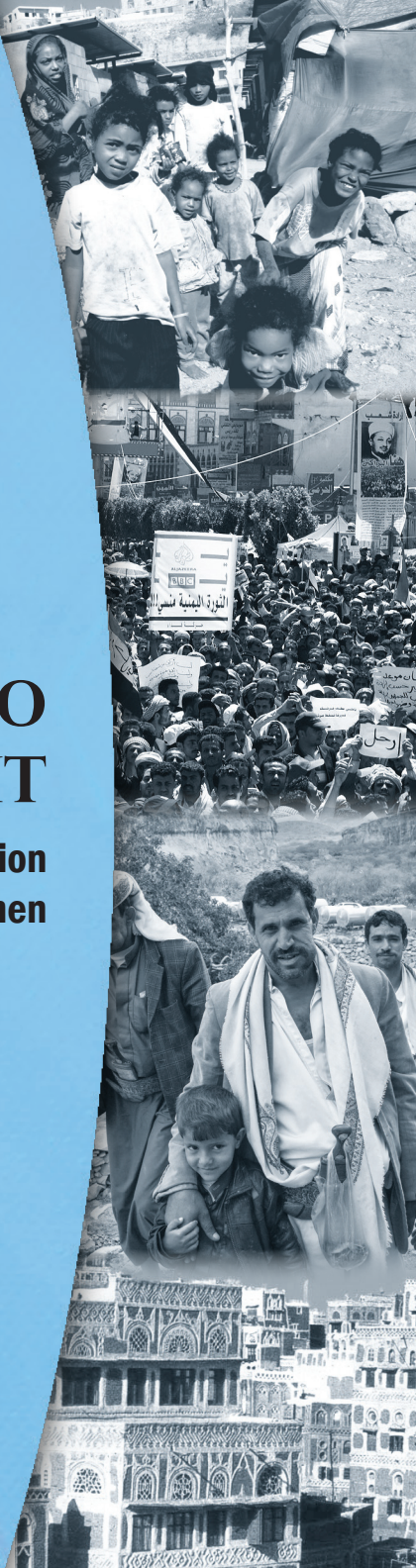
FROM NIGHT TO DARKER NIGHT

Addressing Discrimination and Inequality in Yemen



Equal Rights Trust

EQUAL RIGHTS TRUST

From Night to Darker Night

Addressing Discrimination and Inequality in Yemen

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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My country is handed over from one tyrant to the next,
a worse tyrant; from one prison to another,
from one exile to another.
It is colonised by the observed
invader and the hidden one;
handed over by one beast to two
like an emaciated camel.

In the caverns of its death
my country neither dies
nor recovers. It digs
in the muted graves looking
for its pure origins
for its springtime promise
that slept behind its eyes
for the dream that will come
for the phantom that hid.
It moves from one overwhelming
night to a darker night.

My country grieves
in its own boundaries
and in other people's land
and even on its own soil
suffers the alienation
of exile.

"From Exile to Exile" by Yemeni poet
Abdullah Al-Baradouni
(1929–1999)

"The crowd was shouting: *"Heroes! We are with you in the line of fire against the evil rulers!"* We were treated roughly by the security forces, and we chanted: *"If, one day, a people desires to live, then destiny will answer their call,"* and *"The night must come to an end"*.

Tawakkol Karman, Yemeni human rights activist and
Nobel Prize Laureate, describing the 2011 Yemen revolution

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ACRONYMS AND ABBREVIATIONS

ACHR	Arab Charter on Human Rights
AQAP	Al-Qaida in the Arabian Peninsula
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CAT-OP	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW-OP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRC-OP	Optional Protocol I to the Convention on the Rights of the Child (involvement of the children in armed conflict)
CRPD	Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol to the Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP	Optional Protocol I to the International Covenant on Civil and Political Rights
ICCPR-OP II	Optional Protocol II to the International Covenant on Civil and Political Rights

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IDP	Internally Displaced Person
IHL	International Humanitarian Law
ILO	International Labour Organization
ISIL	Islamic State in Iraq and the Levant
IOM	International Organisation for Migration
LGBT	Lesbian, Gay, Bisexual and Transgender
NDC	National Dialogue Conference
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDRY	People's Democratic Republic of Yemen
NGO	Non-Governmental Organisation
UAE	United Arab Emirates
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
USAID	United States Agency for International Development
US$	United States Dollars
UPR	Universal Periodic Review
WHO	World Health Organization
YAR	Yemen Arab Republic

EXECUTIVE SUMMARY

On 22 May 1990, the People's Democratic Republic of Yemen (PDRY) and the Yemen Arab Republic (YAR) were unified, creating the Republic of Yemen. Unification brought together two territories which had developed along different political lines and had distinct legal frameworks. Ali Abdullah Saleh, formerly the leader of the YAR, was declared President of the new state, while Sana'a, the capital city of the former YAR, was declared as the capital of the Republic.

Despite Saleh's attempts to stabilise and unify the country's different factions and tribes – including through repressive and violent means – the country has faced successive waves of political unrest, with the group "Ansar Allah" (also known as the "Houthis"), and the emerging Southern Movement in particular challenging the state's stability. Successive armed uprisings and civic protests culminated in the resignation of President Saleh in 2012. Saleh became the fourth Arab leader to be forced from power during the Arab Spring.

Whilst the transition from the Saleh regime to the elected government of President Hadi initially appeared to be a success, instability prevailed in both the north and south. This led to a sharp deterioration in the political situation in late 2014, and the eventual takeover of Sana'a by Ansar Allah forces in early 2015. The country has since been embroiled in armed conflict, with the involvement of multiple international and domestic state and non-state actors fragmenting the state and engendering one of the world's worst humanitarian disasters.

The international community's attention has largely been focussed on the humanitarian crisis facing the country, and, to a lesser extent, on violations of international humanitarian law and human rights law being committed by all parties to the conflict. Less attention has been paid to the pre-existing circumstances in the country, and the way in which the conflict has exacerbated the patterns of inequality, disadvantage and discrimination faced by certain groups in Yemen.

This report, which aims to provide a comprehensive assessment of the enjoyment of the rights to equality and non-discrimination in Yemen, seeks to shed light on these issues. The Trust's research has found substantial evidence

of discrimination and disadvantage in Yemen arising on a range of different grounds, including political opinion, religion or belief, gender, ethnicity and descent, disability, health status, sexual orientation, nationality and internal displacement.

The Trust's key finding is that the conflict has not affected the Yemeni population in a uniform manner. Rather, the conflict has had a particular impact on groups who have historically been subject to discrimination and marginalisation – such as women and girls, members of the Muhamasheen community, and members of religious minorities – who have become more vulnerable to existing types of discrimination, as well as facing new forms of discriminatory treatment and exclusion. Furthermore, new vulnerable groups have arisen as a result of the conflict – in particular, a large population of internally displaced persons – whose enjoyment of fundamental rights is restricted.

Introduction

Purpose and Structure

This report has been produced as part of a broader project implemented by the Equal Rights Trust and its local partner in Yemen, the objective of which is to protect and empower human rights defenders in Yemen. Whilst the report was originally intended to address the lack of consistent and comprehensive information on discrimination and inequalities in Yemen, the significant deterioration in the political and security situation in Yemen in the period since our work in the country began necessitated a shift in focus; thus, the report seeks to identify the ways in which the conflict has exacerbated existing patterns of discrimination, as well as highlighting established patterns of discrimination and inequality.

The report comprises an introduction setting out the conceptual framework, methodology and scope of the report, followed by four substantive parts. **Part 1** provides an overview of Yemen's history and current political and economic situation; **Part 2** analyses the legal and policy framework in Yemen as it relates to equality and non-discrimination; **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Yemen, focusing on the characteristics of political opinion, religion or belief, gender, ethnicity and descent, disability, health status, sexual orientation, nationality and in-

ternal displacement; and **Part 4** contains a series of recommendations based on the report's findings.

Conceptual Framework

The report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policies.

The unified human rights framework on equality is expressed in the **Declaration of Principles on Equality** ("the Declaration"), a statement of international best practice adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world. Under the Declaration, the **right to equality** is understood as the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. The **right to non-discrimination** is a freestanding right, subsumed within the right to equality. It encompasses four prohibited forms of discrimination: **direct discrimination**, **indirect discrimination**, **harassment**, and **failure to provide reasonable accommodation**. In order to be effective, the right to equality requires states to take **positive action measures** in order to remove disadvantage caused to particular groups by underlying structural inequalities.

Research Methodology

The Equal Rights Trust has been working to document and combat discrimination and other human rights abuses in Yemen since 2014, in the context of the project *Protecting and empowering human rights defenders in Yemen and improving their capacity to challenge human rights abuses*, funded by the European Union through its European Instrument for Democracy and Human Rights.

The Trust worked closely with its local partner to develop and implement a plan for the conduct of primary in-country field research to document the experience of groups exposed to discrimination, and for the conduct of desk-based research into patterns of discrimination and the legal and policy framework in Yemen. Ten groups of field researchers were commissioned

to undertake primary field research on discrimination and inequality and other human rights abuses between July 2015 and March 2017, working at significant personal risk. Despite the considerable challenges faced by the appointed researchers, the research teams collectively documented approximately 6,000 cases of discrimination and other human rights abuses across 22 governorates. This primary field research was supplemented by extensive desk-based research, undertaken by researchers working under the direction of the Trust between April 2017 and March 2018.

In order to ensure the accuracy of the report's findings and conclusions, a draft of the report was exposed to a validation process. Between February and April 2018, sections of the draft were reviewed by seven experts with in-depth knowledge and understanding of the legal and political context in Yemen, in addition to being subject to close editorial review and scrutiny by the Trust and its local partner. The feedback, comments and criticism received from the experts were addressed and incorporated into the final draft.

Scope and Limitations of this Report

The report does not claim to provide an exhaustive account of discrimination and inequality in Yemen; rather, its aim is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in Yemen.

The rapidly changing context has created particular challenges to researching and representing the principal patterns of discrimination and inequality, and the way in which these have been affected and exacerbated by the conflict. With discrimination faced by certain groups, the situation has been constantly evolving and, whilst this report has attempted to map the most recent developments in this regard, a cut-off date of 30 April 2018 had to be applied for the purposes of updating factual information.

The Trust acknowledges that the internationally recognised government is not in *de facto* control of the whole country, and indeed is arguably not in control of some of the forces ostensibly acting on its behalf. This report does not analyse the complex issue of the extent to which the various actors in Yemen (including non-state armed groups in *de facto* control of parts of the country) are bound to respect international human rights law, and thus the extent to

which they may each be legally responsible for the violations of the rights to equality and non-discrimination discussed in the report; instead, it aims to present the principal patterns of discrimination and inequality as they are *experienced* by the individuals and groups affected. Further, it is beyond the scope and purpose of this report to provide an in-depth analysis of compliance with international humanitarian law standards by the various parties to the current conflict.

Part 1: Social and Political Context

Country Context

Section **1.1** of the Report provides an overview of the country context. The Republic of Yemen is a small, densely populated country located at the tip of the Arabian Peninsula, with an area of 527,000 square km. It has a population of approximately 27,584,213 people, making it the 48th most populous country in the world.

The country is not ethnically or racially homogenous, despite assertions by the government to the contrary, and is in fact home to a number of different ethnic, racial and religious groups, including the Muhamasheen and large numbers of refugees and migrants from the Horn of Africa. Tribes in Yemen serve an important social function, with some estimates suggesting that up to 80% of the population possesses tribal membership.

Whilst official data is lacking regarding the religious demography of the country, recent estimates indicate that approximately 65% of all Muslims in Yemen are Sunnis, with the remaining 35% being Shia. Religious minorities include Ismailis, Jews, Christians, Hindus and members of the Bahá'í faith. Arabic is the official language of the country, although Mahri and Soqotri are also spoken.

After falling sharply in the wake of the 2008 financial crisis, Yemen's economy grew in the five years between 2009 and 2014. However, economic growth fell in 2014 as political stability in the country deteriorated. Yemen ranked 88th out of the 207 economies on the World Bank's 2015 GDP list. The UN Development Programme ranked Yemen in 168th place out of 188 countries in its Human Development Index (HDI) for 2015, with an HDI of 0.482.

History, Government and Politics

Section **1.2.1** provides an overview of Yemen's **history up to 2000**. It begins by noting that the territory now known as Yemen was once home to the ancient Kingdom of Saba', before being taken over by the Himyarites, who were conquered in turn by the Christian kingdom of Aksum. The Zaidi Imamate was established in the 9th century following the introduction of Islam to the territory in the 7th century. The section describes the colonisation of the southern and northern territories several centuries later by the British and the Ottomans respectively.

It then describes the creation of the PDRY in the southern territories and the creation of the YAR in the northern territories following decolonisation. The section describes the territorial wars and political negotiations which led to the unification of the YAR and PDRY in 1990 to form the Republic of Yemen, with Ali Abdullah Saleh (formerly President of the YAR) elected as President of the Republic, and the tensions between the southern and northern leadership which arose shortly after unification.

Section **1.2.2** considers Yemen's **recent history**, beginning with the hostilities between the government and groups who felt excluded from President Saleh's patronage from the early 2000s onwards, including the Southern Movement and the Zaidi Shia movement "Ansar Allah". The section describes the outbreak of mass demonstrations across Yemen in late 2010, and the brokering of President Saleh's resignation in November 2011 by the Gulf Cooperation Council. It explains how, despite attempts at an inclusive transitional period, with President Hadi overseeing a National Dialogue Conference in 2013-2014, instability continued.

Armed groups allied with Ansar Allah and former President Saleh took control of the capital Sana'a in February 2015 and President Hadi's government fled to Aden, requesting that the Gulf Cooperation Council and League of Arab states intervene militarily in Yemen. Multiple national and international state and non-state actors have since become involved in the conflict. This has resulted in the fragmentation of the state and the creation of a humanitarian crisis in the country, with an estimated 22.2 million people (75% of the population) in need of humanitarian assistance.

Part 2: Legal and Policy Framework

This Part of the report examines the legal framework related to equality and non-discrimination in Yemen, looking at both Yemen's international legal obligations and the domestic legal framework which protects the rights to equality and non-discrimination. In addition, it provides an overview of the Yemeni justice system, considering the coexistence of the formal judicial system and informal tribal justice system, and how their operation has been affected by the ongoing conflict.

Legal Framework Related to Equality and Non-Discrimination

Section **2.1.1** of the report assesses Yemen's **participation in international instruments**. It finds that Yemen has a comparatively strong record of participation in the UN human rights treaty system. Yemen has ratified or acceded to seven of the nine key human treaties, with the notable exception of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of all Persons from Enforced Disappearance. However, Yemen has not consented to the individual complaints mechanisms under the majority of the treaties that it has ratified.

Yemen has an average record in relation to other international treaties which have a bearing on the enjoyment by all of the rights to equality and non-discrimination. It is one of the only states in the Middle East and North Africa region to have ratified the Convention relating to the Status of Refugees and its Protocol; however, it has failed to ratify key treaties relating to statelessness and the Rome Statute of the International Criminal Court. As a founder member of the League of Arab States, Yemen is also party to the Arab Charter on Human Rights; however, this treaty has been criticised for being inconsistent with international human rights standards.

The status of international legal obligations in the Yemeni domestic legal order, and the relationship between the Constitution, national laws, and international obligations, is not entirely clear-cut. Whilst international conventions ratified by Yemen must be transposed into domestic law through the enactment of national legislation if they are to have legal effect, the Yemeni courts have been prepared to enforce Yemen's international obligations in the absence of implementing legislation.

Where an armed conflict exists – a fact which is undisputed in Yemen – international humanitarian law (IHL) applies alongside international human rights law. The conflict in Yemen is best characterised as being non-international in nature, meaning that the hostilities are regulated by the norms of IHL applicable to non-international armed conflicts. International human rights law continues to apply concurrently with IHL in situations of armed conflict, meaning that Yemen must still comply with its obligations under international human rights law.

Section **2.1.2** of the report explores Yemen's domestic legal system, which consists of a variety of religious, customary and tribal rules which coexist alongside the state-promulgated legal framework. Section **2.1.2.1** looks first at the **Constitution**, which was adopted by referendum in 1991 and has subsequently been subject to a series of amendments. There is no guarantee of non-discrimination or prohibition of discrimination in the Constitution, and various provisions of the Constitution draw an unfortunate distinction between the rights and freedoms of citizens and non-citizens, with the general constitutional guarantee of equality being limited to citizens only. Further, the Constitution implies a difference in legal status between men and women, indicating that women are considered to be the "sisters of men", as opposed to full citizens, and thus have different rights and duties to men.

The Draft Constitution which resulted from the 2013–2014 National Dialogue Conference, and which was presented to President Hadi in January 2015 prior to the outbreak of the conflict, would have represented a significant improvement on the provisions related to equality and non-discrimination under the current Constitution: it included a substantive guarantee of non-discrimination, extended the guarantee of equality to non-citizens, and included a number of provisions relating to positive action measures. However, the provisions of the Draft Constitution regarding equality and non-discrimination still suffered from some key shortcomings which would need to be addressed in any future constitutional review if the Constitution is to be in line with Yemen's obligations under international law.

Section **2.1.2.2** addresses **specific legislation on equality and anti-discrimination**. There is a notable lack of any comprehensive equality or anti-discrimination legislation in Yemen. The only substantial pieces of legislation relating to equality and non-discrimination are the Law on the Care and Rehabilitation

of Disabled Persons and the Law on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS. However, whilst these laws contain some provisions related to equality and non-discrimination, neither is an anti-discrimination law *per se*. Although the former contains provisions aimed at ensuring the equal participation of persons with disabilities, it fails to define or prohibit disability-based discrimination. The latter guarantees the rights of persons with HIV/AIDS without discrimination on the grounds of their health status but contains a number of provisions which exacerbate the stigma experienced by persons with HIV/AIDS.

Beyond these two laws, Yemen has incorporated provisions on equality and non-discrimination in a small number of laws, though these fall significantly short of offering comprehensive legislative protection of the rights to equality and non-discrimination. Section **2.1.2.3** reviews a number of **non-discrimination provisions in other legal fields**, including criminal, employment and education law. Several problems are identified with the guarantees of equality and non-discrimination in these laws, including provisions of the Labour Code which discriminate on the grounds of sex, and an excessively broad prohibition of hate speech under the Penal Code.

Section **2.1.2.4** considers a number of **government policies** adopted prior to the deterioration in the security situation in 2014, which aimed at fostering the enjoyment of basic rights and protecting vulnerable groups, including policies relating to women's rights, the Muhamasheen community, and persons with disabilities. Our research finds that the political instability of the country and the subsequent outbreak of the conflict has hindered the implementation of these policies and has limited the government's ability to formulate and implement new policies and initiatives relating to equality and non-discrimination.

Overview of the Yemeni Justice System

Section **2.2** provides an overview of the Yemeni justice system. The fragility of the Yemeni state, along with the volatility of its domestic political situation, has allowed for the persistence of informal institutions that exist parallel to the state apparatus; this is particularly evident in the coexistence of state laws and the enduring customs of Yemeni tribes, and the continued operation of both official (state) and informal (tribal) dispute resolution systems.

Section **2.2.1** explains that the formal state judicial system is regulated by Chapter III of the Constitution and the Law on Judicial Authority, which sets out the main principles of equality in the judicial sphere. The judicial system in Yemen is based on the principle of unity of the judiciary, meaning that there is no distinction between regular and administrative jurisdictions and courts; official courts in Yemen have the capacity to adjudicate in all cases, whether civil, criminal, administrative or constitutional, and are subject to one appeal system. Despite the fact that there is a constitutional prohibition on the establishment of "exceptional courts", a number of specialised courts have been created, including the Special Press and Publications Court in Sana'a and Specialised Criminal Courts.

This section finds that the weak legislative framework for protection of the right to non-discrimination is matched by poor enforcement: court proceedings in Yemen are prone to considerable delays and legal aid is rarely available, despite the Constitution guaranteeing judicial assistance for those who cannot afford it. Concerns have also been raised regarding the extent to which the Yemeni judicial system respects the fair trial rights of defendants, with the Specialised Courts coming under particular criticism for failing to respect international fair trial standards.

Section **2.2.2** explores Yemen's informal tribal arbitration system, finding that high levels of "legal illiteracy" in Yemen, coupled with mistrust of formal state institutions, mean that many individuals prefer to settle their personal disputes through tribal arbitration. Tribal arbitration is a dispute settlement mechanism whereby two or more parties decide to delegate the resolution of a dispute to a tribal leader. The tribal award may result in the punishment of the offender, or the provision of material and moral compensation for losses suffered by the victim. Tribal arbitration is not limited to local disputes: historically, tribal mediation and arbitration played a crucial role in resolving tensions between different political parties and factions.

The ongoing conflict has had a profound impact on the functioning and structure of the Yemeni formal judicial system. The progressive erosion of the state's institutions, the appropriation of territory and resources by Ansar Allah forces, and the subsequent seizure of many state functions (including the judiciary), by such forces have led to the fragmentation of the judicial system and a dramatic deterioration of the rule of law. This fracturing of the formal

judicial system has created considerable administrative confusion, which has exacerbated the already extensive delays in court proceedings. The deterioration in the rule of law means that the use of Specialised Criminal Courts has proliferated, and there have been widespread arbitrary arrests of citizens by all parties to the conflict. The poor functioning of the formal judicial has also meant that more people are reportedly relying on tribal justice to resolve their disputes.

Part 2 **concludes** that the Yemeni legal framework does not effectively guarantee the rights to equality and non-discrimination. Whilst Yemen has ratified or acceded to seven of the nine key human rights treaties, the rights to equality and non-discrimination are poorly protected both under the Constitution and in national legislation. The weak legislative framework for protection of the right to non-discrimination is also matched by poor enforcement, with issues in the formal judicial system having been exacerbated by the ongoing conflict.

Part 3: Patterns of Discrimination and Inequality

This part of the report presents evidence of discrimination and inequality arising on the basis of: (i) political opinion; (ii) religion or belief; (iii) gender; (iv) ethnicity and descent; (v) disability; (vi) health status; (vii) sexual orientation; (viii) nationality; and (xi) internal displacement. It does not seek to provide an exhaustive picture of all the observed patterns of discrimination in Yemen. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant grounds of discrimination in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws and policies, the actions of the government and those exercising *de facto* control over particular regions of the country, exposure to discriminatory violence, and inequality in areas such as employment, education, healthcare and access to goods and services.

Section **3.1** addresses discrimination on the basis of **political opinion**. It finds that suppression of dissent, through the application of discriminatory and restrictive laws, but more importantly through discriminatory violence against actual or perceived political opponents, is the principal pattern of discrimination on the basis of political opinion. During the era of former President Saleh, successive clashes between the Ansar Allah movement and the

administration, brutal responses to southern independence protests, and the "war on terror" all provided pretext for the restriction of essential civil and political rights, in ways which discriminated against those whose political opinion was, or was perceived to be, in conflict with the regime. Since the outbreak of the conflict, individuals perceived to be political opponents of the various parties to the conflict have faced new rights violations; journalists, human rights defenders and civil society activists have been targeted by all parties to the conflict on the grounds of their perceived political opinion. The section sets out evidence of discriminatory violence by government and those in *de facto* control, discriminatory detention and torture, and discriminatory restriction on freedom of expression and association.

Section **3.2** considers discrimination on the basis of **religion or belief**. Despite the widespread practice of Islam, there is a broad range of religious communities in Yemen, including different schools of the Islamic faith, and members of non-Muslim religious groups. However, legal primacy is afforded to Islam in the Constitution, with the Constitution recognising Islamic Shari'a as the source of domestic legislation. A number of laws discriminate against religious minorities, including provisions of the Press and Publications Law and the Penal Code which prohibit blasphemy, and provisions of the Penal Code relating to apostasy. The section presents evidence of instances of discrimination and abuse against members of religious minority communities, in particular the Bahá'í community. Since the outbreak of the conflict, members of the Bahá'í community have been increasingly subjected to severe discrimination on account of their religious beliefs. Other minorities have also been subject to discriminatory violence, including Christians and those considered to be atheists, and there has been a marked increase in the destruction of sites of worship and other sites of religious and cultural importance by non-state armed groups.

Section **3.3** addresses discrimination on the grounds of **gender**. Prior to the outbreak of conflict, Yemen ranked at the bottom of global gender rankings on account of the severe discrimination and inequality faced by Yemeni women in all areas of life. A combination of negative societal stereotypes, a weak legislative framework and discriminatory laws meant that gender-based violence and child marriage were prevalent, women were treated unequally in relation to marriage, divorce and inheritance, and they faced barriers in exercising their rights to work, political participation, education and healthcare.

Whilst the conflict has provided certain opportunities for women, including the possibility of obtaining employment in jobs traditionally considered to be unsuitable for women, the Trust's research has found considerable evidence that the conflict has generally exacerbated the entrenched discrimination and inequalities faced by women and girls in Yemen, with rates of gender-based violence and child marriage having increased.

Discrimination on the basis of **ethnicity and descent** is addressed in section **3.4**, which focuses specifically on the situation of the Muhamasheen. The Muhamasheen are the lowest ranking group in Yemen's social hierarchy, and the social stigma attached to them is a central factor in their experience of discrimination and a range of other human rights violations. Having been excluded from Yemeni economic, tribal and political structures for much of their history, the Muhamasheen have faced unique difficulties escaping poverty. They remain limited to low-paid, low-skilled forms of work and face various forms of discriminatory treatment, ranging from discriminatory violence, to discrimination in land ownership, employment and education. Members of the Muhamasheen community have faced new forms of discriminatory treatment since the outbreak of the conflict, including being discriminated against in the provision of humanitarian aid and assistance. Muhamasheen women are subject to multiple discrimination, reportedly being particularly vulnerable to sexual violence and harassment by armed groups.

Section **3.5** discusses the discrimination and disadvantaged faced by **persons with disabilities**. Persons with disabilities in Yemen have long faced difficulties participating in society on an equal basis with others due to strong social prejudice, and a weak legislative framework. The Constitution affords very limited protection to persons with disabilities, and the primary piece of disability legislation in Yemen – the Care and Rehabilitation of Persons with Disabilities Law of 1999 – adopts a medical, rather than social, model of disability, which is inconsistent with international best practice. Persons with disabilities face discrimination and exclusion in various areas of life, including in employment, education and healthcare. The conflict has increased the marginalisation experienced by persons with disabilities: for example, it has exacerbated the challenges faced by children with disabilities in enjoying their right to education, due in part to shortages of equipment at schools such as wheelchairs and hearing aids.

Section **3.6** discusses discrimination on the basis of **health status**. The number of persons with HIV and AIDS in Yemen has grown steadily since the early 1990s, in part due to a lack of understanding and information regarding HIV/AIDS. In 2009, the Law on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS was adopted, the aims of which include raising awareness of the rights of persons living with HIV/AIDS and guaranteeing these rights without discrimination. However, persons living with HIV/AIDS still face high levels of stigma in society, with individuals being ostracised by their communities and even families after being discovered to be HIV positive. Persons living with HIV and AIDS also face discrimination in areas such as housing, work, education and health. The conflict has created further difficulties for persons living with HIV and AIDS in obtaining the health services they need, as travel to healthcare clinics has been obstructed, and medical supplies have become less available.

Discrimination on the basis of **sexual orientation** is discussed in section **3.7**. Yemen is one of the most repressive countries in the world for Lesbian, Gay and Bisexual (LGB) persons. Laws criminalising same-sex sexual relations contain harsh penalties, including death by stoning in the case of married men. Stigma surrounding homosexuality is high, with individuals having to conceal their sexual orientation. As such, there is very little information available regarding the situation of the LGB community in Yemen. However, there have been several reports of men being killed on the basis of their actual or perceived sexual orientation, with the risks of discriminatory violence reportedly having increased since the outbreak of the conflict. The limited space for LGB persons to associate and express themselves has also shrunk yet further as the security situation has deteriorated across the country. The Trust was unable to find any evidence on the situation of transgender person, a fact attributed by an expert with whom we spoke to the high levels of stigma and exposure to violence facing transgender persons, which leads them to hide their gender identity.

Section **3.8** addresses discrimination against **non-nationals**. Yemen has a long history of migration, with large numbers of refugees, asylum seekers and economic migrants travelling to the country from the Horn of Africa and neighbouring Gulf countries. These individuals face a perilous journey, and those who arrive safely on Yemeni soil are at risk of being subject to numerous rights violations, including arbitrary detention, discriminatory violence and

other ill-treatment, and being returned to their country of origin in breach of the principle of *non-refoulement*. Those that remain experience various manifestations of discrimination, including in employment and in accessing services such as healthcare. As the rule of law in the country has deteriorated as a result of the ongoing conflict, both the government authorities and Ansar Allah forces have detained migrants and asylum seekers in poor conditions and exposed them to abuse. The United Nations High Commissioner for Refugees' capacity to protect refugees has also been affected by the conflict, with the registration of asylum seekers having been suspended in certain parts of the country.

Section **3.9** discusses discrimination and inequality affecting **internally displaced persons** (IDPs). There are large numbers of IDPs in Yemen, many of whom are extremely poor as they have been subject to multiple displacements during previous periods of violence. IDPs are particularly vulnerable to certain forms of violence and ill-treatment, and certain issues arising from the conflict – such as the impact on access to education – have had a particular effect on IDPs. The Trust's research also indicates that displacement has operated in conjunction with other characteristics to exacerbate the vulnerability of certain groups to discrimination, with individuals experiencing multiple discrimination on the grounds of, for example, their IDP status and their gender or ethnicity and descent. As such, IDPs belonging to groups that are already vulnerable to marginalisation and discriminatory treatment, such as women and the Muhamasheen, experience unique risks and challenges.

The primary **conclusion** of our research is that the conflict has not affected the Yemeni population in a uniform manner. Instead, it has had a particular impact on certain groups in Yemen, who have experienced increased discrimination and new discriminatory rights violations, in a context where violations of the rights to equality and non-discrimination were already prevalent.

Part 4: Recommendations

This Part sets out recommendations aimed at ensuring enjoyment of the rights to equality and non-discrimination.

Before making specific recommendations aimed at increasing respect, protection and fulfilment of the rights to equality and non-discrimination, **the**

Equal Rights Trust calls upon all parties to the conflict, and to all third-party states which provide support to the parties to the conflict, to bring an end to the current hostilities. These parties are also called upon to commit to resolving the conflict through inclusive, peaceful political dialogue to facilitate the delivery of humanitarian assistance and to provide unhindered access for humanitarian actors.

Part 4 then makes three sets of recommendations, which are categorised based on their respective urgency: (1) Recommendations for immediate implementation; (2) Recommendations applicable to any future transitional process; and (3) Recommendations for post-conflict implementation.

As regards the **recommendations for immediate implementation**, the Trust calls upon all parties to cease and refrain from discrimination and discriminatory human rights violations. Parties to the conflict are called upon *inter alia* to cease and refrain from discriminatory denial of the right to life; discriminatory torture and ill-treatment; discriminatory violations of the right to liberty and security of the person; and discriminatory violations of the rights to freedom of religion, expression, assembly and association. The Trust also calls on all actors involved in the provision of humanitarian aid to take steps to ensure respect for the rights to equality and non-discrimination in their actions.

In terms of the second set of **recommendations applicable to any future transitional process**, the Trust calls upon the parties to any post-conflict transition process to mainstream the principles of equality and non-discrimination in all peace-building initiatives and post-conflict reconstruction. This includes ensuring that such processes are genuinely inclusive of all groups in Yemeni society, and that equality principles are integrated in comprehensive policies to redress past abuses.

The Trust's **recommendations for post-conflict implementation** call for the restoration of the rule of law to be accompanied by steps to ensure the comprehensive protection and guarantee of the rights to equality and non-discrimination in accordance with Yemen's international obligations. Such steps should include *inter alia*: improving participation in human rights instruments; repealing or amending discriminatory laws and legal provisions; ensuring that the Yemeni Constitution guarantees the rights to equality and

non-discrimination in accordance with its international human rights law obligations; adopting comprehensive equality legislation; reforming existing national laws to ensure that they are compatible with the rights to equality and non-discrimination; taking positive action measures to fulfil the rights to equality and non-discrimination; and introducing reforms to ensure the full and effective implementation of legislative provisions aimed at prohibiting discrimination.

INTRODUCTION

On 22 May 1990, the People's Democratic Republic of Yemen (PDRY) and the Yemen Arab Republic (YAR) were unified, creating the Republic of Yemen. Unification brought together two territories which had long been separate, having developed along different political lines and with distinct legal frameworks. Ali Abdullah Saleh, formerly the leader of the YAR, was declared President of the new state, while Sana'a, the capital city of the former YAR, was declared as the capital of the Republic.

Despite Saleh's – often violent and repressive – attempts to stabilise and unify the country's different factions and tribes, the country has faced successive waves of political unrest, with the group "Ansar Allah" (also known as the "Houthis"), and the Southern Movement in particular challenging the state's stability. Successive armed uprisings and civic protests culminated in the resignation of President Saleh in 2012. Saleh became the fourth Arab leader to be forced from power during the so-called "Arab Spring".

Whilst the transition from the Saleh regime to the elected government of President Hadi initially appeared to be a success, instability prevailed in both the north and south. This led to a sharp deterioration in the political situation in late 2014, and the eventual takeover of Sana'a by Ansar Allah forces in early 2015. The country has since been embroiled in armed conflict, with the involvement of multiple international and domestic state and non-state actors in the conflict fragmenting the state and engendering one of the world's worst humanitarian disasters.

The international community's attention has largely been focussed on the humanitarian crisis facing the country, and, to a lesser extent, on violations of international humanitarian law and human rights law being committed by all parties to the conflict. However, less attention has been paid to the pre-existing circumstances in the country, and the way in which the conflict has exacerbated the patterns of inequality, disadvantage and discrimination faced by certain groups in Yemen. This report, which provides a comprehensive assessment of the enjoyment of the rights to equality and non-discrimination in Yemen, aims to shed light on these issues.

Purpose and Structure of this Report

This report has been produced as part of a broader project implemented by the Equal Rights Trust and its local partner in Yemen, the objective of which is to protect and empower human rights defenders in Yemen. As originally conceived, this report was intended to address the lack of consistent and comprehensive information on discrimination and inequalities in Yemen, and thus serves as an evidence base for legal professionals, human rights defenders, legislators and policy-makers in Yemen.

However, the significant deterioration in the political and security situation in Yemen in the period since our work in the country began has necessitated a shift in focus. As such, in addition to highlighting and analysing established patterns of discrimination and inequality in Yemen, the report also seeks to identify the ways in which the conflict has exacerbated these patterns of discrimination, as well as creating new patterns of inequality and disadvantage.

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;

b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and

c) status-based inequalities and socio-economic inequalities.

The report comprises four parts. **Part 1** provides an overview of Yemen's history and current political and economic situation, including information regarding the unfolding of the current political, security and humanitarian crisis

facing the country. **Part 2** analyses the legal and policy framework in Yemen as it relates to equality and non-discrimination, first providing an overview of Yemen's justice system, considering the coexistence of the formal and informal (tribal) justice systems, and the way in which the conflict has affected the operation of the justice system. It goes on to identify Yemen's international obligations on equality and non-discrimination and to analyse national laws and policies for compliance with international law and best practice. It ends with a brief overview of the concurrent application of international humanitarian law and international human rights law standards in Yemen during the current conflict. **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Yemen, focusing on the characteristics of political opinion, religious belief, gender, ethnicity and descent, disability and health status, sexual orientation, nationality and internal displacement. **Part 4** contains recommendations aimed at ensuring respect, protection and fulfilment of the rights to equality and non-discrimination in Yemen drawn from an analysis of the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 2 and the evidence of patterns of inequality and discrimination examined in Part 3. These recommendations are set out in three categories: (1) recommendations for immediate implementation; (2) recommendations applicable to any future transitional process; and (3) recommendations for post-conflict implementation.

Conceptual Framework

This report uses the concepts of equality and discrimination law set out in the **Declaration of Principles on Equality** ("the Declaration")[1] as the conceptual framework for its analysis of Yemen's legal and policy framework in **Part 2**, and its discussion of the principal patterns of discrimination and inequality in **Part 3**.

The Declaration was drafted in 2008 by a number of human rights and equality experts from different regions across the world, and is a statement of international best practice "based on concepts and jurisprudence developed in international, regional and national contexts".[2] It promotes a unified approach to equality and non-discrimination, emphasising the integral role of

1 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

2 *Ibid.*, p. 2.

equality in the enjoyment of all human rights, and encompasses equal participation in all areas of life in which human rights apply. Since its adoption, the standards set out in the Declaration have been reflected in the interpretations of the rights to equality and non-discrimination by numerous UN treaty bodies,[3] and have also informed the development of anti-discrimination laws in numerous countries.

Principle 1 of the Declaration defines the **right to equality** as follows:

> *The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*[4]

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnected nature of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. This report takes this expression of right to equality as the baseline against which it assesses the presence or degrees of inequality.

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3 See *inter alia*, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, U.N. Doc. E/C.12/GC/20, 2009; Committee on the Elimination of Discrimination Against Women, *General Comment No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010; Committee on the Rights of Persons with Disabilities, *General Comment on the right of persons with disabilities to equality and non-discrimination (article 5),* UN Doc. CPRD/C/GC/6, 9 March 2018.

4 See above, note 1, Principle 1.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as a free-standing right subsumed in the right to equality.[5] Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

Principle 5 of the Declaration identifies an extensive list of grounds on which discrimination must be prohibited, drawing together the characteristics protected under various international and regional instruments:

> ***Discrimination*** *must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*
>
> *(…)*
>
> *Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*[6]

The Declaration also provides a "test" for the inclusion of further prohibited grounds of discrimination, according to which "candidate grounds" should meet at least one of three listed conditions:

5 *Ibid*., Principle 4.

6 *Ibid.,* Principle 5.

> *Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*[7]

Most modern legal systems which provide protection against discrimination recognise that discriminatory treatment includes both **direct** and **indirect discrimination**. Principle 5 of the Declaration of Principles of Equality defines direct and indirect discrimination as follows:

> ***Direct discrimination*** *occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*
>
> ***Indirect discrimination*** *occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.*

Importantly, intention is not required for discrimination on a particular ground to be found: an act of discrimination may be committed intentionally or unintentionally.[8] Furthermore, **harassment** may constitute discrimination:

7 *Ibid.*

8 *Ibid.*, Principle 5.

> *[W]hen unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.*[9]

The right to be free from discrimination also implies a right to **reasonable accommodation**, which arises in relation to all protected characteristics (not simply in relation to disability). Principle 13 of the Declaration elaborates on what is required to accommodate difference, and from whom it is required:

> *To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.*
>
> *Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.*

In line with international law in this area, the approach taken in this report is that a denial of reasonable accommodation constitutes discrimination.[10]

The right to equality also gives right to a requirement on the state to institute **positive action** (also known as affirmative action, or special measures) in or-

9 *Ibid.*

10 See, for example, Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 2; Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: "disability-based discrimination" includes the denial of "reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights"; Committee on the Rights of Persons with Disabilities, *General Comment No. 4 on the right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Para 31.

der to remove disadvantage caused to particular groups by underlying structural inequalities, where this is necessary to ensure equal participation in all areas of economic, social, cultural, political and civil life. As with other principles in the Declaration, this principle draws upon established approaches to the interpretation of international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments.[11] Principle 3 of the Declaration states:

> *To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*[12]

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. Positive action is key to addressing those inequalities which are not attributable solely to discrimination.

The review of laws and policies in Part 2 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as explained, *inter alia*, in General Comment No. 3 of the Committee on Economic, Social and Cultural Rights and General Comment No. 31 of the Human Rights Committee. As stated in the commentary on the Declaration:

> *By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are re-*

11 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, 1979, Article 4(1).

12 See above, note 1, Principle 3.

> *quired to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.*[13]

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality to our research has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report: the presentation of discrimination and inequality on a number of different grounds in the same study. Thus, the report reviews evidence of discrimination arising on the basis of nine different grounds, ranging from political opinion to gender to internal displacement status. It also examines evidence of multiple discrimination, looking for example at the intersectional discrimination experienced by women who are internally displaced. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Yemeni context.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of personal safety, employment, education and healthcare. But in this respect, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups. This may be because persons within these groups do not experience disadvantage

13 Petrova, D., "The Declaration of Principles on Equality: A Contribution to International Human Rights", in *Declaration of Principles on Equality*, p. 38.

in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains no evidence of discrimination on the basis of political opinion or religious belief in areas such as education and healthcare, as no such evidence was identified during the development of the report. In the context in which the research was undertaken, a lack of evidence of a particular manifestation of discrimination does not enable us to conclude that it does not take place.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates patterns of substantive inequality, looking in particular at "participation on an equal basis with others in economic, social, political, cultural or civil life",[14] thereby extending beyond experiences of discrimination.

The **fourth implication** of applying the unified framework is the definition of discrimination used, which – reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, rather than the list of grounds protected by law in Yemen – provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of political opinion; religion or belief; gender; ethnicity and descent; disability; health status; sexual orientation; nationality; and internal displacement. Furthermore, the report examines some patterns of discrimination – such as the discrimination experienced by Muhamasheen women – which do not fall within one specified ground alone, but which are examples of multiple discrimination.

The **final implication** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus,

14 See above, note 1, Principle 1.

this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Yemen's legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced.

Research Methodology

The Equal Rights Trust has been working to document and combat discrimination and other human rights abuses in Yemen since 2014, in the context of the project *Protecting and empowering human rights defenders in Yemen and improving their capacity to challenge human rights abuses*, funded by the European Union through its European Instrument for Democracy and Human Rights. This report, which is one of the outcomes of this project, was developed in several stages.

The scope and methodology for this report were conceptualised in 2014, prior to the deterioration of the political situation and the outbreak of the current conflict. The developments in the situation on the ground have necessitated a number of changes to both the scope of the report and the approach taken to the research. Thus, as noted above, whilst the report remains focussed on addressing discrimination and inequality in Yemen, it incorporates an analysis of how the current conflict has impacted on the legal landscape in Yemen, and on the incidence and manifestations of inequality and discrimination experienced by different groups.

The Trust worked closely with its local partner to develop and implement a plan for the conduct of primary in-country field research to document the experience of groups exposed to discrimination, and for the conduct of desk-based research into patterns of discrimination and the legal and policy framework in Yemen. This plan sought to balance the need for objectivity, corroboration and verification of research evidence with the need for measures to mitigate the risks inherent in human rights monitoring in the context of the conflict.

The research process began in 2015, with desk-based research to identify and map the principal patterns of discrimination in Yemen and produce an initial audit of the legal and policy framework on equality and non-discrimination. Following this exercise, five groups of field researchers were appointed in

early 2015; these researchers received financial and technical support to conduct research in the country from July 2015 onwards. An additional five groups of field researchers were appointed in October 2016 to conduct further research until March 2017. The researchers were commissioned to undertake primary field research on discrimination and inequality and other human rights abuses through conducting semi-structured interviews with the groups identified through the mapping exercise as being most exposed to discrimination and other human rights violations: (i) civil society activists, human rights defenders, journalists and others experiencing discrimination on the basis of their actual or perceived political opinion; (ii) religious minorities; (iii) women; (iv) ethnic and racial minorities; (v) persons with disabilities; (vi) persons with HIV/AIDS; (vii) lesbian, gay, bisexual and transgender persons; (viii) refugees; and (ix) internally displaced persons. Detailed guidance was provided to the researchers regarding the conduct of the field research, and the presentations of their findings.

During the research process, the security situation in Yemen became increasingly volatile as a result of the ongoing conflict. The original five research groups were unable to carry out any monitoring and documentation between January and September 2016 without assuming an unreasonable level of risk both to their own personal safety and that of the populations with which they were seeking to speak. Four of the five research groups resumed their research in October 2016, with the fifth group having to be replaced with another researcher as they were unable to continue their work. Of the second set of researchers appointed in October 2016, one group – which was commissioned to document cases in Hodeida governorate – was unable to commence their work until February 2017 due to the instability in the area. All research groups concluded their work at the end of March 2017.

Despite the considerable challenges faced by the appointed researchers, the research teams collectively documented approximately 6,000 cases of discrimination and other human rights abuses across Sana'a, Aden, Lahj, Taiz, Al Bayda, Al Jawf, Marib, Abyan, Ad Dali', Shabwah, Amran, Amanat Al Asimah, Dhamar, Hajjah, Sa'dah, Al Mahrah, Hadramaut, Soqatra, Hodeida, Al Mahwit, Ibb and Raymah governorates. The volume of testimony collated far exceeded expectations, with the result that it was not possible to review and analyse all of the data for the purposes of this present report. Instead, the Trust reviewed, analysed and verified a sample of data, and incorporated the findings

and testimony from this data set into Part 3 of the report. The Trust plans to undertake a quantitative and qualitative analysis of the full data set as a separate exercise, and the findings from this analysis will be published in a second report, at a later date.

Throughout the report, in presenting the first-hand testimony of victims of discrimination and their families, all names and other personal identifying information have been withheld out of respect for the victims' wishes for anonymity and to eliminate any personal risk to the victims in disclosing their identity. Each interview referenced or quoted in Part 3 has been given a unique code, in order to preserve anonymity. Information regarding the identities of the individuals interviewed is kept on file by the Trust.

Between April 2017 and March 2018, desk-based research was undertaken by researchers working under the direction of the Trust. Research on Yemeni law and policy for Part 2 was undertaken by a Yemeni legal expert, working in line with detailed research guidelines provided by the Equal Rights Trust, and with editorial support from the Trust and our local partner. Research on Yemen's international legal obligations benefited from the United Nations treaty collection database[15] and the website of the Office of the High Commissioner for Human Rights.[16] Research on Yemeni law, including the Constitution and national legislation, consisted of reviewing primary sources, accessed online including via the government's National Information Center,[17] and was further supplemented through a review of state reports to the UN treaty bodies and documents gathered from government websites.

In addition to the aforementioned primary field research, research for Part 3 of the report included desk-based research of existing published sources, helping to identify and elaborate the major patterns of discrimination in Yemen. This involved a review of relevant literature on discrimination and inequality in Yemen, including reports by both the government and non-

15 United Nations, *United Nations Treaty Series Online Collection*, available at: https://treaties.un.org/pages/ParticipationStatus.aspx.

16 Office of the High Commissioner for Human Rights, available at: http://www.ohchr.org/EN/Pages/WelcomePage.aspx.

17 Presidency of the Republic, National Information Center, available at: https://www.yemen-nic.info.

governmental organisations (NGOs) to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media institutions. Wherever possible, statistical data was relied on to improve understanding of inequalities. Thus, Part 3 of the report relies on a variety of data sources. Relevant first-hand testimony gathered through interviews and focus groups is complemented by review and analysis of the research and publications produced by others, together with statistical data where possible.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. Between February and April 2018, sections of the draft were reviewed by seven experts with in-depth knowledge and understanding of the legal and political context in Yemen, in addition to being subject to close editorial review and scrutiny by the Trust and its local partner. Due to the security situation, the validation process took place online, with the relevant experts sharing their written comments on the draft via email. The feedback, comments and criticism received from the experts were addressed and incorporated into the final draft of the report.

Scope and Limitations of this Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Yemen itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 3 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in Yemen.

The research for this report was constrained by a lack of disaggregated statistical data or other forms of reliable published information pertaining to the situation of certain groups, and certain areas of life. Consequently, certain issues, such as discrimination on the grounds of sexual orientation, are

not covered in great depth, whilst other issues, such as discrimination on the grounds of gender identity, are not covered at all. More broadly, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment and criminal justice, has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect of the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by a lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality. As regards discrimination on the grounds of gender identity, for example, the absence of evidence does not indicate the absence of discrimination; rather, it is indicative of the social stigma surrounding sexual and gender minorities in Yemen, and the fact that transgender persons do not feel able to disclose their gender identity.[18]

The rapidly changing context has created particular challenges in representing the principal patterns of discrimination and inequality, and the way in which these have been affected and exacerbated by the conflict. With discrimination faced by certain groups – such as journalists, or members of the Bahai' faith, for example – the situation has been constantly evolving and, whilst this report has attempted to map the most recent developments in this regard, a cut-off date of 30 April 2018 had to be applied for the purposes of updating factual information. The same applies in respect of updates regarding developments in the political situation in Part 1.

The outbreak of the current conflict, and the consequent geographical division of the country between Ansar Allah forces and the internationally recognised government of President Hadi, has also presented challenges for the approach to the analysis of patterns of discrimination in Part 3. One of the consequences of the current situation is that the recognised government is not in *de facto* control of the whole country, and indeed is arguably not in control of some of the forces ostensibly acting on its behalf. Indeed, in January 2018, the UN Panel of Experts on Yemen assessed that President Hadi no

18 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

longer had effective command and control over military and security forces operating on behalf of the government.[19] This report does not analyse the complex issue of the extent to which the various actors in Yemen (including non-state armed groups in *de facto* control of parts of the country) are bound to respect international human rights law,[20] and thus the extent to which they may each be legally responsible for the violations of the rights to equality and non-discrimination discussed in Part 3 as a matter of international law. Rather, the discussion in Part 3 of the report presents the principal patterns of discrimination and inequality as they are *experienced* by the individuals and groups affected, rather than attempting to attribute legal responsibility to any particular actor or group of actors (whether state or non-state).

Another key consequence of the existence of the ongoing armed conflict in Yemen is that international human rights law is not the only legal framework which applies to regulate the conduct of those in *de facto* control of the country: where an armed conflict exists – a fact which is undisputed in Yemen[21] – another distinct body of law, international humanitarian law, also applies. It is beyond the scope and purpose of this report to provide an in-depth analysis of compliance with international humanitarian law standards by the various parties to the current conflict. However, given the relevance of international humanitarian law to certain of the issues discussed in Part 3, a brief exposition of the application of international humanitarian law, and its interrelation with international human rights law during armed conflict, is set out in Part 2.

19 UN Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2342 (2017)*, UN Doc. S/2018/68, 26 January 2018.

20 Although international human rights law is predominantly concerned with the role and responsibilities of states, the Office of the High Commissioner for Human Rights has noted that "[i]t is increasingly accepted that non-State actors that exercise government-like functions and de facto control over a territory must respect human rights standards when their conduct affects the human rights of the individuals under their control": see Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/33/38, 4 August 2016, Para 10; Office of the High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict*, 2011, pp. 24–25, available at: http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

21 See Human Rights Council, *Situation of human rights in Yemen – Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/31, 2015, Paras 20–24; UN Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2266 (2016)*, UN Doc. S/2017/81, 2017.

1. SOCIAL AND POLITICAL CONTEXT

1.1 Country Context

The Republic of Yemen is a small, densely populated country located at the tip of the Arabian Peninsula, an area known to the Romans as "prosperous Arabia" or *Arabia Felix*[1] because of its plentiful resources. It is bordered to the North by Saudi Arabia, to the South by the Arabian Sea and the Gulf of Aden, to the East by Oman and to the West by the Red Sea. Slightly larger than its neighbouring Oman, it has an area of 527,000km^2.[2] The country is geographically diverse, with mountains, coastal areas, plateaus, desert and islands.

The territory occupied by modern day Yemen has been colonised by twelve different nations, with North and South Yemen eventually emerging as separate states.[3] On 22 May 1990, the northern and southern territories of present day Yemen officially united to become the Republic of Yemen. It should be noted, however, that the country is currently geographically divided as a result of an ongoing civil war: in early 2015, Ansar Allah forces (also known as the "Houthis") assumed control of much of the north of the country, including the capital Sana'a, with the backing of forces loyal to the former President Saleh, whilst a *de facto* capital was established by the internationally-recognised government in Aden.[4]

As at 2016, Yemen was estimated to have a population of 27,584,213 people, making it the 48th most populous country in the world.[5] 54.2% of the population lives in the countryside, and the remainder inhabit the cities of which the largest are Sana'a (home to 2.9 million people) and Aden (home

1 de Maigret, A, *Arabia Felix: an exploration of the archaeological history of Yemen,* Stacey International, 2002, p. 26.

2 United Nations Development Program, *Yemen General Information*, 10 Sep 2013, available at: http://www.ye.undp.org/content/yemen/en/home/countryinfo.html.

3 Orkaby, A. A., *The International History of the Yemen Civil War, 1962–1968. Doctoral dissertation,* 2014. Available at: https://dash.harvard.edu/bitstream/handle/1/12269828/Orkaby_gsas.harvard_0084L_11420.pdf?sequence=1.

4 See more detailed discussion below.

5 The World Bank, Data: *Population*, available at https://data.worldbank.org/indicator/SP.POP.TOTL?end=2016&locations=YE&start=2011.

to 0.8 million people).[6] According to data collected prior to the outbreak of the civil war, the population has been consistently growing since the 1950s as a result of high birth rates, comparatively low death rates and increased migration. Between 2005 and 2015 the population rose by just over five million.[7] In 2014 – prior to the outbreak of the current conflict – the birth rate was reported to be 32.4 per 1,000 people,[8] whilst the death rate for the same year was 6.9.[9] Life expectancy at birth was 65.2 years for women, as compared to 62.4 years for men.[10] This data must be considered in view of the deterioration of the humanitarian situation brought about by the current civil war.

The country is not ethnically or racially homogenous, despite assertions by the government to the contrary,[11] and is in fact home to a number of different ethnic, racial and religious groups. The United Nations Committee of the Convention of Elimination of Racial Discrimination (CERD Committee) has noted the absence of statistical data on the ethnic make-up of the country.[12] However, one large ethnic minority group of particular note is the Afro-Arab group whose members self-identify as "*Muhamasheen*" (the marginalised) and who have been pejoratively labelled "*Al-Akhdam*" (servants) by many in Yemeni society,[13]

6 World Population Review, *Yemen* 2018, 19 May 2018, available at: http://worldpopulationreview.com/countries/yemen-population.

7 See above, note 5.

8 The World Bank, Data: *Birth rate, crude (per 1,000 people*), available at: http://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=YE. (as of 2014).

9 *Ibid*.

10 The World Bank, Data: *Life Expectancy (All); Life Expectancy (Female); Life expectancy (Male)*; available at: http://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=YE. (as of 2014)

11 Committee of the Convention on the Elimination of Racial Discrimination, *Concluding Observations: Yemen,* UN Doc CERD/C/YEM/CO/17-18, 4 April 2011, Point 9.

12 The World Bank, Data: *Refugee population by country or territory of origin, Yemen*¸ available at: http://data.worldbank.org/indicator/SM.POP.REFG.OR?locations=YE.

13 "*Al-Muhamesheen*" means "The Marginalised", and was adopted by the group itself in order to move away from the derogatory label "*Al-Akhdam*" (Servants); however, in practice the two are used intercŮhangeably. For a detailed discussion, see Minority Rights Group International, *'Even War Discriminates': Yemen's Minorities, Exiled at Home*, 2016, available at http://minorityrights.org/wp-content/uploads/2016/01/MRG_Brief_Yemen_Jan16.pdf.

and who account for up to 12.7% of the population.[14] The vast majority of the *Muhamasheen* are concentrated in shanty towns around the main cities (Sana'a, Aden, Taiz, Ibb, Dhamar, Lahj and Abyan).

Tribes in Yemen serve an important social function, with some estimates suggesting that up to 80% of the population possesses tribal membership.[15] Local sheiks play a key role in interacting with the government, mediating on behalf of the tribe whilst protecting its vested interests.[16] The most prominent Yemeni tribes are that of the Hashid and the Bakil.[17] Several smaller tribal subsets belong to each of these larger unions,[18] including most notably the Sanhan clan, a member of the Hashid tribal group which boasted the former President Saleh and his family among its most prominent members.[19] After several years as a British protectorate, tribalism in the south of Yemen is less pronounced than in the north.[20]

Whilst official data is lacking regarding the religious demographic of the country, recent estimates from the US Department of State suggest that around 65% of all Muslims in Yemen are Sunnis, compared to 35% who belong to the Shia branch of Islam.[21] Religious minorities include adherents of the Ismaili Islamic school, Jews, Christians, Hindus and members of the Bahá'í community.[22] The majority of Ansar Allah members and supporters identify as being from the

14 United Nations International Children's Fund, *Muhamesheen Mapping Update,* January 2015, available here: http:/Ů/reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Yemen%20SitRep%20January%202015.pdf.

15 Lackner, H., "Understanding the Yemeni Crisis: The Transformation of Tribal Roles in Recent Decades", *Durham Middle East Papers: Sir William Luce Publication Series,* No. 17, 2016, p. 4, available at: http://dro.dur.ac.uk/19545/1/19545.pdf.

16 The World Bank, *The Republic of Yemen, Unlocking the Potential for Economic Growth: A Country Economic Memorandum*, 2015, p. 29, available at: http://documents.worldbank.org/curated/en/673781467997642839/pdf/102151-REVISED-box394829B-PUBLIC-Yemen-CEM-edited.pdf.

17 Peterson, J. E., "Tribes, the State and the Awakening", 2012, pp. 7–8, available at: http://www.jepeterson.net/sitebuildercontent/sitebuilderfiles/Peterson_-_Yemen_-_Tribes_State_Awakening_28AUG2012.pdf.

18 *Ibid*.

19 See above, note 16, pp. 23–24.

20 See above, note 15, p. 9.

21 United States Department of State, *International Religious Freedom Report: Yemen*, 2014, p. 2, available at: https://www.state.gov/documents/organization/238698.pdf.

22 *Ibid*., Paras 4–6. See also note 13, p. 8.

Zaidi branch of Shia Islam, which dominates the North of the country, although some of its supporters are Sunni.[23]

Arabic is the official language of the country, although Mahri is spoken by an estimated 101,000 people in Eastern Yemen[24] and the Soqotri language is spoken on some of the islands to the south of the country.[25]

Due to its geographical position, Yemen is a natural crossing point between the Horn of Africa and the Gulf countries. The uneven economic development of these regions – ranging from extreme poverty in the Horn of Africa to the prosperous oil monarchies of the Arabian Peninsula – coupled with ongoing conflicts in North-East Africa have triggered an unprecedented refugee flow, with the 30km strait between Yemen and Djibouti the most viable route for those seeking international protection.[26] It is reported that approximately 244,204 Somali refugees were living in camps or urban areas in Yemen before the escalation of the current conflict,[27] with 80,000 arriving between 2010 and 2013;[28] around 250,000 non-Somali migrants (predominantly Ethiopian nationals) have entered Yemen during the same period.[29] As at July 2017, United Nations High Commissioner for Refugees (UNHCR) documented 256,169 Somalian refugees in Yemen.[30]

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23 Brehony, N., "Yemen and the Huthis: Genesis of the 2015 Crisis", *Asian Affairs*, Vol. 46, No. 2, 2015, pp. 232–250.

24 Abdulohoom, A., "Mahri: A Language or Dialect?", *Yemen Times*, 2 October 2014.

25 The Middle East and North Africa Out of School children's Initiative, *Summary Report for Yemen,* October 2014, available at: http://www.oosci-mena.org/uploads/1/wysiwyg/summary/150310_Yemen_Summary_English_Preview.pdf.

26 Research & Evidence Facility, *Migration Between the Horn of Africa and Yemen: a Study of Puntland, Djibouti and Yemen*, July 2017, p. 25, available at: https://www.soas.ac.uk/refhornresearch/research-papers/file122639.pdf.

27 *Ibid.* p. 27.

28 Stein, A. "Leading Either Money or the Sea: Mixed Migration from the Horn of Africa to Yemen", Humanitarian Practice Network, *The Humanitarian Situation in Yemen*, No.61, May 2014, p. 16, available at: https://odihpn.org/wp-content/uploads/2014/04/HE_61_web.pdf.

29 United Nations High Commissioner for Refugees, *New Arrivals in Yemen Comparison 2010–2013*, April 2013, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/New%20Arrivals%20in%20Yemen%20Comparison%202010-April%202013.pdf.

30 United Nations High Commissioner for Refugees, *Operational Portal Refugees Situation – Horn of Africa Situation*, visited 28 November 2017, at: https://data2.unhcr.org/en/situations/horn.

After falling sharply in the wake of the 2008 financial crisis, Yemen's economy grew in the five years between 2009 and 2014.[31] However, economic growth dropped by 28% in 2014, as political stability in the country deteriorated. In 2015, Yemen's Gross Domestic Product (GDP) per capita was 37,374 billion USD, ranking it 88th out of the 207 economies on the World Bank's GDP list.[32] In 2015, Yemen's GDP per capita (purchasing power parity) was 2,820.8 USD and its Gross National Income per capita (purchasing power parity) was 2,720 USD.[33]

The United Nations Development Programme ranked Yemen in 168th place in its Human Development Index (HDI) for 2015, with an HDI of 0.482; by comparison, in the HDI for 2014 (prior to the outbreak of the current conflict) Yemen was ranked in 160th position, with an HDI of 0.499.[34] Yemen's Gini Income coefficient, which measures inequality in the distribution of wealth, placed it 154th out of 187 countries.[35]

1.2 History, Government and Politics

1.2.1 History up to 2000

The territory now known as Yemen was once home to the ancient civilisation of the Kingdom of Saba', home of the Sabaeans, which flourished between the eighth century Before the Current Era (BCE) and the third century Current Era (CE) through exploiting commercial trading routes from East Africa and South-East Asia.[36] Its importance in the trading route from

31 The World Bank, Data: GDP, Yemen, 2014, available at: http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=YE.

32 The World Bank. *Gross Domestic Product Ranking Table,* 2015, available at: http://data.worldbank.org/data-catalog/GDP-ranking-table.

33 The World Bank, *Data: GDP, Yemen*, 2014, http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?locations=YE.

34 United Nations Development Programme, *Human Development Report: Yemen,* 2016, available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/YEM.pdf.

35 United Nations Development Programme, *Human Development Report Summary 2014: Sustaining Human Progress: Reducing Vulnerabilities and Increasing Resilience,* p. 24, available at: http://hdr.undp.org/sites/default/files/hdr14-summary-en.pdf.

36 Korotayev, A.V., *Pre-Islamic Yemen: Socio-Political Organization of the Sabean Cultural Area in the 2nd and 3rd Centuries AD*, Otto Harassowitz Verlag, 1996.

the Mediterranean to India was well-known in ancient times: in 25 BCE, the Roman emperor Augustus ordered a military expedition into the "territory of the Sabaeans", which was referred to by the Romans as *Arabia Felix*, although the expedition was not a success.[37] The Kingdom of Saba entered a period of decline shortly thereafter, and the Sabaeans were eventually overthrown in 275 CE by the Himyarites, a tribal people who went on to establish a kingdom which held control of the territory of modern-day Yemen and the spice trade routes until the sixth century.[38] During this time, the Himyarite people were exposed to the influence of Judaism, with the Himyarite monarchs embracing monotheism.[39] However, in around 525 CE, the territory was conquered by the Christian kingdom of Aksum (now Ethiopia), which established Christianity in the region.[40]

Islam was introduced in the 7th century during the lifetime of the prophet Muhammad; the various tribes populating the territory quickly converted to Islam and played a major, propulsive role in the expansion of the Caliphate throughout the 7th and 8th centuries.[41] In 897 CE, Yahya Ibn al-Husayn, a member of the Sada group (which claims descent from the prophet Muhammad) established the Zaidi Imamate in the northern regions of Yemen, a religious state based on the authority of the Imam;[42] the Zaidi Imamate was to last in various forms until the 19th century.

The Ottoman and Post-Ottoman Period

In 1538, Yemen's southern coast was colonised by the Ottomans and subsumed within their growing empire.[43] Between 1547 and 1552, the Ottomans managed to establish their presence in the northern highlands after the con-

37 Burrowes, D.R., *Historical Dictionary of Yemen*, Rowman & Littlefield, 2010, p. 319.

38 See above, note 36.

39 *Ibid.*

40 *Ibid.*

41 Landau-Tasseron, E., "Arabia", in Robinson, C.F. (1st ed.), *The New Cambridge History of Islam*, Cambridge University Press, 2010, p. 416.

42 Peterson, D. and Hamblin, W., "Zaydiyah", in Esposito, J.L. (ed.), *Oxford Encyclopaedia of the Islamic World*, *Vol. 6*, Oxford University Press, 2009.

43 Blackburn, J.R., "The Collapse of the Ottoman Authority in Yemen, 968/1560-976/1568", *Die Welt des Islams*, Vol. 19, No. 1/4, 1979, p. 119.

quest of Sana'a and Taiz,[44] and in 1548 they conquered the Bay of Aden.[45] However, the Ottomans' rule was precarious, marked by continuous rebellions of the Zaidi tribes in the north of the country.[46] When Selim II (1566–1574) became Emperor after the death of his father Suleiman the Magnificent, the Zaidis revolted and deprived the Ottomans of most of their strongholds in the country.[47] After three years, the revolt was suppressed by the new governor of Egypt, Koja Sinan Pasha, who occupied Taiz, Aden and the Zaidi stronghold in Sana'a.[48]

The Zaidis eventually succeeded in overcoming the Ottomans in the 1630s, and extended their authority throughout most of the territory now comprising Yemen.[49] However, less than a century later, the Zaidi Imamate began to lose control over the territory.[50] The change in the Imamate's dominance in the 18th and 19th centuries, coupled with the spread of Wahhabism in Arabia, led the Ottomans to request the then governor of Egypt, Muhammad Ali, to assert his control in Arabia in 1811.[51] This in turn prompted the British to seize control of the port of Aden in 1839, fearing that Muhammad Ali's rule in Arabia could threaten their position in India.[52] Muhammad Ali withdrew from Arabia in 1840, with the Ottomans returning in 1849 to claim sovereignty over the northern territories of modern-day Yemen.[53] The seizure of Aden by the British and the Ottomans' reoccupation of the north paved the way for the emergence of two separate states: the People's Democratic Republic of Yemen in the South, and the Yemen Arab Republic in the North.

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44 Imber, C., *The Ottoman Empire, 1300–1650: The Structure of Power*, Palgrave McMillian, 2002.

45 Shaw, S.J., Shaw, E.K., *The Ottoman Empire and Modern Turkey: Volume 1, Empire of the Gazis: The Rise and Decline of the Ottoman Empire 1280-1808*, Cambridge University Press, 1977.

46 See above, note 43.

47 *Ibid*, pp. 119–176.

48 See above, note 44.

49 Yaccob, A. R., "Yemeni opposition to Ottoman rule: an overview", *Proceedings of the Seminar for Arabian Studies* Vol. 42, 2012, p. 411.

50 *Ibid*.

51 *Ibid*.

52 *Ibid.*

53 *Ibid.*

South Yemen: the Emergence of the People's Democratic Republic of Yemen

The British seized control of Aden and the surrounding territory in 1839, and shortly thereafter transferred it to the control of the British-Indian empire.[54] Aden served as a "coal-post" port on the desirable trading route from India to Arabia, and its strategic importance was further increased following the opening of the Suez Canal in 1871.[55] After the occupation of the Bay of Aden, the city was ruled as a colony under the jurisdiction of British India until 1937, when it was made a crown colony ("Aden Colony"). The surrounding territories were occupied by a number of tribes, which were gradually brought under British control by way of protection agreements in the period between 1839 and 1914, eventually being united in the "Aden Protectorate"; the Aden Protectorate, together with the Aden Colony, occupied all of the territory that would become South Yemen.[56]

After India gained independence from British colonial rule in 1947, the rationale for the existence of a British colony in the Arabian Peninsula radically changed.[57] Whilst the territory was no longer needed in order to exert control over India, its importance was increased by the discovery of oil in the Middle East.[58] However, in the 1950s, a surge in Arab nationalism which spread throughout the Middle East, coupled with British plans for decolonisation, resulted in the creation of the Federation of Arab Emirates of the South in the territories making up the Aden Protectorate, in 1959.[59] On 11 February 1959, the Federation signed a "Treaty of Friendship and Protection" with Britain, under which the British were to provide financial and military assistance in order to enable the Federation to achieve full independence.[60]

An increase in nationalist sentiment in the early 1960s resulted in a violent insurgency against British colonial forces and the leadership of the Federa-

54 See above, note 1, p. 9.

55 Whitaker, B., The Birth of Modern Yemen, Al-Bab, 2009, Chapter 1, available at: http://al-bab.com/birth-modern-yemen-chapter-1.

56 Dresch, P., *A History of Modern Yemen,* Cambridge University Press, 2000, p. 11.

57 King, G., *Imperial Outpost-Aden: Its Place in British Strategic Policy, Vol. 6,* Oxford University Press, 1964.

58 See above, note 56.

59 Smitson, S., "The Road to Good Intentions: British Nation-building in Aden", *Center for Complex Operations*, 2010, pp. 6–10.

60 *Ibid*., p. 10.

tion, including by the National Liberation Front, a paramilitary organisation founded by political activists from the Aden Colony, and the Front for the Liberation of Occupied South Yemen, which was heavily influenced by Egypt.[61] Britain finally withdrew from the territory in November 1967, after the National Liberation Front succeeded in forcing the collapse of the Federation.[62]

The National Liberation Front declared independence as the "People's Republic of South Yemen" on 30 November 1967. At the same time, all of the political parties in the south merged to become the Yemen Socialist Party; the state was subsequently renamed the People's Democratic Republic of Yemen (PDRY) in 1970, becoming the Arab world's first self-defined Marxist State.[63] At this point, the PDRY welcomed an alliance with the Union of Soviet Socialist Republics (the USSR), with the USSR making use of the port of Aden as a strategic entry-point into post-colonial Africa.[64]

North Yemen: the Emergence of the Yemen Arab Republic

Having returned to Yemen in 1849, the Ottomans finally managed to capture Sana'a, the capital of the north, in 1872, in the wake of famine, disease and tribal disagreements.[65] The Ottoman conquest led to the formation of the Yemen Vilayet, a province of the Ottoman empire, and their rule over the territory was calm for most of the remainder of the 19th century.[66] However, in the late 19th century and early 20th century, there were a series of tribal revolts against Ottoman rule, with the Zaidi Imam Yahya aiding the Ottomans in consolidating their control over the rebellious tribes.[67]

In 1904, the British and the Ottomans agreed on a boundary in order to separate the territories under their control, which divided Yemen into an Ottoman

61 See above, note 57; see also note 59, p. 14.

62 See above, note 59, p. 32.

63 See above, note 55, Chapter 1.

64 *Ibid*.

65 Cahoon, B, *World Statesman: Timeline of Yemen,* 2016, available at: http://www.worldstatesmen.org/Yemen.html.

66 Masters, B., *The Arabs of the Ottoman Empire, 1516–1918: a Social and Cultural History*, Cambridge University Press, 2013.

67 Agoston, G; Masters, B.A., *Encyclopaedia of the Ottoman Empire*, Facts on File, 2009, p. 603.

North and a British South.[68] When the Ottoman empire collapsed in 1918 after the First World War, the Ottoman North became an independent state known as Mutawakkilite Kingdom, with Zaidi Imam Yahya becoming its leader.[69]

Whilst the Imamate's government was internationally recognised,[70] domestic and external pressures caused fractures in the Mutawakkilite Kingdom. The relationship between the ruling Zaidi Imamate (Yahya until his assassination in 1948, and his son Ahmed thereafter) and various tribal factions was a troubled one. In 1959, the rise of Arab nationalist movements across the region pushed senior Zaidis to seek stronger relations with Egypt and Syria, which at that time were the two constituent countries of the United Arab States and were leading the ideological move towards Arab nationalism.[71]

When the ruling Zaidi Imam died in 1961, nationalist factions (supported by Egypt) clamoured for power against royalists loyal to the Zaidi Imamate, who were backed by Saudi Arabia.[72] After various failed coups, in 1962, Abdullah al-Sallal, a military official, deposed the last Mutawakkilite ruler, Muhammad al-Badr, and created the Yemen Arab Republic (YAR).[73]

Shortly after the 1962 coup, royalist forces started uniting around the deposed Muhammad al-Badr, backed by Saudi Arabia. Armed conflict erupted between these forces and the republican YAR, which was receiving substantial support from the USSR and the United Arab Republic, the short lived political entity that united Egypt and Syria.[74] The conflict continued periodically until the late 1960s; the republican forces eventually prevailed and an agreement between the republican and loyalist forces was reached in in 1968.[75] Colonel Ali Abdullah Saleh became President of the YAR after the assassination of the previous President

68 Tharoor, I., "A Brief History of Yemen: Rich Past, Impoverished Present", *Time*, 1 November 2010, available at: http://content.time.com/time/world/article/0,8599,2028740,00.html.

69 See above, note 56, p. 45.

70 *Ibid*, p. 11.

71 University of Texas, *Timeline of Yemen from 1900–2000,* available at: http://www.lib.utexas.edu/maps/atlas_middle_east/yemen_timeline.jpg.

72 See above, note 3.

73 See above, note 56, pp. 89–90.

74 *Ibid.*

75 *Ibid.* p. 118.

Ahmad bin Hussein al-Ghashmi in 1978.[76] Coming from a relatively modest family which did not belong to a powerful tribe, Saleh started to build a system of patronage centred around his family. This system of patronage was to inform the political and social structure of the YAR over the following decades.[77]

Changes in Social Structures

Yemen's social structure is complex and has evolved over recent decades. Whilst tribal membership is central to this system,[78] the country's social structure has also been likened to a caste system due to the "ascribed or inherited nature" of its various occupation-based categories.[79] At the top of the hierarchy are the *Sada* (Sayeed), also known as Hashemites, who claim descent from the prophet Muhammad;[80] they have traditionally occupied a prominent role in religious, judicial and political life, and are also landowners.[81] The next in status are the *Quda* (Qadi), individuals distinguished by their education; it has been noted that whilst qadi status is predominantly a hereditary title, "anyone can become a qadi through personal merit and religious studies".[82] Below these two groups are the tribespeople, "the mainstream of Yemeni society", the majority of whom were historically agriculturalists.[83] Beneath the tribespeople are those groups considered to be "weak" (*da'if*), comprising the trading class.[84] The lowest two levels of the Yemeni social stratum are individuals thought to be "lacking in origin" (*nuqqas al-asl*), including service-providers such as restaurateurs and barbers,[85] and beneath them, the Muhamasheen, whose main occupations are cleaning and begging.[86]

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76 Abbas, K.K., *Governance in the Middle East and North Africa: A Handbook*, Routledge, 2013, p. 309.

77 *Ibid*; see further discussion below.

78 See above, note 17, p. 5.

79 Nevola, L., "On colour and origin: the case of the akhdam in Yemen", *Open Democracy*, 13 February 2018, available at: https://www.opendemocracy.net/beyondslavery/luca-nevola/on-colour-and-origin-case-of-akhdam-in-yemen.

80 Adra, N., "Tribal Mediation in Yemen and its Implications to Development", *AAS Working Papers In Social Anthropology*, Vol. 19, 2011, pp. 1-2, available at: http://www.najwaadra.net/tribalmediation.pdf.

81 See above, note 15, p. 4.

82 See above, note 17, p. 9. See also above, note 15, p. 4.

83 *Ibid*., Lackner.

84 See above, note 15, pp. 4–5.

85 See above, note 79; also see above, note 15, p. 5.

86 *Ibid*., Lackner.

From around 1960 onwards, social structures underwent a period of transformation, driven primarily by economic factors including wide-scale emigration to Saudi Arabia and neighbouring states.[87] Throughout the 1970s and 1980s, "hundreds of thousands" of Yemenis travelled abroad in search of increased financial opportunities.[88] With the money and wealth they accumulated during this period, young Yemeni men gained increased prestige within their own communities, thus "undermining the authority structure within the household and village".[89]

After coming to power in 1978, President Saleh exploited these evolving social structures by co-opting powerful tribal elites and establishing a system of political patronage, whereby key government positions and state resources were exchanged for tribal, military and political influence.[90] As new tribesmen exerted their authority and some established sheiks moved toward the state capital, outside of their traditional mode of influence, the government found increased space to "interfere" in tribal affairs.[91] With the backing of his own Sanhan clan, President Saleh quickly asserted his influence; the primary beneficiaries were tribal groups of the northern highland region, in particular powerful elites of the Hashid and Sanhan tribes, including several members of the President's family who were appointed to key military and government positions.[92]

As the local economy grew more dependent on external revenue sources (and less dependent on local production), imports from outside Yemen increased and the trading class gained social standing.[93] As described by Lackner:

> *In brief, by the time of unification in 1990, social structures had been significantly redesigned thanks to the emergence of new criteria for the definition of status,*

87 See above, note 17, pp. 8–9.

88 See above, note 15, pp. 7–8.

89 *Ibid*.

90 See above, note 16, p. vii.

91 See above, note 17, pp. 8–9.

92 *Ibid*, pp. 12–13.

93 *Ibid*.

> *shifting from ascription based on occupation (artisan/ trader, tribes, Sada), to wealth (from migration, trade, concentration of land and corruption) and power, (based on the support for the Saleh regime necessary to receive cash handouts and increasing power of the security/military apparatus).*[94]

Unification

The ideological and geopolitical differences between the PDRY and the YAR were pronounced: the PDRY was a Marxist-Leninist Socialist Republic aligned with the USSR, whilst the YAR was a republican state which was reliant on the funds of the anti-communist Saudi Arabia.[95] Territorial wars broke out between the YAR and the PDRY in 1972, not long after their establishment, as they came under pressure from international actors engaged in the Cold War.[96] The hostilities did not last long, however, and in October 1972 the leaders of the two states signed the Cairo Agreement, which established their commitment to, and a roadmap for, the unification of the two states.[97]

However, unification agreements during this decade were frustrated,[98] with historians pointing to a number of factors behind this, including vocal opposition by certain tribes in the YAR to unity with a "communist, atheist" south,[99] and the fact that the PDRY benefited hugely from its communist identity, acquiring investment from Moscow in its shipping and oil industries.[100]

However, the 1984 discovery of oilfields in Marib, on the border between the YAR and PDRY, fostered interest in the coordinated exploitation of natural resources by the two states.[101] In 1988, the two governments negotiated the

94 See above, note 15, p. 8.

95 See above, note 3.

96 Gause, F.G., "Yemeni Unity: Past and Future", *The Middle East Journal*, 1988, pp. 33–47.

97 *Ibid*.

98 See above, note 55, Chapter 1.

99 *Ibid*.

100 *Ibid*.

101 See above, note 56, p. 160.

establishment of a Joint Exploration Area along their border and the creation of the Yemeni Company for Investment in Mineral Oil Resources.[102]

These developments, together with the decline of the USSR and changes in political structures in both the YAR and the PDRY, led to greater efforts towards unification.[103] In the PDRY, a decline in the economy was mirrored in a decline in the country's political unity: in 1986, a coup by members of the Yemen Socialist Party caused the deaths of 4,330 people, amongst them experienced members of government.[104] From 1986 onwards, the government of the PDRY was led by General Al-Baid, who had previously been Minister of Defence.[105] Political weakness in the PDRY meant that the YAR, led by President Saleh, dominated the unification negotiations.[106]

Unification negotiations came to fruition in May 1990 and the Republic of Yemen ("Yemen") was born on 22 May 1990.[107] Ali Abdullah Saleh, the former president of the YAR, was elected as chairman of the Presidential Council, with Al-Baid elected as Vice-Chairman.[108]

The Republic of Yemen

There were substantial teething problems during the first five years following unification.[109] Relations between the southern and northern leadership deteriorated swiftly, with southerners claiming that they were being excluded from decision-making.[110] When parliamentary elections finally took place in

102 *Ibid.*

103 See above, note 55, Chapter 1.

104 Halliday, F., *Revolution and Foreign Policy: the Case of South Yemen, 1967–1987* (Vol. 21), Cambridge University Press. 2002.

105 See above, note 55, Chapter 1.

106 Human Rights Watch, *Human Rights in Yemen during and after the 1994 War*, 1994, p. 4, available at: https://www.hrw.org/sites/default/files/reports/YEMEN94O.PDF.

107 See above, note 71.

108 See above, note 56, p. 11.

109 See above, note 55, Chapter 8.

110 Salisbury, P., "Yemen: Stemming the Rise of a Chaos State", Chatham House, May 2016, p. 7, available at: https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-05-25-yemen-stemming-rise-of-chaos-state-salisbury.pdf.

1993, the General People's Congress (the "GPC", founded by Saleh in 1982[111]), the *Islah* party (the Yemen Congregation for Reform, Yemen's main Sunni Islamist party) and the southern Yemen Socialist Party (YSP) formed a government.[112] However, the latter secured only 56 seats out of 301.[113]

Fearing that the south would fall into political irrelevance, southern rebels bombed Sana'a on 4 May 1994 and on 21 May 1994 unilaterally declared the secession of southern Yemen, thus sparking a short civil war between the government and southern separatists which lead to mass casualties and attacks on civilians.[114] The war ended in July 1994 with the defeat of the southern separatist movement and the expulsion of the YSP from the government.[115]

After the civil war, the northern elite were left in a position of dominance, and the 1997 elections were won by the GPC, under President Saleh, by a substantial majority.[116] The Sana'a-based regime's economic, political and military power was grounded in an alliance between a network built around President Saleh and one surrounding the *Islah* party, with each network effectively having its own military wing.[117] The combined power of these two networks, along with the consolidation of President Saleh's position through a number of constitutional changes (such as the abolition of the Presidential council), enabled his continued leadership of the country.[118]

Yemen and the "War on Terror"

From the late 1990s, Yemen increasingly came under the attention of Western security policy-makers, due to concerns regarding the proliferation of militant

111 International Institute for Democracy and Electoral Assistance, *Yemen's 'Peaceful' Transition from Autocracy: Could it have succeeded?*, 2016, p. 23, available at: http://www.idea.int/sites/default/files/publications/yemens-peaceful-transition-from-autocracy.pdf.

112 See above, note 55, Chapter 10.

113 Inter-Parliamentary Union, *Yemen Parliamentary Chamber: Elections Held in 1993*, available at: http://archive.ipu.org/parline-e/reports/arc/2353_93.htm.

114 See above, note 106.

115 See above, note 56, p. 196.

116 See above, note 110, p. 8.

117 *Ibid*.

118 *Ibid*.; see above, note 55, Chapter 14.

organisations labelled as "terrorist" (including groups affiliated to al-Qaeda). In October 2000, the USS Cole was attacked by suicide bombers whilst in port in Aden, killing 17 US sailors. Less than a year later al-Qaeda claimed responsibility for the terrorist attacks on the Twin Towers on 11 September 2001 (with one of the alleged "masterminds" being a Yemeni national).[119]

Following the 9/11 attacks, President Saleh's government chose to align itself with the US as a partner in the "war on terror",[120] and the US began to provide the Yemeni government with both financial and military aid in order to support President Saleh's counter-terrorism efforts.[121] In 2002, the US began conducting a programme of targeted killings in Yemen using unmanned aerial drones, with drone strikes targeting alleged members of terrorist organisations including Al-Qaeda in the Arabian Peninsula (AQAP) and Ansar al-Shari'a.[122] Yemen was the site of the first known US targeted killing using a drone on 3 November 2002,[123] and whilst there were no further known targeted killings in Yemen until 2009, the number of drone strikes has increased steadily since then.[124]

1.2.2 Recent History

From the early 2000s, there were intermittent hostilities between the government and groups who felt excluded from President Saleh's patronage system, including southern separatists and Ansar Allah, a Zaidi Shia movement from the

119 Healy, S. and Hill, G., "Yemen and Somalia: Terrorism, Shadow Networks and the Limitations of State-building", *Chatham House Briefing Paper*, October 2010, p. 5, available at: https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/bp1010_yemensomalia.pdf.

120 *Ibid*.

121 Salmoni, B.A., et al. *Regime and Periphery in Northern Yemen: the Huthi Phenomenon*, Rand Corporation, 2010, pp. 125–126.

122 The New America Foundation, International Security Program, *Drone Wars Yemen: Analysis,* live report, available at: http://securitydata.newamerica.net/drones/yemen-analysis.html.

123 Human Rights Watch, *"Between a Drone and Al-Qaeda"*: *The Civilian Cost of US Targeted Killings in Yemen*, October 2013, p. 18, available at: https://www.hrw.org/sites/default/files/report_pdf/yemen1013web.pdf; The Bureau of Investigative Journalism, "Yemen: Reported US covert actions 2001–2011", available at: https://www.thebureauinvestigates.com/drone-war/data/yemen-reported-us-covert-actions-2001-2011.

124 Kube, C., Windrem, R. and Arkin, W. M., "U.S. airstrikes in Yemen have increased sixfold under Trump", *NBC News*, 2 February 2018, available at: https://www.nbcnews.com/news/mideast/u-s-airstrikes-yemen-have-increased-sixfold-under-trump-n843886.

northern province of Sa'dah.[125] The Ansar Allah movement was founded by Zaidi cleric Hussein al-Houthi, a prominent critic of the Saleh regime who strongly objected to Saleh's decision to ally the state with the US in the "war on terror"; supporters of Ansar Allah also objected to the government's marginalisation and isolation of Sa'dah (a Zaidi heartland) and its promotion of a Sunni Salafist doctrine in mosques and schools.[126] One of the key ideologies of the Ansar Allah movement is its belief that the *Sada* social group – which claims descent from the prophet Muhammad – has "an innate right to rule".[127] The most serious period of violence between Ansar Allah and the government occurred in 2004 during the "Sa'dah conflict"; Hussein al-Houthi was killed during this conflict, with his name subsequently being appropriated by the Ansar Allah movement.[128]

In the south of Yemen, *al-Hirak al-Janubiyy* (the Southern Movement) was initially formed to advocate for the creation of jobs and improved pensions in the south; however, it evolved into a secessionist movement after the Saleh regime failed to engage with the group's grievances.[129] Following a series of peaceful sit-ins between January and May 2007, many prominent members of the southern political opposition were arrested.[130] In October 2007, four persons in al-Habilayn were killed as security forces opened fire on demonstrators.[131] By 2010, several such incidents had been recorded by human rights organisations.[132] Multiple newspapers had their licenses suspended after reporting on the protests,[133] whilst journalists were detained and assaulted by members of the security forces.[134]

125 See above, note 110, p. 11.

126 *Ibid*.

127 See above, note 15, p. 4; Information provided to the Equal Rights Trust by Moammar Al-Eryani, Minister of Information of the Republic of Yemen, London, 1 March 2018.

128 See above, note 13, p. 9.

129 See above, note 110, p. 12.

130 Day, S. W., *Regionalism and Rebellion in Yemen: A Troubled National Union*, Cambridge University Press, 2012, pp. 228–9.

131 *Ibid*.

132 Human Rights Watch, *In the Name of Unity: The Yemeni Government's Brutal Response to Southern Movement Protests*, 2009, pp. 28–36, available at: https://www.hrw.org/sites/default/files/reports/southyemen1209web.pdf.

133 Human Rights Watch, *"A Life-Threatening Career": Attacks on Journalists under Yemen's New Government*, 2013, p. 20, available at: https://www.hrw.org/report/2013/09/19/life-threatening-career/attacks-journalists-under-yemens-new-government.

134 *Ibid*., p. 21.

Alongside these conflicts, tensions between the Saleh and *Islah* networks had been growing for over a decade, as President Saleh attempted to concentrate power around himself and his family.[135] At the same time, popular unrest was growing as a result of the poor economic and social conditions experienced by the Yemeni population, which were considerably worse than elsewhere in the wider region. In 2005, the World Bank reported that 46.6% of Yemeni citizens were living in extreme poverty (i.e. on less than 1.25 USD per day), as opposed to the 16.9% in Syria, 15.4% in Egypt, and 14% in Morocco.[136] When food prices increased in 2007–2008 following the global recession, inflation in food prices in Yemen reached more than 20%.[137] These factors exacerbated the structural incapacity of Saleh's regime to create an efficient labour market and to provide sufficient social security; in 2011, it was estimated that roughly 90% of Yemeni workers were employed in the informal sector, outside of any form of social protection.[138]

These tensions came to a head in late 2010 following proposed constitutional amendments that sought to remove presidential term limits.[139] The Joint Meeting of Parties (JMP), a coalition of several independent political groups, including the *Islah* party, opposed the changes and demonstrations soon broke out across the country.[140]

After mass popular protests broke out in Tunisia in December 2010 and Egypt in January 2011, protest movement throughout the country intensified. By February 2011, thousands of Yemenis had joined the protests, which soon resulted in bloodshed as the government began to crack down on demonstrators, particularly in Sana'a and Aden, the former capital of the PDRY and cultural home

135 See above, note 110, p. 9.

136 Achcar, G., *The People Want: A Radical Exploration of the Arab Uprising*, Saqi Books, 2013.

137 Gatti, R., Angel-Urdinola, D. et al., *Striving for Better Jobs: The Challenge of Informality in the Middle East and North Africa Region*, World Bank, 2011, p.6.

138 *Ibid*.

139 Alkarama Foundation, *Submission to the Human Rights Committee on Yemen,* 2012, Para 17, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10335_E.doc.

140 Federation for Human Rights, *Submission to the Human Rights Committee on Yemen*, 2011, p. 2, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10330_E.pdf.

of the Southern Movement.[141] Clashes between demonstrators and police forces in the capital Sana'a prompted a "Day of Rage" in Sana'a and Aden against the 33 year rule of President Saleh.[142] Excessive use of force by the security apparatus of President Saleh was widely documented in Aden, where the use of live ammunition killed at least nine protesters and injured around 150 others.[143]

On 2 February 2011, President Saleh announced that he would not be seeking another term in office.[144] Nevertheless, protests continued. Between 11 and 18 February 2011, six individuals were killed and many more injured in Aden and Taiz,[145] including as a result of an incident involving the use of a live grenade.[146] On 25 February 2011, at least 12 people were killed,[147] and four more were killed between 12 and 13 March 2011 after government security forces used "live ammunition and teargas" on demonstrators.[148]

Despite growing international pressure,[149] the use of force against protestors in Sana'a escalated dramatically on 18 March 2011, resulting in the deaths of 45 persons and hundreds of injuries[150] and the end of the alliance between

141 See, Human Rights Watch, *Yemen: Days of Bloodshed in Aden*, 2011, available at: https://www.hrw.org/sites/default/files/reports/yemen0311webwcover.pdf.

142 Amnesty International, *Yemen – The forgotten war,* 2017, available at : https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war.

143 See above, note 141.

144 See above, note 139, Para 19.

145 Human Rights Watch, *Unpunished Massacre Yemen's Failed Response to the "Friday of Dignity" Killings*, 2013, p. 16, available at: https://www.hrw.org/report/2013/02/12/unpunished-massacre/yemens-failed-response-friday-dignity-killings.

146 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/21/37, 5 September 2012, Para 19.

147 Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2012, p. 9, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10336_E.doc.

148 See above, note 145, p. 17.

149 See, for instance, Office of the High Commissioner for Human Rights, "Yemen: UN Human Rights Chief Warns against Use of Force", *OHCHR,* 1 March 2011, available at: http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10776&LangID=E; and European Union, "Statement by EU High Representative Catherine Ashton on Yemen", *European Union*, 12 March 2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119860.pdf.

150 See above, note 145, p. 29.

the Saleh and *Islah* networks.[151] A state of emergency was declared by President Saleh, which resulted in restrictions on freedom of expression and assembly, and a deterioration in the rule of law.[152]

The use of force against protestors in Change Square, Sana'a was sharply criticised by the UN Office of the High Commissioner for Human Rights.[153] Nevertheless, the suppression of protests continued, with significant incidences of violence documented by human rights organisations in the period leading up to President Saleh's eventual resignation in November 2011.[154] The government denied any involvement in the killings, and subsequent investigations have been marred by inefficient prosecutions and alleged political interference.[155]

Meanwhile, power struggles between the Saleh and *Islah* networks in northwest Yemen, resulting from the breakdown in their three-decade-long political alliance, gave Ansar Allah an opportunity to seize control of the entire of Sa'dah province, whilst the Southern Movement intensified its calls for southern secession and Al-Qaeda in the Arabian Peninsula (AQAP) expanded its hold on territory in the south.[156]

Concerns that Yemen was on the brink of economic and political collapse – and that this would lead to the proliferation of AQAP – led the Gulf Cooperation Council to draft a power transfer deal, known as the Gulf Cooperation Council Initiative (GCCI), in April 2011. The GCCI called for President Saleh to step down and for the creation of a new unity government.[157] However, President Saleh reneged on signing the GCCI on three separate occasions in

151 See above, note 110, p. 9.

152 See above, note 145 p. 33.

153 Office of the High Commissioner for Human Rights, "Yemen: The Killing of Protesters Must Stop", *OHCHR*, 18 March 2011, available at: http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10862&LangID=E.

154 See, for instance, note 147, p. 9.

155 See Human Rights Watch's account of the dismissal of the Attorney General leading the investigation into the killings. *Ibid*., p. 53.

156 See above, note 110, pp. 9 and 13.

157 See above, note 139, 2012, Para 20.

April and May 2011.[158] On 3 June 2011, a bomb exploded in the Presidential Palace in Sana'a, resulting in 11 deaths and the wounding of President Saleh, who was forced to leave the country, only to return several months later.[159]

In October 2011, the United Nations Security Council adopted a resolution that condemned breaches of international human rights and humanitarian law within the state and urged President Saleh to sign the GCCI.[160] Following several defections from senior politicians, President Saleh stepped down on 22 November 2011 and allowed his vice-president, Abd Rabbu Mansour Hadi, to be elected unopposed to govern the country for a two-year transitional period.[161]

The GCCI was signed on 23 November 2011, in a deal brokered by the UN Special Envoy to Yemen.[162] The terms of the GCCI provided for the establishment of a national unity government comprising 50% representation from both the GPC and Joint Meeting of Parties (JMP),[163] with the *Islah* party holding the key posts in the JMP share of cabinet seats, and the adoption of a law affording the former President Saleh and his associates immunity from "legal and judicial prosecution".[164] According to the GCCI, presidential elections were to be called within 60 days, followed by the appointment of a constitutional drafting committee; the constitution was to be submitted for referendum before further Parliamentary elections and the formation of a new government.[165] The transitional mechanisms under the GCCI also included the convening of a comprehensive National Dialogue Conference (NDC) "for all forces and political actors".[166]

158 Reuters, "EU slams Yemen's Saleh for refusal to sign peace deal", *Reuters*, 23 May 2011, available at: https://www.reuters.com/article/us-france-yemen/eu-slams-yemens-saleh-for-refusal-to-sign-peace-deal-idUSTRE74M28T20110523.

159 See above, note 139, Para 21.

160 United Nations Security Council, *Resolution 2014*, UN Doc. S/RES/2014, 2011, Paras 4–5.

161 United Nations International Children's Fund, Middle East and North Africa Out of School Initiative, *Yemen Country Report on Out of School Children,* October 2014, p. 1.

162 See above, note 139, Para 22.

163 United Nations, *Gulf Cooperation Council Initiative Agreement (UN Translation)*, 2011, Para 1, available at: https://osesgy.unmissions.org/sites/default/files/gcc_initiative_yemen_english.pdf.

164 *Ibid*., Paras 3–4.

165 *Ibid*., Paras 5–9.

166 United Nations Peacemaker, *Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council*, 5 December 2011, Para 20, available at: https://peacemaker.un.org/yemen-transition-mechanism2011.

The initial success of the transition was marked by the peaceful elections in February 2012 that installed Hadi into power as President at the head of a government of national unity, and the establishment of committees to consult with various groups on the content of the NDC.[167] The NDC itself took place between March 2013 and January 2014. The NDC was tasked with discussing a number of issues, including the drafting of a new Constitution through the establishment of a Constitutional Drafting Commission, the "issue of the South", national reconciliation and transitional justice, and the adoption of legal and other means to strengthen the protection and rights of vulnerable groups and the advancement of women.[168] The aim was for the NDC to be broadly representative of the different key stakeholder groups:[169] 50% of members of the NDC were to be elected from the GPC and the other 50% from the JMP,[170] with 50% of seats allocated to representatives from the south and north respectively, 40% of seats being reserved for women, and 20% reserved for youths.[171]

Takeover by Ansar Allah

Despite these attempts at shaping a politically comprehensive transitional phase following the adoption of the GCCI, instability remained. Whilst the NDC purported to be an inclusive process, it did not lead to greater transparency or accountability in governance,[172] and certain factions – including the Southern Movement – claimed that their interests were not properly represented.[173] Further, throughout the transitional period, the growing Ansar Allah movement was engaged in hostilities with various non-state groups including rival Sunni Islamists and *Islah*-affilliated tribes, whilst the Southern

167 See above, note 146, Para 9.

168 See above, note 166, Para 21.

169 Although success was limited in this regard. As has been noted in the 2013 report of the UN High Commissioner for Human Rights, just one member of the Muhamasheen community was represented at the Conference, while "Jewish and Ismaili communities did not obtain any representation". See Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/24/34, 25 July 2013, Para 6.

170 See above, note 146, Para 7.

171 National Dialogue Conference, *Representation*, 2016, available at: http://ndc.ye/page.aspx?show=68.

172 See above, note 110, p. 15.

173 *Ibid*, p. 17.

Movement clashed with forces loyal to former President Saleh in Al Dhale province.[174] Living standards deteriorated as a result of the country's weak economy, with the government failing to fund the day-to-day running of the state or to provide basic amenities such as water and electricity.[175]

In mid-2014, armed groups allied with Ansar Allah and former President Saleh fought against the government and government-allied forces in northern Yemen, resulting in hundreds of casualties.[176] Demonstrations against the government soon followed in the state capital Sana'a – fuelled in part by the government's decision to remove oil subsidies earlier in the year[177] – and Abdelmalek al-Houthi – the leader of Ansar Allah – issued a public warning that he would call for the overthrow of the government if fuel prices were not reduced.[178] By September 2014, fighting had broken out in Sana'a, and multiple government buildings were seized.[179] On 21 September 2014, a Peace and National Partnership Agreement was signed between President Hadi, Ansar Allah delegates and representatives of the major political parties.[180] However, demonstrations and attacks by Ansar Allah continued.[181]

On 7 January 2015, the same day a car bomb killed at least 37 people in Sana'a,[182] a draft Constitution was submitted to President Hadi.[183] The draft was accepted by all political parties and delegates, other than the Ansar Allah movement, which opposed the creation of a federal State.[184] Just 10 days later, on 17 January 2015, the Secretary-General of the National Dialogue Confer-

174 *Ibid*.

175 See above, note 110, pp. 18–19.

176 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/31, 7 September 2015, Para 4.

177 *Ibid.*, Para 6.

178 See above, note 110, p. 21.

179 See above, note 176, Para 9.

180 *Ibid.*, Para 10.

181 *Ibid.*, Para 10.

182 United Nations Security Council, "Security Council Press Statement on Yemen", *United Nations Press*, 7 January 2015, available at: http://www.un.org/press/en/2015/sc11728.doc.htm.

183 See above, note 176, Para 12.

184 *Ibid.*, Para 12.

ence, Ahmed Awad bin Mubarak, was kidnapped.[185] The following three days saw the escalation of fighting between government and Ansar Allah, leading to the eventual house arrest of President Hadi in the Presidential Palace by Ansar Allah forces.[186]

On 21 January 2015, a new 10-point agreement was announced by President Hadi and Ansar Allah, which contained revisions to the draft Constitution and permitted Ansar Allah to appoint new members to the government.[187] The next day President Hadi and the entire Cabinet resigned, although their resignation was never considered by the Parliament.[188] On 25 February 2015 President Hadi escaped to Aden and, after the Presidential Palace in Aden was attacked (allegedly by pro-Ansar Allah forces), he fled to Saudi Arabia on 25 March 2015.[189]

The Hadi government proceeded to operate "in exile" out of Aden. Meanwhile, following Hadi's flight, Ansar Allah forces began exercising *de facto* control over central government institutions in Sana'a and local government in other governorates under their control. Ansar Allah's authority was further strengthened by the consolidation of a political and military alliance with forces loyal to former President Saleh in August 2016.[190]

The Internationalisation of the Conflict

Ansar Allah's takeover of Sana'a marked a critical point in the Yemeni conflict, leading as it did to the involvement of various foreign states in the conflict. The involvement of foreign states irreversibly changed the nature of the war, embroiling Yemen in wider regional power struggles.

On 24 March 2015, the day before he fled to Saudi Arabia, President Hadi called on the Gulf Cooperation Council and the League of Arab States to inter-

185 *Ibid*.

186 *Ibid.*

187 *Ibid.*, Para 13.

188 *Ibid*.

189 *Ibid*.

190 United Nations Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2266 (2016)*, UN Doc. S/2017/81, 31 January 2017, Paras 15 and 16.

vene in Yemen, invoking the right to "individual and collective self-defence" in the event of an armed attack, as enshrined in Article 51 of the UN Charter.[191] Accordingly, a joint operation called "Decisive Storm" was launched on 26 March 2015 by a Saudi-led coalition of ten Middle Eastern and African States (Qatar, Kuwait, United Arab Emirates, Bahrain, Egypt, Morocco, Jordan, Sudan, Senegal and Saudi-Arabia).[192] The Saudi-led coalition initially engaged in air strikes against northern areas under Ansar Allah control, including Sana'a;[193] however, the scope of the operations progressively expanded to include a naval blockade of Red Sea coastal areas under Ansar Allah control and the deployment of soldiers on the ground. The Saudi-led coalition's reported use of cluster ammunition and its targeting of non-military objectives (such as civilian areas and medical facilities) has led to allegations that it has committed violations of international humanitarian law.[194]

There are also a number of proxy forces which have been formed by, and are supported by, members of the Saudi-led coalition, and which the UN Security Council has stated "present a threat to the peace, security or stability of Yemen".[195] The "Security Belt Forces" – which were established in March 2016, and are ostensibly under the control of the Hadi government – are widely considered to be under the control of the United Arab Emirates (UAE), which provides training, equipment and funding.[196] The Security Belt Forces are reported to have as many as 15,000 troops, and have been active throughout southern Yemen since 2016.[197] The UAE has also established and funded the

191 See above, note 176, Paras 13-14. Bertelsmann Stiftung, *Yemen Country Report 2016,* 2016, p. 3, available here: https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Yemen.pdf.

192 Baron, A, *Yemen's forgotten war,* Sanaa Centre Online, December 2016, accessed here: http://sanaacenter.org/blog/item/66-yemen%E2%80%99s-forgotten-war.html.

193 Human Rights Watch, *"What Military Target Was in My Brother's House" Unlawful Coalition Airstrikes in Yemen*, 2015, p. 11, available at: https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen.

194 See above, note 176, Paras 44-53; also see above, note 142.

195 United Nations Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2342 (2017)*, UN Doc. S/2018/68, 26 January 2018, Para 54.

196 *Ibid.*, Para 55 and p. 307; Salisbury, P., "Yemen: National Chaos, Local Order", Chatham House, December 2017, p. 31, available at: https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2017-12-20-yemen-national-chaos-local-order-salisbury2.pdf.

197 See above, note 195, Para 55 and p. 307; also see above, note 190, Para 41.

"Hadrami Elite Forces" and the "Shabwani Elite Forces", both of which operate outside the control and command structure of the Yemeni military.[198] Human Rights Watch has documented human rights abuses by these various forces, reporting that they have established a parallel security system to that operated by the Hadi government.[199] There is a clear geographical demarcation in the involvement of members of the Saudi-led coalition, with the UAE playing a prominent role in the south of Yemen through its proxy forces, whilst Saudi Arabia has been leading the aerial campaign in the north of the country.[200]

At the same time, there is evidence that the Islamic Republic of Iran has provided military assistance to Ansar Allah forces in the north of the country.[201] The UN Panel of Experts on Yemen (appointed by UN Security Council Resolution 2140) has identified "strong indicators of the supply of arms-related material manufactured in, or emanating from, the Islamic Republic of Iran", including short-range ballistic missiles and unmanned aerial vehicles.[202]

Recent Developments

The involvement of multiple national and international state and non-state actors in the conflict has resulted in the fragmentation of the state, with instability prevailing in all areas of the country: as noted by the UN Panel of Experts on Yemen, "[i]nstead of a single State there are warring statelets, and no one side has either the political support or the military strength to reunite the country or to achieve victory on the battlefield".[203]

International actors involved in the conflict have increasingly displayed that they are operating pursuant to "divergent agendas",[204] with tensions between the UAE and the remainder of the Saudi-led coalition being particularly vis-

198 See above, note 195, Paras 57 and 58.

199 Human Rights Watch, *Yemen: UAE Backs Abusive Local Forces*, 22 June 2017, available at: https://www.hrw.org/news/2017/06/22/yemen-uae-backs-abusive-local-forces.

200 See above, note 196, Salisbury, p. 11.

201 See, for example, Reuters, "Exclusive, Iran steps up support for Houthis in Yemen's war", *Reuters*, 22 May 2017.

202 See above, note 195, Para 79.

203 *Ibid*, Summary.

204 See above, note 196, Salisbury, p. 6.

ible. The UAE reportedly considers President Hadi to be "an impediment to progress", and has been accused of targeting individuals who are affiliated with the *Islah* party – which holds key positions in Hadi's government – and which the UAE considers to be a threat to regional political stability.[205]

In the south of Yemen, the authority of the internationally recognised government of President Hadi has been further undermined by the creation of the Southern Transitional Council (STC) in May 2017 by the former Governor of Aden, Aydrous al-Zubaidi, with the support of the UAE.[206] The STC is a separatist group with the stated aim of achieving secession for southern Yemen; there is evidence that it is receiving support from the UAE-backed Security Belt Forces and Hadrami Elite Forces.[207] In late January 2018, the STC was accused by the Prime Minister Ahmed bin Dagher of staging a "coup" after clashes erupted in Aden, during which STC separatists and Security Belt Forces seized a number of government buildings and demanded the resignation of the government.[208] Whilst this "coup" was not successful, there are allegations that the STC is still "fomenting sectarian division and hatred in Aden", including through the deportation and detention of displaced northern Yemenis with the assistance of UAE-backed forces.[209]

At the same time, late 2017 and early 2018 saw the breakdown of the military and political alliance between Ansar Allah forces and forces loyal to former President Saleh. Following an increase in tensions between Ansar Allah and Saleh in August 2017 and in November 2017, a five-day long clash in Sana'a

205 The *Islah* party is often described as Yemen's "Muslim Brotherhood", which is abhorred by the *de facto* ruler of the UAE: see above, note 196, Salisbury, pp. 12 and 16.

206 Middle East Monitor, "UAE is leading a 'coup' in south Yemen, says Hadi", *Middle East Monitor*, 29 January 2018, available at: https://www.middleeastmonitor.com/20180129-uae-is-leading-a-coup-in-south-yemen-says-hadi.

207 See above, note 195, Paras 19-20; Gasim, G. "*What is going on in southern Yemen?*", Al Jazeera, 29 January 2018, available at: https://www.aljazeera.com/indepth/opinion/south-yemen-secession-aden-180129095311293.html.

208 Al-Batati, S., "UAE-backed separatists launch 'coup' in southern Yemen", *Al Jazeera*, 28 January 2018, available at: https://www.aljazeera.com/news/2018/01/separatists-government-headquarters-aden-180128073439998.html.

209 Al Jazeera, "UAE-backed militia deports Yemenis from southern Yemen", 23 March 2018, available at: https://www.aljazeera.com/news/2018/03/uae-backed-militia-deports-yemenis-southern-yemen-180322142103465.html.

resulted in Saleh's death on 4 December 2017.[210] This was followed by a crackdown by Ansar Allah forces against members of the GPC and other individuals who were loyal to or connected with Saleh, in order to consolidate their control over northern Yemen.[211]

On19 April 2018, a senior member of Ansar Allah – Saleh al-Sammad – was killed by a Saudi-led air raid in Hodeida province.[212] Al-Sammad was the most senior Ansar Allah official to have been killed during the conflict. Concerns have been raised that this could create further instability in the country, particularly as al-Sammad has been replaced by Mahdi al-Mashat who is considered to be a "hardliner" within the Ansar Allah movement.[213]

The security vacuum created by the conflict has allowed for the proliferation of extremist organisations, including Al-Qaeda in the Arabian Peninsula (AQAP).[214] As noted by Salisbury, AQAP has been "one of the biggest winners from the war, expanding territorially while (…) branding itself as a local alternative to the Hadi government and the Houthis".[215] Since early 2015, AQAP has devoted significant effort to fighting Ansar Allah and attacking Security Belt Forces in order to acquire territory; however, it has also remained active in conducting suicide attacks, roadside bombings, mortar attacks, assassinations, improvised explosive device attacks, and small-scale assaults.[216] The UN Panel of Experts on Yemen has stated that AQAP has two "international" goals, which are to launch attacks against Western targets from its base in Yemen, and to inspire or incite individuals living in the West to carry out terrorist attacks.[217] Islamic State in Iraq and the Levant, which has a much smaller presence in Yemen than AQAP, has also been active in carrying out su-

210 See above, note 195, Paras 26–28.

211 *Ibid*, Para 29.

212 BBC News, "Yemen war: Houthi political leader Saleh al-Sammad 'killed in air raid", *BBC*, 23 April 2018, available at: http://www.bbc.co.uk/news/world-middle-east-43872482.

213 Al Jazeera, "What does the death of Saleh al-Sammad mean for Yemen's Houthis?", *Al Jazeera*, 24 April 2018, available at: https://www.aljazeera.com/indepth/features/saleh-al-sammad-yemen-houthis-180424170317613.html.

214 See above, note 110, p. 9.

215 *Ibid*., p. 34.

216 See above, note 190, Paras 51-52; also see note 195, Para 66.

217 *Ibid*, United Nations Security Council, Para 67.

icide bombings and assassinations, with its presence concentrated in Yemen's southern and central governorates. [218]

The UAE's increasingly prominent role in the south of Yemen has facilitated the US's counter-terrorism operations in the country, with the US working in cooperation with the UAE to target AQAP and gather intelligence.[219] In January 2017, US soldiers undertook a ground raid in central Yemen, and there has been a considerable rise in the number of drone strikes since January 2017:[220] there were reportedly 131 strikes during 2017 as compared to 21 strikes in 2016.[221] As at 30 April 2018, it was estimated that 314 strikes had taken place in Yemen since 2002, resulting in between 1,001–1,359 deaths, of which between 116–215 were known to be civilians and 44–50 were children.[222] These strikes have been taking place outside the context of the ongoing armed conflict, and have been criticised for being conducted in violation of international law standards on the use of lethal force.[223]

Humanitarian Crisis

The ongoing conflict has created a humanitarian crisis in the country. As of 15 October 2017, 8,757 conflict-related deaths and over 50,610 injuries were reported by healthcare facilities.[224] In January 2018, the United Nations Population Fund estimated that 22.2 million people (75% of the population) were in need of humanitarian assistance, with 11.3 million

218 See above, note 190, Para 55; also see note 195, Para 74.

219 See above, note 196, Salisbury, p. 34 and generally.

220 Reprieve, *Game Changer: An investigation by Reprieve into President Donald Trump's secret assassination programme and the massacre of Yemeni civilians in the villages of Yakla and Al Jubah*, July 2017, available at: https://www.reprieve.org.uk/wp-content/uploads/2017/09/2017_08_15_PRIV-Yemen-Report-UK-Version-FINAL-FOR-USE.pdf.

221 See above, note 124.

222 The Bureau of Investigative Journalism, "Drone Strikes in Yemen", last accessed 9 May 2018, available at: https://www.thebureauinvestigates.com/projects/drone-war/yemen.

223 See, for example, note 123, Human Rights Watch.

224 United Nations Office for the Coordination of Humanitarian Affairs, *Humanitarian Needs Overview*: *Yemen*, 4 December 2017, p. 2, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/yemen_humanitarian_needs_overview_hno_2018_20171204_0.pdfs.

people urgently requiring immediate assistance in order to survive.[225] Approximately 17 million people are facing food insecurity, with 1.8 million children reported to be acutely malnourished.[226]

An estimated 2,007,216 individuals (334,536 households) have been internally displaced throughout 21 governorates, most of them having relocated in Hajjah, Taiz, Ammanat Al-Asimah and Sana'a.[227] Many Yemenis have fled the country, as is apparent from the eightfold rise in asylum claims worldwide from Yemeni nationals between 2014 and 2015, from 2,631 to 15,896.[228]

The conflict has triggered a cholera epidemic, with 771,945 suspected cholera cases reported between 27 April to 30 September 2017.[229] There has also been an outbreak of diphtheria, resulting from gaps in routine vaccination coverage and the collapse of the healthcare system, with over 1,300 persons infected and over 70 having been killed since October 2017.[230]

225 World Food Programme, *Yemen Monthly Situation Report,* 1 January 2018, available: http://yemen.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Yemen%20-%20Monthly%20SitRep%20%231%20January%202018.pdf.

226 *Ibid.*

227 International Organization for Migration, *Task Force on Population Movement – Yemen, 16th Report,* October 2017, accessed 28 November 2017, available at: https://www.iom.int/sites/default/files/country/docs/TFPM-16th-Report-Oct2017.pdf.

228 See above, note 12.

229 World Health Organization, *Situation report no. 40: Yemen conflict*, September 2017, available at: http://www.emro.who.int/images/stories/yemen/WHO_Situation_Report_IH_30_Oct.pdf?ua=1.

230 World Health Organization, *Diptheria vaccination campaign for 2.7 million children concludes in Yemen*, 16 March 2018, available at: http://www.emro.who.int/pdf/yem/yemen-news/diphtheria-vaccination-campaign-for-27-million-children-concludes-in-yemen.pdf?ua=1.

2. LEGAL AND POLICY FRAMEWORK

This Part of the report examines the legal framework related to equality and non-discrimination in Yemen, looking at both Yemen's international legal obligations and the domestic legal framework. As regards Yemen's international legal obligations, where an armed conflict exists – a fact which is undisputed in Yemen[1] – two legally distinct yet "mutually reinforcing" bodies of law apply:[2] international humanitarian law (IHL), and international human rights law. The conflict in Yemen is best characterised as being non-international in nature,[3] meaning that the hostilities are regulated by the norms of IHL applicable to non-international armed conflicts. However, international human rights law continues to apply concurrently with IHL in situations of armed conflict, meaning that Yemen must still comply with its obligations under international human rights law.

The report begins by discussing Yemen's international obligations in relation to the rights to equality and non-discrimination, considering Yemen's ratification of the key international treaties relevant to equality and its obligations under customary international law. It then provides a brief overview of the legal regimes applicable during non-international armed conflict, considering the interrelation between IHL and international human rights law. In respect of domestic law, this Part examines the Constitution, specific anti-discrimination laws, non-discrimination provisions in other legislation, and policies aimed at ensuring equality. In order to assess the full picture of the Yemeni legal framework as it relates to equality, this Part should be read together with, and in the context of, Part 3, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application. It should also be noted that the deterioration in the rule of law in the country in the context of the ongoing conflict has affected the efficacy of Yemen's legal framework, with existing laws being implemented and enforced in an inconsistent man-

1 See Human Rights Council, *Situation of human rights in Yemen – Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/31, 7 September 2015, Paras 20–24; UN Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2266 (2016)*, UN Doc. S/2017/81, 31 January 2017.

2 Office of the High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict*, 2011, p. 1, available at: http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

3 See further discussion in section 2.1.1.6 below.

ner, and various policies having been suspended. This is discussed in more detail in Part 3. This Part finishes by providing an overview of the Yemeni justice system, considering the coexistence of the formal judicial system and informal tribal justice system, and how their operation has been affected by the ongoing conflict.

2.1 Legal Framework Related to Equality and Non-Discrimination

2.1.1 International Law

This section provides an overview of Yemen's international obligations in relation to the rights to equality and non-discrimination. Yemen has ratified or acceded to seven of the nine key human rights treaties, and has thereby expressly agreed to protect, respect and fulfil the rights contained in these instruments and to be bound by the legal obligations contained therein. In addition, Yemen is bound by customary international law which provides some important protection in respect of the right to non-discrimination on certain grounds.

2.1.1.1 Major United Nations Treaties Relevant to Equality

Yemen has ratified or acceded to seven of the nine core UN treaties related to human rights, with the notable exception of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). Whilst the Yemeni government approved Yemen's accession to the ICPPED in 2013,[4] the ratification process was never completed.

Individual complaints may only be made to the Committee on the Rights of Persons with Disabilities under the Optional Protocol on the Rights of Persons with Disabilities, as Yemen has not consented to the individual complaints mechanisms under any of the other core human rights treaties. Whilst Optional Protocol III to the Convention on the Rights of the Child, which relates to the individual communications procedure, was approved

4 Law No. 127 of 2013 "on the Ratification and Accession to the International Convention on Enforced Disappearance"; see: Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Yemen*, UN Doc. A/HRC/WG.6/18/YEM/1, 8 November 2013, Paras 40 and 126.

by Cabinet Decision No. 129 of 2013, it has not been ratified.[5] Yemen has not acceded to the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, despite the recommendation of the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) that it do so.[6] Yemen has also refused to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights concerning the elimination of death penalty, on the basis of its position that Shari'a law requires the imposition of the death penalty as a punishment for a number of crimes.[7]

Table 1: Ratification of international human rights treaties by Yemen

Instrument Relevant to Equality	Signed	Ratified/Acceded/Succeeded
International Covenant on Civil and Political Rights (1966) (ICCPR)	n/a	9 February 1987 (Acceded)
Optional Protocol to the International Covenant on Civil and Political Rights (1966) (ICCPR-OP)	No	No
Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) (ICCPR-OP II)	No	No
International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)	n/a	9 February 1987 (Acceded)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008) (ICESCR – OP)	No	No
International Convention on the Elimination of All Forms of Racial Discrimination (1965) (ICERD)	n/a	18 October 1972 (Acceded)
Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)	No	No

5 *Ibid.,* Human Rights Council, Para 126.

6 Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *Concluding Observations: Yemen*, UN Doc. CEDAW/C/YEM/CO/6, 9 July 2008.

7 See Human Rights Committee (HRC), *Concluding Observations: Yemen*, UN Doc. CCPR/C/YEM/CO/5, 23 April 2012, Para 14, and the Government's reply: HRC, *Information received from Yemen on follow-up to the concluding observation*, UN Doc. CCPR/C/YEM/CO/5/Add.1, 4 April 2014, Para 2.

Instrument Relevant to Equality	Signed	Ratified/Acceded/Succeeded
Convention on the Elimination of All Forms of Discrimination Against Women (1980) (CEDAW)	n/a	30 May 1984 (Acceded)
Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (1999) (CEDAW-OP)	No	No
Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) (CAT)	n/a	15 November 1991 (Acceded)
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002) (CAT-OP)	No	No
Convention on the Rights of the Child (1989) (CRC)	13 February 1990	1 May 1991 (Acceded)
Optional Protocol I to the Convention on the Rights of the Child (involvement of children in armed conflict) (2000) (CRC-OP)	n/a	2 March 2007 (Acceded)
Optional Protocol II to the Convention on the Rights of the Child (2000) (sale of children, child prostitution and child pornography) (CRC-OP II)	n/a	15 December 2004 (Acceded)
Optional Protocol III to the Convention on the Rights of the Child (2011) (communicative procedure) (CRC-OP III)	No	No
Convention on the Rights of Persons with Disabilities (2006) (CRPD)	30 March 2007	26 March 2009 (Ratified)
Optional Protocol on the Rights of Persons with Disabilities (2006) (CRPD-OP)	11 April 2007	26 March 2009 (Ratified)
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (ICRMW)	No	No
International Convention for the Protection of all Persons from Enforced Disappearance (2006) (ICPPED)	No	No

In relation to the treaties that it has ratified, Yemen has submitted a number of declarations and reservations.[8] In particular, Yemen has formulated various reservations to the ICERD which limit the scope of protection under the Convention, including in relation to Article 5(c) regarding the elimination of racial discrimination in the enjoyment of political rights, and Article 5(d)(iv), (vi) and (vii) concerning non-discrimination in the exercise of the right to marriage and choice of spouse, the right to inherit, and the right to freedom of thought, conscience and religion.[9] The Committee on the Elimination Racial Discrimination has repeatedly urged the government of Yemen to withdraw these reservations to the Convention.[10]

2.1.1.2 Other Treaties Related to Equality

Yemen has an average record in relation to other international treaties which have a bearing on the enjoyment by all of the rights to equality and non-discrimination. It is one of the only states in the Middle East and North Africa region to have ratified the Convention relating to the Status of Refugees of 1951 and its 1967 Protocol, but it has failed to ratify the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961. In the field of labour standards, Yemen has ratified 30 International Labour Organization (ILO) Conventions, including eight of the fundamental ILO Conventions such as the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.

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8 For example, the Supreme People's Assembly Decree No. 169 of 1983 formulated a reservation to Article 29(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, 1979, stating that Yemen "declares itself not bound by paragraph (1) of Article 29 of the said Convention relating to the resolution of disputes which may arise over the application or interpretation of the Convention".

9 The reservations formulated by Yemen upon ratification have been objected to by the governments of Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Mexico, the Netherlands, New Zealand, Norway, Sweden and the United Kingdom which deemed the reservations to be "incompatible with the object and purpose of this Convention": see United Nations Treaty Collection, *Chapter IV: Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en.

10 See, for example, Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Yemen*, UN Doc. CERD/C/YEM/CO/16, 19 October 2006, Para 13.

However, Yemen is yet to ratify the Rome Statute of the International Criminal Court. Despite the fact that the Yemeni Parliament ratified the Rome Statute on 24 March 2007 with a two-thirds majority vote, the decision was referred to the then President Saleh for final approval and, after considerable controversy and the filing of a petition by 50 Members of Parliament challenging the legality of the previous vote, the Parliament retracted its decision on 7 April 2007.[11] In 2014, the Human Rights Council expressed its concern in relation to the non-ratification of the Rome Statute and urged the government to ratify the treaty.[12] The Government subsequently approved Yemen's accession to the Rome Statute by way of Cabinet Decision No. 128 of 2013,[13] but the Parliament did not vote in favour of ratification due to the security and political instability of the country.[14]

Table 2: Other international Treaties Relating to Equality and Non-Discrimination

Instruments Relevant to Equality	Signed	Ratified/Acceded/Succeeded
Convention relating to the Status of Refugees (1951)	n/a	18 January 1980 (Acceded)
Protocol relating to the Status of Refugees (1967)	n/a	18 January 1980 (Acceded)
Convention on the Prevention and Punishment of Genocide (1948)	n/a	9 February 1987 (Acceded)
Convention relating to the Status of Stateless Persons (1954)	No	No
Convention on the Reduction of Statelessness (1961)	No	No

11 Coalition for the International Criminal Court, "Global Coalition Urges Yemen to Join International Criminal Court: Says Time to Reconsider 2007 Ratification Vote", *Coalition for the International Criminal Court*, 22 December 2008, available at: http://archive.iccnow.org/documents/08_12_Yemen_URC_Press_Release_(2).pdf.

12 Human Rights Council, *Situation of Human Rights in Yemen, Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/27/44, 27 August 2014.

13 See above, note 4, Human Rights Council, Para 126.

14 Global Justice, *Post-Revolution Yemen Inches Towards Rome Statute*, 2014, available at: https://ciccglobaljustice.wordpress.com/2014/04/09/post-revolution-yemen-inches-towards-rome-statute.

Instruments Relevant to Equality	Signed	Ratified/Acceded/Succeeded
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	No	No
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)	n/a	9 February 1987 (Acceded)
Rome Statute of the International Criminal Court (1998)	28 December 2000	No
UNESCO Convention against Discrimination in Education (1960)	No	No
Forced Labour Convention (1930) (ILO Convention No. 29)	n/a	14 April 1969 (Acceded)
Equal Remuneration Convention (1951) (ILO Convention No. 100)	n/a	29 July 1976 (Acceded)
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)	n/a	22 August 1969 (Acceded)
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)	n/a	15 June 2000 (Acceded)
UN Convention against Transnational Organised Crime (2000)	15 December 2000	8 February 2010 (Ratified)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	No	No

2.1.1.3 Regional Instruments

Yemen is a founding member of the League of Arab States and is party to the Arab Charter on Human Rights (ACHR);[15] as such, Yemen is subject to review by the Arab Human Rights Committee, which is tasked with monitoring and overseeing compliance with the ACHR. Whilst the ACHR emphasises in Article 3 that states parties shall take measures "to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter

15 Arab Charter on Human Rights, 2004.

in order to ensure protection against all forms of discrimination", the closed list of grounds of discrimination set out in Article 3(1) is not comprehensive, and the ACHR was criticised by the former UN High Commissioner for Human Rights for failing to meet international human rights standards.[16] In particular, the provisions of the ACHR regarding the treatment of women and non-citizens are inconsistent with the rights to equality and non-discrimination as understood under international human rights instruments.[17]

2.1.1.4 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law, with customary international law being deduced over time from the practice and behaviour of states.[18] Certain principles of international law, such as the prohibition of torture, are considered to be so fundamental that no derogation from such norms is permitted; these are known as peremptory norms, or *jus cogens.*[19] The prohibition of racial discrimination is widely accepted to be a peremptory norm of customary international law.[20] In addition, it can be said that the

16 UN News, *Arab rights charter deviates from international standards, says UN official*, 30 January 2008, available at: https://news.un.org/en/story/2008/01/247292-arab-rights-charter-deviates-international-standards-says-un-official.

17 *Ibid*.; Rishmawi, M., Carnegie Endowment for International Peace, *The Arab Charter on Human Rights*, 6 October 2009, available at: http://carnegieendowment.org/2009/10/06/arab-charter-on-human-rights/2z1r.

18 According to Article 38(b) of the Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, 1998, one of the sources of international law is "international custom, as evidence of a general practice accepted as law".

19 *Prosecutor v Anto Furundzija*, International Criminal Tribunal for the former Yugoslavia,Case No. IT-95-17/1-T, 1998, Para 153; Parker, K. and Neylon, L. B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53; CEDAW Committee, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 14 July 2017, Para 25.

20 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68, and the materials referred to therein; Pellett, A., "Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation", *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; cf Shaw, M., *International Law*, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm; Tanaka, J. (in dissent), South-West Africa Cases (Ethiopia v South Africa; Liberia v South Africa), International Court of Justice 1996, pp. 293, 299–300.

prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.[21] It has been argued, including by the Inter-American Court of Human Rights, that the principle of non-discrimination is a peremptory norm of customary international law;[22] however, this remains subject to debate.[23]

2.1.1.5 Status of International Obligations in Yemeni National Law

The status of international legal obligations in the Yemeni domestic legal order, and the relationship between the Constitution, national laws, and international obligations, is not entirely clear-cut. Article 6 of the Yemeni Constitution declares that "the Republic of Yemen affirms its adherence to the UN Charter, the Universal Declaration of Human Rights, the Charter of the Arab League and principles of international law which are generally recognised", indicating that Yemen is bound to comply with principles of customary international law. However, this is qualified by Article 3 of the Constitution, which provides that Islamic Shari'a "is the source of all legislation". Legal scholars have noted that international treaties ratified by Yemen occupy a lower status than the Constitution, but a higher status than national legislation, provided that the provisions of such treaties do not conflict with Islamic Shari'a.[24] The status of Islamic Shari'a in Yemen is discussed in more detail in section 2.1.2 below.

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21 *Ibid*., Shaw, p. 287; *Ibid*., Pellett, p. 85; Cassel, D., "Equal Labour Rights for Undocumented Migrant Workers", in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

22 *Juridical Condition and Rights of Undocumented Migrants*, Inter-American Court of Human Rights, Advisory Opinion OC-18/03, No. 18, 17 September 2003, p. 23. See also, by way of example, Martin, F. F. et al, *International Human Rights and Humanitarian Law*: *Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

23 See Bianchi, A., "Human Rights and the Magic of Jus Cogens", *The European Journal of International Law,* Vol. 19, 2008, p. 506; see Cassel, above, note 21, pp. 511–512; see Pellett, above, note 20, p. 85.

24 Al–Obeid, A., "مواءمة القوانين اليمنية مع الالتزامات الدولية المتعلقة بحقوق الإنسان- المجلة اليمنية لحقوق الانسان" (Harmonization of Yemeni Laws with International Human Rights Obligations), *Yemen Journal of Human Rights*; Al-Joubi, J.M.,"القوة الإلزامية لنصوص الصكوك الدولية" (The Compulsory Power of International Instruments), Sana'a, Yemeni Bar Association in cooperation with Farid Reish Foundation, 2009, p. 37.

Yemen is a dualist state, meaning that any international conventions ratified by Yemen must be transposed into domestic law through the enactment of national legislation if they are to produce legal effect.[25] However, the Yemeni courts have been prepared to enforce Yemen's international obligations in the absence of implementing legislation: for example, in a well-known asylum case involving a young woman from Saudi Arabia, the Southeast Court of Sana'a ordered that the woman should be given a period to resolve her legal status in accordance with Article 31 of the Refugee Convention, emphasising that Yemen is obliged to implement the international conventions that it has ratified.[26] Prior to the conflict, the state tasked a number of Parliamentary Committees with drafting and reviewing legislation to incorporate the obligations contained in the treaties Yemen has ratified, including the Constitutional and Legal Affairs Committee, the Public Liberties and Human Rights Committee, and the Shari'a Codification Committee, which has responsibility for reviewing the compatibility of the proposed legislation with Islamic Shari'a.[27]

2.1.1.6 Applicable Legal Framework during Armed Conflict: An Overview

Where an armed conflict exists – a fact which is undisputed in Yemen[28] – two legally distinct yet "mutually reinforcing" bodies of law apply:[29] international humanitarian law (IHL), and international human rights law. As explained in the Introduction, it is beyond the scope of this report to provide an analysis of compliance with IHL by the various parties to the conflict; as such, whilst Part 3 presents evidence of discriminatory conduct that has taken place during the course of the current conflict, the discussion does not attempt to determine whether such conduct is in breach of IHL standards. However, given the concurrent application of these two legal regimes in Yemen, and IHL's relevance to some of the issues discussed in Part 3, a brief overview of the application

25 Al-Makhlafi, A.M.D.,"الحقوق المدنية والشخصية للمرأة في الدستور اليمن", (The Civil and Personal Rights of Women in the Yemeni Constitution), Working Papers - Gender Workshop, Preface.

26 Judicial ruling issued by the Southeast Sana'a Court, Judgment No. 53 of 1435**;** See also the ruling of the Southeastern District Court in the Somali Refugees case; Judgment No. 153 of 1427 A.H. in the civil labour case No. 37 of 1424 A.H.

27 Law No. 1 of 2006 "on issuing the internal regulations of the House of Representatives", Articles 28, 31, and 49.

28 See above, note 1, Human Rights Council, Paras 20–24; See above, note 1, UN Security Council.

29 See above, note 2.

of IHL and its interrelation with international human rights law during armed conflict is set out below.

IHL seeks to regulate and limit the effects of armed conflict, and to protect those persons not actively or no longer participating in hostilities. As such, it *only* applies where an armed conflict exists. The question of whether or not an armed conflict exists is one of fact, and the criteria for determining the existence of an armed conflict depends on whether the hostilities are occurring between (i) two or more states (known as an "international armed conflict"),[30] or (ii) between a state and one or more organised armed groups, or between one or more organised armed groups (known as a "non-international armed conflict").[31] As regards the latter, the violence between the state authorities and the organised armed group(s), or between such organised armed groups, must reach a certain level of intensity before a non-international armed conflict is deemed to exist.[32] Different legal standards apply, depending on whether the conflict is classified as an international armed conflict or a non-international armed conflict.

Classifying the nature of the conflict in Yemen as either international or non-international is complex, given the involvement of a number of different state and non-state actors.[33] However, the conflict is best classified as being non-

30 This definition of an "international armed conflict" stems from Common Article 2 to the Geneva Conventions of 1949; according to the International Committee of the Red Cross (ICRC) 2016 commentary to Common Article 2, there is no requirement that the use of armed force reach a certain level of intensity before an international armed conflict exists. See ICRC, *Commentary Of 2016 Article 2: Application Of The Convention*, 2016, available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518.

31 Common Article 3 of the Geneva Conventions of 1949 refers to "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties"; ICRC, *Commentary on the First Geneva Convention,* 2016, available at: https://ihl-databases.icrc.org/ihl/full/GCI-commentary.

32 International Criminal Tribunal for the former Yugoslavia*, The Prosecutor v Dusko Tadic*, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1-A, 2 October 1995, Para 70: A non-international armed conflict exists where there is "protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".

33 For further information, see Part 1.

international.[34] As such, the hostilities are regulated by the norms of IHL applicable to non-international armed conflicts. These standards derive from a number of international treaties ratified by Yemen, including Common Article 3 to the Geneva Conventions of 12 August 1949 and its second Additional Protocol of 8 June 1977,[35] as well as customary international law. IHL imposes specific obligations on both state and non-state parties to non-international armed conflicts, meaning that all of the parties to the conflict in Yemen are bound by these standards.

Table 3: Yemen's ratification of the Geneva Conventions and their Additional Protocols

Instrument	Signed	Ratified/Acceded/ Succeeded
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949	n/a	16 July 1970

34 The fact that a number of other states have intervened in the conflict through the Saudi-led coalition does not render the conflict international, given that the intervention occurred at the request of the internationally recognised government of President Hadi, see: ICRC, *Commentary of 2016, Article 2: Application of the Convention*, 2016, Para 259, available at: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518; furthermore, whilst there is evidence that the Ansar Allah forces are supported by Iran, including through the alleged supply of weapons, it is unclear whether there is sufficient evidence to establish that Iran has overall control over the actions of the Ansar Allah forces such that their conduct can be attributed to Iran as a matter of customary international law, see above, note 32; International Criminal Court, *Lubanga Trial Judgment*, 2012, Para 541; See this note, ICRC, Paras 265–273. The classification of the conflict as non-international in nature has been made by other human rights organisations and experts; see, for instance, Human Rights Watch, *Bombing Businesses: Saudi Coalition Airstrikes on Yemen's Civilian Economic Structures*, 2016, p. 20, available at: https://www.hrw.org/report/2016/07/10/bombing-businesses/saudi-coalition-airstrikes-yemens-civilian-economic-structures; and Geneva Academy of International Humanitarian Law and Human Rights, *Non-international armed conflicts in Yemen*, March 2018, available at: http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen#collapse1accord.

35 Additional Protocol to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 3, 1977 applies in more limited circumstances than Common Article 3 to the Geneva Conventions, namely to all armed conflicts "which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (Article 1); given the extent of the control of the Ansar Allah forces over territory in Yemen, this threshold is arguably met.

Instrument	Signed	Ratified/Acceded/ Succeeded
Geneva Convention on the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949	n/a	16 July 1970
Geneva Convention relative to the Treatment of Prisoners of War, 1949	n/a	16 July 1970
Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949	n/a	16 July1970
Protocol I Additional to the Geneva Conventions relative to the Protection of Victims of Armed Conflicts, 1977	14 February 1978	17 April 1990
Protocol II Additional to the Geneva Conventions, Relative to the Protection of Victims of Non-International Armed Conflicts, 1977	14 February 1978	17 April 1990

The International Committee of the Red Cross (ICRC) has emphasised that "non-discrimination is a basic tenet not only of human rights law, but also of international humanitarian law".[36] Common Article 3 to the Geneva Conventions of 1949, which is arguably the most important provision of IHL applicable in non-international armed conflicts, provides that "humane treatment and *non-discrimination* are the basic principles which must guide the behaviour of the parties to the conflict vis-à-vis the persons not taking part in it" (emphasis added).[37] Common Article 3 specifically provides that persons not taking part in the conflict "shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria",[38] and prohibits certain conduct including "violence to life and person" (including torture), hostage taking, "outrages upon personal dignity" and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a

36 ICRC, *Non-Discrimination and Armed Conflict*, 2001, available at: https://www.icrc.org/eng/resources/documents/article/other/57jqzq.htm.

37 *Ibid.*

38 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, 1949, Common Article 3(1).

regularly constituted court".[39] Additional Protocol II to the Geneva Conventions also emphasises the importance of the principle of non-discrimination in armed conflict.[40] Article 2(1) stipulates that the provisions of the Protocol "shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (…) to all persons affected by an armed conflict", thus broadening the scope of protection contained in Common Article 3 to include grounds such as political opinion and social origin.[41]

It is important to note that international human rights law continues to apply concurrently with IHL in situations of armed conflict.[42] Where two conflicting provisions of IHL and international human rights law regulate the same situation but in a different manner, the legal principle of *lex specialis* is used to avoid any potential conflict of norms; according to this principle "the provision that gives the most detailed guidance should be given priority over the more general rule".[43] Whilst a state may temporarily derogate from some of its human rights obligations in the event of a state of emergency,[44] Yemen has not done so in respect of any international treaties to which it is a party; in any event, UN treaty bodies have made clear that certain obligations continue to apply even during armed conflict[45] and that "there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any

39 *Ibid.*, Common Article 3(1)(a)-(d).

40 See above, note 36.

41 See above, note 35, Article 2(1).

42 See above, note 2, pp. 6 and 55-56; HRC, *General Comment No. 29: Article 4: Derogations during a State of Emergency,* UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, Para 3; HRC, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, Para 11; International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* 8 July 1996, Para 25; ICJ, *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* 9 July 2004, Para 106.

43 See above, note 2, p. 60, citing International Law Commission, *Yearbook of the International Law Commission*, vol. II, part II, 2004, Para 304.

44 See International Covenant on Civil and Political Rights (ICCPR) 999 U.N.T.S. 171, Article 4.

45 See for instance, note 42, HRC, *General Comment No. 29: Article 4: Derogations during a State of Emergency*, Para 3.

circumstances".[46] The UN Security Council and the Human Rights Council have repeatedly reaffirmed the need for all parties to the conflict in Yemen to comply with their obligations under both IHL and international human rights law,[47] with the Human Rights Council emphasising in September 2017 "the commitments and obligations of the Government of Yemen to ensure respect for the promotion and protection of the human rights of all individuals within its territory and subject to its jurisdiction", and recalling that Yemen is party to the ICCPR, ICESCR, ICERD, CEDAW, CAT, CRC, CRPD and Convention relating to the Status of Refugees.[48]

2.1.2 The National Legal Framework on Equality and Non-Discrimination

Prior to the unification of Yemen in 1990, the People's Democratic Republic of Yemen (PDRY) and the Yemen Arab Republic (YAR) had two distinct legal systems; these systems were unified upon the creation of the new Republic of Yemen, with the legal codes of the YAR being declared as the "official" legislation of the country.[49]

The Yemeni legal system consists of a variety of religious, customary and tribal rules which coexist alongside the state-promulgated legal framework. The latter encompasses the Constitution, ordinary legislation, Republican (or Presidential) decrees, and administrative regulations. It should be noted that the precise relationship between state-issued law and Islamic Shari'a in Yemen is subject to debate. The Republic of Yemen's first Constitution, adopted by referendum in 1991 upon the unification of the country, stipulated in Article 3 that Shari'a was "the principal source of legislation"; however, this provision was amended in 1994 to denote Shari'a as "the source of all legislation". As such, the majority of judges, scholars and lawyers in Yemen consider that

46 *Ibid*., Para 8.

47 UN Security Council, *Resolution 2402 (2018)*, UN Doc. S/RES/2402, 26 February 2018, Preamble; Human Rights Council, *Human rights, technical assistance and capacity-building in Yemen* (with oral revision), UN Doc. A/HRC.36/L.8, 22 September 2017.

48 Human Rights Council, *Human rights, technical assistance and capacity-building in Yemen* (with oral revision), UN Doc. A/HRC.36/L.8, 22 September 2017.

49 Al-Zwaini, L., The Hague Institute for Innovation of Law, *The Rule of Law in Yemen: Prospects and Challenges*, 2012, p. 37, available at: http://www.hiil.org/data/sitemanagement/media/QuickScan_Yemen_191212_DEF.pdf; See further discussion in Part 1.

Shari'a is superior to all state-issued law.[50] However, another (minority) group of lawyers, judges and scholars maintain that state-issued law has replaced Shari'a as the only source of law, with the state being the "sole legislator".[51] As noted by Al-Zwaini:

> *Although nobody actually agrees on what shari`a actually means, and by whom shari`a should be decisively interpreted, both standpoints – and many in between – co-exist today throughout all levels of the state, politics, the judiciary, education, and society in Yemen.*[52]

In practice, all new Yemeni legislation is reviewed for compatibility with Shari'a principles by the Shari'a Codification Committee, which considers itself to be "the guardian of Article 3 of the Constitution".[53] As such, Yemen's personal status law, family law, and criminal and civil codes (amongst others) are based on the rules of classical Islamic Shari'a.[54] Yemeni judges also refer to Shari'a principles in interpreting Yemeni legislation, with *fiqh* (Islamic jurisprudence) manuals having been officially prescribed for use by judges to "harmonise interpretation of 'open' Islamic norms in Yemeni legislation".[55]

As noted at the outset of this Part, in order to assess the full picture of the Yemeni legal framework as it relates to equality, this Part should be read together with, and in the context of, Part 3, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application. It is also important to emphasise that the deterioration in the rule of law in the country in the context of the ongoing conflict has affected the efficacy of Yemen's legal framework, with existing laws being implemented and enforced in an inconsistent manner, and various policies having been suspended. This is discussed in more detail in Part 3.

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*, p. 20.

54 *Ibid.*, p. 88.

55 *Ibid.*

2.1.2.1 The Constitution

Given Yemen's political history, it is perhaps unsurprising that its Constitution has been the subject of a series of negotiations and amendments. Yemen's first Constitution as a unitary state was promulgated in 1990 and was approved by referendum in 1991;[56] following the 1994 civil war between the government and southern separatists, a number of amendments were made to the Constitution, including the stipulation that Islamic Shari'a is the source of all legislation.[57] Further amendments were adopted on 20 February 2001.[58] This section considers the key provisions of the current Constitution relating to equality and non-discrimination, as well as the provisions of the 2015 Draft Constitution which was never adopted.

Part One of the Constitution sets out "The Foundations of the State", with Article 1 declaring that the Republic of Yemen is an Arab, Islamic state, and Article 2 stipulating that Islam is the religion of the state, and Arabic its official language. Under Chapter III of Part One of the Constitution, Article 24 provides that the state shall "guarantee equal opportunities for all citizens in the fields of political, economic, social and cultural activities and shall enact the necessary laws for the realization thereof", with Article 25 going on to state that Yemeni society is based on the principles of justice, freedom and equality according to the law.

Part Two of the Constitution concerns "The Basic Rights and Duties of Citizens"; by its title, this Part creates an unfortunate distinction between the rights and freedoms of citizens and non-citizens, which continues throughout subsequent provisions of the Constitution. Article 41 sets out a general guarantee that "[a]ll citizens are equal in rights and duties". The fact that the guarantee of equality in Article 41 is limited to citizens is a significant shortcoming: it contradicts both international human rights law[59] and best practice, which provides that the right to equality extends to "all human beings"

56 Constitution of the Republic of Yemen 1990.

57 Constitution of the Republic of Yemen, amended in 1994.

58 Constitution of the Republic of Yemen 1990, amended via a referendum held on 20 February 2001.

59 See, for instance, the non-discrimination clause under Article 26 of the ICCPR which extends to "all persons". See International Covenant on Civil and Political Rights, Article 26.

and is not restricted in application to citizens of a state.[60] Article 42 stipulates that every citizen has the right to participate in the political, economic, social and cultural life of the state, and also guarantees "freedom of thought and expression of opinion (…) within the limits of the law". Subsequent provisions provide for other key rights and freedoms, including the rights to personal freedom, dignity and security (Article 48(a)), the prohibition of physical and psychological torture (Article 48(b)), the right to education (Article 54), the right to healthcare (Article 55), freedom of movement (Article 57) and freedom of association (Article 58); however, the enjoyment of such rights and freedoms is also restricted to citizens.

While international human rights law does not require *all* rights and freedoms guaranteed to citizens to be extended to non-citizens, exceptions to the general principle of equality between citizens and non-citizens are extremely limited. For example, under the ICCPR, certain political rights contained within Article 25 are guaranteed only to citizens, and the right to liberty of movement and to choose one's residence under Article 12(1) is guaranteed only for persons "lawfully within the territory of a State".

Whilst the 1990 version of the Constitution provided that "[a]ll citizens are equal before the law and are equal in public rights and duties and shall not be discriminated against on the grounds of sex, colour, origin, language, occupation, social status or race",[61] the latter wording was removed in the 1994 amendments to the Constitution. As such, there is no express prohibition of discrimination in the Constitution.

Another major shortcoming is the treatment of women's rights in the Constitution. The equality clause in Article 41 must be read in conjunction with Article 31, which defines women as "the sisters of men", and states that they have "rights and duties which are guaranteed and assigned by Shari'a and stipulated by law". This is an unhelpful categorisation that may have the effect of reinforcing harmful social norms,[62] as it implies that men and women have

60 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 1.

61 See above, note 56, Article 27.

62 See Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2012, pp. 5–6, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10336_E.doc.

different rights and obligations under the Constitution.[63] This is considered in further detail in Part 3, section 3.3.

Finally, the Constitution falls short of international best practice by failing to stipulate that positive action is a mandatory part of the right to equality: according to Principle 3 of the Declaration of Principles on Equality, "to be effective, the right to equality requires positive action", which includes "a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups".[64]

Draft Constitution

As explained in Part 1, the Gulf Cooperation Council Initiative (GCCI) was signed on 23 November 2011, which governed the transfer of power from President Saleh and the creation of a new national unity government. The GCCI stipulated that the "new President shall establish a constitutional committee to oversee the preparation of a new constitution",[65] and also provided for the convening of a National Dialogue Conference (NDC) as one of the transitional mechanisms. The NDC was intended to provide a forum for inclusive negotiations in relation to institutional reforms and various policy issues. The NDC took place between March 2013 and January 2014, and was tasked with discussing a number of issues, including the drafting of a new Constitution through the establishment of a Constitutional Drafting Commission.[66]

On 3 January 2015, the first draft of the new Constitution (the Draft Constitution) was officially published online, and it was subsequently submitted to President Hadi on 7 January 2015.[67] As noted in Part 1, the draft was accepted

63 Ali Halawi, H., "Reflections on Women's Rights in Yemen: Opportunities and Challenges", in Grote, R. and Röder, T.J. (eds.), *Constitutionalism, Human Rights and Islam After the Arab Spring*, Oxford University Press, 2016.

64 See above, note 60, Principle 3.

65 UN, *Gulf Cooperation Council Initiative Agreement (UN Translation)*, 2011, Para 6, available at: https://osesgy.unmissions.org/sites/default/files/gcc_initiative_yemen_english.pdf.

66 UN Peacemaker, *Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council*, 5 December 2011, Para 21, available at: https://peacemaker.un.org/yemen-transition-mechanism2011.

67 See above, note 1, Human Rights Council, Para 12.

by all political parties and delegates, except Ansar Allah (also known as the "Houthis"), who opposed the creation of a federal state.[68]

The Draft Constitution represents a significant improvement on the provisions related to equality and non-discrimination under the current Constitution.[69] There are a number of provisions which are of relevance in this respect:

- Chapter 2 of the Draft Constitution, which concerns rights and freedoms, removes former Article 41 (which declares all citizens "equal in rights and duties"[70]) and replaces it with a guarantee under draft Article 74 that "all people are equal before the law" (emphasis added).
- Chapter 2 of the Draft Constitution also includes a substantive guarantee of non-discrimination under draft Article 75:

> *Citizens shall have equal rights, freedoms and public duties without discrimination due to sex, skin colour, race, origin, religion, sect, belief, opinion, economic or social status, disability, political or geographical affiliation, occupation, birth, or any other considerations.*

- Draft Article 62 addresses the state's obligation to take positive action, stating that it will undertake action "to raise the status of vulnerable and marginalised groups and promote their active participation in political, economic and social life" and "to integrate marginalised groups into society".
- Under draft Article 63, the state is further required to ensure "[t]he maintenance of the cultural and linguistic diversity of society".[71]
- As regards women's participation in political life, draft Article 76 states that in order to "give effect to the principle of equal citizenship" the state shall "enact legislation and take measures to achieve effective political participation for women to ensure access to at least 30% of various authorities and bodies".

68 *Ibid.*

69 UN, *Translation of the Draft Constitution of the Republic of Yemen*, 2015, available at: http://www.constitutionnet.org/sites/default/files/yemen-draft_constitution-15jan2015-_english.pdf.

70 See above, note 56, Article 41.

71 *Ibid*., Article 63.

- In terms of other provisions which impact on gender equality, draft Article 128 provides that legislation shall be enacted with the aim of protecting women from violence and affording equal citizenship. A minimum age for marriage (18) is also established under draft Article 124, and draft Article 7, which concerns Yemeni citizenship, provides that citizenship is "a right for everyone born to a Yemeni father or a Yemeni mother."[72]
- The rights of persons with disabilities are recognised under Article 130 of the Draft Constitution: all persons with disabilities are to be "empowered to exercise their full political, economic, social and cultural rights". Such persons are to be afforded "full care and the provision of all their needs to overcome their disability"; appropriate education; access to suitable infrastructure; improved social attitudes and the right to be treated with dignity and respect.
- Draft Article 118 concerns the right to asylum and provides that all refugees are to "enjoy basic human rights in accordance with the Constitution and law".
- Internally displaced persons (IDPs) are protected under draft Article 121, which states that IDPs "have the right to protection and humanitarian aid" and provides that the state "shall ensure decent life, education and appropriate healthcare without discrimination".
- The Draft Constitution also provides some further clarity regarding the status of international obligations in the domestic legal order, with draft Article 10 providing that the state "shall adhere to international conventions and treaties ratified by the legislative authority and the generally recognised principles of international law".

The Draft Constitution contains a number of key improvements, in particular the expansion of the general equality clause under Article 74 to encompass non-citizens, the inclusion of a substantive guarantee of non-discrimination under Article 75, and the inclusion of provisions relating to positive action measures under Articles 62, 63 and 76. The constitutional recognition of the right of Yemeni women to confer nationality on their children is also a positive development, and stands in contrast to Article 44 of the current Constitution, which merely maintains that "the law shall regulate Yemeni nationality".[73]

72 See above, note 69, Article 7.

73 See above, note 56, Article 44.

However, the provisions of the Draft Constitution regarding equality and non-discrimination are still not comprehensive and suffer from some key failings, which should be addressed in any future constitutional review.

Firstly, while the inclusion of a guarantee of non-discrimination under draft Article 75 is an improvement, it still falls short of international best practice in a number of ways. Significantly, whilst draft Article 74 provides that all *people* (as opposed to citizens only) are "equal before the law", draft Article 75 only guarantees protection from discrimination to citizens. As noted above, this contradicts both international human rights law[74] and best practice, which provide that the right to equality (including the right to non-discrimination) extends to "all human beings" and is not restricted in application to citizens of a state.[75]

Moreover, discrimination itself is not defined under draft Article 75, and the Draft Constitution does not oblige the state to take any measures to eliminate discrimination through the enactment of relevant legislation and policies. Whilst the term "any other considerations" is not further defined, it has the potential to operate in a similar way to the "other status" category found in many international human rights instruments,[76] potentially extending the application of this provision to cover a list of non-specified characteristics, concordant with international best practice. However, the criteria for determining what constitutes "any other circumstances" are not set out within the Draft Constitution.[77]

Together, Articles 62 and 63 represent a positive development insofar as they oblige the state to enact measures to facilitate the improved and continued enjoyment of rights of marginalised groups and linguistic minorities, and thus enable their equal participation in political, economic and social life. However, whilst the inclusion of positive action in Article 62 and 63 is a key improvement, the failure to provide for quotas for the political representa-

74 See, for instance, the non-discrimination clause under the ICCPR, Article 26, which extends to "all persons".

75 See above, note 60, Principle 1.

76 See, for example, ICCPR, Article 2(1); and International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, Article 2(2).

77 See above, note 60, Principle 5.

tion of marginalised groups – such as the Muhamasheen – in key political and administrative bodies has been viewed with disappointment, given the sustained advocacy efforts of the Working Group on Rights and Freedoms of the NDC and the Yemeni Union of the Marginalized to include a minimum participation quota for the Muhamasheen community.[78]

Under draft Article 128, women are recognised as possessing "full civil, political, economic, social and cultural rights without discrimination", and the state is required to "enable them to reconcile between their family duties and the requirements of their jobs". The exact meaning and effect of the latter statement is unclear and the reference to family duties is problematic, although any potential constitutional recognition of women's right to work would be significant considering that women may be prohibited from working by their husbands under current legislation.[79]

Draft Article 76 goes some way towards giving effect to the recommendations of the CEDAW Committee in its 2009 Concluding Observations, in which it urged Yemen to "take effective and sustained legal measures, including temporary special measures" in order to increase women's representation in positions of responsibility.[80] Whilst the inclusion of a participation quota of 30% for women is a positive development, it still does not target *equal* representation of women, who account for approximately 49.5% of the Yemeni population.[81] Further, draft Article 76 does not contain any time limitations as required under Article 4(1) CEDAW, which provides that any temporary special measures "shall be discontinued when the objectives of equality of opportunity and treatment have been achieved".

Furthermore, guarantees of key rights – including the right to housing and sanitation, the right to adequate and sufficient food, the right to social welfare and social security, the right to healthcare, the right to high quality education,

78 See above, note 1, Human Rights Council, Para 77; See also section 2.1.2.4 below.

79 See Law No. 20 of 1992 "on the Personal Status Law", Article 40(4), and further discussion in Part 3, section 3.3.

80 See above, note 6, Para 23.

81 The World Bank, *Data: Population*, visited 13 June 2018, available at https://data.worldbank.org/indicator/SP.POP.TOTL?end=2016&locations=YE&start=2011.

and right to work[82] – remain limited to citizens. Only "the right to clean water in sufficient volumes" under draft Article 102 is guaranteed to "everyone". It is unclear how the exclusion of non-citizens from the enjoyment of these fundamental social and economic rights sits alongside draft Article 118, which provides that refugees "shall enjoy basic human rights in accordance with the Constitution and law". As regards draft Article 118 itself, whilst its inclusion is an improvement on the current Constitution, it is nonetheless inadequate insofar as it only recognises the rights of refugees guaranteed under national law, rather than guaranteeing their rights under international law.[83]

Whilst this section does not purport to analyse the remaining provisions of the Draft Constitution in any detail, it should be noted that there are a number of other provisions which are inconsistent with or contrary to international best practice. As regards the treatment of refugees, draft Article 118 only prohibits the forcible removal of individuals "if it puts their lives at risk",[84] which is narrower than the state's obligation under the CAT, which prohibits states from refouling an individual to any state "where there are substantial grounds for believing that he would be in danger of being subjected to torture".[85] In addition, draft Article 56 – which provides that "libel of Islam and all divinely revealed religions" and the "insulting [of the] prophets" are to be criminalised – operates as a *de facto* criminalisation of blasphemy, contrary to the requirements of international human rights law.[86] Furthermore, draft Article 82 requires the adoption of criminal sanctions for any individual who imposes "any opinion, thought or belief on anyone by force". When applied in practice, this provision could be used to justify a criminal prohibition on proselytism, which is contrary to international law and best practice.[87] Together, draft Articles 56 and 82 may restrict the rights of religious minorities and non-believers in Yemen.

82 See above, note 69, Articles 103, 104, 105, 106, 108 and 109.

83 *Ibid*.

84 Although draft Article 118 does make an exception for political refugees, whose repatriation is "prohibited".

85 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N.T.S. 85, Article 3(1).

86 See HRC, *General Comment No. 34: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, Para 48.

87 See further discussion in Part 3, section 3.2.

Finally, draft Article 135 states that "[a]ll rights and freedoms are guaranteed as long as they do not conflict with the conclusive provisions of the Islamic Shari'a and are consistent with the provisions of this Constitution". As such, whilst there are a number of positive improvements in the Draft Constitution, in particular as regards the rights of women, it is unclear whether these would be guaranteed in practice given the primacy still afforded to Islamic Shari'a.

2.1.2.2 Specific Legislation on Equality and Anti-Discrimination

The most notable shortcoming in Yemen's legal framework for equality is its lack of any comprehensive equality or anti-discrimination legislation. As noted in the Declaration of Principles on Equality, "[t]he realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage".[88] Whilst Yemen has adopted legislative provisions on equality and non-discrimination across a couple of laws, these fall significantly short of offering comprehensive legislative protection of the rights to equality and non-discrimination.

Law on the Care and Rehabilitation of Disabled Persons

Law No. 61 of 1999 "on the Care and Rehabilitation of Disabled Persons"(the **"Law on the Care and Rehabilitation of Disabled Persons"**) is the primary piece of legislation regulating the rights of persons with disabilities in Yemen.

Whilst the Law on the Care and Rehabilitation of Disabled Persons contains some provisions related to equality and non-discrimination, it is not anti-discrimination legislation *per se*. Article 3 stipulates that persons with disabilities shall enjoy all of the rights guaranteed by the Constitution and other applicable laws, and subsequent provisions specify the measures to be taken by the state to facilitate equal participation of persons with disabilities. These include the provision of free training and social welfare programmes for persons with disabilities (Article 4), the preparation of curricula and teaching aids (Article 6), the creation of recreational facilities that are accessible to persons with disabilities (Article 8), and the removal of barriers that obstruct access to public buildings (Article

88 See above, note 60, Principles 3 and 15.

10). Article 9 stresses the importance of allowing persons with disabilities to enrol in colleges and universities if they have obtained the requisite grades, whilst Articles 18 and 19 stipulate that 5% of both public and private sector job vacancies must be allocated to persons with disabilities. Such positive action measures are both permitted and required under international human rights law, provided that the measures adopted are *inter alia* proportionate to the aim pursued and employed only so long as is necessary to correct inequality between groups.[89] Article 23 provides that persons with disabilities who have been employed in accordance with the terms of the Law must not be deprived of any privileges or rights on account of their disability.

However, the Law on the Care and Rehabilitation of Disabled Persons suffers from a number of weaknesses, which are explored in more detail in Part 3, section 3.5. In particular, the definition of disability in Article 2 follows a medical model of disability, defining a person with a disability as "any person, male or female, proven by medical examination to be in a permanent or total disability, caused by an injury or illness and leading to his/her inability to learn or engage in any activity, in whole or in part"; this is inconsistent with international best practice, as exemplified in the CRPD, which adopts a "social" model of disability. The Law does not define or prohibit disability-based discrimination (other than in general terms in Article 23, which relates only to the employment context), nor does it elaborate on the duty to provide reasonable accommodation as required under Article 5(3) CRPD. Furthermore, the Law does not provide adequate remedies for a breach of the Law, with judicial redress being limited to the employment context. Any failure to comply with the provisions regarding job quotas gives rise to a fine not exceeding 10,000 Riyals (approximately 25 US$);[90] this is too low to operate as a significant disincentive, and there is a lack of adequate enforcement in practice.[91]

89 See CEDAW, Article 4, and CERD, *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, UN Doc. CERD/C/GC/32, 24 September 2009, Para 16, respectively.

90 Law No. 61 of 1999 "on the Care and Rehabilitation of the Disabled", Article 25.

91 Republic of Yemen, Ministry of Social Affairs and Labour, *National Disability Strategy,* 2010, p. 8, available at: http://www.inclusive-education.org/system/files/publications-documents/Tines_National%20Strategy%20on%20Disability%20in%20Yemen.pdf.

Law on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS

Law No. 30 of 2009 "on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS" (the **"Law on HIV/AIDS"**) was promulgated on 30 August of 2009.[92] As the title indicates, the objectives of the Law include the provision of medical services to persons with HIV/AIDS, the coordination of efforts to reduce the prevalence of HIV/AIDS, raising community awareness about the rights of persons with HIV/AIDS, promoting health awareness amongst persons with HIV/AIDS, and guaranteeing the rights of persons with HIV/AIDS without discrimination on the grounds of their health status.

Article 5 provides that persons with HIV/AIDS shall be "accorded with all of the rights guaranteed under the Constitution, other applicable laws and international conventions ratified by Yemen". The Law on HIV/AIDS prohibits the dismissal of an employee on the grounds of their health status, and imposes sanctions on employers who violate this prohibition.[93] The Law also prohibits discrimination against children living with HIV, with Article 8 stating that children living with HIV have the right to healthcare and obliging the state to guarantee full respect for their basic rights, and Article 10 preventing educational institutions from expelling or transferring children living with HIV to other schools on account of their health status.

However, the protections set out in the Law on HIV/AIDS are undermined by a number of provisions which exacerbate the stigma experienced by persons with HIV/AIDS, and thus run counter to its stated objectives, such as Article 19 which establishes the right of a woman to request a divorce if her husband is infected with HIV/AIDS.

2.1.2.3 Non-Discrimination Provisions in Other Pieces of Legislation

In addition to the Law on the Care and Rehabilitation of Disabled Persons, and the Law on HIV/AIDS, there are other pieces of Yemeni legislation contain-

92 This law is published in the official gazette, issue No. 16 of 2009.

93 Law No. 30 of 2009 "on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS", Articles 6 and 38.

ing equality and non-discrimination provisions. However, none of the laws discussed below contains a definition of discrimination, let alone definitions of direct and indirect discrimination and harassment, nor do they detail the state's duty to provide reasonable accommodation.

Criminal Law

The Republican Decrees No. 12 and 13 of 1994, respectively on Crimes and Penalties (the **"Penal Code"**) and Criminal Procedure (the **"Code of Criminal Procedure"**), are the main legal instruments regulating the administration of criminal justice through the formal justice system in Yemen. The former regulates and defines the types of criminal conduct punishable by law, whereas the latter determines the procedure to be followed in criminal cases.

Article 5 of the Code of Criminal Procedure states that "[a]ll citizens are equal before the law; no person may be prosecuted or subjected to any punishment on the basis of nationality, race, origin, language, religious belief, occupation, educational level or social standing". In addition to only applying to Yemeni citizens, this provision excludes several characteristics recognised as being protected under international human rights law, including sex and political opinion. The Code of Criminal Procedure also provides for the accommodation of the needs of certain persons with disabilities – namely defendants or witnesses who are "deaf or mute" – through the provision of sign language or other technical assistance;[94] however, this provision does not impose an obligation on the Court to provide reasonable accommodation, and there are no provisions in relation to the accommodation of other disabilities during criminal proceedings.

Hate Motivated Violence

International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, to offer comprehensive protection from discrimination, certain severe manifestations of discrimination may be dealt with under criminal law. Principle 7 of the Declaration of Principles on Equality states:

94 Republican Decree No. 13 of 1994 "on Criminal Procedure", Article 337.

> *Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.*[95]

Under international human rights law, states are obliged to take appropriate action to protect individuals from violence at the hands of public or private actors. This includes violence committed against certain categories of individuals such as women, persons with disabilities, and sexual and gender minorities.[96] States are required to prevent and prosecute such acts.[97] Individuals whose rights have been violated are entitled to an effective remedy under Article 2(3) ICCPR.[98] To this end, states should "take account of the special vulnerability of certain categories of person".[99]

Violence committed against an individual on account of their actual or perceived personal characteristics, or their association with a protected person or group, is a particularly serious form of discrimination, and appropriate action in such cases may differ from that to be taken in relation to similar cases committed without a discriminatory motive.[100] For example, in order to give

95 See above, note 60, Principle 7.

96 Human Rights Committee, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CPR/C/GC/35, 2014, Para 9.

97 *Ibid*.

98 ICCPR, Article 2(3)(a).

99 See above, note 42, HRC, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,* Para 15. Similarly, the Committee against Torture has recognised that in order to access redress mechanisms "[s]pecial measures should be adopted to ensure access by persons belonging to groups who have been marginalised or made vulnerable." See Committee against Torture, *General Comment No. 3*, *Implementation of Article 14 by States Parties*, UN Doc. CAT/C/GC/3, 13 December 2012, Para 29.

100 For example, the European Court of Human Rights (ECtHR) has recognised that "treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights". See ECtHR, *Identoba and Others v Georgia*, Application No. 73235/12, 12 May 2015, Para 67.

full effect to the principle of equality, a discriminatory motive in the incitement or commission of violence must be considered an aggravating factor during sentencing.[101]

However, the Penal Code does not satisfactorily address the phenomena of hate motivated violence. It does not treat the existence of a discriminatory motive as an aggravating circumstance in the commission of violent crimes, as required as a matter of international best practice.[102]

Incitement to Hatred

The right to freedom of expression has been recognised as an essential precondition to the realisation of human rights.[103] Under Article 19 ICCPR, the right to freedom of expression is guaranteed, subject only to those narrowly defined restrictions set out under Article 19(3); namely that any restriction is "provided by law and necessary for respect of the rights or reputations of others, [or] for the protection of national security (...) public order, or (...) public health or morals." At the same time, international human rights law increasingly recognises a need to protect individuals from "hate speech", which is often defined by reference to Article 20 ICCPR.

Under Article 20(2) ICCPR, states are obliged to prohibit any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". It is noteworthy that Article 20(2) does not mandate the use of criminal law for this purpose. Further, the Human Rights Committee has stressed the important relationship between Article 20 and Article 19(3) of the Covenant.[104] While states are obliged to prohibit "hate speech" as defined under Article 20, any restrictions must also justify the requirements of Article 19(3), i.e. legislation must not unduly restrict the right to freedom of expression.

Under Article 194 of the Penal Code, anyone who "publicly incites disdain of a group of people or the superiority of a sect where this would disturb public

101 See above, note 60, Principle 7.

102 *Ibid.*

103 See above, note 86, Para 3.

104 *Ibid*., Paras 50–52.

peace" may be punished by up to three years imprisonment.[105] The criminalisation of the incitement of "disdain of a group of people or the superiority of a sect" is considerably broader than the wording of Article 20(2) ICCPR.[106] Furthermore, the loose language of the caveat that such restriction applies "where [the incitement] would disturb public peace" arguably fails to satisfy the conditions of Article 19(3) ICCPR, which provides that the legitimate aims for restricting the right to freedom of expression are the respect of the rights or reputations of others and the protection of national security or public order, or of public health or morals. Offences such as that contained in Article 194 have the potential to be used to repress rather than protect minority groups. Indeed, as Part 3 indicates, criminal provisions including Article 194 have been used to charge peaceful protesters in Yemen.

Employment Law

The Republican Decree No. 5 of 1995 "on Labour" and the amendments thereto[107] (the **"Labour Code"**) regulate the employment relationship in the private sector, as well as issues concerning vocational training, professional apprenticeships, occupational health and safety, the functioning of unions and the settlement of labour disputes. There are a number of provisions in the Labour Code relating to equality and non-discrimination.

Article 5 of the Labour Code states that

> *[W]ork is a natural right of every citizen and a duty for everyone who is capable of working, on the basis of equal conditions, opportunities, guarantees and rights without discrimination on grounds of sex, age, race, colour, beliefs or language.*

In addition to excluding non-citizens from its scope, Article 5 includes only a limited list of characteristics recognised under international human rights

105 See Republican Decree No. 12 of 1994 "on Crimes and Penalties", Articles 194.

106 ICCPR, Article 20(2) provides that "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

107 Republican Decree No. 5 of 1995 "on Labour", amended by Law No. 25 of 1997, Law No. 11 of 2001, Law No. 25 of 2003, and Law No. 15 of 2008.

law, and the term "discrimination" is not defined here or elsewhere in the Labour Code. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is tasked with examining the application of international labour standards under the ILO Conventions that a country has ratified, has repeatedly recommended that Yemen revise the Labour Code to explicitly prohibit direct and indirect discrimination and to expand the list of prohibited grounds to include, *inter alia*, political opinion and social origin.[108]

A number of categories of individuals are excluded from the scope of the Labour Code under Article 3(2), including casual workers, domestic workers, foreigners seconded to work with the State, and persons related to and working with the employer "who are effectively his dependants regardless of their degree of kinship".[109] This provision is indirectly discriminatory on the grounds of sex (since women are more likely than men to be employed as casual or domestic workers), as well as being directly discriminatory on the grounds of nationality and family status. As regards the latter, the exclusion of dependants has been justified on the basis that family ties provide a better framework of protection for workers than the law; however, it has the potential to expose workers who are dependants of their employer to abuse and exploitation.[110]

Article 42 of the Labour Code explicitly addresses the issue of gender equality:

> *Women shall be equal to men in relation to all conditions of employment and employment rights, duties and relationships, without any discrimination. Women shall also be equal with men in employment, promotion, wages, training and rehabilitation and social insurance. The specifications of the work or profession shall not be deemed to constitute discrimination.*

108 International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Observation on Yemen – adopted 2017, published 107th ILC session*, 2018.

109 Republican Decree No. 5 of 1995 "on Labour", Articles 3(2)(d), (g), (h) and (i).

110 Al-Sharafi, M.A., "شرح أحكام قانون العمل" (Explanation of the provisions of the Labour Law), *Sana'a Sadiq Center for Printing, Publishing and Distribution*, 2013.

The effect of the latter sentence is that any requirements for an individual to possess particular qualifications or experience in order to carry out the work in question are precluded from being considered to be discriminatory. Further, Article 46 of the Labour Code prohibits women from being employed in certain occupations that are considered to be "hazardous, arduous or harmful to their health or social standing", or from being employed at night (except during the month of Ramadhan and in certain jobs specified by order of the Minister of Social Security, Social Affairs and Labour). The provisions under Article 46 are directly discriminatory on the grounds of sex, with the CEDAW Committee having emphasised that prohibitions on women's performance of certain forms of "dangerous" work may perpetuate discriminatory stereotypes against women.[111]

As regards equal pay, Article 67(1) states that "women shall be entitled to wages equal to those of men if they perform the same work under the same conditions and specifications". The CEACR has commented that Article 67(1) is more restrictive than the equal pay provisions set out in ILO Convention No. 100, since it does not give full expression to the principle of equal remuneration for work of equal value.[112]

The Labour Code also addresses issues of pregnancy and maternity. Article 43(1) sets out a mandatory reduction in the working hours of women who are pregnant and breast-feeding, stating that "women's working time shall be five hours a day as from their sixth month pregnancy and, if breast-feeding, until the end of the sixth month after childbirth"; this provision directly discriminates on the grounds of pregnancy and maternity by removing individual autonomy for women to determine their working hours. Article 45(1) provides workers with 60 days' maternity leave, which falls significantly short of the minimum 14-weeks of leave called for by the ILO.[113]

Article 15 of the Labour Code sets a quota for the employment of persons with disabilities:

111 CEDAW Committee, *Svetlana Medvedeva v Russian Federation*, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 2016.

112 ILO CEACR, *Direct Request to Yemen – adopted 2017, published 107th ILC session*, 2018.

113 ILO, Maternity Protection Convention C183, 2000, Article 4(1).

> *Employers shall, according to their resources and available opportunities, employ disabled persons nominated by the Ministry or its branch offices up to a proportion of 5% of their total workforce in jobs and professions suited to their capabilities and potential as to ensure that they enjoy all the rights provided for in this Law.*[114]

The Labour Code does not impose an obligation on employers to make reasonable accommodation for persons with disabilities, as required under Article 5(3) CRPD, although Article 108 states that the Minister of Social Security, Social Affairs and Labour may make provision for employers to participate in the training and rehabilitation of persons with disabilities.

Nationality Law

Law No. 6 of 1990 (the **"Nationality Law"**) regulates the acquisition and loss of Yemeni nationality.[115] As originally promulgated, the Nationality Law excluded Yemeni nationality from children born to a Yemeni mother and a non-Yemeni father, whilst extending nationality to children born to Yemeni fathers and non-Yemeni mothers. Following a series of amendments,[116] the Nationality Law was expanded such that Yemeni women married to non-Yemeni nationals have the right to confer nationality to their children on an equal basis with men,[117] thus removing the discriminatory denial of Yemeni nationality to children born of Yemeni mothers and non-Yemeni fathers.

This legislative amendment had a retroactive effect such that children born prior to its issuance are entitled to request to acquire Yemeni nationality by filing an application with the Minister of the Interior.[118] The final decision regarding the acquisition of Yemeni nationality is taken at the discretion of the

114 See above, section 2.1.2.2, for a discussion of positive action measures and quotas.

115 Law No. 6 of 1990 "on Yemeni Nationality".

116 Law No. 24 of 2003, Law No. 17 of 2009 and Law No. 25 of 2010.

117 Law No. 5 of 2010 "to amend the law No. 6 of 1990 on the Yemeni Nationality". Article 1 of this law amended Article 3 of the law No. 6 of 1990 "on the Yemeni nationality" as amended by law No. 17 of 2009.

118 Law No. 25 of 2010, Article 1(b).

Ministry of the Interior.[119] However, this mechanism is only available to minor children, meaning that adults who were denied Yemeni nationality under the previous discriminatory provisions of the Nationality Law do not have recourse to any redress.[120]

Law on Political Parties and Organisations

In 1991, Law No. 66 "on Political Parties and Organisations" (the **"Law on Political Parties and Organisations"**) was promulgated to regulate the provisions and procedures concerning the formation of political parties and organisations. The Law contains a number of provisions relating to equality and non-discrimination.

Article 31 provides for formal equality between all political parties and organisations, and explicitly states that the official media has a duty to enable equal access for all parties and political organisations to convey their message to the citizenry. Article 5 stipulates that all Yemenis are entitled to form political parties and organisations without distinction, whilst Article 8 prohibits the formation of political parties or organisations inconsistent with, *inter alia*, the national unity of Yemeni society and the freedoms and fundamental rights of the Universal Declaration of Human Rights.[121] Article 9(d) states that the membership conditions of and procedures for application, admission, withdrawal and expulsion from a political party or organisation "must not be tailored with the intent of discriminating on the basis of sex, colour, racial origin, language, profession or social status". Whilst, on its face, this provision appears to have good intent, the right to freedom of association under Article 22 ICCPR requires that associations should be free to choose their members, including whether to be open to any membership.[122] This restriction on that freedom is therefore not in line with international law. It runs the risk of preventing minority groups from creating associations which are constituted such that they aim to support members to overcome their past disadvantage, for example.

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119 *Ibid.*

120 *Ibid.*

121 Law No. 66 of 1991, Article 8(1). Further restrictions on the formation of political parties are discussed in Part 3.1.

122 Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association,* UN Doc. A/HRC/20/27, 8 June 2012, Para 64.

The Law on Political Parties and Organisations includes limited provision for reasonable accommodation for persons with disabilities; whilst Article 100(b) stipulates that persons with disabilities may be accompanied by a person of their choice to assist them to cast their vote, there are no requirements that voting facilities and materials are appropriate, accessible and easy to understand and use, as required under Article 29 CRPD.

Law on the Rights of the Child

Law No. 45 of 2002 "on the Rights of the Child" (the **"Law on the Rights of the Child"**) regulates the social, economic and cultural rights of children, including the rights to health and education.[123] Article 9 provides for the enjoyment of all rights and freedom "without discrimination as to race, colour or creed". This narrow list of protected characteristics is inconsistent with Yemeni's obligations under international human rights law, with the majority of protected characteristics explicitly recognised under international law, omitted from Article 9. The Law on the Rights of the Child does, however, recognise equality of opportunity between the sexes in the context of higher education in Article 82, whilst Article 91 provides that the state shall endeavour to achieve equality of opportunity in education and to assist families whose poor economic and social conditions prevent them from enrolling their children in compulsory education.

Part III of Chapter 7 of the Law on the Rights of the Child addresses the care and rehabilitation of children with disabilities, providing in Article 115 that the state shall guarantee the right to enjoy a fulfilling life for all children with mental and physical disabilities, and to guarantee social, health and psychological care that facilitates their integration into society. As regards the right to education, Article 118 states that the Ministry of Education "establish[es] special classes attached to schools of regular education for the teaching of disabled children in accordance with their abilities and aptitudes"; the creation of segregated classes for children with disabilities does not comply with Yemen's obligation under Article 24(1) CRPD to realise the right of children with disabilities to education through an inclusive education system.[124]

123 The law is published in the Official Gazette No. 22 of 2002.

124 Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 4 (2016) on the right to inclusive education*, UN Doc. CRPD/C/GC/4, 25 November 2016, Para 11.

The Law on the Rights of the Child does not include any provisions regarding the obligation to provide reasonable accommodation for children with disabilities in relation to the right to education, or in the enjoyment of other rights and freedoms.

Education Law

Law No. 45 of 1992 "on General Education"[125] (the **"General Education Law"**) stipulates that education, besides being an investment in human development, is a right.[126] Article 8 specifies that education is free at all stages and provides that the state shall achieve this principle gradually according to established plans. Article 9 provides that the state "shall endeavour to achieve social justice and equal opportunity in education and to take into consideration the social and economic conditions that impede some families from benefitting from the right of their children to education". However, there is no guarantee of equal access to education for all children, nor any prohibition of discrimination in education on grounds recognised under international human rights law.

As regards the education of children with disabilities, Article 28 of the General Education Law stipulates that the State "shall establish schools and educational institutions for persons with disabilities and shall provide basic education that is suitable for each case of disability, to enable disabled persons to integrate into society and contribute to its activities". This is supplemented by Article 118 of the Law on the Rights of the Child, discussed above, which requires the Ministry of Education to "establish special classes attached to schools of regular education for the teaching of disabled children in accordance with their abilities and aptitudes".[127] However, the maintenance of separate classes for children with disabilities within mainstream educational facilities is still a form of segregation, and is thus discriminatory.[128]

125 This law is published in the official gazette issue No. 24 of 1992.

126 Law No. 45 of 1992 "on General Education", Article 6.

127 *Ibid*., Article 118.

128 CRPD Committee, *General Comment No. 6, Article 24: Right to inclusive education*, UN Doc. CRPD/C/GC/4, 2016, Paras 11.

Health Law

Law No. 4 of 2009 "on Public Health" (the **"Public Health Law"**) regulates access to healthcare and sets out the duties and competences of the Ministry of Public Health and Population.[129] The Public Health Law guarantees respect for the patient's dignity, religious and cultural beliefs under Article 51, but does not guarantee equal access to healthcare nor prohibit discrimination in the provision of healthcare.

The Public Health Law states under Article 5 that "[t]he Ministry shall give priority to the healthcare of women and children as an integral part of the national strategy", with a particular focus on women's healthcare during pregnancy and maternity, and children and women of childbearing age being eligible for free vaccinations.[130] Such provisions draw a distinction on the grounds of sex and age, with women (and particularly women of childbearing age) being given preferential treatment over men. This is directly discriminatory and cannot be justified. Whilst Article 4(2) CEDAW makes clear that special measures aimed at protecting maternity "shall not be considered discriminatory", this exception cannot justify giving preferential treatment to the much broader category of "women of childbearing age".

2.1.2.4 National Policies affecting the Right to Equality and Non-Discrimination

Prior to the 2011 mass popular protests and the subsequent resignation of President Saleh, the government had adopted various social policies aimed at fostering the enjoyment of basic rights – such as the rights to education, work, housing and healthcare – and protecting vulnerable groups.[131] However, the political instability of the country during this period and the subsequent

129 This law is published in the official gazette, issue No. 6 of 2009.

130 Law No. 4 of 2009 "on Public Health", Articles 6 and 8.

131 These included the National Strategy for Secondary Education 2006–2015, the National Strategy for Vocational Education 2005–2014, the National Strategy for Higher Education 2005–2014, the National Strategy for Reproductive Health 2011–2015, the Fourth Five-Year Plan for Health Development and Poverty Alleviation 2011–2015, the Social Protection Strategy 2010–2013, the National Health Strategy 2010–2015, National Strategy for Employment 2010–2015, the National Strategy for Food Security 2010–2015, and the Phased Programme for the Government Consensus 2012–2014.

outbreak of the current conflict has hindered the implementation of these policies, and has limited the government's ability to formulate and implement new policies and initiatives relating to equality and non-discrimination.

National Strategy for Human Rights

Cabinet Decision No. 58 of 2013 provided for the establishment of a national committee (comprising of different governmental bodies and civil society organisations) to draft a National Human Rights Strategy.[132] Following several events and activities,[133] and the concerted efforts of the UNHCR and the Danish Institute for Human Rights,[134] a draft for the National Strategy for Human Rights setting out a 10 year agenda for 2015-2025 was completed in September 2014, with the Minister of Human Rights emphasising that the strategy focused "in particular on the rights of vulnerable groups such as women, children, the disabled and the marginalised".[135] The completion of the draft strategy was followed by a period of consultation with key stakeholders, including academics, civil society organisations, activists and members of marginalised groups, with a view to evaluating and finalising the strategy.[136] However, the deterioration in the security situation in late 2014 meant that the National Human Rights Strategy was never finalised or implemented.

Policies relating to Gender Equality and Women's Rights

The Women's National Committee (WNC) was established in 1996 by the Council of Ministers Decree No. 97 and plays a key role in the formation and

132 See above, note 4, Human Rights Council, Para 37.

133 Saba News Agency, "A consultative meeting in Sana'a discussing the preparation of the National Strategy for human rights", *Saba News Agency*, visited 13 June 2018, available at: http://www.sabanews.net/ar/news227842.htm.

134 The Danish Institute for Human Rights, *The Danish Institute for Human Rights (DIHR) in Yemen*, 2016, available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/countries/country_notes/16-00667-3_mena_yemen_country_note_2016_212363_206817_0.pdf.

135 Al-Hayat, "Yemen sets out a draft for the National Strategy for Human Rights", *Al-Hayat*, 5 September 2014, available at: http://www.alhayat.com/Articles/4462569.

136 *Ibid.;* ADENGD, "Concluding the workshop on discussing the draft for directions of the National Strategy for Human Rights in Mukalla city", *ADENGD*, visited 13 June 2016, available at: http://www.adengd.net/news/121335.

implementation of state policy relating to women's rights.[137] The organisational structure of the WNC was enhanced in March 2000 through the creation of the Supreme Council for Women, which includes government ministers and WNC provincial leaders.[138]

Before the deterioration in the political situation, the government approved various policies to promote the rights of women. A National Strategy for the Advancement of Women 2006–2015 was prepared by the WNC,[139] which aimed to increase women's representation in the political process and in public life; at the same time a Strategy for the Advancement of Working Women 2003–2011 was formulated, which aimed at increasing participation by women in the formal and informal economic sectors.[140] Furthermore, strategies for the advancement of rural women and for the agricultural sector 2011–2015 were adopted.[141] However, as of 2017 the Global Gender Gap Report ranked Yemen 144th out of 144 countries in women's political empowerment with a score of 0.014.[142]

Following the 2011 protests and the election of President Hadi in 2012, a National Conference for Women was held from 19-21 March 2012. The Conference produced an agenda for women which set out a number of demands, including a quota for the appointment of women in state bodies.[143] This agenda was submitted to the National Dialogue Conference (NDC) for incorporation into the Draft Constitution; however, as discussed above, the Draft Constitution – which included a quota for women's political participation – was never adopted.

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137 Council of Ministers Decision No. 97 of 1996. See UN Women, *Global Database on Violence against Women: Women's National Committee*, 2017, available at: http://evaw-global-database.unwomen.org/en/countries/asia/yemen/1996/women-national-committee.

138 *Ibid.*

139 National Strategy for Women Development 2003–2005, available at: https://yemen-nic.info/contents/popul/social/detail.php?ID=9265.

140 Committee on Economic, Social and Cultural Rights (CESCR), *Third periodic reports of States parties due in 2013: Yemen*, UN Doc. E/C.12/YEM/3, 14 March 2014, Paras 45–46.

141 *Ibid.*, Para 49.

142 World Economic Forum, *The Global Gender Gap Report*, 2017, p. 11, available at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

143 See above, note 4, Human Rights Council, Para 88.

Policies relating to the Muhamasheen

As observed in Part 1, the *Muhamasheen* (the marginalised) are an Afro-Arab group who are pejoratively labelled "*Al-Akhdam*" (servants) by many in Yemeni society,[144] and who suffer from deeply entrenched economic, cultural and political isolation.[145] Whilst no specific state strategy or policy has been adopted to advance the rights of the Muhamasheen, a number of measures have been taken over the last two decades to promote their welfare. These have included: the establishment of two social services centres in Sana'a and Aden to provide educational, training and healthcare services for poor families in general, and for the Muhamasheen in particular; the provision of free services and procedures by two hospitals in Sana'a;[146] the allocation of 150 free places in Ta'iz University and 30 places in Sana'a University to the Muhamasheen;[147] the allocation of 1,500 posts in the armed forces to the Muhamasheen between 2009 and 2010;[148] and the transfer of home ownership in residential compounds in Sana'a, Ta'iz, Aden and Hodeida to members of the Muhamasheen community.[149]

Through participating in the NDC in 2013–2014, the Muhamasheen were able to advocate for the guarantee of their rights, including in relation to equal participation in public, civil and political life, with the President of the Yemeni Union of the Marginalized (who represented the Muhamasheen in the NDC) demanding a 10% quota across legislative and senior military posts for individuals from marginalised communities.[150] However, this recommendation was ultimately rejected and did not appear in the final Draft Constitution.[151]

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144 See El-Rajj, R., Minority Rights Group International, *Even War Discriminates: Yemen's Minorities, Exiled at Home*, July 2015, available at http://minorityrights.org/wp-content/uploads/2016/01/MRG_Brief_Yemen_Jan16.pdf.

145 See above, note 140, Para 32; See Part 3, section 3.4, for further discussion.

146 *Ibid.*, Para 37.

147 *Ibid.*

148 *Ibid.*

149 *Ibid.*

150 *Ibid,* Para 36.

151 See above, note 1, Human Rights Council, Para 77.

Policies relating to Persons with Disabilities

In 2010, Yemen adopted a National Disability Strategy,[152] which sets out Yemen's vision of creating a "society for all", whereby persons with disabilities are granted access to their rights on a basis of equality with others, with the aim of creating an inclusive environment and removing social and physical barriers.[153] The strategy briefly analyses key challenges and obstacles faced by persons with disabilities in several areas of life, including education,[154] employment[155] and accessibility.[156] Among its stated objectives is the review and amendment of national disability legislation, in line with the CRPD.[157] In 2014, the NDC recommended the establishment of a National Independent Body for Persons with Disabilities to propose laws and policies to care for persons with disabilities, as well as to monitor the implementation of such laws and policies.[158] Due to the ongoing conflict, there has been limited progress in relation to the implementation of the National Disability Strategy, and the National Independent Body for Persons with Disabilities was never established.[159]

Despite being one of the poorest countries in the region, Yemen has operated a number of funds that either directly (in the case of direct money transfers), or indirectly (through allocating funds to social development projects and rehabilitative services) support persons with disabilities. The primary source of financial assistance for persons with disabilities in Yemen is the Social Welfare Fund (SWF) of 1996, which was created through Law No. 31

152 Republic of Yemen, Ministry of Social Affairs and Labour, *National Disability Strategy,* 2010, p. 3, available at: http://www.inclusive-education.org/system/files/publications-documents/Tines_National%20Strategy%20on%20Disability%20in%20Yemen.pdf.

153 *Ibid*., p. 2.

154 *Ibid*., p. 22.

155 *Ibid*., p. 20.

156 *Ibid*., p. 27.

157 *Ibid*., p. 2.

158 Republic of Yemen National Dialogue Conference 2014.

159 Information provided to the Equal Rights Trust by a lawyer from Sana'a on 21 May 2018; Saba News Agency, "**صندوق رعاية المعاقين ينظم ورشة عمل خاصة بالتقييم المؤسسي للصندوق**" (The Fund for the Care of the Disabled organises a workshop on institutional evaluation of the Fund), 20 July 2016, available at: http://sabanews.net/en/print434012.htm.

of 1996,[160] and which provides cash transfers to impoverished individuals in need of social assistance. Initially, the SWF was limited to a small group of vulnerable beneficiaries, including persons with serious or moderate disabilities.[161] Between 2008 and 2010, the criteria for identifying persons who could receive assistance were broadened to include all "households living below the poverty line".[162] In order to receive funds from the SWF, individuals must submit an application along with evidence of their disability and "lack of income or earning potential".[163] However, amongst individuals interviewed by the Overseas Development Institute for the purposes of a 2012 report, there was a lack of clarity regarding whether or not persons with disabilities could register with the SWF,[164] and there was evidence that registration was problematic for persons with disabilities and other marginalised individuals, such as the Muhamasheen, who often lack the requisite certification (such as disability certificates and birth certificates).[165] Allocations from the SWF were small, between around 2000 and 4000 Riyals (US$ 6.7–13.5) per month in 2011,[166] and generally considered insufficient.[167] The SWF ceased operating in early 2015, with fund allocations dropping from around 25.3% "to zero" in 2016.[168]

Other key sources include the Social Fund for Development (SFD), which was created in 1996.[169] The SFD works alongside NGOs to implement programmes

160 Law No. 31 of 1996, "on Social Welfare".

161 Overseas Development Institute, *Transforming Cash Transfers: Beneficiary and Community Perspectives on the Social Welfare Fund in Yemen*, 2012, p. 30, available at: https://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8181.pdf+&cd=2&hl=en&ct=clnk&gl=uk.

162 *Ibid*.

163 *Ibid*.

164 *Ibid*., p. 47.

165 *Ibid*., p. 49.

166 United Nations Children's Fund, *Situation Analysis of Children in Yemen 2014*, 2014, p. 125, available at: https://www.unicef.org/mena/MENA-Situation_Analysis_report_-_English_Final(1).pdf.

167 *Ibid*., p. 33.

168 CARE et al, *From the Ground Up: Gender and Conflict Analysis in Yemen*, 2016, p. 23, available at: http://www.carenederland.org/content/uploads/2016/11/Yemen-gender-conflict-analysis-201016-en.pdf.

169 Law No. 10 of 1997 "on the Social Fund for Development".

focusing on poverty alleviation, including in relation to persons with so-called "special needs".[170] According to its most recent Annual Report, the SFD completed 22 projects in 2015 that had a bearing on persons with disabilities, the majority of which focussed on integration within schools, including through the provision of new classrooms, facilities and equipment, teacher training and awareness-raising activities.[171] Additionally, in 2002, a Disability, Welfare and Rehabilitation Fund (DWRF) was established, which comprises annual allocations from the State's general budget, as well as funds from the taxation of products such as cigarettes and airplane tickets; these funds are then redistributed toward the provision of rehabilitative, healthcare and other services for persons with disabilities.[172] As early as December 2014, the government was reportedly experiencing difficulties allocating money to the DWRF,[173] and in 2015 state funding through the DWRF was discontinued.[174] According to a 2016 International Research & Exchanges Board report, the "operational expenses" of around 125 disability organisations had been provided by the DWRF, with the closure of the DWRF in 2015 leading "to the total paralysis of all associations dealing with persons with disabilities and to the total or partial cessation of their activities".[175]

Education Policies

Between 2000 and 2015, the Yemeni government sought to implement a number of education strategies dealing with some of the most urgent problems of the education system in Yemen. The National Strategy to Develop

170 See Social Fund for Development, *Background and Objectives*, visited 26 July 2017, available at: http://www.sfd-yemen.org/content/1/42.

171 Social Fund for Development, *Annual Report: 2015*, 2016, p. 26, available at: http://www.sfd-yemen.org/uploads/issues/Annual%20Report%202015-20170322-184619.pdf.

172 Law No. 2 of 2002 "on the Welfare and Rehabilitation Fund for Persons with Disabilities".

173 International Research & Exchanges Board, *Disability Inclusion Among Refugees in the Middle East and North Africa: A Needs Assessment of Libya, Egypt, Yemen, Jordan, and Turkey*, 2016, p. 12, available at: http://www.disabledpeoplesinternational.org/documents/DPO-Report-FINAL.pdf.

174 Machado, A. C. et al, International Policy Centre for Inclusive Growth, *Overview of Non-contributory Social Protection Programmes in the Middle East and North Africa (MENA) Region Through a Child and Equity Lens*, 2018, p. 327, available at: http://www.ipc-undp.org/pub/eng/JP18_Overview_of_Non_contributory_Social_Protection_Programmers_in_MENA.pdf.

175 See above, note 173, p. 22.

Basic Education 2003–2015,[176] adopted by Ministerial Decision No. 144 of 2001, represented an important step forward in terms of promoting equality in education, since it aimed to address the low level of girls' education in Yemen (with a particular emphasis on those living in rural areas), to increase awareness of and dedicate resources towards children with disabilities, and to increase educational access for children from poor families.[177] The Ministry of Education was tasked with supervising the implementation of the strategy; however, the strategy did not provide for a clear monitoring and evaluation system, thus weakening its impact and effectiveness.[178]

A number of other strategies to increase educational participation for marginalised groups were put in place, such as the National Strategy for Secondary Education 2006-2015, the National Strategy for Vocational Training 2005-2014, the National Strategy for Higher Education 2005, and the National Strategy for Literacy and Adult Education 2003-2015. All of these policies included measures to promote equality and non-discrimination: the National Strategy for Vocational Training acknowledged the need to be responsive to the needs of women and persons with disabilities and aimed at increasing their participation,[179] whilst the National Strategy for Education noted the "political desire to increase the participation of women and rural population" and to "decrease the gaps between urban and rural enrolments".[180] However, the deterioration in the political situation means that the ambitions of these policies were not translated into a reality.

A number of decisions in the field of education were adopted at the NDC, including in relation to the promotion of girls' education and access to education for persons with disabilities.[181]

176 Republic of Yemen, *National Strategy for the Development of Basic Education in the Republic of Yemen 2003–2011*, 2003, available at: https://www.yemen-nic.info/files/ministations/eduction/watanyaa.pdf.

177 *Ibid.*

178 *Ibid*.

179 Republic of Yemen, Ministry of Technical Education and Vocational Training*, National Strategy for Vocational Training 2005–2014*, 2005, p. 25, available at: http://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/yemen_tvet_strategic_plan.pdf.

180 Republic of Yemen, Ministry of Higher Education and Scientific Research, *National Strategy for Education 2005*, pp. 49–159, available at: http://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/yemen_higher_education_strategy.pd.

181 Republic of Yemen 2014 National Dialogue Document.

2.2 Overview of the Yemeni Justice System

The fragility of the Yemeni state, along with the volatility of its domestic political situation, has allowed for the persistence of informal institutions that exist parallel to the state apparatus.[182] These dynamics are particularly evident in the coexistence of state laws and the enduring customs of Yemeni tribes, and the continued operation of both official (state) and informal (tribal) dispute resolution systems. According to one narrative, the continued existence of tribal systems weakens the authority of the state; however, an alternative view posited by certain tribal sheikhs and Yemeni academics is that "the tribes *persist* because the state is weak", with the recourse to tribal law "indicat[ing] not an attempt to weaken the state, but an attempt to survive given the pre-existing weakness of that state".[183]

Tribal arbitration is an informal means of dispute settlement based on the recognition of the authority of the tribes, their leaders (tribal sheikhs) and the customary norms that underpin their authoritative social function. This section sets out an overview of the operation of the formal judicial system and the informal tribal arbitration system, considering how the operation of these systems has been affected by the ongoing conflict.

2.2.1 Formal Judicial System

The operation of the formal judicial system is dealt with in Chapter III of Constitution of the Republic of Yemen (the Constitution).[184] The judiciary enjoys formal independence from the legislative and executive branches of the state, with Article 149 of the Constitution stipulating that the legislature may not intervene in cases litigated before the courts, and that the latter shall be com-

182 Raial Youm, "العدالة العرفية في اليمن تبدأ بالأشعار وتنتهي بالجزار" (Customary justice in Yemen begins with poems and ends with the butcher), 6 September 2013, available at: https://www.raialyoum.com/index.php/%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%B9%D8%B1%D9%81%D9%8A%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D9%8A%D9%85%D9%86-%D8%AA%D8%A8%D8%AF%D8%A3-%D8%A8%D8%A7%D9%84%D8%A3%D8%B4%D8%B9%D8%A7.

183 Corstange, D., College Park, Md.,Department of Government and Politics, *Tribes and the Rule of Law in Yemen*, 2008, pp. 13–14, available at: http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.554.568&rep=rep1&type=pdf.

184 See above, note 56, Articles 149–154.

pletely free in the settlement of disputes. Interference by other state bodies in the activities of the judiciary is considered to be a criminal offence.[185]

The organisation of the judiciary is governed by Law No. 1 of 1991 (the "Law on Judicial Authority") and the amendments thereto,[186] which regulates the courts' tasks, their respective jurisdiction, the prioritisation of their work, as well as the organisation of the General Prosecution System and the Supreme Judiciary Council (SJC). Senior positions within the SJC are made by direct Presidential appointment. The SJC is tasked with supervising the work of the courts and judges, and seeks to implement the guarantees set out in the Constitution in terms of the appointment, promotion, suspension and dismissal of judges according to the law.[187] This mandate of the SJC was intended to ensure the impartiality, integrity and independence of the judiciary.[188] The Law on Judicial Authority sets out the main principles of equality in the judicial sphere, especially in Article 2 which declares that litigants are equal and stand with equal rights before the court, irrespective of their origin, gender, colour, faith or personal opinion.

Unlike other Arab countries, such as Egypt and Syria, the judicial system in Yemen is based on the principle of unity of the judiciary, meaning that there is no distinction between regular and administrative jurisdictions and courts. Official courts in Yemen have the capacity to adjudicate in all cases, whether civil, criminal, administrative or constitutional, and are subject to one appeal system.[189]

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185 *Ibid.,* Article 149 states that "[n]o other body may interfere in any way in the affairs and procedures of justice. Such interference shall be considered a crime that must punished by law. A charge regarding such interference cannot be nullified with the passing of time."

186 Law No. 1 of 1991 as amended by Law No. 3 of 1994, Law No. 15 of 2006, and Law No. 27 of 2013.

187 Law No. 1 of 1991, Articles 109(b),(c) and (d).

188 See above, note 56, Article 152; Law No. 1 of 1991, Article 109; Information provided to the Equal Rights Trust by a lawyer from Sana'a on 15 November 2017.

189 Dr. Mohammed Noman Al-Amir, استقلال القضاء في الجمهورية اليمنية؛ دراسة مقارنة (*The Judiciary's Independence in the Republic of Yemen, a comparative study*), Book Number in the Yemeni Books Home: 656/2013. Although the Constitution does not explicitly mention the unified character of the judicial system, Article 150 of the Constitution which declares "[t]he Judiciary is an integrated system": Dr. Abdulrahman Ahmed Al-Mokhtar, المبادئ الدستورية العامة وتطبيقاتها في الدساتير اليمنية (*The General Constitutional Principles and their implementations in the Yemen Constitutions*), Hodeida University, Law and Shari'a Faculty, Second Edition, 2013–2014, p. 276.

There are three levels of jurisdiction within the Yemeni judiciary: the Courts of First Instance (*mahkama ibtidâ'îya*); the Appeal Courts (*mahkamat al-isti'nâf*); and the Supreme Court (*al-mahkama al-ulyâ*). The Courts of First Instance are located in each district, whilst the Appeal Courts are established in each governorate;[190] the Appeal Courts have jurisdiction to hear appeals against all rulings issued by the Courts of First Instance in the absence of any law to the contrary. Judgments issued by the Appeal Courts can be appealed before the Supreme Court, which is the highest judicial authority in Yemen. After the unification of the country, the Supreme Court replaced the Supreme Court of Appeals and Approvals in Northern Yemen and the Supreme Court of South Yemen. The Supreme Court is based in Sana'a and is comprised of eight divisions, namely the Constitutional Division, the Commercial Division, the Penal Division, the Personal Status Division, the Administrative Division, the Military Division, and the Appeals Examination Division.[191] The Supreme Court also has a General Assembly (*jam`îya`âmma*), which is responsible for examining questions regarding the competence and functioning of the eight Divisions.

The Yemeni judicial system envisages three methods for challenging judicial decisions: appeal, cassation and review by petition.[192] The appeal procedure involves the ruling of a Court of First Instance being challenged before the Appeal Courts, which are hierarchically superior to the Courts of First Instance.[193] Cassation is the last level of domestic appeal, under which points of law and conflicts of jurisdiction are determined by the Supreme Court.[194] The final method – review by petition – is an exceptional mechanism by which a party to a case may petition the court to reconsider its decision under strictly defined circumstances.[195]

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190 See above, note 49, p. 22.

191 See above, note 186, Articles 10, 11 and 16.

192 Dr. Saeed Al-Sharabi, الموجز في أصول قانون المرافعات المدني اليمني (*Summary of the Origins of Yemeni Civil Procedural Law*), p. 577.

193 Dr. Ali Hassan Al-Sharafi, Professor of Criminal Law, Sana'a University, دراسات وبحوث في حقوق الانسان (Studies and Research in Human Rights), Part One, First Edition, 1430/2010, Publisher Awan for Media Services and Distribution, Khalid Bin Al-Walid Library – Sana'a p. 298.

194 See above, note 49, p. 22.

195 Code of Civil Procedure, Article 304 and Code of Criminal Procedure, Article 457.

Specialised Courts

Despite the fact that the Constitution states that "exceptional courts may not be established under any conditions",[196] the SJC has used its powers to create a number of specialised Courts of First Instance. These include the Special Press and Publications Court in Sana'a, which has jurisdiction to try a range of cases relating to the media, both under the Press and Publications Law and the Law on Crimes and Penalties,[197] and a number of Specialised Criminal Courts. A Specialised Criminal Court was originally established in Sana'a by means of Republican (Presidential) Decree No. 391 of 1999 to deal with terrorism-related cases, and its jurisdiction was significantly extended in 2004 to include crimes harmful to national security and crimes with significant repercussions for the Yemeni economy or society.[198] In 2009, the SJC established three new Specialised Criminal Courts in Hodeida, Aden and Hadramout governorates, each of which has its own prosecutor and appeal court.[199] Despite the unconstitutionality of such specialised courts, they have remained in operation and have proven to be one of the most efficient means of control and repression of not only political opponents, but also civil society organisations and journalists.[200]

Precedent

The Yemeni legal system is largely based on principles of civil law; accordingly, the core substantive and procedural legal principles are transposed into a codified system which serves as the primary source of law. Within this system, judicial decisions are not recognised as binding precedents: the *stare decisis* doctrine (which binds courts to follow the rules of principles laid down

196 See above, note 56, Article 142 and 148.

197 See further discussion of the Specialised Press and Publications Court in Part 3, section 3.1.

198 Presidential Decree No. 8 of 2004. See note 49, p. 24.

199 Decision of the Supreme Judicial Council Decision No. 131 of 11 May 2009.

200 For example, under the regime of President Saleh, a number of key political opponents were tried before the Specialised Criminal Courts, such as the journalists Abdulkarim Al-Khaiwani and Muhammad Meftah. See: Amnesty International, "Yemen Jailing of Journalist in Line for Human Rights Award Condemned", *Amnesty International*, 9 June 2008, available at: https://www.amnesty.org.uk/press-releases/yemen-jailing-journalist-line-human-rights-award-condemned.

in previous decisions) does not apply, and case law functions as a secondary, explanatory source subordinate to statutory law.[201]

Judicial interpretations of the Supreme Court are known as "*ijtihad qadâ'î*", with the term "precedent" not being favoured in Yemen.[202] Article 302 of the Code of Civil Procedure stipulates that if one of the Divisions of the Supreme Court wishes to issue a decision that contrasts with previous judicial interpretations on the same matter, the case shall be submitted to the President of the Court, who in turn can present it to the Supreme Court General Assembly. The latter will then issue a decision establishing the jurisprudential interpretation of the case at hand. The Supreme Court also has a Technical Office tasked with deducing the legal principles approved by the Supreme Court and disseminating compilations of the Supreme Court's decisions and rulings.[203]

Access to Justice

Article 51 of the Constitution of the Republic of Yemen guarantees the right of all citizens to have "recourse to the courts to protect their rights and lawful interests". Legal assistance is, in theory, available for those who cannot afford it: Article 49 of the Constitution obliges the State to "guarantee judicial assistance to those who cannot afford it", whilst Article 9 of the Code of Criminal Procedure states that the Council of Ministers "shall issue procedural rules for the regulation of the provision of defence lawyers for the poor and disabled". Nonetheless, the legal aid provided by the state is very limited and does not meet the needs of the vast majority of litigants who cannot afford to pay for legal assistance,[204] and the courts are not *obliged* to assign a lawyer to those who cannot afford to pay under Article 9 of the Code of Criminal Procedure, except in the case of juvenile defendants.[205]

Court proceedings in Yemen are prone to considerable delays, in part due to the limited opening hours of the courts: it is common for courts to close shortly

201 Shamiri, N., "Yemen", in Cotran, E., (ed.), *Yearbook of Islamic and Middle Eastern Law*, Brill, 1995, p. 373.

202 See above, note 49, p. 22.

203 See above, note 186, Article 35.

204 Information provided to the Equal Rights Trust by a lawyer from Sana'a on 15 November 2017.

205 See Law No. 45 of 2002 "on the Rights of the Child", Article 130(a).

after midday, giving rise to "excessive delays in litigation proceedings".[206] Cases have been known to take as long as nine years to reach the judgment stage.[207]

Fair Trial Rights

Concerns have been raised regarding the extent to which the Yemeni judicial system respects the fair trial rights of defendants.[208] Although the Department of Public Prosecutions (DPP) is legally responsible for the oversight and administration of state prisons and detention facilities,[209] the DPP appears to exert very little influence in the decision to release inmates and in some instances has even been denied access to places of detention by members of the security forces.[210] Consequently, as noted by the Committee against Torture in 2010, detainees are often "deprived of fundamental legal safeguards, including an oversight mechanism with regard to their treatment and review procedures with respect to their detention".[211]

In a study conducted by the National Organisation for Defending Rights and Freedoms (HOOD) in Amanat Al-Asimah and Sana'a governorates between December 2014 and April 2015, in 75% of the cases monitored, the state had exceeded the maximum period of pre-trial detention of the accused; 43% of arrests were conducted without any warrant or any other legal justification; 46% of detainees were deprived of their right to a lawyer and to contact their relatives; 25% of detainees were subjected to mistreatment during detention; 44% of cases had seen the discontinuance of hearing sessions or the repeated postponement of sessions; and in 18% of cases, sessions were held in

206 See above, note 49, p. 67.

207 For example, in 2000 a German widow of a Yemeni citizen filed a lawsuit in West Sana'a Court to claim her husband's inheritance, and did not receive the Court's judgment until 16 December 2008. Case No. 22 of 2008.

208 See above, note 49, p. 82.

209 See above, note 186, Article 53(G).

210 Amnesty International, *"Where Is My Father?": Detention and Disappearance in Huthi-Controlled Yemen*, 2016, p. 16, available at: https://www.amnesty.org/en/documents/mde31/4006/2016/en.

211 Committee against Torture, *Concluding Observations: Yemen*, UN Doc. CAT/C/YEM/CO/2/Rev.1, 25 May 2010, Para 10.

the absence of defendants.[212] In another study conducted by HOOD between December 2013 and April 2014, in which the organisation monitored violations of fair trial rights in Amanat Al-Asima and Sana'a governorates, 95 of 100 respondents complained about the discontinuance and postponement of trial sessions and the slow progress of cases.[213] The report also found that the appalling conditions and overcrowding of detention centres meant that detainees felt they had little choice but to accept the resolution of their disputes through the informal justice system.[214]

The Specialised Courts have come under particular criticism for failing to respect international fair trial standards.[215] For example, defendants have complained that both the Specialised Criminal Court and the Specialised Press and Publication Court have failed to investigate allegations of torture and ill-treatment during pre-trial detention and have also convicted defendants on the basis of confessions made under torture or duress.[216]

2.2.2 Informal Tribal Arbitration System

In 2005, a rule of law mission to Yemen found that "most Yemenis barely [know] that the formal judiciary exists".[217] More recently, a study conducted by the United States Institute of Peace assessed that even in the more developed governorates (Hodeida, Taiz, and Sana'a), there are several dis-

212 The National Organisation for Defending Rights and Freedoms (HOOD) monitored proceedings in 12 Courts of First Instance, 13 offices of Public Prosecution and 20 security entities operating at the evidence collection stage; the team monitored 90 cases litigated at all levels of the judicial system, and involving a wide range of human rights violations. See HOOD, *A Monitoring Report on the Trial proceedings of Women and Juveniles in Amanat Al-Asemah and Sana'a Governorate between December 2014–April 2015*, 2015, p. 14, available at: http://www.hoodonline.org/images/report2.pdf.

213 HOOD, *Monitoring the fair trial proceedings in Amanat Al-Asemah and Sana'a governorate during December 2013–April 2014*, 2014, available at:http://www.hoodonline.org/images/Report%20on%20monitoring%20violations.pdf.

214 *Ibid.*

215 See above, note 49, p. 82.

216 *Ibid.*

217 Meyer, W. D., Jansen, R., *Assessment Report of a Rule of Law Mission to Yemen for the ABA/CEELI Middle East Legal Initiative*, 2–13 January 2005, pp. 8–9, available at: https://issuu.com/openbriefing/docs/rule_of_law_in_yemen/48.

tricts where no court has ever been established.[218] This situation of "legal illiteracy"[219] stems from the inaccessibility of the formal justice system – with court buildings not being signposted in many cities, and the procedures to file a case being opaque[220] – and a general mistrust in state institutions following decades of unchecked power and endemic corruption.[221] The inadequacies of the formal justice system are exacerbated in rural areas, where a lack of infrastructure and short-staffed tribunals discourage citizens from engaging with the court system.[222] Such issues affect a considerable proportion of the population: only 35.8% of the total population lives in urban areas, whereas 54.2% lives in the countryside.[223]

Within this framework, tribal institutions have provided not only economic support to their community members, but also a means of enforcing and adjudicating their rights and interests.[224] As noted above, the formal judicial system coexists alongside an informal tribal arbitration system, which is based on the authority of tribal customs and enforced by local leaders. A 2006 report found that roughly 80% of disputes are settled through the application of tribal customary laws,[225] with Yemenis deeming informal tribal justice to be more accessible, efficient and cheaper than the formal judicial system.[226] A separate study published in 2008, which adopted a mass survey methodology, found that the factors that motivated individuals to settle their private disputes through the informal tribal arbitration system were only weakly related to material deficiencies of the formal judicial system, and more strongly correlated to personal perceptions of the rule of law and the authority of

218 Gaston, E., Al-Dawsari, N., United States Institute of Peace, *Dispute Resolution and Justice Provision in Yemen's Transition*, 2014, available at: https://www.usip.org/sites/default/files/SR345_Dispute-Resolution-and-Justice-Provision-in-Yemen%E2%80%99s-Transition.pdf.

219 See above, note 49, p. 68.

220 *Ibid.*

221 *Ibid.*

222 *Ibid.*

223 Index Mundi, *Yemen Demographic Profile,* 2018, available at: https://www.indexmundi.com/yemen/demographics_profile.html.

224 See above, note 183, p. 14.

225 Al-Zwaini, L., United States Institute of Peace, *State and Non-State Justice in Yemen*, 2006, p. 2, available at: https://www.usip.org/sites/default/files/ROL/al_zwaini_paper.pdf.

226 Al-Dawsari, N., Carnegie Endowment for International Peace, *Tribal Governance and Stability in Yemen*, April 2012, available at: http://carnegieendowment.org/files/YEMEN_TRIBAL_ALL._02.pdf.

courts.[227] Moreover, the study found that, after controlling for the effect of basic socioeconomic, educational and demographic variables, the geographical and religious background of respondents had statistical significance, with Zaydi Shia Yemenis (who dominate the north of the country) being more inclined towards tribal justice than the Shafai Sunni, who mainly reside in the south of the country.[228]

Tribal arbitration is not limited to local disputes: historically, tribal mediation and arbitration played a crucial role in resolving tensions between different political parties and factions. For example, when armed clashes broke out in May 2011 between state security forces and tribal guards of Sheikh Sadeq Al-Ahmar in Sana'a, a tribal mediation by tribal sheiks from various tribes succeeded in preventing any escalation of the conflict.[229]

Tribal Arbitration Procedure

Tribal arbitration is a dispute settlement mechanism whereby two or more parties decide to delegate the resolution of a dispute to a tribal leader. The legitimacy of tribal arbitration and of the arbitrator nominated by the parties to the dispute lies in the authority deriving from the historical origin of tribal customs, which are social and religious norms that have become settled over time and thus enjoy wide acceptance amongst tribal communities.[230] Key to tribal customs are "transparency, accountability, solidarity, collective responsibility, the protection of public interests and the weak, prioritising community interests over those of the individual, empathy and forgiveness".[231] The ultimate purpose of the arbitration procedure is to facilitate a negotiation between the parties to the dispute and their respective communities so as to ensure that all sides are content with the resolution of the issues and maintain the social equilibrium that is essential to tribal communities.[232]

One of the crucial aspects of tribal arbitration is the selection of the arbitrator or arbitrators. They are usually sheikhs: community leaders whose expe-

227 See above, note 183, p. 14.

228 *Ibid.*

229 See above, note 226, p. 6.

230 See above, note 49, pp. 50–52.

231 See above, note 226.

232 *Ibid.,* p. 9.

rience and knowledge of tribal customs and religious law are recognised by the members of the community. The arbitrator is usually a third party, who is neutral and impartial in respect of the issues being litigated by the parties; in such cases, the community acts as a mediator between the parties in order to negotiate the appointment of an arbitrator. The arbitrator is remunerated equally by both parties, unless otherwise agreed by them at the beginning of the process.[233] However, it is also possible to designate one of the opponents as an arbitrator. This kind of tribal arbitration is peculiar to Yemeni tribal custom, and involves the individual who has committed an unlawful act voluntarily submitting himself to the judgment of the aggrieved party, thereby renouncing the right of appeal.[234] Both parties also nominate a guarantor (usually a prominent tribal member), whose role is to guarantee respect for the procedure and its final decision by the individual by whom they were appointed.[235]

The tribal award may result in the punishment of the offender, or the provision of material and moral compensation for losses suffered by the victim.[236] The award is issued in writing, especially in criminal cases, with financial guarantees having been deposited by the parties during the proceedings in order to guarantee their compliance with the ruling.[237] After the tribal award has been issued, the disputing parties have the right to appeal the award before the higher levels of tribal jurisdiction.[238]

Interaction Between the Formal and Informal Justice Systems

As noted above, the formal state judicial system and the tribal justice system are interdependent: whenever the former collapses or is weakened to such

233 Abdulnasser Al-Muwadea, "التقاضي الرسمي والعرفي في اليمن" (Formal and Customary Litigation in Yemen), 12 October 2014, available at: http://almuwadea.blogspot.com/2014/10/httpema_12.html?q=%D8%A7%D9%84%D8%B9%D8%B1%D9%81.

234 Al-Alemi, R., القضاء القبلي في المجتمع اليمني (*Tribal Jurisdiction in the Yemeni Society*), Dar Al-Wadi for Publishing and Distribution, 1990, p. 101; Al-Nuno, W., تاريخ القانون والنظم الاجتماعية دراسة تاريخية مقارنة (*History of Law and Social Systems: Comparative Historical Study*), Legal Center for the Legal profession and Legal Consultancy, 2005, p. 210.

235 See above, note 49.

236 See above, note 233.

237 See above, note 234, Al-Alemi, R.

238 See above, note 236.

an extent that it cannot provide justice for its citizens, the latter is revitalised and becomes a more viable option for dispute resolution.[239] As such, the two systems should be viewed as operating on a continuum, with the choice of forum depending on whose power is deemed more authoritative in a particular context (the state or the local community).[240]Accordingly, there is no clear division between the types of disputes adjudicated in the courts and those settled via tribal arbitration; tribal arbitration has as a "universal" jurisdiction over all legal disputes, ranging from tribal to civil and criminal issues, including murder and other serious crimes.[241]

The state authorities are not completely separate from these procedures, and to some extent cooperate with tribal authorities; for example, even where the police or the Public Prosecutor is involved in a particular case, the official proceedings may be suspended if there is a tribal arbitration pending between the litigants.[242] The Yemeni State has also tried to regulate the relationship between the two justice systems through the Arbitration Law of 1992, which recognises tribal arbitral awards as binding upon the parties, and subject to appeal before regular courts.[243]

Furthermore, the Yemeni government has traditionally recognised the importance of tribal arbitration in the resolution of very delicate disputes, par-

239 See Mojalli, A., "Traditional tribal justice trumps state laws for many in Yemen", *Middle East Eye*, 26 November 2015, available at: http://www.middleeasteye.net/in-depth/features/tribal-law-trumps-state-laws-many-yemen-1038882353; Raial Youm, العدالة العرفية في اليمن تبدأ بالأشعار وتنتهي بالجزار (Customary justice in Yemen begins with poems and ends with the butcher), 6 September 2013, available at: https://www.raialyoum.com/index.php/%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%B9%D8%B1%D9%81%D9%8A%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D9%8A%D9%85%D9%86-%D8%AA%D8%A8%D8%AF%D8%A3-%D8%A8%D8%A7%D9%84%D8%A3%D8%B4%D8%B9%D8%A7.

240 Dupret, B., "Legal traditions and State-Centered Law: Drawing from Tribal and Customary Law Cases of Yemen and Egypt", in Chatty, D. (ed.), *Nomadic Societies in the Middle East and North Africa: Entering the 21st Century*, London: Brill, 2006, pp. 280-301.

241 See above, note 49, p.m51.

242 See above, note 226.

243 Arbitration is defined as "the choice by which the parties agree to appoint one or several third parties in order to arbitrate the disputes or conflicts which might arise between them, without resorting to the competent court" according to Law No. 2 of 1994 ("the Yemeni Arbitration Law"), Article (2). The definition of arbitration was amended in Articles 2, 9, 14, 15, provisions A and C of Articles 22, 24, 35, 36, 37, 40, 45, 46, and 48 under Law No. 32 of 1997.

ticularly those involving tribesmen who are opposed to the government or to companies operating in tribal areas. For example, following the killing of the deputy governor of Marib governorate in a US drone strike in May 2010, then President Saleh requested in June 2010 that a committee consisting of prominent sheikhs from Marib governorate be involved in mediating a potential clash between the government and the tribal community.[244]

2.2.3 Impact of the Conflict on the Operation and Use of the Justice System

The ongoing conflict has had a profound impact on the functioning and structure of the Yemeni formal judicial system. The progressive erosion of the state's institutions, the appropriation of territory and resources by the Ansar Allah forces, and the subsequent seizure of many state functions (including the judiciary), by such forces have led to the fragmentation of the judicial system and a dramatic deterioration of the rule of law.[245] According to the World Bank's Worldwide Governance Indicators,[246] the Rule of Law indicator (which measures factors including judicial independence, the speed of judicial processes, the informal sector and the efficiency of the legal framework) has decreased between 2010 and 2016, with a particularly sharp decline in the rule of law being evidenced from 2014 onwards following the outbreak of the current conflict. This decrease in the Rule of Law indicator coincides with a decline in other indicators including Government Effectiveness and Regulatory Quality, which measure the capacity of the state's infrastructure to exert control over the territory, the population and the economy.

244 See above, 226.

245 See above, note 183, p.9.

246 The World Bank, *Worldwide Governance Indicators*, visited 13 June 2018, available at: http://info.worldbank.org/governance/WGI/#home.

Governance indicators (2010–2016)

Source: The World Bank[247]

Following the Hadi government's departure to Aden and the Ansar Allah takeover of Sana'a, there was a partial halt of the court system in most of the governorates of the country during 2015.[248] In Sana'a and the northern governorates of country, Ansar Allah's seizure of the headquarters of the legislature, the Supreme Court and the General Prosecutor's Office resulted in the fragmentation of Yemen's judiciary. The Supreme Revolutionary Council, which was established by Ansar Allah on 6 February 2015 to act as an executive body following President Hadi's resignation,[249] appointed a new Minister of Justice, General Prosecutor, judges and court staff.[250] At the same time, the SJC moved to Aden, where the internationally recognised government appointed its own prosecutors and judges.[251]

247 The World Bank, *Worldwide Governance Indicators*, *Regulatory Quality (estimate), Government Effectiveness (estimate), Rule of Law (estimate)*, visited 13 June 2018, available at: http://databank.worldbank.org/data/reports.aspx?source=worldwide-governance-indicators&Type=TABLE&preview=on.

248 Rushed TV Channel, "Government delegation visits formal courts in Aden after three years of suspension", *Rushed TV Channel*, 8 July 2017, available at: http://rushdtv.net/reports/2763.

249 See above, note 1, UN Security Council, p. 58.

250 Decision of the Supreme Revolutionary Council No. 123 of 15 May 2016. Information provided to the Equal Rights Trust by a lawyer in Sana'a on 28 May 2018.

251 Information provided to the Equal Rights Trust by a lawyer in Sana'a on 28 May 2018.

This fracturing of the formal judicial system has created considerable administrative confusion, which has exacerbated the already extensive delays in court proceedings.[252] The functioning of the courts in areas controlled by Ansar Allah has been further undermined by the regular absence of judges and lawyers, who are no longer receiving salary payments after the Hadi government refused to pay any judges or staff hired by Ansar Allah, and by the precarious security situation.[253] For example, courts in Sana'a have frequently had to evacuate their staff and lawyers from the court building after hearing airstrikes in nearby areas or receiving warnings that the court is at risk of being targeted by airstrikes.[254] The poor functioning of the formal judicial system has meant that more people are reportedly relying on tribal justice to resolve their disputes.[255]

The deterioration in the rule of law means that the judicial system has been used by both Ansar Allah and the Hadi government to "settle political scores".[256] For example, shortly after their takeover of Sana'a, Ansar Allah and pro-Saleh forces tried President Hadi and other senior politicians for treason *in absentia* before the Specialised Criminal Court, and condemned them to death.[257] Moreover, hundreds of activists, academics, journalists and other citizens have been tried by Ansar Allah in the Specialised Criminal Courts as threats to national security,[258] with journalist Abdulraqib Al-Jubaihi being handed down a death sentence in 2017.[259]

The disruption to the Yemeni judicial system has also been accompanied by the widespread arbitrary arrest and detention of citizens by all parties to the

252 *Ibid*.

253 *Ibid*.

254 *Ibid*.

255 See above, note 239.

256 Amnesty International, "Yemen: Houthi Court Sentences Three To Death After Enforced Disappearance And Alleged Torture", *Amnesty International* , 15 February 2018, available at: https://www.amnesty.org/en/press-releases/2018/02/yemen-huthi-court-sentences-three-to-death-after-enforced-disappearance-and-alleged-torture.

257 Reuters, "Pro-Houthi Court Sentences Yemen President to Death for Treason", *Reuters*, 25 March 2017, available at: https://www.reuters.com/article/us-yemen-security-court/pro-houthi-court-sentences-yemen-president-to-death-for-treason-idUSKBN16W0UF.

258 Middle East Eye, "Yemen's Houthis behind 'spree of arbitrary arrest and torture': Amnesty", *Middle East Eye*, 16 May 2016, available at: http://www.middleeasteye.net/news/yemens-houtis-behind-spree-arbitrary-arrests-and-torture-says-amnesty-100642236.

259 See Part 3, section 3.1, for further discussion.

conflict.[260] In addition to the hundreds of individuals who have been arbitrarily imprisoned by Ansar Allah forces,[261] there are reports of individuals being detained in prisons controlled by militia affiliated with the Southern Movement and the United Arab Emirates-backed Security Belt Forces, where detainees have been subject to ill-treatment and denied due process rights.[262]

2.3 Conclusion

The Yemeni legal framework does not effectively guarantee the rights to equality and non-discrimination. Whilst Yemen has ratified or acceded to seven of the nine key human rights treaties, and has thereby expressly agreed to protect, respect and fulfil the rights contained in these instruments and to be bound by the legal obligations contained therein, the position of international law in the domestic legal system is inadequately defined, and the state has failed to ratify several important treaties which have a bearing on the right to equality.

At the domestic level, the rights to equality and non-discrimination are poorly protected. There is no express prohibition of discrimination in the Constitution, and various provisions of the Constitution draw an unfortunate distinction between the rights and freedoms of citizens and non-citizens, with the general constitutional guarantee of equality being limited to citizens only. The Draft Constitution which resulted from the 2013–2014 National Dialogue Conference, and which was presented to President Hadi in January 2015 prior to the outbreak of the conflict, represented a significant improvement on the provisions related to equality and non-discrimination under the current Constitution: it included a substantive guarantee of non-discrimination, extended the guarantee of equality to non-citizens, and included a number of provisions relating to positive action measures. However, the provisions of the Draft Constitution regarding equality and non-discrimination still suffered from some key shortcomings which should be addressed in any future constitutional review.

260 See: Human Rights Watch, *Yemen: UAE Supports Abusive Local Forces*, 22 June 2017, available at: https://www.hrw.org/news/2017/06/22/yemen-uae-backs-abusive-local-forces; Human Rights Watch, *Yemen: Abusive Detention Rife Under Houthis*, 17 November 2016, available at: https://www.hrw.org/news/2016/11/17/yemen-abusive-detention-rife-under-houthis.

261 *Ibid*.

262 *Ibid.*

The most notable shortcoming in Yemen's legal framework for equality is its lack of any comprehensive equality or anti-discrimination legislation. Whilst Yemen has adopted legislative provisions on equality and non-discrimination across a couple of laws, these fall significantly short of offering comprehensive legislative protection of the rights to equality and non-discrimination. Whilst a number of government policies had been adopted prior to the deterioration in the security situation in 2014, which aimed at fostering the enjoyment of basic rights and protecting vulnerable groups, the political instability of the country and the subsequent outbreak of the conflict has hindered the implementation of these policies, and has limited the government's ability to formulate and implement new policies and initiatives relating to equality and non-discrimination.

The weak legislative framework for the protection of the right to non-discrimination is matched by poor enforcement. Court proceedings in Yemen are prone to considerable delays and legal aid is rarely available, despite the Constitution guaranteeing judicial assistance for those who cannot afford it. These issues have been exacerbated by the ongoing conflict, which has had a profound impact on the functioning and structure of the Yemeni formal judicial system. The deterioration in the rule of law means that the use of Specialised Criminal Courts has proliferated, and there have been widespread arbitrary arrests of citizens by all parties to the conflict.

The fragility of the Yemeni state, along with the volatility of its domestic political situation, have allowed for the persistence of informal institutions that exist parallel to the state apparatus; this is particularly evident in the coexistence of state laws and the enduring customs of Yemeni tribes, and the continued operation of both official (state) and informal (tribal) dispute resolution systems. The poor functioning of the formal judicial system has meant that more people are reportedly relying on tribal justice to resolve their disputes.

The severe deterioration in the rule of law in Yemen – including the lack of access to justice, and the poor implementation of existing laws and policies – is unsurprising given the protracted nature and devastating impact of the ongoing conflict. However, the restoration of the rule of law will be crucial to the country's longer-term recovery, and any such process should ensure the comprehensive protection and guarantee of the rights to equality and non-discrimination in accordance with Yemen's international obligations.

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

This Part of the report discusses the principal patterns of discrimination and inequality in Yemen. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Yemen. It is based both on an analysis of research undertaken by authoritative sources in the last five years and original direct testimony from a wide range of individuals collected by researchers working with the Equal Rights Trust. The Trust has sought to corroborate all facts and provide accurate attribution of all statements.

It should be noted that this Part does not seek to provide an exhaustive picture of all the observed patterns of discrimination in Yemen. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant grounds of discrimination in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws and policies, the actions of the government and those exercising *de facto* control over particular regions of the country, exposure to discriminatory violence, and inequality in areas such as employment, education, healthcare and access to goods and services.

The research for this report found substantial evidence of discrimination and disadvantage arising on a range of different grounds, including (i) political opinion; (ii) religion or belief; (iii) gender; (iv) ethnicity and descent; (v) disability; (vi) health status; (vii) sexual orientation; (viii) nationality; and (xi) internal displacement.

3.1 Discrimination on the Basis of Political Opinion

Protection against discrimination in the enjoyment of other human rights on the basis of "political or other opinion" is enshrined in Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Additionally, Article 26 ICCPR guarantees equal and effective protection against discrimination in all areas of life regulated by law, on the ground of political or other opinion.[1] Article 2(1) ICCPR requires that all Covenant rights

1 Including on the ground of political or other opinion. See, International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 26.

are to be guaranteed to all persons without distinction, including on the basis of political opinion. Thus, the obligation to ensure non-discrimination on the basis of political opinion extends to the enjoyment of, *inter alia*, the rights to life, freedom from torture, liberty and security of the person, freedom of movement and freedom of expression, assembly and association, protected by Articles 6, 7, 9, 12, 19, 21 and 22 ICCPR. It follows that any limitations to these freedoms must respect the principle of non-discrimination,[2] and that any limitation, restriction or denial of these rights on the basis of political opinion alone is a violation of the ICCPR.

Unlike some of the other patterns of discrimination discussed in this report, the suppression of opposition political activism, independent journalism and civil society activity in Yemen has been relatively well-publicised. Human Rights Watch,[3] Amnesty International,[4] Reporters without Borders,[5] and the Committee to Protect Journalists,[6] amongst others, have documented the suppression of political dissent and free expression during the Saleh-era. Both national and international non-governmental organisations (NGOs) have exposed the increase in arbitrary arrests, detentions, enforced disappearances and other rights violations since the current conflict escalated in 2015, with journalists, human rights defenders, and civil society activists being targeted by both Ansar Allah (sometimes referred to as the "Houthis") and coalition forces on the grounds of their perceived political opinions.[7] As such, this section does not seek to provide extensive new evidence, but rather to systematise the information which is already available, and to analyse the inherently

2 See, Human Rights Committee (HRC), *General Comment No. 34: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 2011, Para 26.

3 Human Rights Watch, *World Report*, 2010, p. 576, available at: https://www.hrw.org/sites/default/files/world_report_download/wr2010_0.pdf.

4 Amnesty International, *Yemen: Security At What Price?*, 2010, available at: https://www.amnesty.org/download/Documents/40000/mde310112010en.pdf.

5 Reporters Without Borders, "Another Journalist Killed as Saleh regime Steps Up Violence Against Protesters", *Reporters Without Borders*, 17 October 2010, available at: https://rsf.org/en/news/another-journalist-killed-saleh-regime-steps-violence-against-protesters.

6 Committee to Protect Journalists, "Yemeni Journalists Continue to be Targeted", *Committee to Protect Journalists*, 7 September 2011, available at: https://cpj.org/2011/09/yemeni-journalists-continue-to-be-targeted.php.

7 Mwatana Organization for Human Rights, *Mwatana and international NGOs demand release of journalists held by Houthi defacto authority for two years*, 2017, available at: http://mwatana.org/en/962017629.

discriminatory nature of the human rights violations against those who have, or are perceived to have, opinions opposed to those in *de facto* authority in a particular region.

Political and Social Context

The context in which discrimination on the basis of political opinion occurs in Yemen is one of continued and increasing suppression of dissent, both through the application of discriminatory laws and direct interference with the work of political activists, civil society representatives and members of the media, and – increasingly – through discriminatory violence, arrest and detention and torture. This atmosphere of suppression has its roots in the attempts of long-serving President, Ali Abdullah Saleh, to control the various factions which challenged his regime. However, since the fall of Saleh's regime, and the escalation of the conflict in the country, repression – in particular violent repression – has increased, with a wider range of both state and non-state actors being responsible for acts of discriminatory violence, detention and torture.

As explained in Part 1, Ali Abdullah Saleh became leader of the Yemen Arab Republic (YAR) in July 1978,[8] and later, following unification with the People's Democratic Republic of Yemen (PDRY), President of Yemen, under the General People's Congress (GPC).[9] In 1994, civil war erupted between the government and southern separatists, leading to mass casualties and attacks on civilians.[10] Over the course of the following decade, hostilities between the government and various separatist forces continued intermittently, with the most serious spell of violence occurring in 2004 during a military rebellion led by the Ansar Allah movement.[11]

8 Human Rights Watch, *Human Rights in Yemen during and after the 1994 War*, 1994, p. 4, available at: https://www.hrw.org/sites/default/files/reports/YEMEN94O.PDF.

9 International Institute for Democracy and Electoral Assistance, *Yemen's 'Peaceful' Transition from Autocracy: Could it have succeeded?*, 2016, p. 23, available at: http://www.idea.int/sites/default/files/publications/yemens-peaceful-transition-from-autocracy.pdf.

10 See broadly, above, note 8.

11 Minority Rights Group International, *'Even War Discriminates': Yemen's Minorities, Exiled at Home*, 2016, p. 9, available at: http://minorityrights.org/wp-content/uploads/2016/01/MRG_Brief_Yemen_Jan16.pdf.

As discussed in Part 1, Yemen's involvement in the so-called "war on terror" had a profound impact on the domestic human rights situation of Yemen. As the "war on terror" progressed, Yemen assumed a central role in the international fight against terrorism; this resulted in a deterioration of human rights standards, with a large number of individuals being detained in the absence of procedural guarantees.[12] As in many other countries across the region, the "war on terror" was accompanied by, and provided pretext for, severe restrictions on civil and political freedoms, with journalists, human rights defenders, and opponents to the Saleh administration being subject to a broad range of human rights abuses.[13]

The outbreak of mass popular protests in 2011 and the subsequent election of President Hadi led to a further deterioration in the situation for journalists, human rights defenders and other politically active individuals. Despite the institution of the National Dialogue Conference as a platform for the inclusion of civil society organisations in the political process during the transitional period, NGOs, journalists and human rights defenders continued to experience serious human rights violations on account of their political opinion, with hundreds of arrests, assaults and threats recorded.[14] Journalists faced new dangers as the boundaries of "acceptable" reporting became ever more opaque.[15] At least one journalist was killed in 2013,[16] whilst 74 were taken to court after reporting on politically sensitive subject-matters.[17] Likewise, instances of violence against political activists and protestors continued. At least 10 individuals were "shot dead" during a southern independence protest in February 2013.[18]

Since the escalation of the current conflict in early 2015, the situation has deteriorated yet further. Multiple NGOs and media outlets have been closed.

12 Amnesty International, *Yemen: Human Rights Agenda for Change*, 2012, p. 16, available at: https://www.amnesty.org/en/documents/mde31/012/2012/en.

13 *Ibid*., pp. 17–24.

14 Human Rights Watch, *"A Life-Threatening Career": Attacks on Journalists under Yemen's New Government*, 2013, p. 24, available at: https://www.hrw.org/report/2013/09/19/life-threatening-career/attacks-journalists-under-yemens-new-government.

15 Committee to Protect Journalists, "Yemeni Journalists: 'Our Mouths are Gagged'", *Committee to Protect Journalists,* 14 August 2015, available at: https://cpj.org/blog/2015/08/yemeni-journalists-our-mouths-are-gagged.php.

16 See above, note 14 p. 25.

17 In particular, corruption. *Ibid*., p. 41.

18 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/24/34, 25 July 2013, Paras 32–33.

At least one journalist has been sentenced to death by Ansar Allah following a trial that failed to observe basic procedural guarantees,[19] whilst several more have been killed, arbitrarily arrested, disappeared and even tortured after exercising their rights to freedom of thought, conscience and expression.[20] In December 2017, the Ansar Allah-controlled Central Bank in Sana'a issued a letter instructing local government-run and private banks to seize the accounts of 1,223 persons considered to be "traitors", including senior politicians, activists and lawyers, and ministers in the Hadi government.[21]

In Freedom House's 2018 "Freedom in the World" report, which analyses political freedoms in 210 countries, Yemen was designated "not free", receiving an aggregate score of just 13 out of 100, and ranking 188th out of 210 states.[22] In the 2017 World Press Freedom Rankings, Yemen was placed 166th out of 180 states.[23]

Legal and Policy Framework

Under the Yemeni Constitution all citizens are declared equal.[24] The Constitution does not provide a right to non-discrimination on any ground, including political opinion. However, several Articles provide basic political rights.[25]

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19 Reporters Without Borders, "RSF Condemns Death Sentence Passed on Journalist Held by Houthis", *Reporters Without Borders*, 14 April 2017, available at: https://rsf.org/en/news/rsf-condemns-death-sentence-passed-journalist-held-Houthis.

20 Amnesty International, *'Where Is My Father?': Detention and Disappearance in Huthi-Controlled Yemen*, 2016, p. 7, available at: https://www.amnesty.org/en/documents/mde31/4006/2016/en.

21 Seif, I., "Houthis seize and detain bank accounts of 1,223 Yemeni officials and citizens", *Al Arabiya*, 27 December 2017, available at: https://english.alarabiya.net/en/News/gulf/2017/12/27/Houthis-seize-and-detain-bank-accounts-of-1223-Yemeni-officials-and-citizens.html.

22 Freedom House, *Freedom in the World*, 2018, available at: https://freedomhouse.org/report/freedom-world-2018-table-country-scores. With a total freedom rating of 6.5/7, a political rights rating of 7/7, and a civil liberties rating of 6/7, where one represents the highest level of freedom, and seven represents the lowest. See Freedom House, *Freedom in the World*, 2018, available at: https://freedomhouse.org/report/freedom-world/2018/yemen .

23 Reporters Without Borders, *World Press Freedom Index: Yemen*, 2017, available at: https://rsf.org/en/yemen.

24 Constitution of the Republic of Yemen 1990, Article 41.

25 *Ibid*., see for instance, Article 43 which provides citizens the right to stand in elections and Article 57 which guarantees freedom of movement to citizens, subject to lawful restrictions.

Article 42 of the Constitution provides that all citizens have "the right to participate in the political, economic, social and cultural life of the country",[26] thus limiting the right to political participation to Yemeni citizens. Under Article 25 ICCPR, certain political rights – including the right to take part in the conduct of public affairs, and the right to vote – are guaranteed to citizens only. However, this exception does not apply to other areas of life – such as economic, social and cultural rights, as provided in Article 42 – where participation should be guaranteed irrespective of nationality or citizenship.

Article 42 of the Constitution also provides that the state "shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law".[27] Article 19 ICCPR, which provides these rights, does not permit any limitation of the right to hold opinions, as protected by Article 19(1). Article 19(3), on the other hand, permits limitation on the right to freedom of expression, where such restrictions are provided in law and are necessary for the "respect of the rights or reputations of others; for the protection of national security or of public order, or of public health or morals".[28] The Yemeni Constitution imposes no such limits and as such is incompatible with the ICCPR.

The Constitution does not recognise the right to freedom of assembly, as guaranteed under Article 21 ICCPR.

Under Article 58 of the Constitution, citizens possess the right to form associations and "organise themselves along political, professional and union lines".[29] However, the scope of Article 58 is qualified by the requirement that such associations "serve the goals of the Constitution". Political organisation "contrary to the Constitution" is prohibited.[30] These restrictions go beyond the limitations on the exercise of the right to freedom of association provided by Article 22(2) ICCPR, which must be necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and

26 *Ibid*., Article 42.

27 *Ibid*.

28 See ICCPR, Article 19(3).

29 See above, note 24, Article 58.

30 *Ibid*.

freedoms of others. Furthermore, the broad formulation of qualification in Article 58 of the Constitution offers the opportunity for inconsistent interpretation and risks resulting in individuals being denied the right to organise along political lines.[31]

Discriminatory Laws and Policies

The Constitutional guarantees of the right to freedom of assembly, association and expression are limited through legislation, which places restrictions on the enjoyment of these rights which are incompatible with the limitations permitted under the ICCPR. A number of these provisions discriminate, directly or indirectly, or permit discriminatory application, against individuals on the basis of political opinion.

In December 1990, shortly after unification, Yemen adopted the Press and Publications Law,[32] described by Human Rights Watch as "one of the most liberal Press Laws in the Middle East".[33] Nevertheless, several suspect provisions within the law have had a chilling effect on journalists and inhibit the right to freedom of expression in contravention of international legal standards.[34] Despite proposed amendments in 2005, the Press and Publications Law has gone unchanged since its adoption in 1990.[35]

Article 103 of the Law contains a list of 12 restrictions relating to the content of publications. Individuals found guilty of violating this Article may be subject to a "fine not exceeding ten thousand riyals [approximately 34 US$] or a period of imprisonment not exceeding one year".[36] Many of the prohibitions contained in Article 103 are overly broad, including the prohibition

31 See Article 19, *Yemen, Freedom of the Press in Peril*, 2008, p. 8, available at: https://www.article19.org/data/files/pdfs/publications/yemen-foe-report.pdf.

32 Law No. 25 of 1990 (the "Press and Publications Law").

33 Human Rights Watch, *Submission to the Human Rights Committee on Yemen,* 2012, pp. 11–12, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10339_E.pdf.

34 See HRC, *Concluding Observations: Yemen*, UN Doc. CCPR/C/YEM/CO/5, 23 April 2012, Para 25.

35 Patrice, C., Arab Media Centre, Westminster University, *The Yemeni Law and How to Use it Against Journalists*, 2009, available at: https://hal.archives-ouvertes.fr/file/index/docid/361700/filename/Chevalier_The_Yemeni_Law_and_How_to_Use_it_Against_Journ_.pdf.

36 See above, note 32, Article 104.

of the publication of "anything which (…) might spread a spirit of dissent and division among the people or call on them to apostasies"[37] or "anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage".[38] Both of these provisions leave a wide scope of interpretation and the possibility of discriminatory application impinging upon the right to freedom of expression and the right to freedom of religion.[39]

Article 103(12) of the law prohibits criticism of the head of state. In addition, Article 197 of the Penal Code which provides that insult of the President, foreign heads of state, parliamentary institutions, the army, the courts or "authorities or public services", is punishable by up to two years imprisonment or a fine of not more than 4,000 Riyals (approximately 15 US$).[40] The Human Rights Committee (HRC) has made clear that media should not be penalised "solely for being critical of the government or the political social system espoused by the government", stating that restrictions of this type "can never be considered to be a necessary restriction of freedom of expression".[41] Moreover, in discussing defamation laws, the HRC has stated that "laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned" including persons in positions of power.[42]

In May 2009, a specialised Press and Publications Court was convened in Sana'a. The Court has jurisdiction to try a range of cases relating to the media,

37 See above, note 32, Article 103(c).

38 See above, note 32, Article 103(d).

39 See above, note 2, Para 34, emphasising that restrictions on the right to freedom of expression "must not be overbroad".

40 Law No. 12 of 1994 " on Crimes and Penalties" (the "Penal Code"), Article 197.

41 See above, note 2, Para 42.

42 *Ibid*., Para 38. Likewise, the Special Rapporteur on Freedom of Expression has noted that whilst it may be permissible for states to require journalists to register in order to gain access to particular events, "under no circumstances should such conditions be imposed by State authorities as preconditions to practice journalism, given that journalism as a profession can only fulfil its role if it has full guarantees of freedom and protection." See, Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue,* UN Doc. A/HRC/20/17, 4 June 2012, Para 6.

under both the Press and Publications Law and the Penal Code,[43] despite a clear provision in the Yemeni Constitution prohibiting the establishment of "exceptional courts".[44] In the two years immediately following its establishment, hundreds of cases had reportedly been tried before the Press and Publications Court.[45] There have been allegations of cases being selectively prosecuted by the Attorney General[46] and reports of members of the press being unable to afford lengthy trials in Sana'a.[47] In 2012, the HRC recommended the abolition of the specialised Press and Publications Court and instructed Yemen to "review all pending cases related to the implementation of the Press and Publication Law of 1990 which seriously infringes the freedom of press".[48] The Press and Publications Court has remained in operation during the current conflict, with a number of journalists having been referred to the Court by the Ansar Allah regime.[49]

The right to form a political party or organisation is regulated through the Law Governing Political Parties and Organisations of 1991. Under Article 8, parties established on the basis of "regional, tribal, sectarian, class, professional, or any other form of discrimination among citizens on the basis of their sex, racial origin, or colour", are prohibited.[50] Article 4(b) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) requires states to "declare illegal and prohibit organisations (…) which promote and incite racial discrimination"; however, the restrictions in Article 8 of the Law go beyond the requirements of Article 4(b) ICERD, and have the potential to be applied in a discriminatory manner given the broad range of grounds included – such as class, region and profession – and the

43 Alkarama Foundation, *Submission to the Human Rights Committee on Yemen,* 2012, Para 167, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10335_E.doc.

44 See above, note 24, Article 150. See also, *Ibid.,* Para 167.

45 See above, note 14, p. 17.

46 See above, note 43, Paras 162–167.

47 As Abdul Rahman Barman, the executive director of National Organisation for Defending Rights and Freedoms, explained to Human Rights Watch in 2013, "each time you wrote, you had to study your bank account to see if you could afford to publish the story". See above, note 14, p. 18.

48 See above, note 34, Para 25.

49 Information provided to the Equal Rights Trust by the Yemeni Coalition for Monitoring Human Rights Violations on 13 April 2018.

50 Law No. 66 of 1991 "Governing Political Parties and Organisations", Article 8(4).

potential for an expansive interpretation of certain grounds, such as the reference to "tribal" and "sectarian" distinctions.

The Law Governing Political Parties and Organisations provides that a political party can only be registered where it has at least 2,500 members "from most of the provinces including Sana'a city". This provision may indirectly discriminate against political groups with a high level of regional representation, but a lack of members elsewhere, or indeed those with a small membership.[51] Since 2011, 16 new political parties have been established in Yemen,[52] a large increase on previous years.[53] Nevertheless, it is clear that current registration rules, including regional representation requirements,[54] may unduly inhibit the right to form political parties and organisations, contrary to the requirements of international law.[55]

Under the draft Yemeni Constitution of 2015, the right to form a political party or organisation would have been recognised as a "mainstay of democracy", with provision to establish a party on a notification basis,[56] and removing any registration requirement related to numerical or geographical representation. Unfortunately, as a noted in Parts 1 and 2, the Draft Constitution was never adopted.

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51 *Ibid*., Article 14.

52 Al-Wesabi, S., "Young Political Parties Face Challenges", *Yemen Times*, 13 June 2013, available at; http://www.yementimes.com/en/1685/news/2481/Young-political-parties-face-challenges.htm.

53 According to Bajash Al-Mikhlafi, Secretary of the CAPPO, "in the past recognizing any party was confined to the condition of approval by the security authorities." As a result of the events of 2011, the role of the security forces in the approval of parties diminished, leading to a large number of new and successful applications. See Saeed, P., "New Political Parties for Similar Player", *La Voix du Yemen,* 26 May 2013, available at: http://www.lavoixduyemen.com/en/2013/05/26/new-political-parties-for-similar-players/3389.

54 See, for instance, *Ibid.*

55 See for instance, the HRC's Concluding Observations on Turkmenistan, in which the Committee expressed concern regarding "excessive restrictions on the establishment and functioning of political parties", potentially in violation of Article 22 of the Covenant. See HRC, *Concluding Observations: Turkmenistan*, UN Doc. CCPR/C/TKM/CO/2, 20 April 2017, Paras 48–49.

56 See UN, *Translation of the Draft Constitution of the Republic of Yemen*, 2015, Article 13 (1), available at: http://www.constitutionnet.org/sites/default/files/yemen-draft_constitution-15jan2015-_english.pdf. It should be noted that Article 13(5) of the Draft Constitution would have prohibited the formation of parties seeking to "prejudice the republican and democratic system", an overbroad provision which could have led to legitimate political activities being restricted.

As with the rights to freedom of expression and association, the right to freedom of assembly is restricted through the application of domestic legislation. Law No. 29 of 2003 "on the Organisation of Demonstrations and Assemblies" (the "Law on Demonstrations") contains a prohibition on marches "aimed at harming the republican system or the safety of the homeland and its territorial integrity".[57] This provision is expansive and has the potential to prevent otherwise lawful, peaceful protests. Although the right to freedom of assembly is recognised in Article 3 of the Law on Demonstrations, individuals planning a demonstration must provide authorities with three days' prior-notice, including information on the suggested location of the march, any slogans to be used and its objectives.[58] Under Article 5, the authorities may temporarily postpone, reroute, or call off a demonstration for 24 hours for "security purposes", although a right of appeal to the courts exists.[59] Human rights groups have noted that Articles 4 and 5 of the Law on Demonstrations have been used to curtail protests against the government.[60] In 2012, the HRC expressed concern regarding the law, calling on Yemen to "repeal all laws which unreasonably restrict the freedom of assembly" and to release all individuals detained as a result of such laws.[61]

Suppression of Dissent: Discriminatory Violence

The overarching pattern of discrimination on the basis of political opinion in Yemen is the suppression of dissent. This suppression is effected both through the application of the aforementioned discriminatory laws and through extra-legal means, in particular through the use of discriminatory violence. This pattern can be seen most obviously in the violent suppression of protests and protest movements, which have resulted in deaths, serious injury and – consequentially – in violation of the rights to freedoms of expression and assembly. Since the outbreak of the conflict, the incidence of violent suppression of dissent has increased, while a wider range of actors – including the Ansar

57 Law No. 29 of 2003 "on the Organisation of Demonstrations and Marches", Article 16.

58 *Ibid*., Articles 3 and 4.

59 *Ibid*., Article 5.

60 International Federation for Human Rights, *Submission to the Human Rights Committee on Yemen*, 2011, p. 11, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10330_E.pdf.

61 See above, note 34, Para 26.

Allah forces in *de facto* control of the north of the country, but also other non-state actors involved in the conflict – have been involved as perpetrators.

It should be noted that in addition to violence, suppression of dissent has, and continues to be, practiced through the discriminatory arrest and detention of those whose political opinions conflict, or are perceived to conflict, with those in effective control, and with discriminatory torture and ill-treatment of those detained. These latter patterns of discriminatory arrest, detention and torture are dealt with in further detail below, while here we focus on the use of discriminatory violence to suppress dissent.

Over the course of its history, Yemeni citizens have strongly engaged with various modes of political activism. However, government interference in protests has also been a regular occurrence in recent decades, with demonstrators being detained, beaten and even murdered by security forces and affiliated armed groups.[62] Violence against protestors escalated from the mid-2000s onwards, as former President Saleh sought to buttress his position amidst conflict with the Ansar Allah, renewed calls for southern independence, and widespread dissatisfaction with the political system.[63] In October 2007, four persons in al-Habilayn were killed as security forces opened fire on demonstrators protesting under the banner of the Southern Movement;[64] by 2010, several such incidents had been recorded by human rights organisations,[65] with reports that the regime had used the assistance of "pro-government militias" in order to shield itself from accountability for the atrocities committed.[66]

Protests in 2011 were marked by several outbreaks of violence committed by government security forces and armed groups affiliated with the former

62 Freedom House, *Freedom in the World 2017: Yemen*, 2017, available at: https://freedomhouse.org/report/freedom-world/2017/yemen.

63 Day, S. W., *Regionalism and Rebellion in Yemen: A Troubled National Union*, Cambridge University Press, 2012, pp. 228–9.

64 *Ibid*.

65 Human Rights Watch, *In the Name of Unity: The Yemeni Government's Brutal Response to Southern Movement Protests*, 2009, pp. 28-36, available at: https://www.hrw.org/sites/default/files/reports/southyemen1209web.pdf.

66 *Ibid*., pp. 36–38.

President,[67] the largest of which occurred on 18 March in Change Square, Sana'a.[68] In the weeks preceding the 18 March killings, protest camps had begun to expand across the capital and other major cities.[69] As more individuals joined the demonstrations, government-aligned forces responded with force. Between 11 and 18 February, six individuals were killed and many more injured in Aden and Taiz,[70] including as a result of one incident involving the use of a live grenade.[71] On 25 February, at least 12 people were killed by state security forces.[72] Between 12 and 13 March 2011, four individuals were killed after government security forces "fired live ammunition and teargas" at demonstrators.[73]

The international community strongly criticised what was described as an "escalation" in violence,[74] urging the state to protect protestors, journalists and human rights defenders, who had been subject to "attacks, intimidation and harassment".[75] Despite this international pressure, the use of force against protestors escalated dramatically on 18 March 2011, known as the "Friday of Dignity", resulting in the deaths of 45 people and injury to hundreds more.[76] According to Human Rights Watch, those perpetrating the violence were highly trained: "all of those killed and at least 40 of the wounded were shot

67 Human Rights Watch, *Unpunished Massacre Yemen's Failed Response to the "Friday of Dignity" Killings*, 2013, p. 16, available at: https://www.hrw.org/report/2013/02/12/unpunished-massacre/yemens-failed-response-friday-dignity-killings.

68 *Ibid*., pp. 15–18.

69 *Ibid*., pp. 16–18.

70 *Ibid*., p. 16.

71 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/21/37, 5 September 2012, Para 19.

72 Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2012, p. 9, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10336_E.doc.

73 See above, note 67, p. 17.

74 European Union, "Statement by EU High Representative Catherine Ashton on the Situation in Yemen", *European Union,* 10 March 2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119746.pdf.

75 Office of the High Commissioner for Human Rights, "Yemen: UN Human Rights Chief Warns against Use of Force", *Office of the High Commissioner for Human Rights,* 1 March 2011, available at: http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10776&LangID=E.

76 See above, note 67, p. 29.

with semi-automatic weapons in the head, chest, or other areas of the upper body",[77] and some reportedly carried government identification.[78] The violent suppression of demonstrators in Change Square was sharply criticised by the UN Special Rapporteurs on extrajudicial executions, freedom of expression and torture, who issued a joint statement condemning the actions of the government.[79] Nonetheless, the suppression of protests continued, with significant incidences of violence documented by human rights organisations in the period leading up to former President Saleh's eventual resignation.[80] The government denied playing a role in the killings. Subsequent investigations were marred by ineffective legal proceedings and alleged political interference.[81]

In accordance with the Gulf Cooperation Council Initiative Agreement,[82] under which President Saleh relinquished power in exchange for immunity from prosecution for the violent crackdowns on protestors, an Amnesty Law was adopted on 21 January 2012. This law absolved the former president and other officials involved in the Change Square massacre – including the president's own son and nephew, who were in command of armed and security forces at the time of the attack[83] – of any criminal wrongdoing.[84] In 2012, the HRC strongly criticised the Amnesty Law and called for its immediate repeal.[85]

During the transitional period following President Hadi's election in 2012, at least 10 individuals were killed by government forces in a southern independence protest.[86] Since the outbreak of the conflict in 2015, Ansar Allah forces have

77 *Ibid*.

78 *Ibid*., p. 31.

79 Office of the High Commissioner for Human Rights, "Yemen: The Killing of Protesters Must Stop", *Office of the High Commissioner for Human Rights*, 18 March 2011, available at: http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10862&LangID=E.

80 See, above note 72, p. 9.

81 See Human Rights Watch's account of the dismissal of the Attorney General leading the investigation into the killings, above, note 67, p. 53.

82 UN, *Gulf Cooperation Council Initiative Agreement (UN Translation)*, 2011, Para 3, available at: https://osesgy.unmissions.org/sites/default/files/gcc_initiative_yemen_english.pdf.

83 See above, note 33, p. 3.

84 Law No. 1 of 2012 "on the Granting of Immunity from Legal and Judicial Prosecution".

85 See above, note 34, Para 6.

86 See above, note 18, Paras 32–33.

violently suppressed political protests in areas under their control. During the course of their 2015 takeover, Ansar Allah forces used force to suppress pro-Hadi protests in Sana'a and elsewhere;[87] in particular, following their seizure of Taiz in March 2015, members of the Ansar Allah forces fired shots and teargas at thousands of protestors who attended a peaceful demonstration, resulting in several individuals being killed and many more requiring hospital treatment.[88] During 2016 and 2017 there were frequent demonstrations against both the Ansar Allah regime and the Saudi-led coalition airstrikes, with Ansar Allah forces reportedly violently suppressing critical protests in areas under their control.[89]

Following a rise in tensions between the internationally recognised government of President Hadi and the separatist Southern Transitional Council (STC) in January 2018, during which the STC demanded the resignation of President Hadi and his cabinet, the government was reported to have banned public gatherings in Aden ahead of a protest rally by supporters of the STC.[90] In a statement published by the state-run Saba news agency, the Yemeni Interior Ministry stated that it would consider any gatherings, sit-ins or marches in Aden to be "acts that target stability and calm".[91] As discussed below, both the Hadi government and the Ansar Allah forces have restricted freedom of expression, both through the application of discriminatory legal provisions, and through direct interference with media institutions and organisations. In addition, however, the conflict has seen increased use of violence against journalists and members of the media who are, or are perceived to be, challenging those in power.

87 Freedom House, *Freedom in the World 2016*, 2016, available at: https://freedomhouse.org/report/freedom-world/2016/yemen.

88 Amnesty International, "Yemen: Huthi-loyal Armed Forces Kill Peaceful Protesters as Country Descends into Chaos", *Amnesty International*, 24 March 2015, available at: https://www.amnesty.org/en/latest/news/2015/03/yemen-huthi-loyal-armed-forces-kill-peaceful-protesters-as-country-descends-into-chaos; *The Guardian*, "Yemen protesters killed after Houthi rebels fire bullets and teargas into crowd", The Guardian, 24 March 2015, available at: https://www.theguardian.com/world/2015/mar/24/six-yemeni-protesters-killed-Houthi-rebels-teargas.

89 See above, note 62.

90 Mukhashaf, M., "*Yemen government bans protests in Aden ahead of separatist deadline*", Reuters, 27 January 2018, available at: https://uk.reuters.com/article/uk-yemen-security-southerners/yemen-government-bans-protests-in-aden-ahead-of-separatist-deadline-idUKKBN1FG0FC.

91 Middle East Monitor, "Yemen government bans protests in Aden ahead of separatist deadline", *Middle East Monitor*, 28 January 2018, available at: https://www.middleeastmonitor.com/20180128-yemen-government-bans-protests-in-aden-ahead-of-separatist-deadline.

In March 2015, Abdulkarim al-Khaiwani, described by Amnesty International as an "outspoken" and "peaceful" activist, previously awarded with a "Special Award for Human Rights Journalism under Threat", was shot by men on a motorbike as he walked close to his home in central Sana'a.[92] Around 11 months later, a journalist was shot and killed in Taiz by individuals believed to be allied to the Ansar Allah movement.[93] In July 2016, Reporters Without Borders documented the death of a young journalist who was shot by a sniper in Haijjah province whilst "embedded with a Yemeni army brigade",[94] with a similar incident reported in Shabwah province less than two months earlier.[95] More recently, on 13 April 2018, a newspaper crew was targeted with a heat-seeking missile whilst covering the clashes taking place in Al-Bayda governorate, killing a journalist and a photographer, and wounding two others.[96] In another incident occurring on the same day, two members of the Yemen TV crew were killed after they were targeted by a coalition airstrike.[97]

As explained below, journalists, political activists, civil society representatives and human rights defenders across Yemen have also been subject to arbitrary deprivations of liberty, torture and enforced disappearances.[98]

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92 Amnesty International, "Yemen: Investigate 'Despicable' Killing of Prominent Journalist", *Amnesty International,* 18 March 2015, available at: https://www.amnesty.org/en/latest/news/2015/03/despicable-killing-of-prominent-yemeni-journalist/. See also: Reporters Without Borders, "Leading Journalist Murdered in Sanaa", *Reporters Without Borders,* 18 March 2015, available at: https://rsf.org/en/news/leading-journalist-murdered-sanaa.

93 Committee to Protect Journalists, "Yemeni Journalist Killed in Taiz", *Committee to Protect Journalists,* 17 February 2016, available at: https://cpj.org/2016/02/yemeni-journalist-killed-in-taiz.php#more.

94 Reporters Without Borders, "RSF Stresses Need for Protection for Reporters in Yemen", *Reporters Without Borders,* 26 July 2016, available at: https://rsf.org/en/news/rsf-stresses-need-protection-reporters-yemen.

95 Reporters Without Borders, "Yemeni Reporter Killed Covering Clashes, Ten Others Missing", *Reporters Without Borders,* 31 May 2016, available at: https://rsf.org/en/news/yemeni-reporter-killed-covering-clashes-ten-others-missing.

96 Euro-Mediterranean Human Rights Monitor, "Yemen: Journalists targeted by all parties, three killed in one day", *Euro-Mediterranean Human Rights Monitor*, 19 April 2018, available at: https://euromedmonitor.org/en/article/2352/Yemen:-Journalists-targeted-by-all-parties--three-killed-in-one-day.

97 *Ibid*.

98 See Human Rights Watch, "Yemen: Houthis Ban Rights Advocate's Travel", *Human Rights Watch*, 12 March 2016, available at: https://www.hrw.org/news/2016/03/12/yemen-Houthis-ban-rights-advocates-travel; and *Human Rights Watch*, "Yemen: Travel Ban on Women's Rights Advocate", Human Rights Watch, 15 November 2015, available at: https://www.hrw.org/news/2015/11/15/yemen-travel-ban-womens-rights-advocate.

Arrests and Arbitrary Detentions

Article 9(1) ICCPR provides that: "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention". Read in conjunction with Article 2(1) ICCPR, Yemen has an obligation not to arrest or detain persons on the basis of their political opinion. Article 9 ICCPR also sets out further basic procedural guarantees, including the right to be informed of any charges brought, as well as the reason for the arrest; the right to a trial within a reasonable time period; the right to review the lawfulness of detention before a court; and compensation where an individual has been subject to an unlawful arrest or detention.[99]

Over the last decade, the authorities in Yemen have consistently failed to uphold international standards regarding deprivations of liberty. State responses to ongoing violence by members of the Ansar Allah movement between 2004 and 2010, as well as to protests in the south of the country by the Southern Movement, involved numerous violations of the right to liberty and security of the person, with provisions of the Penal Code being used to indict protestors contrary to international legal standards.[100] Some of these provisions are ambiguous, allowing for the arrest of individuals solely on the basis of their actual or perceived political opinion. For example, Article 125 of the Penal Code prohibits acts undertaken "with the intent of violating the independence, unity or territorial integrity of the Republic". This provision carries the death penalty and, as explained by Amnesty International, "is imprecise and overbroad in a manner that fails to meet international requirements of 'legality'".[101]

Throughout the latter part of Saleh's rule, journalists, human rights defenders and political activists were arbitrarily detained and assaulted by security forces,[102] a trend which increased during the protests that took place across Yemen in 2011.[103] The HRC admonished the state repeatedly over these re-

99 ICCPR, Article 9(2)-(5).

100 See above, note 72, pp. 14–15.

101 *Ibid*.

102 *Ibid*., p. 21.

103 *Ibid*., p. 22.

ports of arbitrary arrests and imprisonment,[104] and in 2012 called for all such incidences to be investigated and perpetrators prosecuted.[105]

The rapid deterioration of the security situation in early 2015 led to a marked rise in the number of individuals unlawfully detained in Yemen, as forces loyal to Ansar Allah, Saleh, Hadi and coalition forces have attempted to assert authority and limit political dissent. Given the lack of access to the places of detention, including by the International Committee of the Red Cross (ICRC),[106] it is difficult to estimate the total number of individuals affected. The Office of the High Commissioner for Human Rights (OHCHR) recorded at least 491 cases of arbitrary detention between July 2015 and August 2016, of which 89% were "allegedly committed by [Ansar Allah] Popular Committees, 6% were attributed to Al-Qaida affiliates and 5% were attributed to the pro-Hadi Popular Resistance".[107] However, given the difficulties in verifying cases, the true figure may well be much higher.[108]

The majority of detainees have reportedly been arrested on account of their political opinion or religious belief. According to the OHCHR:

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104 See above, note 34, Paras 15–18; HRC, *Concluding Observations: Yemen*, UN Doc. CCPR/CO/84/YEM, 9 August 2005, Para 13; HRC, *Concluding Observations: Yemen*, UN Doc. CCPR/CO/75/YEM, 12 August 2002, Para 18; HRC, *Concluding Observations: Yemen*, UN Doc. A/50/40, 3 October 1995, Para 254.

105 In addition, the HRC urged Yemen to ensure that "all persons deprived of their liberty have their detention reviewed by a judge in compliance with Article 9 of the Covenant." See above, note 34, Paras 15 and 18.

106 International Committee of the Red Cross (ICRC), "Yemen: ICRC Statement on behalf of the Red Cross Red Crescent Movement", *ICRC*, 25 April 2017, available at: https://www.icrc.org/en/what-we-do/visiting-detainees.

107 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/33/38, 4 August 2016, Para 53.

108 By October 2015, Human Rights Watch had personally verified the arbitrary detention of 35 individuals by Ansar Allah forces. By May 2016, the Mwatana Organisation for Human Rights had verified 53 cases. In 2016, Amnesty International personally interviewed or spoke with the families of several individuals who had been arbitrarily detained and subsequently subject to gross human rights abuses. See: Human Rights Watch, "Yemen: Abusive Detention Rife Under Houthis", *Human Rights Watch*, 17 November 2016, available at: https://www.hrw.org/news/2016/11/17/yemen-abusive-detention-rife-under-houthis; Mwatana Organisation for Human Rights, *They Are Not Here: Incidents of Arbitrary Detention and Forcibly Disappearance under Ansar Allah (Al-Houthis) Armed Group Authority in Yemen*, 2016, available at: http://www.mwatana.org/en/3182016530; Amnesty International, *'Where Is My Father?': Detention and Disappearance in Huthi-Controlled Yemen*, 2016, available at: https://www.amnesty.org/en/documents/mde31/4006/2016/en.

> *Particular groups who appear to have been targeted include journalists, human rights defenders, and members of political parties, especially individuals affiliated with the Islah Party, the Socialist and the Nasserist Unionist People's Organization; and religious leaders.*[109]

Following the *Islah* Party's pronounced support of the intervention of the Saudi-led coalition in March 2015, around 100 members were reportedly detained by Ansar Allah forces.[110] Several accounts have appeared in the work of international human rights organisations, detailing sustained efforts to intimidate members of *Islah*, including through their detention and enforced disappearance. In January 2016, Human Rights Watch publicised the case of Ahmad Al-Qatta, a "high-ranking member of the *Islah* Party" who was abducted by members of the Political Security Organisation (one of Yemen's domestic intelligence agencies) and accused of supporting the Islamic State.[111] On 9 August 2015, eight *Islah* Party members were arrested by armed men who "searched [their] apartment and seized all the phones, laptops and some personal effects".[112]

Journalists and human rights defenders have also been targeted by Ansar Allah forces. For example, in August 2015, Abd al-Kader Al-Guneid, a "medical doctor and human rights activist critical of the Houthis" was reportedly snatched from his home by a group of armed men who broke into his house and forced him into a car, following months of harassment on Facebook, over the phone and by Ansar Allah supporters.[113] A group of 10 journalists are being held in detention by Ansar Allah forces, having now been detained for over two years: nine of the group were arrested on 9 June 2015 whilst working in a hotel in Sana'a, while the 10th was arrested at his home in Sana'a on

109 See above, note 107, p. 29. See further discussion in section 3.2 of this report.

110 Human Rights Watch, "Yemen: Houthis 'Disappear' Political Opponent", *Human Rights Watch*, 15 September 2015, available at: https://www.hrw.org/news/2015/09/15/yemen-Houthis-disappear-political-opponent.

111 Similar testimony was received by the Equal Rights Trust. See Human Rights Watch, "Yemen: Arbitrarily Held by the Houthis", *Human Rights Watch*, 10 January 2016, available at: https://www.hrw.org/news/2016/01/10/yemen-arbitrarily-held-Houthis; Interview B68.

112 *Ibid.*

113 *Ibid.*

28 August 2015.[114] Many of those arrested reportedly had links to the *Islah* Party.[115] In July 2017, it was reported that these men's cases had been transferred to the Specialised Criminal Court in Sana'a.[116]

In August 2017, prominent political activist, Hisham Al-Omeisy, who voiced regular criticism of the conduct of all parties to the conflict via his twitter account, was detained without charge by Ansar Allah forces after tweeting that "armed goons" had arrived outside his home.[117] The whereabouts of Mr. Al-Omeisy were unknown for several months until his release on 15 January 2018,[118] when he was freed alongside two other prisoners thought to be loyal to former president Saleh.[119] On 2 December 2017, 41 journalists were held hostage by Ansar Allah rebels in the headquarters of the Al-Yemen Al-Youm TV channel in Sana'a for almost two weeks before being released in "unclear circumstances".[120]

Individuals detained by Ansar Allah forces are reportedly arrested without charges, rarely have a lawyer present and are unable to challenge detention de-

114 Mwatana Organization for Human Rights, *Mwatana and international NGOs demand release of journalists held by Houthi defacto authority for two years*, 2017, available at: http://mwatana.org/en/962017629; Reporters Without Borders, "Concern about Health of Journalists Held by Houthis in Sanaa", *Reporters Without Borders*, 13 April 2017, available at: https://rsf.org/en/news/concern-about-health-journalists-held-houthis-sanaa.

115 *Ibid.*, Reporters Without Borders.

116 Women Journalists Without Chains, "Kidnapped Journalists Sent to Specialised Criminal Court, WJWC Expresses Deep Concern", *Women Journalists Without Chains*, 19 July 2017, available at: https://womenpress.org/en/womenpress-news/kidnapped-journalists-sent-to-specialized-criminal-court-wjwc-expresses-deep-concern.html.

117 Dehghan, S. K., "Houthi Rebels Detain Activist who Brought Yemen War to Outside World", *The Guardian*, 30 August 2017, available at: https://www.theguardian.com/world/2017/aug/30/yemen-activist-hisham-al-omeisy-detained-sanaa-houthi-rebels; Amnesty International, *Yemen: Activist detained by Huthi-Saleh forces must be freed*, 18 August 2017, available at: https://www.amnesty.org/en/latest/news/2017/08/yemen-activist-detained-by-huthi-saleh-forces-must-be-freed.

118 *Ibid.*, Dehghan, S. K.

119 Al Jazeera, "Yemen's Houthis release activist Hisham al-Omeisy", *Al Jazeera*, 17 January 2018, available at: http://www.aljazeera.com/news/2018/01/yemen-Houthis-release-activist-hisham-al-omeisy-180116061517153.html.

120 Reporters Without Borders, "RSF relieved by announced release of 41 journalists", 14 December 2017, available at: https://rsf.org/en/news/rsf-relieved-announced-release-41-journalists.

cisions.[121] Lawyers are routinely denied visits and access to legal documents.[122] Many detainees reportedly need a guarantor: an individual (usually a family member) able to "take responsibility for detainees" in order to secure their release.[123] One man, detained by Ansar Allah forces in March 2015 on account of being affiliated to the *Islah* party, reported being monitored following his release in September 2015.[124] Individuals are held at multiple, often secret, detention centres and many "have been transferred multiple times between different locations".[125] There are also concerns that detained journalists have been used as human shields by Ansar Allah forces: in May 2015, for example, Reporters Without Borders and the Committee to Protect Journalists publicised the case of two men who had been abducted by Ansar Allah forces and detained in a weapons depot, and were subsequently killed in coalition airstrikes.[126]

Arbitrary detentions and violations of the rights to liberty and security of person are not limited to areas under the *de facto* control of Ansar Allah forces. Reporters Without Borders has reported that a newspaper editor, Awad Kashmim, had been arrested on the orders of the governor of Hadramout on 21 February 2018, shortly after he wrote a post on Facebook that was critical of the military operations being conducted against Al-Qaida in the Arabian Peninsula (AQAP) by United Arab Emirates(UAE)-backed forces; at the time of publication his whereabouts were unknown.[127] Another journalist was detained by government forces in similar circumstances in Marib after reporting on a meeting of Saleh-supporters and was held incommunicado for a week.[128]

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121 See above, note 108, Amnesty International, pp. 14–15.

122 *Ibid.*, p. 15.

123 *Ibid.*, p. 16. See also, above, note 11.

124 See above, note 108, Amnesty International, pp. 18–19.

125 See above, note 92.

126 See Reporters Without Borders, "Two Journalists Killed in Air Strike While Held Hostage", *Reporters Without Borders,* 28 May 2015, available at: https://rsf.org/en/news/two-journalists-killed-air-strike-while-held-hostage; and Committee to Protect Journalists, "Two Abducted Yemeni Journalists Found Dead after Air Strike", *Committee to Protect Journalists,* 29 May 2015, available at: https://cpj.org/2015/05/two-abducted-yemeni-journalists-found-dead-after-a.php.

127 Reporters Without Borders, "Newspaper editor held incommunicado in eastern Yemen", *Reporters Without Borders*, 1 March 2018, available at: https://rsf.org/en/news/newspaper-editor-held-incommunicado-eastern-yemen.

128 *Ibid.*

Human rights organisations have also increasingly expressed concern regarding the rising number of security forces in Aden and other southern cities "arresting and detaining people and operating unofficial detention facilities".[129] In June 2017, Human Rights Watch recorded at least 49 instances of individuals considered to be "extremists" being detained in the south of the country, predominantly by the Security Belt and Hadrami Elite Forces trained and financed by the UAE.[130]

In its General Comment No. 35, the HRC stressed that the protections in Article 9 ICCPR apply even during armed conflict: "the fundamental guarantee against arbitrary detention is non-derogable".[131] During situations of conflict, "access by the International Committee of the Red Cross to all places of detention becomes an essential additional safeguard for the rights to liberty and security of person".[132] However, in Yemen, the ICRC has expressed concern regarding the unwillingness of the parties to the conflict to allow access to detainees,[133] with the ICRC President Peter Maurer reporting a "vicious cycle (…) whereby each side does not give the ICRC access until their own people have been seen first".[134]

Torture and Ill-Treatment

The prohibition of torture is an absolute right which all states are required to uphold,[135] and is contained in numerous human rights treaties, including

129 Human Rights Watch, "Yemen: Ramadan an Opportunity for Detainees", *Human Rights Watch,* 26 May 2017, available at: https://www.hrw.org/news/2017/05/26/yemen-ramadan-opportunity-detainees.

130 Human Rights Watch, "Yemen: UAE Backs Abusive Local Forces", *Human Rights Watch,* 22 June 2017, available at: https://www.hrw.org/news/2017/06/22/yemen-uae-backs-abusive-local-forces.

131 HRC, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CCPR/C/GC/35, 2014, Paras 64 and 66.

132 *Ibid*.

133 See ICRC, "Yemen: ICRC Statement on behalf of the Red Cross Red Crescent Movement", *ICRC*, 25 April 2017, available at: https://www.icrc.org/en/document/yemen-conflict-statement-end-suffering.

134 Maurer, P., "Yemen: The pain of Conflict Permeates Deeply into Communities – ICRC Statement to the United Nations", *ICRC*, 22 September 2017, available at: https://www.icrc.org/en/document/statement-united-nations-general-assembly-humanitarian-crisis-yemen.

135 As discussed in Part 2, section 2.1.1.4, the prohibition of torture is a peremptory norm of international law, which is considered to be so fundamental that no derogation is possible.

the ICCPR[136] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).[137] Article 1 CAT provides a definition of torture that is considered to be authoritative:

> *[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*[138]

Yemen's national legal framework on torture is not consistent with the country's international human rights law obligations, in particular those which arise under the CAT. Under the Yemeni Constitution, whilst individuals who "practice, order, or participate in executing physical or psychological torture" are to be punished, physical and psychological torture are only prohibited where they are used to coerce a confession in the context of an individual's arrest, investigation, detention or imprisonment,[139] and punishment does not extend to accomplices.[140]

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136 ICCPR, Article 7.

137 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, 1984, Article 1.

138 See, for example, Rodley, N., "The Definition(s) of Torture in International Law", *Current Legal Problems*, Vol. 55, 2002, p. 476; Miller, G.H., Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, *Defining Torture*, 2005, pp. 5–6; Lasson, K., "Torture, Truth Serum, and Ticking Bombs: Toward a Pragmatic Perspective on Coercive Interrogation", *Loyola University Chicago Law Journal*, Vol. 39, 2008, p. 334.

139 See above, note 24, Articles 48(b) and (e); See above, note 34, Para 19; Committee against Torture, *Concluding Observations: Yemen*, UN Doc. CAT/C/YEM/CO/2/Rev.1, 25 May 2010, Para 7.

140 See above, note 34, Para 19.

The Penal Code also fails to include a comprehensive definition of torture. Whilst it prescribes punishment for public officials who commit acts of torture in certain circumstances, including in order to extract a confession,[141] Amnesty International has noted that the Penal Code "stipulates specific acts of torture, such as amputation and flogging, as punishments which may be passed by competent courts against persons convicted of committing certain crimes".[142] The inadequacy of Yemen's legal framework means that there is *inter alia* no prohibition on the infliction of pain and suffering "for any reason based on discrimination of any kind", as is required under Article 1 CAT.

In 2010, the Committee against Torture expressed concern at the fact that Yemen does not have a comprehensive definition of torture under domestic law, noting the numerous allegations of torture and ill-treatment in Yemen, and the impunity enjoyed by perpetrators in the absence of an effective legal framework.[143] The Committee highlighted the "widespread practice of torture and ill-treatment" of detainees in Yemeni prisons, including state security prisons.[144] In 2012, Amnesty International also noted the prevalence of torture committed under the Saleh regime against individuals "held in connection with politically motivated acts [and] peaceful protests", such as members of the Southern Movement.[145]

According to international human rights organisations, torture and ill-treatment of suspected dissidents and journalists in Yemen has been rife during the conflict, with human rights organisations and monitoring bodies documenting numerous examples of ill-treatment and torture at the hands of Ansar Allah forces in particular.[146] In 2016, Amnesty International released an extensive report on arbitrary arrests and enforced disappearances in Ansar Allah-controlled Yemen, in which at least six cases involving the torture and ill-treatment of political detainees were identified.[147] One such case was that

141 See the Penal Code, Article 166.

142 See above, note 72, pp. 11–12.

143 See above, note 139, Paras 7 and 8, Committee against Torture.

144 *Ibid*., Para 8.

145 See above, note 72, p. 12.

146 See above, note 107, p. 31.

147 See above, note 108, p. 7, Amnesty International.

of Mahmoud Yacine, who was arrested by Ansar Allah in October 2015 alongside 25 other individuals at a meeting of political figures, journalists and activists; Mr. Yacine explained to researchers that he was subject to severe physical assaults in detention by interrogators, who "blindfolded him and tied his hands together, then hit him continually on his shoulders, thighs and back with a stick", and "gave him electric shocks to his chest, neck, forearms and groin area".[148] In November 2016, Human Rights Watch released a report detailing further instances of torture and ill-treatment by Ansar Allah forces.[149]

The Equal Rights Trust spoke with a former journalist – Yousef Aglan – who had been detained and tortured by Ansar Allah forces as a result of his work:

Case Study: Interview with Mr. Yousef Aglan, Former Journalist and Detainee[150]

Mr. Yousef Aglan was formerly a journalist in Sana'a. He was arrested twice by the Ansar Allah forces in 2015: the first time was in January 2015, during protests against the Ansar Allah takeover of Sana'a, and the second time was in March 2015 following the announcement of the Saudi-led coalition's military intervention in Yemen. On the second occasion, Mr. Aglan was taken to a police station for questioning by Ansar Allah forces, but was released after a few hours. After that, he decided to leave journalism and become a taxi driver.

However, on 13 October 2016, Mr. Aglan was abducted at gunpoint by Ansar Allah forces whilst driving back from the hospital with his wife. He was taken to a police station and immediately transferred to the prison of the Criminal Interrogation Department (CID) where he was placed in solitary confinement for 26 days, during which time he was interrogated on six occasions. During four of those interrogations, he was tortured: he was blindfolded, his hands were tied to his feet, and he was hung from an iron rod whilst being beaten all over his body. Those detaining him tried to extract a confession that he had been disseminating false news and was working against the Ansar Allah

148 *Ibid.,* p. 26.

149 Human Rights Watch, "Yemen: Abusive Detention Rife Under Houthis", *Human Rights Watch*, 17 November 2016, available at: https://www.hrw.org/news/2016/11/17/yemen-abusive-detention-rife-under-Houthis.

150 Equal Rights Trust interview with Yousuf Aglan, Geneva, 7 March 2018.

forces, and told him that if he did not confess they would kill members of his family, including his two-year old daughter. He was also threatened with rape, denied food, and had limited access to a toilet.

After 26 days of detention at the CID, Mr. Aglan was transferred to Al-Thawra Reserve prison. His family were only notified of his whereabouts at that point, although two months passed before he was able to speak to or see them. He remained in that prison for 50 days, before being moved to the Political Security Prison for five months. He was then moved to Sana'a Central Jail where he remained for another five months. Whilst Mr. Aglan was detained in the Central Jail, the Ansar Allah forces tried to move him and other detainees to a military police centre, which he believes was an attempt to use them as human shields against coalition airstrikes. When he and other detainees refused to move they were attacked with tear gas. Mr. Aglan spent one month at the military police centre.

Mr. Aglan was eventually released as part of a prisoner swap between the Ansar Allah forces and the Hadi government, the terms of which required him to leave Sana'a and move to Marib with his wife and two children.

By the time of his release, Mr. Agland had been detained for one year and 45 days in total. He is not allowed to return to Sana'a, even to visit his extended family and friends, and has essentially been forcibly displaced from his hometown. Mr. Aglan explained that the only ways in which individuals can be released from Ansar Allah detention are through a prisoner swap (with tribal leaders playing an important role as mediators) or through families paying a ransom, with one individual being released after his family paid a ransom of 1 million Yemeni Riyal (approximately 4,000 US$). However, the ransoms demanded by Ansar Allah are unaffordable for most families. There is little recourse to any due legal process, with court proceedings often being delayed, and lawyers denied access to information.

Freedom of Expression

The provisions of the Penal Code and the Press and Publications Law discussed above have long been utilised by those in power in Yemen to limit free speech,[151] and to restrict reporting unfavourable to the regime in a

151 See above, note 14, pp. 41–44.

manner which discriminates on the grounds of political opinion. As political stability has deteriorated, freedom of expression has come under ever greater threat, with all parties to the conflict seeking to limit the freedom of the media in particular through both established legal means and more direct interference with the freedom of individual journalists and media organisations.

Historically, the Saleh regime has exerted a large degree of control over television and radio stations,[152] as well as informing the content of print publications.[153] Ongoing hostilities between state security forces and members of the Ansar Allah movement between 2004 and 2010 were accompanied by crackdowns on the freedom of the media,[154] and in 2009 multiple newspapers had their licenses suspended after reporting on southern protests.[155] The resignation of President Saleh in 2011 left journalists in a precarious position, with the boundaries of acceptable reporting left even less clear than before:

> *[Prior to] 2011 it had been clear which red lines President Saleh considered inviolable and journalists were largely able to understand the risks of crossing them. But with the collapse of Saleh's presidency came a new threat environment, in which red lines and those who had the guns to enforce them proliferate.*[156]

During the transitional period following Saleh's resignation, hundreds of arrests, assaults and threats against journalists were recorded.[157] At least one

152 Freedom House, *Freedom of the Press 2016: Yemen,* 2016, available at: https://freedomhouse.org/report/freedom-press/2016/yemen. For an overview of media and radio in Yemen see Fanack Chronicle, "Yemen's Media Landscape: An Overview", *Fanack Chronicle*, 2 March 2017, available at; https://chronicle.fanack.com/yemen/society-media-culture/yemen-media/#television.

153 See above, note 14, p. 16.

154 *Ibid*., p. 20.

155 *Ibid*., p. 20.

156 Committee to Protect Journalists, "Yemeni Journalists: 'Our Mouths are Gagged'", *Committee to Protect Journalists,* 14 August 2015, available at: https://cpj.org/blog/2015/08/yemeni-journalists-our-mouths-are-gagged.php.

157 See above, note 14, p. 24.

journalist was killed in 2013,[158] whilst 74 were taken to court after reporting on politically sensitive subject-matters.[159]

During the course of the conflict, both Ansar Allah forces and the Hadi government have engaged in censorship of news and media outlets, with state TV having been described as being "in a tug-of-war" between the warring parties.[160] The breakdown of domestic political relations towards the end of 2014 quickly resulted in increased restrictions on reporting,[161] and by the end of March 2015 multiple media organisations had been closed.[162] Journalists were arrested, their offices raided, and access to several news websites was blocked.[163]

Members of the Ansar Allah regime has reportedly declared that they consider journalists to be more dangerous than combatants,[164] and have engaged in various rights violations against individual journalists and media organisations. After being taken over by members of the Ansar Allah movement, the Ministry of Information issued a direct warning to journalists across the country:

> *The Ministry of Information will take stringent and deterrent legal measures, which may amount to the closure of any media outlet that is working to instigate unrest or subversions (…) Such legal measures are taken*

158 *Ibid*., p. 25.

159 In particular, corruption. *Ibid*., p. 41.

160 BBC News, *Yemen profile – Media*, 9 January 2018, available at: http://www.bbc.co.uk/news/world-middle-east-14704901.

161 See above, note 156.

162 See Committee to Protect Journalists, "Media Outlets Raided and Banned as Conflict Spirals in Yemen", *Committee to Protect Journalists*, 27 March 2015, available at: https://cpj.org/2015/03/media-outlets-raided-and-banned-as-conflict-spiral.php; and Reporters Without Borders, "Houthi Rebels Continue to Target Media", *Reporters Without Borders*, 11 March 2015, available at: https://rsf.org/en/news/ Houthi-rebels-continue-target-media.

163 *Ibid.*

164 Equal Rights Trust interview with the Yemeni Minister of Information Muammar Al Eryani, London, 1 March 2018; Equal Rights Trust interview with members of the Yemeni Coalition for Monitoring Human Rights Violations, Geneva, 7 March 2018; Equal Rights Trust interview with Yousuf Aglan, Geneva, 7 March 2018.

> *at a sensitive time for the country in order to shield [it] from subversions given how media outlets are dredging and inciting sectarianism and regionalism with the aim of tearing the social fabric and the nation's unity by publishing false new.*[165]

Following this announcement, journalists have been subject to criminal sanctions for their reporting. For example, Yahya Abdulraqib Al-Jubaihi was detained by Ansar Allah security forces in September 2016,[166] and on 12 April 2017 he was sentenced by the Specialised Criminal Court in Sana'a, which continues to operate under Ansar Allah control,[167] on charges of being an enemy spy.[168] The death penalty was imposed by the Court in a trial which has been described as "opaque"[169] and "unconstitutional" by concerned observers.[170] According to Reporters Without Borders, Mr. Al-Jubaihi was not afforded a fair trial.[171]

During 2015, the Ansar Allah reportedly conducted dozens of raids on media outlets in order to suppress dissent,[172] and as at September 2017 the UN reported that they had blocked 21 news websites, censored seven television channels, and banned the publication of 18 newspapers.[173] However, the number of websites censored is potentially much higher, with the Yemeni Coalition for Monitoring Human Rights Violations stating that as many as 130 news websites have been blocked by the Ansar Allah regime.[174] Since the

165 See above, note 108, p. 23, Amnesty International.

166 Reporters Without Borders, "RSF Condemns Death Sentence Passed on Journalist Held by Houthis", *Reporters Without Borders*, 14 April 2017, available at: https://rsf.org/en/news/rsf-condemns-death-sentence-passed-journalist-held-Houthis.

167 See above, note 116.

168 See above, note 166.

169 Committee to Protect Journalists, "Collapse of State Institutions leaves Yemeni Journalists Vulnerable", *Committee to Protect Journalists,* 24 April 2017, available at: https://cpj.org/blog/2017/04/collapse-of-state-institutions-leaves-yemeni-journ.php.

170 See above, note 166.

171 *Ibid*.

172 See above, note 152.

173 Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, UN Doc. A/HRC/36/33, 13 September 2017, Para 69.

174 Equal Rights Trust interview with members of the Yemeni Coalition for Monitoring Human Rights Violations, Geneva, 7 March 2018.

breakdown of the Ansar Allah-Saleh alliance in December 2017, Ansar Allah representatives have been targeting journalists and media outlets associated with Saleh and the GPC, such as the television channel Yemen Today.[175]

At the same time, pro-Hadi forces have censored seven television channels.[176] Security forces associated with (but not necessarily under the control of) the Hadi government have demanded the closure of media outlets; for example, in January 2018 it was reported that men bearing the Yemeni military insignia had demanded the closure of Al-Jazeera's offices in Taiz on the grounds of its "alleged attempts to create divisions between 'legitimate authorities' (…) and the Saudi Arabia-led coalition".[177] More recently, the Aden-based Al-Shomou Foundation – a media foundation which is considered to be supportive of the Hadi government – was attacked on 1 March 2018 by forces wearing uniforms consistent with the Security Belt Forces, which are formally aligned with the Hadi government, but backed by the UAE.[178]

The impact on the free flow of information of media repression at the national level is exacerbated by the inability of international journalists to travel to Yemen to report on the conflict, with the Saudi-led coalition having imposed restrictions on Yemeni airspace (including the closure of the main airport, Sana'a International) and prevented both journalists and international human rights organisation from embarking on UN flights.[179]

175 Dehghan, S., "Houthis detain journalists linked to Saleh as airstrikes intensify over Yemen", *The Guardian*, 6 December 2017, available at: https://www.theguardian.com/world/2017/dec/05/Houthis-detain-saleh-loyalists-as-yemeni-capital-gets-back-to-business; Committee to Protect Journalists, *Yemeni TV guards injured, others taken hostage by Houthi forces*, 6 December 2017, available at: https://cpj.org/2017/12/yemeni-tv-guards-injured-others-taken-hostage-b.php

176 See above, note 173.

177 Committee to Protect Journalists, *Yemeni authorities force local Al Jazeera station to close*, 10 January 2018, available at: https://cpj.org/2018/01/yemeni-authorities-force-local-al-jazeera-station-.php.

178 Committee to Protect Journalists, *Armed attackers set fire to Yemen media foundation printing press*, 7 March 2018, available at: https://cpj.org/2018/03/armed-attackers-set-fire-to-yemen-media-foundation.php.

179 Baider, H., and Porter, L., "How the Saudis are making it almost impossible to report on their war in Yemen", *New Statesman*, 22 August 2017, available at: https://www.newstatesman.com/world/middle-east/2017/08/how-saudis-are-making-it-almost-impossible-report-their-war-yemen.

Freedom of Association

During the Saleh era, infringements of the right to freedom of association were noted by UN treaty bodies, in particular against civil society organisations (CSOs). For example, in 2009, the Sister Arab Forum for Human Rights explained to the Committee against Torture that members of its organisation had been the victims of "numerous incidents of harassment" at the hands of the government, including anonymous phone calls and damage to office premises, following advocacy submissions they had made at the UN regarding the state's human rights violations.[180] The Committee expressed "serious concern" regarding the Forum's allegations and criticised the state's lack of response to their enquiries on the matter.[181]

In the post-Saleh transitional period, the situation of CSOs appeared to improve. In 2012, a new Office of the OHCHR opened within the state,[182] and the number of human rights organisations also increased, albeit some faced difficulties in registering.[183] Likewise, new political parties were established, leading to increased participation within the National Dialogue Conference.[184]

CSOs have been severely impacted by the current conflict, and in particular by the Ansar Allah takeover of Sana'a in 2015. By December 2014, Human Rights Watch had documented the closure of "several dozen non-governmental organisations" by Ansar Allah forces, as well as the arbitrary detention of "numerous activists

180 Sister Arab Forum for Human Rights, *Submission to the Committee against Torture on Yemen,* 2009, available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/YEM/INT_CAT_NGO_YEM_44_10346_E.pdf.

181 See above, note 42, Para 32, Committee against Torture.

182 Committee on Economic, Social and Cultural Rights, *Third Periodic Report: Yemen*, UN Doc. E/C.12/YEM/3, 14 March 2014, Para 2.

183 The Office of the United Nations High Commissioner for Human Rights has noted that some organisations were required to amend their "constitutive documents" to remove references to cooperation with international organisations. See Human Rights Council*, Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/21/37, 5 September 2012, Paras 37–39.

184 Al-Wesabi, S., "Young Political Parties Face Challenges", *Yemen Times*, 13 June 2013, available at: http://www.yementimes.com/en/1685/news/2481/Young-political-parties-face-challenges.htm.

since taking over the capital".[185] In August 2016, the OHCHR reported that it had recorded "10 cases in which the premises of human rights organisations were raided and four cases where human rights defenders were banned from travelling outside the country by the *de facto* authorities under Houthi control".[186] By way of example, on 4 March 2016, Abdulrasheed Al-Faqih, a senior member of the Mwatana Organisation for Human Rights, had his passport removed by Ansar Allah forces after returning to Yemen from a conference in Jordan.[187]

More recently, the work of many NGOs has been severely disrupted by the issuance of an order by the Ansar Allah-controlled Central Bank of Yemen dated 23 December 2017 to seize and detain the bank accounts of more than 1,000 individuals and NGOs considered by the Ansar Allah to be "traitors".[188] One individual interviewed for this report related that CSOs based in Ansar Allah-controlled areas are operating in a climate of fear and suspicion, unable to conduct their work openly given the risk of interference or disruption by the Ansar Allah forces.[189]

Since the escalation of the conflict, the Hadi government has also increasingly resorted to attempts to undermine the work of human rights NGOs. Indeed, in addition to being targeted by Ansar Allah forces, the Mwatana organisation has been accused by the Hadi government of "covertly supporting the Houthis" in an attempt to undermine its work in documenting human rights violations, including civilian deaths as a result of coalition airstrikes.[190] In May 2017, several respected international organisations signed a letter drafted to ambassadors of the UN Security Council denouncing attacks on the Mwatana Organisation and calling on all parties to the conflict to "cease any actions, including intimidation and harassment, which would result in preventing Yemeni human rights

185 Human Rights Watch, "Yemen: Houthi Shut Groups, Detain Activists", *Human Rights Watch*, 13 December 2015, available at: https://www.hrw.org/news/2015/12/13/yemen-Houthi-shut-groups-detain-activists.

186 See above, note 107, Para 52.

187 Human Rights Watch, "Yemen: Houthis Ban Rights Advocate's Travel", *Human Rights Watch*, 12 March 2016, available at: https://www.hrw.org/news/2016/03/12/yemen-Houthis-ban-rights-advocates-travel.

188 See above, note 21.

189 Interview G1.

190 See Amnesty International et al, "Joint Letter to Ambassadors of the United Nations Security Council", *Mwatana Organisation for Human Rights*, 9 May 2017, available at: http://www.mwatana.org/en/952017617.

defenders, activists and NGOs from exercising their rights to expression and association".[191] There have also been reports that the Ministry of Foreign Affairs has required all CSOs to submit a detailed information to the Ministry regarding activities they are implementing, including in relation to the names of participants, the location, the budget, and sources of funding.[192]

Conclusion

Yemen has an inadequate legal framework for the protection of civil and political rights and the elimination of discrimination on the basis of political opinion. Constitutional guarantees of the rights to freedom of assembly, association and expression are limited through the inadequacy of ordinary legislation, which fails to afford comprehensive protection to political rights and, in some instances, actively discriminates against individuals for expressing their political opinion, contrary to the norms of international law.

However, the inadequate and discriminatory legal framework is not the primary source of discrimination on the basis of political opinion in the country. Suppression of dissent, through the application of discriminatory and restrictive laws, but more importantly through discriminatory violence against actual or perceived political opponents, is the principal pattern of discrimination on the basis of political opinion. During the era of former President Saleh, successive clashes between the Ansar Allah movement and the administration, brutal responses to southern independence protests, and the "war on terror" all provided pretext for the restriction of essential civil and political rights in ways which discriminated against those whose political opinion was, or was perceived to be, in conflict with the regime. Attempts to suppress peaceful demonstrations in 2011 resulted in the deaths of multiple protestors. Through the adoption of the Amnesty Law which effectively precluded the prosecution of the former President Saleh and his closest associates, victims of the Change Square massacre have been denied legal redress.

Since the collapse of the transitional government in early 2015, individuals in Yemen have faced new challenges. Multiple NGOs and media outlets have been

191 *Ibid*.

192 International Center for Not-for-Profit Law, *Civic Freedom Monitor: Yemen*, updated 7 December 2017, available at: http://www.icnl.org/research/monitor/yemen.html.

closed, at least one journalist has been sentenced to death following a trial that failed to observe basic procedural guarantees, whilst many more have been killed, arbitrarily arrested, disappeared and even tortured on the grounds of their actual or perceived political opinions or affiliations. The Ansar Allah forces, the Hadi government, the Saudi-led coalition and coalition-backed proxy forces all bear responsibility for these discriminatory human rights violations.

3.2 Discrimination on the Basis of Religion or Belief

Yemen is required to ensure the enjoyment of all rights guaranteed under the international covenant on civil and political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) without discrimination on the basis of religion by virtue, respectively, of Article 2(1) ICCPR and Article 2(2) ICESCR. Additionally, under Article 26 ICCPR, the state is required to ensure that domestic law prohibits discrimination on grounds including religion.

Whilst official data is lacking, according to the state's 2001 Core Document "more than 99.7 per cent of Yemenis are Muslims", the majority belonging to Shafi'i and Zaidi schools of Islam.[193] Religious minorities include adherents of the Ismaili Islamic school (numbering around 14,000 individuals),[194] Jews, Christians, Hindus and members of the Bahá'í community.[195] Recent estimates from the United States Department of State suggest that around 65% of all Muslims in Yemen are Sunnis, compared to 35% who belong to the Shia branch of Islam.[196]

Discriminatory Laws and Policies

The Yemeni Constitution does not prohibit discrimination on the grounds of religion or belief,[197] nor does it provide for freedom of religious belief, although

193 UN, *Core Document: Yemen,* UN Doc. HRI/CORE/1/Add.115, 31 July 2001, Para 4.

194 United States Department of State, *2014 Report on Religious Freedom, Yemen*, 2014, available at: https://www.state.gov/j/drl/rls/irf/2014religiousfreedom/index.htm#wrapper.

195 *Ibid*., Paras 4–6. See also: above, note 11, p. 8.

196 See above, note 194, p. 2.

197 As discussed elsewhere in this report, although the constitution declares citizens "equal in rights and duties", a specific prohibition on discrimination was removed through amendments in 1994. See, among other sources: the World Bank, *The Status of Yemeni Women: From Aspiration to Opportunity*, 2014, pp. 16-17, available at: http://documents.worldbank.org/curated/en/6401+51468334820965/pdf/878200REVISED00Box0385200B00PUBLIC0.pdf.

freedom of thought and expression of opinion are guaranteed.[198] On the contrary, Islam is afforded legal primacy: Article 1 of the Constitution defines Yemen as a sovereign Islamic state,[199] and Article 2 recognises Islam as the official state religion.[200] Furthermore, Article 3 of the Constitution declares Islamic Shari'a to be the source of all legislation.[201]

Where a religion is recognised as an official state religion, states are required to ensure that such recognition does not impair or violate the rights of other individuals, nor result in any discrimination against either adherents of other religions or non-believers.[202] In particular, states must ensure that recognition of an official religion does not impose "special restrictions on the practice of other faiths".[203] The Yemeni Constitution appears to violate this standard by, *inter alia,* requiring that candidates for Parliament "practice their religious duties".[204] Under Article 107, Presidential candidates are required to "practice their Islamic duties", a further restriction that appears to inhibit non-Muslim candidates from standing as presidential candidates.[205]

Yemen has been reluctant to accept that some legal provisions have a discriminatory impact on certain groups of individuals.[206] This is particularly problematic in the context of criminal legislation. The Penal Code contains several provisions that reflect a narrow interpretation of the tenets of Islam, which directly discriminate against individuals on the grounds of their religious belief, gender and sexual orientation, (for discussion of these latter grounds, see sections 3.3 and 3.7 of this report).

198 See above, note 24, Article 42.

199 *Ibid.*, Article 1.

200 *Ibid*., Article 2.

201 See above, note 24, Article 3.

202 Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 9.

203 *Ibid*.

204 See above, note 24, Article 64.

205 *Ibid*., Article 107.

206 In particular laws which discriminate against women, as discussed in section 3.3. See HRC, *Concluding Observations: Yemen*, *Addendum,* UN Doc. CCPR/C/YEM/CO/5/Add.1, 4 April 2014, Para 10; and Human Rights Committee, *Fourth Periodic Report: Yemen,* UN Doc. CCPR/C/YEM/2004/4, 23 February 2004, Para 385.

The Press and Publications Law contains several provisions that discriminate on the basis of religious belief. Under Article 103(a), the publication of any materials that may "prejudice the Islamic faith" or seek to "belittle religions or humanitarian creeds" is forbidden.[207] Article 103(j) of the law further prohibits the publication of "advertisements containing texts or pictures which are inconsistent with Islamic values".[208] Violation of these articles may result in a fine or imprisonment for up to one year.[209] Under Article 194 and 195 of the Penal Code, those found guilty of disseminating "in public ideas containing ridicule or contempt of religion in its beliefs or rituals or teachings" may be punished by up to three years imprisonment, or up to five years where that religion is Islam.[210]

Articles 103 of the Press and Publications Law and Articles 194 and 195 of the Penal Code combine to create a broad criminal prohibition of the criticism of religion. These provisions are in direct violation of the right to freedom of thought, conscience and religion under Article 18(1) ICCPR. Further, they are directly discriminatory insofar as they allow for harsher punishment of those criticising Islam as compared to those criticising other religions. Moreover, those provisions which make no explicit reference to Islam are likely to be indirectly discriminatory, in that their application in practice will have a disproportionate impact on non-Muslims (or those practicing heterodox interpretations of Islam), given the status of Islam as the official state religion. The HRC has urged states to remove provisions such as these, warning that "prohibitions of displays of lack of respect for a religion or other belief system (…) are incompatible with the Covenant".[211] The UN Special Rapporteur on Religious Belief has made similar observations, noting that such laws "typically have a stifling effect on open dialogue and public discourse, often particularly affecting persons belonging to religious minorities".[212]

207 See above, note 32, Article 103(a).

208 *Ibid*., Article 103(j).

209 *Ibid*., Article 104.

210 See above, note 40, Articles 194 and 195.

211 See above, note 2, Para 48.

212 Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt*, UN Doc. A/HRC/25/58, 26 December 2013, Para 70(e).

In addition to the criminal prohibition of blasphemy, the Penal Code also includes provisions relating to apostasy,[213] the distortion of the Quran,[214] and assaults on the sanctity of the faith.[215] The most serious of these provisions is the former. Any individual who denounces Islam and fails to repent after being questioned three times may be sentenced to death.[216] It appears that the criminal prohibition on apostasy also extends to proselytism, with at least one individual charged with "trying to convert Muslims" since 2016.[217]

Apostasy laws directly violate the right to freedom of thought, conscience and religion in Article 18 ICCPR, with Article 18(2) expressly stating that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". Further, the fact that the prohibition of apostasy under Article 259 of the Penal Code applies only to Islam is directly discriminatory on the grounds of religious belief. UN treaty bodies and special procedures have urged states to abolish apostasy laws.[218] The former UN Special Rapporteur on Freedom of Religion has noted that such laws "may prevent persons belonging to religious or belief minorities from fully enjoying their freedom of religion or belief".[219] The current Special Rapporteur has warned that designation as an "apostate" or "non-believer" may also place individuals "at risk from non-state actors or religious vigilantes or "forces", which are known to operate with impunity in a number of states".[220] This is especially true in Yemen, where attacks

213 See above, note 40, Article 259.

214 *Ibid*., Article 260.

215 *Ibid*., Article 261.

216 *Ibid*., Article 259.

217 See the discussion of Hamid Kamal Bin Haydara below. Human Rights Watch, "Yemen: Baha'i Adherent Faces Death Penalty", *Human Rights Watch,* 1 April 2016, available at: https://www.hrw.org/news/2016/04/01/yemen-bahai-adherent-faces-death-penalty.

218 HRC, *General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, UN Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, Para 5. See also the Committee on the Rights of the Child's most recent Concluding Observations on Saudi Arabia, which noted that "vaguely defined offences of "apostasy" violated the right to freedom of expression and called for their removal. See Committee on the Rights of the Child, *Concluding Observations: Saudi Arabia,* UN Doc. CRC/C/SAU/CO/3-4, 25 October 2016, Para 24.

219 See above, note 212, Para 66.

220 *Ibid.,* Para 39.

by organisations such as Al-Qaeda in the Arabian Peninsula have been well documented.[221]

In 2012, blogger Ali Ali Qasim Al-Saeedi was brought before the Specialised Press and Publications Court in Sana'a and charged with the offence of apostasy after posting "articles and research that question the teachings of the Quran" on his personal Facebook page.[222] According to individuals close to Mr. Al-Saeedi, the charges brought were politically, rather than religiously, motivated.[223] After his initial trial was delayed following kidney surgery,[224] Mr. Al-Saeedi was eventually acquitted.[225]

Discrimination against Members of Religious Minorities

Despite the reportedly high proportion of the population which adheres to Islam, there is a broad range of religious communities in Yemen, including both adherents of different schools of the Islamic faith, and members of non-Muslim religious groups. Although certain minority groups have historically been subject to discriminatory practices,[226] historically, the state has not experienced the same sectarian divides as some of its regional neighbours.[227] However, such divides have increased in recent years, with tensions rising as a result of the current conflict,[228] leading to a "deepening of the Shia – Sunni

221 According to the United States Department of State in its 2015 Religious Freedom Report on Yemen, Al Qaeda and other terrorist groups continue to inflict violence against "individuals they accused of "immoral" behaviour. Jihadist websites characterized such attacks as "warfare against apostates." See United States Department of State, *International Religious Freedom Report: Yemen*, 2015, p. 5, available at: https://www.state.gov/documents/organization/256509.pdf.

222 Yemen Times, "Family of Yemeni Blogger Prosecuted for Apostasy Calls Accusations 'Unacceptable'", *Yemen Times,* 6 December 2012.

223 *Ibid*.

224 *Ibid*.

225 Ghazzali, K., "Yemeni Blogger Ali Ali Sadeq Al Saidi Acquitted", *Facebook,* 7 January 2013, available at: https://www.facebook.com/KacemOfficialPage/posts/404617409619941.

226 See above, note 11, p. 8.

227 Day, S. W., *Regionalism and Rebellion in Yemen: A Troubled National Union*, Cambridge University Press, 2012, p. 43.

228 Humanitarian Country Team, *Yemen: 2017 Humanitarian Needs Overview,* 2017, p. 16, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%202017%20HNO_Final.pdf.

divide", increased levels of animosity and, in some instances, violence toward members of particular religious groups.[229]

Discriminatory Arrests, Detentions and Violence

The most well-documented instances of discrimination and abuse have occurred against members of the Bahá'í community. The Bahá'í faith was established in Iran during the 19th century[230] and the Bahá'í form a small religious minority in Yemen, with around 1,000 members according to recent estimates.[231] This group has faced discrimination under successive regimes, with the Committee on the Elimination of Racial Discrimination expressing concern in 2011 regarding acts of intimidation against members of the Bahá'í faith "that affect[ed] their right to freely practice their religion".[232]

Members of the Bahá'í community have long been exposed to discriminatory arrest, detention and violence, though the situation has deteriorated since the outbreak of the conflict. Six Bahá'í individuals were detained and subsequently deported by the Saleh regime in 2008 on account of their faith.[233] One individual – Mr. Hamid Kamal Bin Haydara – was reportedly arrested at his workplace on 3 December 2013, during the rule of President Hadi, for "spreading the Bahá'í faith in the Republic of Yemen", and subsequently detained.[234]

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229 See above, note 11, p. 10.

230 BBC, "Bahá'í at a Glance", *BBC,* 22 September 2009, available at: http://www.bbc.co.uk/religion/religions/bahai/ataglance/glance.shtml.

231 Human Rights Watch, "Yemen: Drop Charges against Baha'i Adherent", *Human Rights Watch,* 3 February 2015, available at: https://www.hrw.org/news/2015/02/03/yemen-drop-charges-against-bahai-adherent.

232 Committee on the Elimination of Racial Discrimination, *Concluding Observations: Yemen*, UN Doc. CERD/C/YEM/CO/17-18, 4 April 2011, Para 16.

233 Freedom House, *Yemen Urged to Respect Rights of Religious Minorities*, 27 August 2008, available at: https://freedomhouse.org/article/yemen-urged-respect-rights-religious-minorities.

234 Office of the High Commissioner for Human Rights, "Yemen Must Stop Persecution of Bahá'í Community, Urges UN Expert on Freedom of Religion", *Office of the High Commissioner for Human Rights*, 22 May 2017, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21643&LangID=E; Human Rights Watch, "Yemen: Drop Charges against Baha'i Adherent", *Human Rights Watch,* 3 February 2015, available at: https://www.hrw.org/news/2015/02/03/yemen-drop-charges-against-bahai-adherent.

Since the conflict began, members of the Bahá'í community have increasingly been subject to severe discrimination on account of their religious beliefs, including arbitrary detentions,[235] harassment and raids on Bahá'í funded organisations and homes.[236] In the case of Mr. Haydara referred to above, his situation deteriorated after Ansar Allah took control of Sana'a; Ansar Allah forces continued his imprisonment in the National Security Prison, and he was subsequently indicted by the Specialised Criminal Court in Sana'a in January 2015 on several spurious allegations relating to his faith:

> *In the indictment, which Human Rights Watch reviewed, the prosecutor charges Haydara under Yemen's Penal Code with committing, among other crimes, "an act that violates the independence of the republic, its unity, or the integrity of its lands," "working for a foreign state's interests," "insulting Islam," and "apostasy." The prosecutor is seeking "the maximum possible penalty," which for some of these charges is death and confiscation of his property.*[237]

A hearing was scheduled for April 2016 where, according to Human Rights Watch, prosecutors were expected "to seek the death penalty".[238] Shortly after an earlier hearing, two individuals recording events, who were also Bahá'í adherents, were detained by members of the Political Security Organisation, one of Yemen's several security services, and questioned on their religious beliefs.[239] After he was placed in solitary confinement,[240] Mr. Haydara's trial con-

235 Amnesty International, "Yemen Baha'i Community Faces Persecution at Hands of Huthi-Saleh Authorities", *Amnesty International*, 28 April 2017, available at: https://www.amnesty.org/en/latest/news/2017/04/yemen-bahai-community-faces-persecution-at-hands-of-huthi-saleh-authorities.

236 Human Rights Watch, "Yemen: Baha'i Man Arbitrarily Held for Months", *Human Rights Watch,* 30 November 2016, available at: https://www.hrw.org/news/2016/11/30/yemen-bahai-man-arbitrarily-held-months.

237 *Ibid*.

238 Human Rights Watch, "Yemen: Baha'i Adherent Faces Death Penalty", *Human Rights Watch,* 1 April 2016, available at: https://www.hrw.org/news/2016/04/01/yemen-bahai-adherent-faces-death-penalty.

239 *Ibid*.

240 Amnesty International, "Yemen Baha'i Community Faces Persecution at Hands of Huthi-Saleh Authorities", *Amnesty International*, 28 April 2017, available at: https://www.amnesty.org/en/latest/news/2017/04/yemen-bahai-community-faces-persecution-at-hands-of-huthi-saleh-authorities.

tinued to be delayed.[241] In January 2018, the Specialised Criminal Court was reported to have sentenced Mr. Haydara to death by public execution, due to his religious beliefs.[242] The judge also reportedly called for the dissolution of all elected Baha'i institutions.[243] As at the date of this report, the sentence against Mr. Haydara had not been executed, and Mr. Haydara remains in detention.[244]

Mr. Haydara's case is just one example of persecution of the Bahá'ís recorded by human rights groups in recent years. In August 2016, 65 Bahá'ís were detained at a youth event in Sana'a.[245] One week on from their arrest, at least 27 individuals remained in detention.[246] As at April 2018, one individual – Mr. Kywan Qadari – was still being detained in the Political Security Prison,[247] subject to a threat of *refoulement* to Iran, where members of the Bahá'í faith face considerable repression,[248] despite being born in Yemen and residing within the state for "his entire life".[249] In April 2017, three men were detained by the authorities in *de facto* Ansar Allah territory following

241 Office of the High Commissioner for Human Rights, "Yemen Must Stop Persecution of Bahá'í Community, Urges UN Expert on Freedom of Religion", *Office of the High Commissioner for Human Rights*, 22 May 2017, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21643&LangID=E.

242 Baha'i World News Service, *Outcry over appalling death sentence of Yemeni Baha'i*, 2018, available at: http://news.bahai.org/story/1232/; Baha'i International Community, *The Baha'i Community in Yemen: A brief history of the recent persecution and Iranian involvement*, 2018, available at: https://www.bic.org/situation-in-yemen/background.

243 *Ibid.*

244 Information provided to the Equal Rights Trust by a Yemeni NGO, 23 April 2018.

245 Amnesty International, "Yemen Baha'i Community Faces Persecution at Hands of Huthi-Saleh Authorities", *Amnesty International*, 28 April 2017, available at: https://www.amnesty.org/en/latest/news/2017/04/yemen-bahai-community-faces-persecution-at-hands-of-huthi-saleh-authorities.

246 Amnesty International, "Yemen: Huthi Authorities Must Release Detained Bahá'ís, End Crackdown on Minorities", *Amnesty International,* 17 August 2016, available at: https://www.amnesty.org/en/latest/news/2016/08/yemen-huthi-authorities-must-release-detained-bahais-end-crackdown-on-minorities.

247 Information provided to the Equal Rights Trust by the National Organisation for Defending Rights and Freedoms Foundation, 23 April 2018.

248 Abrams, E., "No Mercy for Iran's Bahai'", *Foreign Affairs*, 8 May 2017, available at: https://www.foreignaffairs.com/articles/iran/2017-05-08/no-mercy-iran-s-baha-i.

249 Human Rights Watch, "Yemen: Ramadan an Opportunity for Detainees", *Human Rights Watch,* 26 May 2017, available at: https://www.hrw.org/news/2017/05/26/yemen-ramadan-opportunity-detainees.

the issuance of a demand from the office of the Prosecutor-General of the Specialised Criminal Court, which ordered around 30 adherents to "present themselves at his office for interrogation about Bahá'ísm" or else "risk being rounded up from their homes".[250] As at April 2018, all three men remained in detention.[251] In October 2017, armed security forces were reported to have raided a small Bahá'í gathering in Sana'a and opened fire on the persons present, before arresting one individual related to one of the men detained in April 2017.[252]

More recently, at the end of March 2018, the Yemeni Initiative for Defending Bahá'ís Rights reported that a media campaign had been launched by Ansar Allah to incite hatred and hostility against the Bahá'í.[253] Ansar Allah activists are reported to have posted provocative messages on social media stating that Bahá'ísm "is a devilish religion and we will exterminate every Bahá'í",[254] and the leader of Ansar Allah reportedly gave a televised speech in which he "vehemently vilified and denounced the Bahá'í faith".[255]

250 Amnesty International, "Yemen Baha'i Community Faces Persecution at Hands of Huthi-Saleh Authorities", *Amnesty International*, 28 April 2017, available at: https://www.amnesty.org/en/latest/news/2017/04/yemen-bahai-community-faces-persecution-at-hands-of-huthi-saleh-authorities. See also Office of the High Commissioner for Human Rights, "Yemen Must Stop Persecution of Bahá'í Community, Urges UN Expert on Freedom of Religion", *OHCHR*, 22 May 2017, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21643&LangID=E.

251 Information provided to the Equal Rights Trust by the National Organisation for Defending Rights and Freedoms Foundation, 23 April 2018.

252 BIC New York, "Attacks in Yemen and Iran coincide with bicentenary period", *Baha'i World News Service*, 2017, available at: http://news.bahai.org/story/1215.

253 Yemeni Initiative for Defending Bahá'ís Rights, "Breaking News", *Facebook*, 26 March 2018, available at: https://www.facebook.com/DefendingBahaiRights/photos/a.1669760346374919.1073741828.1669534433064177/2123941274290155/?type=3&theater.

254 See the tweet by Ansar Allah activist Ahmad Ayed Ahmed on 24 March 2018, available at: https://twitter.com/ahmedayed2000/status/977663202606632962?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Firanpresswatch.org%2Fpost%2F18882%2Finflammatory-campaign-against-yemeni-bahai%2F.

255 PR Newswire, "Inflammatory speech by the Houthi leader targets Baha'is in Yemen with genocidal intent", *PR Newswire*, 19 April 2018, available at: https://www.prnewswire.com/news-releases/inflammatory-speech-by-the-houthi-leader-targets-bahais-in-yemen-with-genocidal-intent-300633431.html; Baha'i International Community, *News articles reiterating Abdel-Malek al-Houthi's statements against Baha'is*, available at: https://www.bic.org/news-articles-about-abdel-malek-al-houthi-statements-against-bahais.

The persecution of the Bahá'í has not only been perpetrated by Ansar Allah forces, with two Bahá'í men detained by government security officials at Aden international airport when attempting to leave the country; in September 2017, the OHCHR reported that the whereabouts of these two men remained unknown.[256]

In 2017, the UN Special Rapporteur on Freedom of Religion or Belief, Ahmed Shaheed, released a statement condemning "the persistent pattern of persecution of the Bahá'í community in Sana'a" and, in particular, a "new wave of court summons and arrest orders" issued in order to discourage individuals from practising their faith.[257] According to the Special Rapporteur, actions taken against members of the Bahá'í community in Yemen may amount to religious persecution.[258] He urged the Ansar Allah regime to end the detention of Bahá'í members and called for an investigation into the disappearance of two men by members of Political Security.[259] In September 2017, a UN resolution regarding the situation in Yemen noted the "severe restrictions on freedom of religion or belief, including for minorities, such as members of the Baha'i faith", and called upon all parties to the conflict "to immediately release all Baha'i detained in Yemen due to their religious belief, to cease the issuance of arrest warrants against them and to cease the harassment to which they are subjected".[260]

Tens of thousands of Christians are known to reside in Yemen, consisting of both native Yemenis and refugees, although many have decided to leave since the escalation of the conflict in early 2015.[261] As discussed below, Christian sites of worship have been subject to attack by non-state armed groups; in one particularly serious incident, around 16 people (including four Catholic nuns) were killed in the southern capital of Aden when armed gunmen (alleged to be

256 See above, note 173, Para 74.

257 See above, note 241.

258 *Ibid*.

259 *Ibid*.

260 Human Rights Council, *Human rights, technical assistance and capacity-building in Yemen* (with oral revision), UN Doc. A/HRC.36/L.8, 2017.

261 Wille, B., "Christians Among The Victims in an Unstable Yemen", *Human Rights Watch,* 10 May 2016, available at: https://www.hrw.org/news/2016/05/10/christians-among-victims-unstable-yemen.

Islamic State in Iraq and the Levant (ISIL) fighters) attacked a Christian-run retirement home in March 2016.[262] During the attack, a Catholic priest – Father Tom Uzhunnail – was kidnapped; he was released in September 2017 after spending 18 months in captivity.[263] According to Human Rights Watch, "the home's residents, who were not Christian, were [left] unharmed".[264]

As discussed further below, other religious sites have also come under attack by terrorist groups, resulting in deaths and injuries amongst minority groups.[265] On 20 March 2015, two mosques in Sana'a – the Badr Mosque in the south of the capital, and the Al-Hashoosh Mosque in the north – were targeted by suicide bombers, resulting in hundreds of deaths and many more injuries.[266] ISIL initially claimed responsibility for the attack, although this was questioned by some.[267] In September 2015, at least 25 individuals were killed in an attack on the Al-Balili Mosque in Sana'a.[268] Again, ISIL claimed responsibility.[269] These incidents had a disproportionate impact on members of the Yemeni Shia Community.[270] The Ismailis of Yemen, who attach a great deal of significance to their places of worship,[271] have been specifically targeted by various armed groups since the beginning of conflict, with attacks and kidnappings documented by Minority Rights Group International.[272] In July 2015, a car bomb exploded outside a Dawoodi Ismaili mosque in Sana'a.[273]

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262 *Ibid*.; BBC News, "Indian priest freed by militants to meet Pope", *BBC News*, 12 September 2017, available at: http://www.bbc.co.uk/news/world-asia-india-41253423.

263 *Ibid.*

264 See above, note 261.

265 See above, note 107, Para 44.

266 BBC, "Yemen Crisis: Islamic State claims Sana'a Mosque Attacks", *BBC,* 21 March 2015, available at: http://www.bbc.co.uk/news/world-middle-east-31989844.

267 See Rayman, N., "ISIS Claims Role in Yemen Attack, But Doubts Persist", *Time,* 20 March 2015, available at: http://time.com/3752683/yemen-suicide-bomber-isis-al-qaeda.

268 BBC, "Yemen Suicide Bombing in Sana'a Mosque 'Kills 25'", *BBC,* 24 September 2015, available at: http://www.bbc.co.uk/news/world-middle-east-34344648.

269 *Ibid*.

270 The Guardian, "Yemen Mosque Blasts: Sana'a Medics Report Multiple Casualties", *The Guardian,* 24 September 2015, available at: https://www.theguardian.com/world/2015/sep/24/yemen-suicide-bomb-blast-mosque-prayers#img-1.

271 See above, note 11, p. 9.

272 *Ibid*., pp. 9–10.

273 *Ibid*., p. 9.

According to reports, the mosque was specifically targeted by ISIL as a "temple belonging to the Ismaili Bohra" due to their perceived support of the "polytheist Houthis".[274] Following this attack, as well as other incidents of aggression in both Sana'a and Aden, Minority Rights Group reported in 2016 that some Dawoodi Ismailis had fled the country for Djibouti.[275]

Another minority community which is exposed to discrimination is the Jewish community, which has existed for hundreds of years and has historically been subject to severe discrimination, often perpetuated by state actors.[276] After World War II, tens of thousands of Yemeni Jews travelled to the newly established state of Israel, with almost 50,000 individuals travelling there between 1949 and 1950.[277] Since then, the Jewish community has diminished significantly, with fewer than 100 Jews remaining in Yemen today, in part due to "continued threats and violence".[278] According to Minority Rights Group International, those that remain in Yemen tend to "keep a low profile, with men tucking away their payots or sidelocks and practi[sing] their religious rituals in the privacy of their homes".[279]

There have also been reports of individuals being harassed, arbitrarily detained and even killed by forces in Aden associated with the Hadi government, on the grounds of being perceived to be atheist or supportive of "secularist agendas".[280] In one particular case, a 22-year-old student from Aden university who co-founded a secular cultural organisation (known as the "the al-Nadi al-Nasiyya Cultural Organisation") was arrested on 24 January 2017 by armed men after publishing a post on his Facebook page in which he discussed sermons from the Al-Hamad Mosque in Crater District, Aden; he was detained for 24 hours in a camp ostensibly run by the Ministry of the Interior (known as Camp 20), where he was tortured with electric wires and questioned about his religious

274 *Ibid*.

275 See above, note 11, p. 10.

276 Including, until the 1950s, the forced conversion of Jewish orphans as a matter of state policy. See *Ibid.,* p. 8.

277 *Ibid*.

278 *Ibid*., pp. 8–9.

279 *Ibid*., p. 8.

280 United Nations Security Council, *Final report of the Panel of Experts in accordance with paragraph 6 of resolution 2342 (2017)*, UN Doc. S/2018/68, 26 January 2018, Annex 20, Para 7.

views.[281] On 14 May 2017, the student was shot dead by a masked individual at an internet café in Shaykh Othman district, Aden, with the media attributing his death to Islamist militants associated with Camp 20.[282]

Discriminatory Destruction of Religious and Cultural Sites

Enjoyment of the right to manifest one's religious beliefs under Article 18(3) ICCPR entails the establishment, maintenance and protection of places of worship.[283] Under the ICESCR, the state also has an obligation to ensure the right of all individuals to participate in cultural life,[284] with the Committee on Economic, Social and Cultural Rights (CESCR) noting that the term "culture" extends to religious beliefs and practices.[285] The protection of "cultural rights" under the ICESCR is expansive, encompassing both cultural property (for instance, religious and historical sites) and cultural heritage, which may include physical property as well as other "intangible heritage" such as traditional practices.[286] The UN Special Rapporteur on Cultural Rights has warned that the destruction of cultural heritage "undermines the right to freedom from discrimination", as well as rights to "freedom of thought, conscience and religion".[287]

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281 *Ibid*, Annex 20, Paras 2, 8 and 9; Alameri, R., "Yemeni student in Aden gets detained, tortured with electric wire", *Al Arabiya*, 4 April 2017, available at: https://english.alarabiya.net/en/features/2017/04/04/Yemeni-student-in-Aden-gets-detained-tortured-with-electric-wires.html.

282 See above, note 280, Para 10; El Yaakoubi, A., "Secular Yemenis live in fear after student is killed in Aden", *Reuters*, 26 June 2017, available at: https://www.reuters.com/article/us-yemen-security-assassination/secular-yemenis-live-in-fear-after-student-is-killed-in-aden-idUSKBN19H10E.

283 Human Rights Council, *Resolution 6/37: Elimination of all forms of intolerance and of discrimination based on religion or belief*, UN Doc. A/HRC/RES/6/37, 14 December 2007, Paras 9(e) and (g); HRC, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 4.

284 International Covenant on Economic, Social and Cultural Rights, Article 15(1).

285 Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life,* UN Doc. E/C.12/GC/21, 2009, Para 13.

286 United Nations General Assembly, *Report of the Special Rapporteur in the Field of Cultural Rights*, UN Doc. A/71/317, 9 August 2016, Para 10.

287 Office of the High Commissioner for Human Rights, "UN Rights Expert Calls to Stop Intentional Destruction of Cultural Heritage", *Office of the High Commissioner for Human Rights*, 26 October 2016, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20767&LangID=E; Human Rights Council, *Report of the Special Rapporteur in the Field of Cultural Rights,* UN Doc. A/HRC/31/59, 3 February 2016, Para 51.

Since the outbreak of the armed conflict in 2015, there has been a marked increase in the destruction of sites of worship and other sites of religious and cultural importance by non-state armed groups such as AQAP and ISIL, with the *de facto* authorities in the north and south of the country failing to prevent attacks by such groups amidst the instability and insecurity of the conflict.

Several Christian places of worship have been attacked and destroyed by individuals purportedly connected to extremist groups such as the Islamic State, including Aden's Church of St. Joseph and Immaculate Conception Catholic Church, and Christian literature has also been confiscated and burnt.[288]

Attacks against Sufi places of worship have also been documented in recent years. Sufism encompasses both Sunni and Shia believers, and emphasises the role of practices, values and traditions unknown to other approaches to Islam.[289] The Sufi movement has witnessed a recent resurgence in Yemen,[290] and alongside this growth in popularity, acts of destruction targeted at Sufi mosques and saints' shrines have been documented: on 1 August 2016, radical Sunni Islamists blew up a 16th century Sufi mosque in Taiz, one of the most revered places of worship for Yemeni Sufis.[291] In one of the interviews conducted by researchers for this report, an interviewee reported the occurrence of an armed attack against a Sufi mosque in Shaikh Othman, in Aden's governorate, perpetrated by members of AQAP.[292]

More broadly, the OHCHR has noted that "religious and cultural sites have repeatedly come under attack" by parties to the ongoing international armed conflict,[293] often being used "for military advantage" by parties to the conflict[294] and left severely damaged as a result of Saudi-coalition airstrikes and

288 *Ibid*.

289 Arberry, A.J., *Sufism: An Account of the Mystics of Islam,* Routledge, 2013.

290 Knysh, A., "The "Tariqa" on a Landcruiser: The Resurgence of Sufism in Yemen Author(s)", *The Middle East Journal*, Vol. 3, No. 55, 2012.

291 Hindustan Times, Sunni Radicals Blow Up 16th Century Sufi Mosque in Yemen, *Hindustan Times*, I August 2016, available at: http://www.hindustantimes.com/world-news/sunni-radicals-blow-up-16th-century-sufi-mosque-in-yemen/story-DLBZ3sCScRsOuGphxpmLYO.html.

292 Interview F45.

293 See above, note 107, Para 44.

294 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/31, 7 September 2015, Para 30.

shelling by forces associated with Ansar Allah.[295] At the time of the OHCHR's 2016 report, United Nations Educational, Scientific and Cultural Organisation had documented at least six instances of mosques being damaged due to conflict.[296] One of these occurred within the Old City of Sana'a, a recognised world heritage site,[297] and another affected the Imam al-Hadi mosque in the Historic City of Sa'ada which was nominated for recognition as a world heritage site by Yemen.[298] It appears that the imperative of "military necessity" has been habitually ignored by the parties to the conflict, in breach of their obligations under international humanitarian law.[299]

Conclusion

Despite the predominance of Islam, there is a broad range of religious communities in Yemen, including different schools of the Islamic faith, and members of non-Muslim religious groups. However, legal primacy is afforded to Islam in the Constitution, with the Constitution recognising Islamic Shari'a as the source of domestic legislation. A number of laws discriminate against religious minorities, including provisions of the Press and Publications Law and the Penal Code which prohibit blasphemy, and provisions of the Penal Code relating to apostasy. Instances of discrimination and violence have been documented against members of religious minorities, including in particular the Bahá'í community. Since the outbreak of the conflict, members of the Bahá'í community have increasingly been subject to severe discrimination

295 See above, note 107, Para 44.

296 See above, note 107, pp. 35–36.

297 *Ibid*., p. 35. See also, United Nations Educational, Scientific and Cultural Organisation (UNESCO), *The State Parties: Yemen*, 2017, available at: http://whc.unesco.org/en/statesparties/ye.

298 *Ibid.,* UNESCO.

299 *Ibid*., Para 49. Where an armed conflict exists, as in Yemen, the parties to the conflict must also respect the norms of international humanitarian law regulating the protection of cultural property. At a fundamental level, the principle of distinction – which is a norm of customary international humanitarian law – requires all parties to a conflict to distinguish between military objectives and civilian objects, and prohibits attacks on cultural property *unless* such property qualifies as a military objective: International Committee of the Red Cross, *Customary International Humanitarian Law*, 2009, Rules 7-10, available at: https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf. Relevant obligations regarding the protection of cultural property can also be found in treaty law, including the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.

on account of their religious beliefs. Other minorities have also been subject to discriminatory violence, including Christians and those considered to be atheists, and there has been a marked increase in the destruction of sites of worship and other sites of religious and cultural importance by non-state armed groups.

3.3 Discrimination on the Basis of Gender

Yemen has specific obligations under Article 3 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure the equal enjoyment of both men and women of the rights set forth in these Covenants.[300] Under Article 26 ICCPR, Yemen is required to ensure that the law guarantees "to all people equal and effective protection against discrimination on any ground such as (…) sex".[301] This is a free-standing right and does not rely on the invocation of any other treaty provision.[302] Yemen is also required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Whilst gender discrimination can affect both men and women, discriminatory state laws and policies, coupled with societal stereotypes which perpetuate discrimination against women and girls, means that women in Yemen – who account for around 49.48% of the total population[303] – face gender discrimination which limits *inter alia* their opportunities for educational, political and economic participation.[304] Gender inequality in Yemen is amongst the most pronounced of any country in the world: in the 2016 Global Gender

300 See International Covenant on Civil and Political Rights (ICCPR), Article 3; and International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 3.

301 *Ibid*., ICCPR, Article 26.

302 Human Rights Committee (HRC), *General Comment No. 18: Non-Discrimination,* UN Doc. HRI/GEN/1/Rev.1, 1989, p. 26, Para 12.

303 According to recent UN estimates, the total population of Yemen is around 28,250,000, of whom around 14,271,000 were male and 13,979,000 were female. United Nations Department of Economic and Social Affairs Population Division, *Wold Population Prospects, 2017 Revision*, 2017, available at: https://esa.un.org/unpd/wpp/Publications/Files/WPP2017_KeyFindings.pdf.

304 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Yemen*, UN Doc. CEDAW/C/YEM/CO/6, 9 July 2008, Paras 14–15.

Gap Report, Yemen ranked 144th out of 144 countries for gender equality.[305] Yemen was amongst the lowest ranking countries in terms of women's economic participation (141st out of 144),[306] educational attainment (141st out of 144),[307] and political empowerment (139th out of 144).[308]

Cultural Attitudes and the Position of Women in Society

Discriminatory stereotypes regarding women's domestic and familial roles permeate society, and impact negatively on women's access to education,[309] political participation,[310] and employment.[311]

In the 2013 World Values Survey, 75% of Yemeni respondents, including 88% of men and 62.9% of women, agreed that men should have "more rights to a job than women",[312] whilst a majority, including 91% of men and 75.5% of women, believed that "when a mother works for pay, the children suffer".[313] From a young age, girls "are perceived as inferior to boys,"[314] and are exposed to social norms that legitimise gender-based violence.[315] In 2008, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern regarding the persistence of "traditional discrimi-

305 World Economic Forum, *The Global Gender Gap Report*, 2016, p. 11, available at: http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf.

306 *Ibid*., p. 12.

307 *Ibid*., p. 12.

308 *Ibid*., p. 13.

309 Committee on the Rights of the Child, *Concluding Observations: Yemen,* UN Doc. CRC/C/YEM/CO/4, 25 February 2014, Para 69.

310 As acknowledged by the state: "[T]raditional culture still inhibits the equality of women in respect of political participation, as reflected in the low percentage of women voting in and standing for elections." See CEDAW Committee, *Combined Seventh and Eighth Periodic Reports: Yemen,* UN Doc. CEDAW/C/YEM/7-8, 14 June 2014, p. 18.

311 *Ibid.*, p. 52.

312 Comprising 1000 respondents. See World Values Survey, *Data Analysis Tool: Yemen*, 2013, available at: http://www.worldvaluessurvey.org/WVSOnline.jsp.

313 *Ibid*.

314 See above, note 309, Para 29.

315 Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2009, p. 6, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_101_10327_E.pdf.

natory practices and strong stereotypical attitudes" that perpetuate women's inequality in Yemen, and result in the denial or restriction of their rights.[316] The Committee has urged Yemen to take measures to "address stereotypical attitudes about the roles and responsibilities of women and men", including through the adoption of awareness raising programmes.[317]

The ongoing conflict has exacerbated the entrenched inequalities faced by women and girls in Yemen, leading to increased vulnerability. The breakdown of formal and informal protection mechanisms, together with large-scale displacement, have led to a rise in harmful cultural practices, particularly child marriage; women and girls are susceptible to sexual violence.

Legal and Policy Framework

Prior to unification, the People's Democratic Republic of Yemen (PDRY) and the Yemen Arab Republic (YAR) had separate legal systems, which offered different degrees of protection for women's rights.[318] The YAR's legislative framework was much more conservative than that of the PDRY, enshrining a number of gender discriminatory provisions: for example, the YAR's Personal Status Law of 1978 gave husbands the right to a unilateral divorce (*talaq*) whereas women could only obtain a divorce in restrictive circumstances; by contrast, the PDRY's Personal Status Law of 1974 enabled both spouses to initiate divorce proceedings.[319]

Following unification, the legal systems of the PDRY and YAR were merged, and the YAR's legislation took precedence over that of the PDRY, with attempts by southern civil society to preserve the former PDRY's laws being largely unsuccessful.[320] For example, in 1992, a new Personal Status Law was approved, containing several discriminatory legal provisions that had existed in the former YAR's Personal Status Law of 1978.[321]

316 See above, note 304, Paras 14–15.

317 *Ibid*.

318 Moghadam, V.M., "Explaining Divergent Outcomes of the Arab Spring: The Significance of Gender and Women's Mobilization", *Politics, Groups and Identities*, 2017, p. 7.

319 See above, note 197, p. 17.

320 *Ibid.*, pp. 3 and 17.

321 *Ibid*.

Yemen has no constitutional or legislative prohibition on gender discrimination (or indeed on discrimination on any other ground). Following unification, the Republic of Yemen adopted a new Constitution which contained a provision prohibiting discrimination on the grounds of "sex, colour, ethnic origin, language, occupation, social status, [and] religion".[322] However, the Constitution was subsequently amended in 1994,[323] resulting in the removal of this provision, and the insertion of Article 31, which declares that: "[w]omen are sisters of men. They have rights and duties, which are guaranteed and assigned by Shari'a and stipulated by law".

The fact that the rights of "citizens" and "women" are distinguished in two separate articles of the Constitution – Articles 41 and 31 respectively – implies a difference in legal status between men and women: it indicates that women are considered to be the "sisters of men", as opposed to full citizens, and thus have different rights and duties to men.[324] Amnesty International has noted that the phrase "sisters of men" has particular "cultural and traditional meanings" which "support the rule of women by brothers and other male family members".[325] Thus, Article 31 enshrines discrimination against women into the Constitution itself. Further, the fact that Article 31 describes women's rights and duties as deriving from Shari'a and national legislation, as opposed to international law, "allows for interpretations which may empty gender equality of meaning and deny women their rights".[326]

Yemen has consistently drawn criticism from UN treaty bodies over its failure to adopt a comprehensive anti-discrimination law,[327] a comprehensive gender-equality act,[328] and a definition of gender discrimination within its

322 *Ibid*., pp. 16–17.

323 See further discussion in Part 2, section 2.1.2.1.

324 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 15 November 2017.

325 See Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2012, pp. 5–6, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10336_E.doc.

326 Draji., I., "The necessity of engendering the constitution and its content", p. 125, in Padovani, C. and Helm, F. (eds.), *Rethinking the transition process in Syria: constitution, participation and gender equality*, Research-publishing-net, 2018.

327 Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations: Yemen*, UN Doc. E/C.12/YEM/CO/2, 22 June 2011, Para 7.

328 See above, note 304, Para 11.

national legal framework, including the Constitution.[329] Prior to the outbreak of the current conflict, Yemen adopted several policies aimed at improving gender equality within the state, largely with the support of two women's organisations: the Yemeni Women's Union and the Women's National Committee (WNC).[330] However, these policies were criticised for a lack of financing,[331] reliable indicators,[332] and subsequent legislative reform.[333] In its 2014 state report to the CEDAW Committee, the Yemeni government highlighted "financial and administrative corruption" as a significant obstacle to the implementation of its legislative and policy framework on equality.[334]

As discussed elsewhere in this report, a Draft Constitution was prepared during the course of the National Dialogue Conference which took place between March 2013 and January 2014, although it was never adopted.[335] Under the Draft Constitution, Article 31 of the current Constitution would have been removed, and there would no longer have been an emphasis on men and women's separate legal duties and obligations (although Islamic Shari'a would have continued to be the "source of legislation"). Rather, under draft Article 74, all persons would have been declared equal before the law,[336] and discrimination on the basis of sex would have been explicitly prohibited, as follows:

> *Citizens shall have equal rights, freedoms and public duties without discrimination due to sex, skin colour, race, origin, religion, sect, belief, opinion, economic or social status, disability, political or geographical affiliation, occupation, birth, or any other considerations.*[337]

329 See above, note 304, Paras 10–11.

330 See further discussion in Part 2, section 2.1.2.4.

331 See above, note 309, Para 11.

332 *Ibid*.

333 Joint Submission 3, *Submission to the Universal Periodic Review on Yemen*, 2013, Para 23, available at: https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=383&file=English Translation.

334 See above, note 310, p. 12.

335 See further discussion in Part 2, section 2.1.2.1.

336 See above, note 56, Article 74.

337 *Ibid.* Article 75.

Discriminatory Laws and Policies

In the year 2000, the WNC began analysing almost 200 laws for compliance with international standards.[338] Of these, twenty were identified as containing provisions that discriminate against women.[339] However, only a handful of amendments were subsequently made.[340] Concerningly, the state has rejected the observations and recommendations of UN treaty bodies regarding the repeal or amendment of discriminatory legal provisions, maintaining that its national legislation conforms to the central requirements of Islamic jurisprudence.[341] The following examples are illustrative, rather than exhaustive, given the extent of discriminatory legal provisions in existence.

Criminal Law

The Penal Code[342] contains a number of provisions that discriminate on the grounds of gender, particularly when read alongside other relevant legislation.

Under Article 269, rape is defined as "any sexual insertion committed against [an]other person, whether a male or female, without that person's consent".[343] On its face, this encompasses a prohibition of marital rape. However, Article 40 of the Personal Status Law imposes a duty of obedience on married women, including a specific requirement that a wife permits her husband "to have legitimate intercourse with her when she is fit to do so".[344] Whilst the phrase "legitimate intercourse" should be understood and interpreted as meaning only consensual intercourse, Article 40 may be interpreted such that wives

338 See above, note 197, p. 18, citing Al-Shrajabi, A., "Domestic violence against women", *National Women's Committee*, 2003.

339 *Ibid.*

340 *Ibid*.

341 See above, note 34, Para 10.

342 Republican Decree No. 12 of 1994 "on Crimes and Penalties" (the "Penal Code").

343 *Ibid.*, Article 269.

344 Law No. 20 of 1992 (the "Personal Status Law"), Article 40(2). Translation provided by Equality Now, available at: https://www.equalitynow.org/content/personal-status-act-no-20-1992.

are required to have sex with their husbands.[345] Furthermore, whilst Article 269 does not explicitly require the use of force in order to establish the absence of consent, the government of Yemen reported in its sixth periodic report to the CEDAW Committee in March 2007 that "the law requires *forceful* intercourse for [a] punishment to be valid".[346] The government's position is contrary to international human rights law: the CEDAW Committee has urged states to ensure that criminal laws regarding rape focus on the issue of consent and not the use of force, which may or may not be present.[347]

Honour-based violence against women is implicitly condoned through several provisions of the Penal Code, which allow for mitigated punishment of those convicted of honour killing. Article 232 provides that "if the husband murders his wife and whoever commits adultery with her when both are caught "red handed", or assaults both of them leading to either death or disability, no punishment is required thereof, but the husband is reprimanded with imprisonment for a period not exceeding on year or a fine". Under Article 232, the same penalty applies to anyone who "surprises any of his ancestors or offspring or sisters caught "red-handed" with the crime of adultery",[348] with this being interpreted to refer to female relatives.[349] No equivalent provisions exist where male relatives are "caught" having committed adultery. The CEDAW Committee has urged the state to ensure that "homicides committed against women by their husbands or male relatives" are punished in the same way as other homicides.[350]

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345 See Human Rights Watch, *Submission to the Committee on the Elimination of Discrimination against Women on Yemen,* 2015, p. 6, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/YEM/INT_CEDAW_NGO_YEM_19358_E.pdf; Yemeni Women Union et al, *Submission to the Committee on the Elimination of Discrimination against Women on Yemen,* 2015, p. 3, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/YEM/INT_CEDAW_NGO_YEM_19260_E.pdf; and Equality Now et al, *Submission to the Human Rights Committee on Yemen,* 2012, p. 3, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10332_E.pdf.

346 CEDAW Committee, *Sixth Periodic Report: Yemen*, UN Doc. CEDAW/C/YEM/6, 13 March 2007, Para 6.2.

347 CEDAW Committee, *Concluding Observations: Czech Republic*, UN Doc. CEDAW/C/CZE/CO/5, 10 November 2010, Paras 22–23.

348 See above, note 342, Article 232.

349 See above, note 304, Paras 18–19; See above, note 197, p. 43; Al-Zwaini, L., "The Rule of Law in Yemen: Prospects and Challenges", *The Hague Institute for Innovation of Law*, 2012, p. 88.

350 See above, note 304, Para 19.

Article 42 of the Penal Code reduces the amount of "blood money" (money paid to a victim of crime) to be paid for serious acts of violence when such acts are committed against a women.[351] Whilst the court may choose to impose a sentence of up to 10 years' imprisonment where an individual poses a threat to public order, in practice, perpetrators of honour killings are not considered to meet this criterion.[352] Yemen has faced multiple calls to amend its legislation to abolish these discriminatory legal provisions,[353] which legitimise gender-based violence by entrenching harmful societal norms under which violence is considered to be an appropriate response to perceived slights on honour.

Article 263 of the Penal Code provides that consensual sexual relations between an unmarried man and woman is punished by "whipping by 100 strokes" or up to one year imprisonment.[354] Where either of the two individuals is married, both may be sentenced to death.[355] The UN Working Group on the Elimination of Discrimination against Women has noted that laws criminalising adultery are disproportionately applied against women and has called for the removal of adultery provisions, noting further that the "criminalization of sexual relations between consenting adults is a violation of their right to privacy and an infringement of Article 17 [ICCPR]".[356]

Law of Evidence

The Yemeni Law of Evidence, as established in the Republican Decree No. 21 of 1992 and amended by Law No. 20 of 1996,[357] sets out the procedural rules regarding evidence. The provisions concerning witness testimony discriminate against women by preventing women from providing testimony in cer-

351 See above, note 342, Article 42.

352 See above, note 345.

353 See above, note 34, Para 10; See above, note 139, Para 29, Committee against Torture; and, see above, note 304, Paras 18–19.

354 See above, note 342, Article 263.

355 *Ibid*.

356 Human Rights Council, *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice*, UN Doc. A/HRC/29/40, 2 April 2015, Para 49.

357 This law was published in the official gazette, issue No. 6 of 1992, and was amended by law No. 20 of 1996 and published in the official gazette, issue No. 14 of 1996.

tain cases, including adultery,[358] and by considering a woman's testimony to be half the value of a man's testimony in financial and rights-based cases.[359]

Marriage and Divorce

Discriminatory societal attitudes toward women, particularly in relation to marriage, are codified in the Personal Status Law of 1992. Under Article 6, marriage is defined as "a commitment between the two spouses based on a legal contract by which a woman becomes legally permissible to a man".[360] In order for a woman to marry she must obtain the consent of her guardian, unless she applies to the court for special permission under Article 18; in such situations, the court exercises discretion to decide whether or not to permit the marriage.[361] Of particular concern, under Article 23, express oral consent to marry is only required from "previously married women": "the consent of a virgin shall be her silence".[362] The effect of these provisions is that a "male guardian is often the one to decide if a girl or woman is to marry",[363] thus denying women the right to marry on a basis of equality with men. Such provisions contravene the international human rights standards set out in the treaties to which Yemen is a party.[364]

Child marriage is prohibited as a matter of international law.[365] States are obligated to adopt a minimum marriage age, with the CEDAW Committee recommending a minimum age of 18 for both men and women,[366] and ensure

358 Law No. 21 of 1992 (the "Law of Evidence"), Art 45, provides that "[a] court may only consider four statements by male witnesses in the case of adultery; two statements by male witnesses in the case of all limits "Hudud" and retribution crimes". The term "Hudud" literally means boundaries, and refers to punishments for illicit acts mandated by Shari'a.

359 See above, note 358, Art 45, requires "two statements by two men/ one man and two women in financial or right-based cases".

360 See above, note 344, Article 6.

361 *Ibid*., Article 18.

362 *Ibid*., Article 23.

363 See above, note 345.

364 ICCPR, Article 23(2) and (3); ICESCR, Article 10(1); CEDAW, Article 16; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1.

365 CEDAW, Article 16(2).

366 CEDAW Committee, *General Recommendation No. 21: Equality in Marriage and Family Relations*, UN Doc. CEDAW/C/GC/21, 1994, Para 36.

that all marriages are officially registered.[367] Contrary to these requirements, Yemeni legislation does not impose a minimum marriage age. The Personal Status Law had previously stipulated that the minimum age for marriage for both sexes was 15. However, a 1999 amendment repealed the minimum age for girls (but not for boys), thus enshrining a provision which is directly discriminatory on the grounds of gender.[368] Several attempts to introduce a minimum age of marriage have failed.[369] In 2010, the Shari'a Legislative Committee blocked the passage of a law which would have introduced a minimum marriage age of 17 for both boys and girls, reportedly citing an increased risk of breast cancer as part of its decision.[370]

The Personal Status Law permits polygamy, allowing a husband to marry up to four wives provided certain conditions are met.[371] Article 41(3) also states that the husband must "treat [his wife] with equality relative to his other wives if any".[372] The legality of polygamy is contrary to the recommendations of UN treaty bodies,[373] which have emphasised that polygamy is a harmful traditional practice that discriminates against women,[374] and cannot be justified by appeals to culture[375] or the right to privacy of the individuals concerned.[376]

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367 CEDAW, Article 16(2).

368 See above, note 344, Article 15; See above, note 363, pp. 6–7.

369 For an excellent overview of attempts to introduce a minimum marriage age in Yemen, see Chr. Michelsen Institute, *Unfulfilled Hopes: The Quest for a Minimum Marriage Age in Yemen, 2009–2014*, 2016, p. 3, available at: https://www.cmi.no/publications/file/5817-unfulfilled-hopes-minimum-marriage-age-in-yemen.pdf.

370 Equality Now et al, *Submission to the Human Rights Committee on Yemen,* 2012, pp. 1–2, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10332_E.pdf.

371 These include the requirements that the husband has sufficient financial means to support more than one wife, and that he tells the woman he wants to marry that he is already married: See above, note 344, Article 12.

372 Personal Status Law, Law No. 20 of 1992, as amended by Law No. 27 of 1998.

373 See above, note 34, Para 10; and, see above, note 304, Para 38.

374 See above, note 34, Para 10.

375 CEDAW Committee and the Committee on the Rights of the Child, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, 2014, Paras 27–28.

376 CEDAW Committee, *Concluding Observations: Israel*, UN Doc. CEDAW/C/ISR/CO/3, 22 July 2005, Para 41.

As in marriage, women are also severely discriminated against in divorce. Whilst men are able to divorce unilaterally under Article 59 of the Personal Status Law by repudiating the marriage three times, women are required to petition the court for divorce, which will only be granted if one of several conditions has been met (such as the husband's absence for over one year, or failure to provide for the family financially).[377] Where a woman is unable to satisfy such conditions she may apply for a "*khula*" divorce under Article 72, which is described as "a separation between the two spouses for which the wife or another party, even if anonymous, pays compensation, be it property or a benefit".[378] In such circumstances, women are often required to pay back the dowry – which can be as much as 400,000-500,000 Riyals (22,000 – 28,000 US$)[379] – and to waive any claims to temporary financial support.[380] The imposition of different requirements for women seeking a divorce from those applicable to men is directly discriminatory; moreover, in practice the requirements mean that divorce is not a realistic option for many women.

Employment and Welfare

Under Article 40 of the Personal Status Law, a wife is not permitted to leave her home except with the consent of her husband, "unless for a legitimate excuse or one commonly regarded as not prejudicial to honour or to her duties towards him".[381] This Article previously provided an exception allowing a woman to leave her house for work, but this was removed in a 1998 amendment.[382] Following this amendment, a wife may only leave the house to "perform a mutually agreed job" that is consistent with Islamic law.[383] The Committee on Economic, Social and Cultural Rights (CESCR) has urged Yemen to

377 See above, note 344, Articles 51–53.

378 *Ibid.*, Article 72.

379 See above, note 197, p. 38; See, for instance, the case of Wafa. Equality Now et al, *Submission to the Human Rights Committee on Yemen,* 2012, pp. 1-2, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10332_E.pdf.

380 See above, note 344, Article 36 and 72.

381 See above, note 344, Article 40(4).

382 See above, note 197, p. 18.

383 See above, note 344, Article 40(4).

abolish Article 40,[384] which undermines women's right to work, as protected under Article 6 ICESCR.[385]

The Labour Code also contains provisions that discriminate against women; in particular, Article 46(a) calls for the adoption of a list detailing jobs which are prohibited for women in "hazardous and arduous industries and activities that are socially and medically harmful",[386] while Article 46(b) prohibits the night-time employment of women.[387] The CEDAW Committee has emphasised that prohibitions on certain forms of "dangerous" work may perpetuate discriminatory stereotypes against women.[388] Such prohibitions are also inconsistent with the state's obligation to ensure the equal right of men and women to work under Articles 3 and 6 ICESCR, with the right to work under Article 6(1) ICESCR encompassing a right to "freely choose" work.[389]

Nationality Law

The Nationality Law regulates the acquisition and loss of Yemeni nationality.[390] As originally promulgated, the Nationality Law excluded Yemeni nationality from children born to a Yemeni mother and a non-Yemeni father, whilst extending nationality to children born to Yemeni fathers and non-Yemeni mothers. Following a series of amendments,[391] the Nationality Law was expanded such that Yemeni women married to non-Yemeni nationals have the right to confer nationality to their children on an equal basis with men,[392] thus

384 See above, note 327, Para 10.

385 ICESCR, Article 6.

386 Law No. 5 of 1995, (the "Labour Code"), Article 46(a).

387 *Ibid*., Article 46(b).

388 CEDAW Committee, *Svetlana Medvedeva v Russian Federation*, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 2016.

389 CESCR, *General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/18, 6 February 2006, Para 4.

390 Law No. 6 of 1990 (the "Nationality Law").

391 Law No.24 of 2003, Law No.17 of 2009 and Law No.25 of 2010.

392 This law on the amendment of the Nationality Law was published in the official gazette, issue No. 22 of 2010. Law No. 25 of 2010 to amend the law No. 6 of 1990. Article 1 of this law amended Article 3 of the law No. 6 of 1990, amended by law No. 17 of 2009.

removing the discriminatory denial of Yemeni nationality to children born of Yemeni mothers and non-Yemeni fathers.

However, the Nationality Law remains discriminatory on the grounds of gender, insofar as Yemeni women are prevented from conferring nationality on their non-Yemeni husbands through marriage in the same way as Yemeni men:[393] a Yemeni woman who wants to marry a foreigner must obtain the consent of the Ministry of Interior, whereas a man possessing Yemeni nationality simply has to notify the Ministry.[394] International NGOs, including the Global Campaign for Equal Nationality Rights and Equality Now, have noted that this contravenes Article 9 CEDAW, which entails an obligation to ensure equality between men and women in the ability to confer their nationality on their spouse.[395]

Gender-Based Violence

In its General Recommendations Nos. 19 and 35, the CEDAW Committee emphasised that the prohibition of discrimination under Article 1 CEDAW includes a prohibition of gender-based violence.[396] The term "gender-based violence" (GBV) is expansive and includes *inter alia* domestic and family-based violence, female genital mutilation,[397] and honour crimes.[398] States are obliged under the CEDAW to pursue "all appropriate means" of eliminating GBV,[399] including through ensuring an adequate legal framework for protec-

393 See above, note 390, Article 11.

394 See above, note 390, Article 10 bis, added by law No. 25 of 2010.

395 Global Campaign for Equal Nationality Rights and others, *Letter to the Committee on the Elimination of Discrimination Against Women*, 23 January 2015, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/YEM/INT_CEDAW_NGO_YEM_19356_E.pdf; CEDAW Committee, *General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, UN Doc. CEDAW/C/GC/32, 14 November 2014, Para 59.

396 CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38, 1992, Para 1; CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women*, UN Doc. CEDAW/C/GC/35.

397 *Ibid.*, Para 11, CEDAW Committee, *General Recommendation No. 19: Violence against Women.*

398 See, for instance, CEDAW Committee, *Concluding Observations: Pakistan*, UN Doc. CEDAW/C/PAK/CO/3, 11 June 2007, Para 22.

399 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 2.

tion; adopting protective measures; and exercising due diligence by "preventing, investigating, prosecuting and punishing" perpetrators.[400] Yemen does not have an adequate legal framework prohibiting and preventing gender-based violence. Whilst a draft domestic violence bill was mooted in 2008, no law has been adopted to date.[401]

GBV is a considerable societal problem in Yemen, with 90% of all women reportedly facing sexual harassment on the street, and 50% of women interviewed by the Ministry of Public Health believing that "a husband is justified in beating his wife".[402] Domestic violence in Yemen is thus prevalent;[403] reasons for such violence are diverse, although an increasing number of Yemenis have reportedly emphasised the influence of economic pressures on the family.[404] Research undertaken for the Equal Rights Trust between 2015–2017, identified testimony from numerous victims of domestic violence; for example, women recounted how they had been beaten,[405] imprisoned in their homes,[406] and deprived of food by their husbands.[407]

Whilst it is culturally shameful in Yemen to beat or insult a woman, it is not considered shameful for male family members to "discipline" their female relatives; indeed they are considered to have a "right" to do so in order to "maintain the honour of the family".[408] This is particularly acute within tribal relations, where a woman's honour is closely bound to that of her male rela-

400 For an in-depth analysis of this point see: Equal Rights Trust, *Shouting Through the Walls, Discriminatory Torture And Ill-Treatment: Case-Studies from Jordan*, 2017, pp. 86–88, available at: http://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf.

401 See CESCR, *Response to List of Issues: Yemen,* UN Doc. E/C.12/YEM/Q/2/Add.1, 20 January 2011, Paras 66–67.

402 CARE et al, *From the Ground Up: Gender and Conflict Analysis in Yemen*, 2016, p. 25, available at: https://www.carenederland.org/wp-content/uploads/care/uploads/2016/11/Yemen-gender-conflict-analysis-201016-en.pdf

403 See above, note 139, Para 29, Committee against Torture.

404 See above, note 197, p. 42.

405 Interviews B168 and B73.

406 Interview B73.

407 Interview C151.

408 See above, note 197, p. 41.

tives or husband.[409] Reliable statistics regarding the prevalence of such violence are, however, not available,[410] and Yemen has been criticised by UN treaty bodies for failing to document the prevalence of honour-based violence.[411] Nevertheless, individual examples of honour-based violence have been well documented by human rights organisations and the media. For example, in one well-publicised case, a teenager from a small village in Taiz province was "burned to death by her father for contacting her fiancée before their wedding", in breach of tribal custom.[412]

In general terms, it has been observed that gender-based violence in Yemen is not only tolerated but, over time, it has undergone a process of legalisation.[413] Women remain vulnerable to honour-based violence within a traditional cultural framework that regards emotional and physical violence as a legitimate tool in the hands of men to ensure the integrity and respectability of the family.[414]

Family honour is also invoked as a justification for the non-reporting of GBV.[415] As any accusation would reflect badly on the family, and potentially expose a woman to further abuses, many cases go unreported.[416] Women who are discouraged from reporting violence to the police may rely on informal justice mechanisms, such as local sheiks, to mediate between parties.[417] Such mecha-

409 Adra, N., "Tribal Mediation and Empowered Women: Potential Contributions of Heritage to National Development in Yemen", *International Journal of Islamic Architecture*, Vol. 5, No. 2, 301–337, 2016, p. 316.

410 According to the United Nations Children's Fund (UNICEF), in 1997 up to 400 individuals were killed due to a perceived slight on honour: UNICEF, "UNICEF Executive Director Targets Violence Against Women", *United Nations Children's Fund*, 7 March 2000, available at: https://www.unicef.org/newsline/00pr17.htm.

411 In 2014 the Committee on the Rights of the Child expressed regret at the lack of state data regarding the causes and prevalence of honour based violence within Yemen. See above, note 309, Para 48.

412 BBC News, "Yemeni Burns Daughter to Death for Contacting Fiancé", *BBC*, 23 October 2013, available at: http://www.bbc.co.uk/news/world-middle-east-24638059.

413 Baobaid, M., "Masculinity and Gender Violence in Yemen", 161–184, in Ouzgane, L. (ed.), *Islamic Masculinities*, Zed Books, 2006, p. 174.

414 *Ibid.* p. 176.

415 See above, note 315, p. 6.

416 *Ibid.*

417 See above, note 71, Para 49; See above, note 197, p. 43.

nisms can promote reconciliation between victim and perpetrator, and may therefore lead to impunity for perpetrators, thus having a negative impact on women's access to justice.[418] The CEDAW Committee has "expressed caution about informal forms of dispute resolution and mediatory procedures that favour reconciliation in situations of violence" and "has recommended that states scrutinise the process closely".[419] It does not appear that such scrutiny is afforded to the informal dispute resolution processes used in Yemen.

Where victims do wish to pursue formal legal action, they have few avenues of redress.[420] The absence of specific legislation means that victims of GBV are only able to rely on provisions of the ordinary criminal law,[421] contrary to the recommendations of UN treaty bodies.[422] In 2012, the Human Rights Committee (HRC) noted that the state's primary response to the "phenomenon of domestic violence" was to provide victims with recourse to temporary shelters.[423] The absence of effective measures to protect women from GBV, and prosecute those responsible, creates a climate of impunity, resulting in widespread and systematic violations of Yemen's international obligations, including the obligation to prevent, protect against, and subsequently investigate and prosecute GBV.[424]

Female Genital Mutilation (FGM) is commonplace in Yemen, particularly in "coastal and rural areas".[425] Whilst measures have been taken by the state to reduce the practice of FGM, including through the adoption of a national policy on "combating harmful traditional practices" in 2007,[426] and a Ministry of Health Decree which banned the practice of FGM in medical health facilities,[427] FGM remains legal, and the Ministry of Health Decree is not ef-

418 CEDAW Committee, *General Recommendation No. 33 on women's access to justice*, UN Doc. CEDAW/C/GC/33, 23 July 2015, Para 57.

419 Freeman, M. A. (ed) et al, *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, Oxford University Press, 2012, p. 470.

420 See above, note 384, Para 17.

421 See above, note 345.

422 See above, note 384, Para 17.

423 See above, note 34, Para 9.

424 For a better overview of this obligation, see above, note 400, pp. 86–88.

425 See above, note 384, Para 20.

426 See above, note 309, Para 47.

427 See above, note 304, Paras 34–35; Ministry of Health Decree No. 1/3 of 2003.

fectively enforced.[428] In a combined periodic report to the CEDAW Committee, the state noted that a 2008 study had shown that FGM was practised in five of the country's 22 governorates, with the population of these governorates stating that "it is an important part of their lives because of its close connection with religion and culture".[429] In a 2013 Health and Demographic Survey, around 18.5% (4,705) of the 25,434 women surveyed across all governorates had been subjected to FGM,[430] with very little change observed between the 2013 survey and its predecessor in 2003.[431] The overwhelming majority of women surveyed in 2013 were cut during the first week after birth (83.8%),[432] and over 75% believed that the practice of FGM should be discontinued.[433]

Rates of gender-based and domestic violence are believed to have increased as a result of the current conflict,[434] with this being attributed to displacement, poverty and the breakdown of mechanisms for protection and the rule of law.[435] According to research conducted by CARE (an international anti-poverty organisation currently operating in Yemen), Oxfam and the Gender Standby Capacity Project (GenCap), between March 2015 and September 2015, reports of GBV increased by 70%.[436] The UN Office for the Coordination of Humanitarian Affairs has also reported a 63% increase in GBV incidents recorded in the first quarter of 2016 as compared to the first quarter of 2015.[437] Girls from marginalised groups are reportedly most at risk of violence, harassment by armed groups, and kidnapping.[438]

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428 *Ibid*; See above, note 345, p. 7.

429 See for instance, note 310, p. 66.

430 Republic of Yemen Ministry of Public Health & Population & Central Statistical Organisation, *Yemen National Health and Demographic Survey 2013*, 2015, p. 165, available at: http://dhsprogram.com/pubs/pdf/FR296/FR296.pdf.

431 Only a small decline was observed in the number of women whose daughter's had been circumcised (around 16% compared to 18.5% of respondents between the ages of 15 and 49); *Ibid*., pp. 166–168.

432 *Ibid*., p. 166.

433 *Ibid*., p. 172.

434 See above, note 402, pp. 25–26.

435 *Ibid*., p. 24.

436 *Ibid*., p. 11.

437 United Nations Office for the Coordination of Humanitarian Affairs, *2017 Humanitarian Needs Overview: Yemen*, 2016, p. 36, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%202017%20HNO_Final.pdf.

438 See above, note 402, p. 11.

Prior to the conflict, there were nine domestic violence shelters across Yemen, the majority in Sana'a, which were operated by domestic civil society organisations.[439] As a result of conflict, it is unclear how many of these shelters are still functional, though some continue to operate with the assistance of international organisations.[440]

Conflict-Related Gender-Based Violence

Both men and women are vulnerable to different forms of conflict-related violence, though in different ways. According to research conducted by CARE, Oxfam and GenCap, "men and boys make up the vast majority of direct victims of armed conflict, forced recruitment and arbitrary detention".[441] As at March 2017, United Nations Children's Fund had verified at least 1,572 cases of boys being recruited and used in armed conflict, and also reported that 66% of children killed during the conflict were boys.[442] Ansar Allah are thought to be responsible for the majority of cases of child recruitment in Yemen,[443] with Amnesty International reporting that this recruitment is being led by representatives at local centres, where prayers, sermons and lectures are used to encourage young boys to join the front-line.[444] Ansar Allah have also reportedly pledged to pay families between 20,000 to 30,000 Yemeni Riyals (around 80 to 120 US$) per child per month if they become a "martyr at the front line".[445]

439 UN Women, *Global Database on Violence against Women: Yemen*, 2011, available at: http://evaw-global-database.unwomen.org/en/countries/asia/yemen/2011/shelters.

440 United Nations Population Fund, "Violence Against Women Escalates Under Yemen's Brutal Conflict", *United Nations Population Fund*, 31 October 2016, available at: http://www.unfpa.org/news/violence-against-women-escalates-under-yemens-brutal-conflict.

441 See above, note 402, p. 3.

442 UNICEF, *Falling Through the Cracks: The Children of Yemen,* 2017, p. 2, available at: http://files.unicef.org/yemen/Yemen2Years-children_falling_through_the_cracks.pdf.

443 Middle East Monitor, *UNICEF: 2,100 child soldiers recruited in Yemen*, 28 December 2017, available at: https://www.middleeastmonitor.com/20171228-unicef-2100-child-soldiers-recruited-in-yemen.

444 Amnesty International, *Yemen: Huthi forces recruiting child soldiers for front-line combat*, 28 February 2017, available at: https://www.amnesty.org/en/latest/news/2017/02/yemen-huthi-forces-recruiting-child-soldiers-for-front-line-combat.

445 *Ibid.*

Women are vulnerable to violence, abuse and exploitation by armed groups, with women from the Muhamasheen community reportedly being particularly vulnerable to sexual violence and harassment by armed groups, especially when travelling through checkpoints.[446] In recent months, there has been considerable attention surrounding allegations that a Sudanese mercenary fighting on behalf of the Saudi-led coalition raped a girl in Hodeida province whilst she was collecting firewood, with the victim allegedly being threatened by United Arab Emirates' forces into making a statement that she had not been raped; the incident was followed by protests in Sana'a and widespread criticism of the Hadi government's failure to take investigative action.[447] Reports have also suggested that "sexual violence has been used by armed actors against men and boys as a form of torture".[448] The reporting of such crimes may be inhibited by social stigma.[449] In the field research stage of this report, the Equal Rights Trust's researchers found evidence of Muhamasheen boys being particularly vulnerable to sexual violence in conflict, irrespective of whether or not they are actively participating in the hostilities.[450]

Marriage and Divorce

Marriage

A 2014 study found that a large proportion of women are married before the age of 18 and many exercise no autonomy in choosing their spouse.[451] One woman interviewed by researchers for this report explained that she was prevented from marrying the man she was in love with because her family

446 Oxfam, *Picking up the pieces: What Yemenis need to rebuild their lives in a country torn apart by conflict*, 2016, p. 9, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/bp-yemen-picking-up-the-pieces-210916-en.pdf.

447 Middle East Eye Correspondent, "Yemeni woman's alleged rape by mercenary stirs anger against coalition", *Middle East Eye*, 5 April 2018, available at: http://www.middleeasteye.net/news/rape-woman-creates-anger-against-hadi-and-his-allies-13731155.

448 Rohwerder., B, *Conflict and Gender Dynamics in Yemen*, 2017, p. 6, available at: http://www.gsdrc.org/wp-content/uploads/2017/07/068_Conflict-and-Gender-dynamics-in-Yemen.pdf.

449 *Ibid*.

450 See further section 3.4, Interviews with Muhamasheen Persons on Access to Justice.

451 See above, note 197, p. 32.

disapproved.[452] A number of other women interviewed by our researchers stated that they were effectively prohibited from marrying after relatives rejected their proposed partner choices,[453] while others stated that they were forced to wed by family members.[454] One woman explained that, after her brothers expressed concern regarding her reputation and honour, she was forced into marriage with a man who subjected her to physical violence; she was prohibited from continuing her education, forced to remain in the family home and prevented from using the telephone.[455] Another woman was forced to marry against her wishes, despite the fact that the divorce from her first husband had not been finalised; she was later sued as a result.[456]

Case Study: Interview with a Yemeni Woman on Marriage[457]

I was forced to marry someone I didn't want to marry and this deprived me of my education. I was in the seventh Grade and had to leave school in order to be married. On the first day of marriage, my husband beat me and forced me into drinking unknown things. He used to tie me up and on the third day he burned my face. He went to my father and questioned my virginity; my father then came to my house and said that he wanted to kill me. My mother and little brothers stopped him (…) Our tradition says that when a man proposes to a woman a father has to say yes or no. If the girl says what she thinks, then this is "aib" (shame) on the family. Unlike the man who can marry according to his own choice, I have been deprived of an education, my future is ruined, I have had psychological disorders. I hate anything related to marriage now.

Child marriage

Child marriage is prevalent in Yemen, in part due to the lack of a minimum marriage age in Yemeni legislation, as explained above. One girl interviewed

452 Interview B265.

453 Interview B145.

454 Interviews B16, B107, B124, B26, B84, B28, B194, B55, and C73.

455 Interview B194.

456 Interview B55.

457 Interview E145.

by the Trust's researchers explained that child marriage was prevalent in the area in which she lived, and her parents believed that if she waited until the age of 20 it would be too late for her to find a husband.[458] In 2015, the Trust's researchers interviewed a number of women who were forced to marry before the age of 18, many of whom had suffered other serious human rights violations as a consequence. For example, one woman was attacked by her husband after being forced to marry against her will at the age of 12; she reported being physically abused by her husband and, some years later, was abandoned and left to care for their children, leaving her dependant on charitable donations.[459]

Case Study: Interview with a Victim of Child Marriage

My father forced me to get married when I was nine years old to a man who was 44. I didn't know anything about marriage then. Although my husband was a teacher, I suffered ill-treatment from him: insults, raising his voice when calling me and treating me as a servant and not as his wife. I was imprisoned in his home and he prevented me from visiting my family and relatives. Before I was 20 years old, I had three children. Because I was so young, I almost died during the three pregnancies and childbirths.

This marriage continued for 12 years, until I made a divorce request to the court. The court granted me the divorce, and instructed that my ex-husband would have to pay alimony for my children: 5,000 Riyals [approximately 17 US$] per month. But my ex-husband refused to pay and abandoned his responsibilities. None of my brothers nor my mother cared about my children, so I decided to find work (...) I faced strong objections from my brothers and the whole family [about this], because in our culture, a woman cannot work but must stay at home. Another man (…) proposed to marry me, and my family agreed on the condition that he would allow me to take my children with me. I agreed without objection, because it is shameful to be divorced in our community.[460]

458 Interview D575.

459 Interview B160.

460 Interview E253.

Rates of child marriage appear to have increased as a result of the current conflict,[461] with recent estimates suggesting that almost half of girls are married before the age of 15, and just under three quarters are married before the age of 18 (as compared to half before the conflict).[462] Families are reportedly resorting to child marriage as a "coping mechanism" in order to ease the financial burdens they face as a result of the current economic turmoil in the country,[463] with parents being attracted by the offer of dowry payments from potential suitors.[464] In April 2018, it was reported that some Yemeni families "had resorted to selling their daughters off to marriage, often while they are still underage", with the Nada Foundation (a Yemeni NGO) stating that Yemeni girls have been smuggled across the border to Oman to be sold as brides.[465]

As discussed in section 3.9, girls from displaced families are more vulnerable to being victims of child marriage, with reports that "host communities exploit the vulnerabilities of internally displaced families and get them to marry off their daughters".[466] A United Nations High Commissioner for Refugees survey of Internally Displaced Persons conducted in Taiz "revealed that 8% of girls aged 12–17 were pregnant, indicating a prevalence of early marriage".[467]

Divorce

Divorce in Yemen is tainted with social stigma and research for this report found that the consequences for women who decide to divorce can be harsh. In one interview carried out for this report, a woman explained that she had been subjected to beating and mistreatment by her husband and his fam-

461 See above, note 173.

462 *Ibid.*; See above, note 442, p. 7.

463 *Ibid.*

464 *Ibid.*

465 Al Shaibany, S. and Al Wasmi, N., "Child marriage on the rise as conflict in Yemen continues", *The National*, 17 April 2018, available at: https://www.thenational.ae/world/mena/child-marriage-on-the-rise-as-conflict-in-yemen-continues-1.722499.

466 Rohwerder, B., *Conflict and gender dynamics in Yemen*, 2017, p. 6, available at: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/13120/K4D_HDR_Conflict%20and%20Gender%20dynamics%20in%20Yemen.pdf;jsessionid=016CD7AB1BB50A8C41E5730B784ED70B?sequence=134.

467 See above, note 402, p. 26, citing UNHCR, *Yemen Situation Regional Refugee and Migration Response Plan*, 2015.

ily; nonetheless, she did not apply for divorce as she feared that this might be detrimental for her children, as they were at risk of being separated from her and potentially becoming homeless.[468] Several women explained that their male family members had attempted to intervene to prohibit the separation,[469] with one woman explaining that she had been physically assaulted by her brother and father when she made clear that she intended to seek a divorce.[470]

Interviewees also reported how women with children were left economically vulnerable after being divorced by their husbands. One man interviewed by the Trust's researchers explained how his sister was left struggling to cope after her husband failed to provide child maintenance payments.[471] Another woman, who obtained alimony and maintenance for her children as part of the divorce, explained to researchers the problems she experienced in enforcing the economic aspects of the court judgment: whilst her ex-husband was in arrears with his alimony payments and refused to comply with his obligations, he was acquitted by the court.[472]

Inheritance

Article 23 of the Yemeni Constitution provides that "the right of inheritance is guaranteed in accordance with Islamic tenets".[473] Accordingly, "[a]mong beneficiaries who have the same degree of familial proximity to a deceased person (such as a brother and a sister), shari`a prescribes that a man is generally entitled to twice the share as a woman".[474] This practice is directly discriminatory on the grounds of gender. Under the CEDAW, Yemen is required to ensure equality between men and women in marriage and family life.[475] This includes an obligation to adopt "laws of intestate succession that comply

468 Interview E151.

469 For example, interviews B169, A26, C72.

470 Interview C72.

471 Interview B15.

472 Interview F57.

473 See above, note 24, Article 23.

474 See above, note 349, Al-Zwaini, L., p. 91; and Baobaid, M., "Masculinity and Gender Violence in Yemen", 161–184, in Ouzgane, L. (ed.), *Islamic Masculinities*, Zed Books, 2006, p. 174.

475 CEDAW, Article 16.

with the principles of the Convention and that ensure the equal treatment of surviving females and males".[476]

During research for this report, the Equal Rights Trust's researchers met dozens of individuals who were either directly affected by, or had indirect experience of, the practice of women being denied inheritance by male relatives.[477] Where this occurs, women have few avenues of redress. Although some interviewees managed to receive an award after taking action through the courts, the process was extremely lengthy,[478] in one case taking around twenty years to resolve.[479] Moreover, the inability of the Yemeni state to assert its authority in certain areas of the country makes recourse to formal court proceedings practically impossible; in such circumstances, the vacuum is filled by recourse to the informal system of tribal arbitration.[480] Within this system, women face considerable obstacles in claiming their inheritance share: one woman interviewed by researchers for this report declared that she would not seek redress through tribal arbitration for the violation of the right to inherit from her parents as "it is considered shameful ("*aib*") to raise a complaint against the seniors of the region".[481]

Detention Conditions

In 2015, Peaceworks published a study that identified important failings in the Yemeni prison system, following visits to several facilities between February and April the previous year.[482] Male staff members were observed to visit female

476 CEDAW Committee, *E.S and S.C v Tanzania,* Communication No. 48/2013, UN Doc. CEDAW/C/60/D/48/2013, 13 April 2015, Para 7.2.

477 One interviewee explained: "I was deprived of [my] inheritance because I am a woman." Interview D823. See also interviews B103, B94, A1, A202, A66, B2, B65, B68, B106, B97, B35, B104, B18, C19, C20, C55, C56, C57, C58, C63, C64, C102, C103, C104, C105, C106, C107, C108, C109, C113, C115, C116, C117, C120, C122, C117, C120, C122, C134, C150, C173, C203, C249, and D823, various regions, 2015-2016. On file with author.

478 Interviews B97 and C64.

479 Interview B97.

480 See above, note 349, p. 68, Al-Zwaini, L.

481 Interview F52.

482 Peaceworks, *Prisons in Yemen*, 2015, available at: https://www.usip.org/sites/default/files/PW106-Prisons-in-Yemen.pdf.

detainees without warning, contrary to international best practice.[483] The Committee against Torture has highlighted the lack of female prison guards[484] and a lack of adequate healthcare facilities in prisons as matters of concern,[485] together with allegations of "sexual violence, including rape, against women in detention" and reports that "women in detention are frequently harassed, humiliated and ill-treated by male guards".[486] Women interviewed for this report in Sana'a prison complained about the poor provision of healthcare services for pregnant prisoners,[487] harassment by prison guards (including on account of their social origin),[488] and a lack of due process guarantees during legal proceedings.[489]

As with other categories of prisoner,[490] women in Yemen are often detained beyond the length of their initial sentence.[491] Unlike male prisoners, however, women may remain imprisoned until a male member of their family consents to their release.[492] A number of women detained in Sana'a prison were interviewed by the Equal Rights Trust's researchers in 2015,[493] and they explained that the prison's policy is to release female prisoners only where a family member provides permission,[494] apparently in one case in contravention of a court order demanding release.[495] Several of the women who spoke to the

483 *Ibid.,* pp. 37–38.

484 Which is driven by negative social connotations regarding the role. *Ibid.*, pp. 37–38.

485 See above, note 139, Para 24, Committee against Torture.

486 *Ibid.*

487 Interview B187.

488 Interviews B190, B182 and B181.

489 Interview B179.

490 For instance, one male prisoner at Sana'a prison told Equal Rights Trust researchers that he had been locked up since 2011, despite originally being detained for just five days. As he was insolvent, he could not afford to repay his debt and so he was not released: B54. See further discussion in Part 2.

491 Peaceworks, *Prisons in Yemen*, 2015, p. 28, available at: https://www.usip.org/sites/default/files/PW106-Prisons-in-Yemen.pdf.

492 Or because they cannot afford to pay blood money to secure their release. Whilst the same requirement would apply to men, women's inferior economic position means that such a requirement indirectly discriminates against them. See above, note 139, Para 24, Committee against Torture.

493 Interviews B184, B180, B188, B189, B186, B185, B175, B178, B176, B177 and B183.

494 Interview B189.

495 Interview B184.

Trust's researchers had been disowned by their family,[496] largely due to perceived moral transgressions.[497] In one case a woman did not have any family, so no one was able to secure her release.[498]

Restrictions on Freedom of Movement

The right to freedom of movement is protected by Article 12 ICCPR. It includes the right to liberty of movement, freedom to choose one's residence and the right to leave any country, including one's own. Freedom of movement may only be restricted under national law as necessary to protect national security, public order, public health, or the rights and freedoms of others; any restrictions must be consistent with other rights.[499] The HRC has emphasised that any restrictions must comply with the "fundamental principles of equality and non-discrimination", and that "measures preventing women from moving freely or leaving the country by requiring them to have the consent or the escort of a male person constitute a violation of article 12".[500]

Women's freedom of movement in Yemen is restricted, with women usually needing to be accompanied by a male relative in order to travel outside their place of residence (the cultural practice known as "*Mahram*").[501] A 2010 survey of 1,993 women in Yemen found that 47% of women surveyed felt "completely restricted" in leaving their house without permission, whilst 15% felt "somewhat restricted" and "somewhat free" respectively, and 21% felt "completely free".[502] In the same survey, 30% of women stated that they felt "completely restricted" in moving about in public areas without fear or pres-

496 Interviews B183, B178, B180, B189, and B186.

497 For instance, one woman noted that her family have refused to help her, because she was employed in work they considered to be "unbefitting to her female nature": Interview B188.

498 Interview B185.

499 Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, Para 2.

500 *Ibid*., Para 18.

501 See above, note 402, p. 34.

502 International Foundation for Electoral Systems and The Institute for Women's Policy Research, *The Status of Women in the Middle East and North Africa (SWMENA) Project: Focus on Yemen, Freedom of Movement, & Freedom from Harassment & Violence Topic Brief*, p. 2, available at: https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/SWMENA_Yemen_Freedoms_Restrictions.pdf

sure and 12% stated they felt "somewhat restricted", whilst 29% stated that they felt "completely free" doing so.[503] When asked the reasons why they felt restricted moving in public areas, the top response (given by 60% of women surveyed) was their husband or parent's opposition to their going out.[504] In household interviews conducted Oxfam, CARE and GenCap in 2015, 51% of female respondents stated that the main obstacle to their freedom of movement was a "lack of cultural acceptance".[505] These restrictions on women's ability to move freely in public spaces reduces their capacity to participate fully in all areas of civil, political and economic life.

The conflict has exacerbated restrictions on freedom of movement for both men and women. CARE et al have noted that men are vulnerable to being targeted at checkpoints and are at risk of being arrested or detained when travelling, which has severely restricted their movement to other towns or governorates.[506] As a result, in areas controlled by less conservative militias, women tend to be stopped less often than men, leading households in some areas to send women rather than men to markets.[507] However, as noted above, women remain vulnerable to sexual violence and harassment by armed groups, with Muhamasheen women being particularly vulnerable to sexual violence and harassment at checkpoints.[508] In areas controlled by radical Islamic groups such as Al-Qaida in the Arabian Peninsula – such as Abyan and Lahj – men at checkpoints reportedly insist on the practice of *Mahram*, which has impact on women's ability to access public services, such as healthcare and educational institutions, and to attend work.[509] According to one woman in Abyan, "[w]omen cannot go easily to work anymore because they don't always have a male companion available".[510]

503 *Ibid.*

504 *Ibid*., p. 3.

505 See above, note 402, p. 34.

506 See above, note 402, p. 34.

507 *Ibid.*

508 Oxfam, *Picking up the pieces: What Yemenis need to rebuild their lives in a country torn apart by conflict*, 2016, p. 9, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/bp-yemen-picking-up-the-pieces-210916-en.pdf.

509 See above, note 402, p. 34; See above, note 508.

510 See above, note 402, p. 34.

Education

Prior to the conflict, Yemen had made considerable progress in relation to educational enrolment rates over the previous two decades, and gender disparities in primary and secondary school enrolments decreased between 1999 and 2013.[511] However, gender disparities persist in enrolment, completion and attainment.

Whilst education was made compulsory in 2001,[512] in practice students are not required to attend.[513] Reports suggest that, in this context, parents prefer to send their sons to school over their daughters, particularly when finances are an issue and classrooms only have space for a limited number of students.[514] The decision to allow a child to continue schooling is often made by male family members, in particular the father.[515]

Between 2015 and 2016, the Equal Rights Trust's researchers interviewed a large number of women who had been forced to finish their education prematurely.[516] Varied reasons were given for the decision to remove girls from school, including the death or loss of a parent,[517] the lack of a local school and unwillingness to let girls travel long distances,[518] financial constraints,[519] female reputation or honour (including a lack of segregated schools),[520] and

511 UNICEF, *UNESCO UIS,* 2017, available at: http://data.uis.unesco.org/Index.aspx.

512 See above, note 24, Article 54.

513 See above, note 197, p. 21.

514 Worm, I., "Women's Health and Politics in Yemen", 275–292, in Mahdi, K.A., Würth, A., Lackner, H. (eds.), *Yemen Into the Twenty-First Century: Continuity and Change*, ISBS, 2007, p. 276.

515 See above, note 197, p. 27.

516 Interviews B34, B45, B79, B126, B130, D43, B23, B123, B24, B22, D63, D562, D1082, D1126, D1136, D1086, D1088, A122, A126, A11, B217, B30, D49, B290, C70, C67, C68, C128, D564, D1122, D1083, D1085, B260, B217, D565, D568, B127, B2, B51, B196, B90, B50, B78, B202, C133, C152, C167, C171, C172, C202, C204, C240, D42, D44, D563, D566, D567, D831 and D1081.

517 Interviews B34, B45, B79, B126, B130 and D43.

518 Interviews B23, B123, B24, B22, D63, D562, D1082, D1126, D1136, D1086 and D1088.

519 Interviews B217, B30 and D49.

520 Interviews B290, C70, C67, C68, C128, D564, D1122, D1126, D1136, D1083, D1085 and D1086.

a lack of female teachers.[521] Some interviewees also explained that "attaining adulthood" meant that there was perceived to be no need for further schooling.[522] Several women interviewed in Al-Bayda Governorate reported a common conception that girls should only remain in education until they entered puberty;[523] notably, the same was not true of these women's brothers, many of whom remained in education even after their sisters were withdrawn.[524]

Case Study: Interview with a Yemeni Woman on Education

Woman (W): *I have never studied. I don't know how to read and write. I don't write because of societal shame ("'aib") which society has [about girls studying]. It is forbidden to go to school (…) I have been discriminated against and marginalised.*

Interviewer (I): *Why didn't you study?*

W: *When someone knows that you are a girl and you have studied, they say "'aib" (shame). So because of traditions and cultural norms.*

I: *Who stopped you from learning?*

W: *At the beginning, my family – I mean my father really, because a girl must stay in the home and serve her family.*

I: *What effect has this had?*

W: *Lots of negative effects have come from not studying – I don't know how to read or write, I can't teach my children, and if I had studied, then I would have been able to get a good job.*[525]

521 Interview D1083.

522 Interview D568.

523 Interviews C5-17, C21-28, C32-47, C50-54, C59, C199-201, C203 and C210.

524 Interviews B260, B217, D565 and D568.

525 Interview E13.

Geographical distance to the nearest school was an inhibiting factor for many girls and women interviewed by the Trust's researchers. One girl explained that she has to travel to a separate village to attend secondary school, and this makes some of her male family members unhappy as there is a high level of social stigma that prevents women from travelling for education; she explained that she has already been withdrawn from school once by her father.[526] Another girl from Hajjah province, who had received top grades at the primary and secondary education level, was unable to study engineering at university, as there was no engineering faculty in Hajjah and she was not permitted by her parents to attend the university in Sana'a.[527]

Societal conceptions of female honour, which prevent some girls from travelling to attend school, also impact the types of educational facilities deemed acceptable for girls. The lack of single-sex educational facilities was commonly highlighted by interviewees as an obstacle to girls' education. As one woman explained:

> *The new school was far away and was mixed boys and girls. My father told me, "You are a girl and your place is in the home." This happened because the state refused to provide a school for girls in my area. I got married one week after the conversation with my father and my new husband lived in a different village. I thought I could perhaps continue my education there, but that village suffers from the same problem; there is no school there either."*[528]

A similar situation was encountered by a second interviewee, who explained that her husband would only allow her to continue her education if single-sex schools were provided locally:

> *I married in my first year of secondary school in 2005. I tried to continue with my education, but my parents and my husband forbade me because I was a girl. There were no single-sex schools in my area. I made a complaint to*

526 Interview B562.

527 Interview B123.

528 Interview D1336.

> *the local authority about this. I also complained to my husband and tried to persuade him. He told me that as soon as there was a single sex school in the area, I would be allowed to attend.*[529]

Among the women interviewed by the Trust's researchers who reported difficulties accessing education, many were victims of child marriage.[530] In some instances both the decision to marry and the decision to leave school was driven by economic concerns, including an inability to pay school fees[531] and the death of a male relative.[532]

The conflict has had a detrimental impact on schooling within Yemen. Reports suggest that over 2 million children were out of education in 2017.[533] More than 1,600 schools have been "damaged, occupied or closed", meaning that the number of pupils per class has increased.[534] Meanwhile, according to Save the Children, up to 73% of teachers were not paid for a six month period between October 2016 and April 2017.[535] The continuation of classes is largely dependent on the willingness of such persons to continue to teach, though many are struggling financially;[536] many schools have had to reduce school hours to as little as two hours of teaching per day.[537] The targeting of educational facilities using cluster bombs has made many parents fearful of sending their children to school; coupled with the financial difficulties of paying fees and other costs associated with schooling, this has had a particular detrimental effect on girls' school attendance.[538]

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529 Interview D1117.

530 Interviews A8, B77, B226, B97, B101, B129, B13, B82, B262, B132, C136, C166, D48, D575 and D1117.

531 Interview B232.

532 Interview B82.

533 See above, note 442, p. 2.

534 Save the Children, *Yemen's Forgotten Children: The Urgent Case for Funding Education and Child Protection,* 2017, p. 2, available at: https://www.savethechildren.org.uk/sites/default/files/documents/Yemen-Brief-FundingEducationChildProtection-April2017.pdf.

535 *Ibid*.

536 See above, note 534.

537 Testimony from a woman in Sana'a provided at '*Human Rights in Yemen: Women's Rights*', Geneva, 7 March 2018.

538 *Ibid*.

Employment

Women in Yemen suffer significant discrimination in employment, in terms of their participation in the labour market, their levels of remuneration, and the types of work they are able to undertake. According to World Bank estimates, based on the 2005 Yemen household budget survey:

> *More than 90% of Yemeni women of working age do not participate in the labour force (i.e., are neither employed nor looking for work) compared to 20% of men out of the labour force (…). If a narrower definition of labour force participation were used that excludes unpaid work, female labour force participation drops to 5%. Worryingly, more than 90% of Yemeni women who work and almost all rural Yemeni women who work, work without pay. Meanwhile, men are thirty times more likely than women to have paid jobs.*[539]

These estimates are supported by state data. In its 2014 report to the CEDAW Committee, Yemen revealed that between 2004 and 2010, female participation in the labour force was around 8%.[540] In the same period, the percentage of women participating in "economic activity" (i.e. excluding unpaid work), decreased, from a rate of 8.75% in 2004 to 8.1% in 2010.[541]

There is a prominent gender divide in respect of the type of work women are likely to participate in. Focus groups and individual interviews carried out by USAID in 2013 revealed that stereotypes exist as to the types of "acceptable" work for men and women.[542] The majority of jobs identified by respondents as appropriate for women involved household tasks (home-schooling; babysitting; house cleaning; cooking etc.) or work that can be completed at home (sewing; embroidery; etc.), whilst most of the jobs identified as acceptable for men involved significant levels of responsibility, education and inter-

539 See above, note 197, p. 4.

540 See above, note 310, p. 50.

541 *Ibid*.

542 USAID, *Yemen Gender Assessment*, 2014, pp. 44–45, available at: http://pdf.usaid.gov/pdf_docs/pa00jnrk.pdf.

action with the formal economy (for example: mechanics, electrical work and engineering; education; office work; agriculture; fishing; beekeeping; etc.).[543]

Water collection is a key task for many Yemeni women. It requires a considerable investment of time and energy and has been linked to decreased educational and employment opportunities, as well as "an increased vulnerability to gender-based violence".[544] Women also play a prominent role in the unpaid agricultural sector, which further limits opportunities for economic independence.[545] According to analysis by CARE, Oxfam and GenCap in 2015, prior to the conflict, women in Yemen provided "60% of crop cultivation labour and 90% of livestock-tending labour", whilst owning "less than 1% of agricultural land" and earning "30% less than men".[546]

Women's opportunities to undertake paid work are directly impeded, in some instances, by a husband or family member.[547] One interviewee for this report explained that her brother had stopped her from starting a new job:

> *I got a job in a computer training institute. My brother stopped me from working and from leaving the house. This happened on the 9th November 2016. He stopped me from work, saying I was a woman and leaving the house is forbidden from a religious point of view. This has saddened me deeply because he stopped me from my work and from making a living; had I not been treated this way I would have received a monthly income to support my needs.*[548]

Our research has found that, where women do find work, they can be exposed to discrimination in the workplace.[549] The Trust's researchers inter-

543 *Ibid*.

544 *Ibid.*, p. 11.

545 *Ibid*., p. 43.

546 See above, note 402, p. 20.

547 Interviews A2, A127, B22 and C168.

548 Interview E111.

549 Interviews C243, C208, C209, A269, D165 and D1099.

viewed one woman who worked in a hospital; she told researchers that, due to her gender and lack of social connections, she had found it difficult to progress in the hospital where she worked.[550] Another woman, who was employed as a secretary, told researchers that she was consistently prevented from applying for promotions and was not allowed to travel independently.[551] A third woman was fired from her job and replaced by a man, despite holding the requisite qualifications, believing that this was because of her gender.[552]

When considering the effects of the current conflict on women's right to work, there have been some counterintuitive positive developments. In particular, social stigma regarding certain jobs traditionally "considered shameful" has reduced, allowing some women additional opportunities of paid employment.[553] Nevertheless, women remain largely excluded from the paid economy and continue to perform the majority of household chores.[554] As noted, one such household chore for which women are responsible is water collection from wells and other water points; according to the International Rescue Committee (IRC), the scarcity of water has had a considerable impact on women and girls, who have been forced to travel further in order to collect water.[555] One woman from Lahj interviewed by the IRC explained that she had suffered two miscarriages after carrying heavy loads of water for long distances, due to the well in her community being dry.[556]

Political Participation

Under Articles 42 and 43 of the Constitution, women have the rights to participate in political life, to vote, and to stand for election. However, a combina-

550 Interview C243.

551 Interview D165.

552 Interview A269.

553 See above, note 402, p. 15.

554 *Ibid*.

555 International Rescue Committee, *They Die of Bombs, We Die of Need: Impact of Collapsing Public Health Systems in Yemen*, 26 March 2018, p. 12, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/theydieofbombswedieofneedfinal.pdf.

556 *Ibid*.

tion of discriminatory social norms,[557] restrictions on movement,[558] and the absence of positive state measures designed to encourage female participation means that women rarely exercise these political freedoms on an equal basis with men.

The number of women voters as a proportion of the voting population increased substantially between 1993 and 2003, from just 17.8% post-unification to 42% in the most recent parliamentary election,[559] though evidently this still fell well short of equal participation. Yet the number of female candidates between 1993 and 2003 decreased. In 1993, 42 women stood for election (1.3% of all candidates); this number fell to 23 (0.6%) in 1997 and to just 11 (0.7%) in 2003.[560] Likewise the number of women elected fell, from two in 1993 and 1997 (meaning women held only 0.6% of all seats), to a single woman representative in 2003 out of 301 seats.[561] In the 2001 and 2006 local elections, women fared little better, representing just 0.46% and 0.78% of the candidates respectively and securing 0.5% of all available seats.[562]

According to state data, women occupy very few other positions of responsibility. In 2012, just 1.1% of all Supreme Court vice-presidents were female (one woman compared to 83 men).[563] Similar trends were documented in relation to other judicial posts, with women making up just 3.3% of all judicial positions (21 women compared to 613 men).[564]

Article 7 of the General Election and Referendum Law[565] requires the High Election's Committee to encourage women's voting. However, as the figures above indicate, men are reportedly more likely to vote and, worryingly, there have been suggestions that women's votes are often "directed" by male family

557 See above, note 197, p. 19.

558 See the discussion above regarding restrictions on women's freedom of movement.

559 See above, note 310, p. 23.

560 *Ibid*.

561 *Ibid.*

562 *Ibid*.

563 See above, note 310, p. 20.

564 *Ibid.*, p. 20.

565 Law No. 13 of 2001 (the "General Election and Referendum Law"), Article 7.

members.[566] Whilst the state has made clear that the provisions of the General Election and Referendum Law are equally applicable to men and women (for instance, the right to stand as a candidate),[567] Article 85 may indirectly discrimination against prospective female candidates. The Article stipulates that any individual running as a candidate must be supported by 300 voters representing the majority of polling stations in their electoral district; this requirement indirectly discriminates against women, since restrictions on their freedom of movement and societal norms mean that women will face greater difficulties than men in gathering such support.

The fluid political environment of recent years has provided opportunities for enhanced participation by women, while the conflict has limited their voice in other respects. In 2011, many Yemeni women participated in the protests that broke out around the country in opposition to the Saleh administration,[568] with commentators observing that women across the Middle East and North Africa region who participated in the Arab Spring not only asserted their presence on the political stage, but also tried to subvert cultural stereotypes about their subordinated position within society.[569] In Yemen, the most prominent example of this was the journalist and human rights activist Tawakkol Karman, Nobel Peace Prize laureate in 2011, who was named the "Mother of the Revolution" for her non-violent political activism against Saleh's regime.[570]

The following year, a 30% quota for women's participation in the National Dialogue Conference (NDC) was approved by the NDC's Technical Committee.[571] Although the total number of women representatives fell short of this target (around 28% female participation),[572] this was a significant step given

566 USAID, *Yemen Gender Assessment*, 2014, p. 35, available at: http://pdf.usaid.gov/pdf_docs/pa00jnrk.pdf.

567 See above, note 310, p. 19.

568 See above, note 197, p. 11.

569 Shalaby, M., "Introduction: Deconstructing Women Empowerment in the Middle East and North Africa", 1–19, in Shalaby, M., Moghadam, V.M., *empowering Women After the Arab Spring*, Palgrave 2016.

570 Al-Ali, N., "Gendering the Arab Spring", *Middle East Journal of Culture and Communication*, Vol. 26, No. 31, 2012, p. 27.

571 See above, note 333, Para 3.

572 *Ibid*.

women's participation in other political fora. The NDC offered the opportunity to further progress women's issues within the state, with several important recommendations made including in relation to women's representation in judicial and political positions.[573] A quota for women's political representation was included in the Draft Constitution, with Article 76 requiring the state to adopt legislation and other such measures in order to improve the political representation of women and "to ensure access to at least 30% in various authorities and bodies".[574]

Since the outbreak of the conflict, women's political participation at the national and international levels has reportedly been "sidelined as a political issue".[575] Despite eight UN Security Council resolutions having been passed since 2000 in relation to the Women Peace and Security agenda, which call for women's participation in all stages of peace processes,[576] Yemeni women have been side-lined from formal peace negotiations.[577] In response to the failure to call for the inclusion of an independent delegation of women in peace talks, a group of around 50 Yemeni women formed the Yemeni Women Pact for Peace and Security in October 2015; following their lobbying efforts, seven members of the Pact were invited to attend peace talks in Kuwait in May 2016, although they were limited to attending side meetings rather than the official delegate meetings.[578] Of the official delegates at the Kuwait peace talks, only three out of 26 were women: there were two women present from the delegation representing the Hadi government, and one woman from the delegation representing the General People's Congress; the Ansar Allah delegation had no women represented.[579] There have

573 See above, note 18, Paras 43–45.

574 See above, note 56, Article 76.

575 See above, note 402, p. 13.

576 See in particular United Nations Security Council, *Resolution 1325 (2000) on Women, Peace and Security,* UN Doc. S/RES/1325, 2000; United Nations Security Council, *Resolution 1889 (2009) on Women, Peace and Security,* UN Doc. S/RES/1889, 2009; and United Nations Security Council, *Aiming to Strengthen Women's Role in All Stages of Conflict Prevention*, UN Doc. SC/11149, 2013.

577 US Civil Society Working Group on Women, Peace, and Security, "Bringing Peace to Yemen by Having Women at the Table: What the US Must Do and Why It Matters", *US CSWG Policy Brief*, 21 August 2017, p. 1, available at: http://www.icanpeacework.org/wp-content/uploads/2017/10/ICAN-US-CSWG-Policy-Brief-August-28-2017.pdf.

578 *Ibid*., p. 5.

579 *Ibid*.

also been reports that the parties to the conflict have prevented women from travelling to participate in peace talks:[580] in November 2015, Ansar Allah forces prevented a member of the Women's National Committee, Dr. Shafiqa Al-Wahsh, from travelling to preparatory peace talk meetings in Jordan and Egypt.[581]

That said, the "leadership vacuum" which has arisen as a result of the departure of significant numbers of key government officials and party members from the country since the start of the conflict has enabled women to assume positions of responsibility at the local level within their neighbourhoods and villages, for example through regulating the provision of basic services and humanitarian assistance.[582] In interviews conducted by Saferworld in Aden in late 2016, certain women (who tended to be well-educated) stated that they considered the war to have "empowered women" in some ways, "making them stronger, more resilient, and more self-reliant", and "more able to have a presence in politics".[583] However, at the same time, their participation in public life has been hindered by a number of security-related obstacles, including controls at checkpoints (which restrict their freedom of movement), and intimidation and threats from the parties to the conflict.[584]

Access to Healthcare and Family Planning

Of the 15,566 married women surveyed in the 2013 Demographic and Health Survey, only 9.4% stated that they were solely responsible for making decisions regarding their own healthcare, as compared to 42.2% who said that their husband was the primary decision-maker; 45.25% of respondents stated that decisions regarding health care were a mutual decision, taken equally

580 *Ibid*.

581 Human Rights Watch, *Yemen: Travel Ban on Women's Rights Advocate*, November 2015, available at: https://www.hrw.org/news/2015/11/15/yemen-travel-ban-womens-rights-advocate.

582 International Foundation for Electoral Systems, *The Role of Elections in a Post-Conflict Yemen*, 2016, p. 15, available at: https://www.ifes.org/sites/default/files/2016_ifes_the_role_of_elections_in_a_post-conflict_yemen_final.pdf; Saferworld et al, *"Women nowadays do anything": Women's role in conflict, peace and security in Yemen*, June 2017, p. 15.

583 *Ibid.*, p. 16, Saferworld et al.

584 *Ibid*., p. 15.

by the wife and husband.[585] The survey found a positive correlation between women's education levels and the likelihood of participating in decisions regarding their healthcare (either solely or jointly).[586] Likewise, women living in urban areas – particularly Aden, Sana'a and Hadramout – were more likely to participate in decisions regarding their health.[587]

In 2013, less than half of all births (44.7%) were attended by "skilled health staff".[588] The CEDAW Committee and the CESCR have both expressed concern regarding women's access to healthcare and family planning, as well as the low rate of women "attended by skilled medical personnel" during childbirth.[589]

According to the International Rescue Committee, women and children "have borne the brunt" of the effects of the conflict in terms of the impact on their access to health services: in October 2016, it was estimated that over half a million pregnant women had no access to reproductive health services, with only 35% of maternal and new-born health services being functional.[590] A hospital manager in Aden interviewed by the IRC in March 2018 explained that women's health needs are being neglected:

> *The state doesn't provide any medicine for women's health or obstetric and gynaecological services. Gulf countries donate to hospitals, but it isn't what is needed by women except maybe the intravenous fluids.(…)We are being given bandages meant for war injuries, not what we need to provide basic care to women and kids here.*[591]

585 Republic of Yemen Ministry of Public Health & Population & Central Statistical Organisation, *Yemen National Health and Demographic Survey 2013*, 2015, p. 179, available at: http://dhsprogram.com/pubs/pdf/FR296/FR296.pdf.

586 *Ibid*., p. 180.

587 *Ibid*.

588 The World Bank, *Data Bank*, 2017, available at: http://databank.worldbank.org/data/home.aspx.

589 See above, note 304, Paras 28–29; See above, note 384, Para 27.

590 International Rescue Committee (IRC), *They Die of Bombs, We Die of Need: Impact of Collapsing Public Health Systems in Yemen*, 26 March 2018, p. 14, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/theydieofbombswedieofneedfinal.pdf.

591 *Ibid*., IRC interview conducted in March 2018.

Conclusion

Women in Yemen face discrimination and inequality in all areas of life, as a result of widespread social prejudice and harmful social norms, discriminatory laws and policies and tolerance of gender-based violence. Before the outbreak of the conflict, the state had consistently fallen to the bottom of global gender rankings on account of the severe manifestations of discrimination women face in everyday life. A combination of negative societal stereotypes, a weak legislative framework and discriminatory laws means that gender-based violence and child marriage are prevalent; women are treated unequally in relation to marriage, divorce and inheritance; and they face barriers in exercising their rights to work, political participation, education and healthcare. Attempts to promote gender equality have been undermined by a general reluctance to challenge traditional belief systems. Despite the best efforts of relevant women's groups, few laws have been amended in recent years. In some instances, previous moves toward gender equality, such as the imposition of a minimum age for marriage, have been reversed.

Whilst the conflict has provided certain opportunities for women, including the possibility of obtaining employment in jobs traditionally considered to be unsuitable for women, the Equal Rights Trust's research has found considerable evidence that the conflict has generally exacerbated the entrenched discrimination and inequalities faced by women and girls in Yemen, with rates of gender-based violence and child marriage having increased, and women having been side-lined in formal peace talks.

3.4 Discrimination on the Basis of Ethnicity and Descent

The Yemeni government has, in the past, been reluctant to acknowledge the ethnic and racial diversity of the country. In its 2010 state report to the Committee on the Elimination of Racial Discrimination (CERD), Yemen rejected concerns previously raised by the CERD over the lack of state data regarding different ethnic groups residing within the country,[592] noting that "social and historical research has never shown [the existence of] diverse racial groups" within the state.[593]

592 Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Yemen,* UN Doc. CERD/C/YEM/CO/16, 19 October 2006, Para 8.

593 CERD, *Combined Seventeenth and Eighteenth Periodic Reports: Yemen*, UN Doc. CERD/C/YEM/17-18, 14 June 2010, Para 20.

The country is not, however, ethnically or racially homogenous, and is in fact home to a number of different ethnic, racial and religious groups. Of particular note is the Afro-Arab group whose members self-identify as "Muhamasheen" (the marginalised) and who have been pejoratively labelled "*Al-Akhdam*" (servants) by many in Yemeni society,[594] who account for up to 12.7% of the population.[595] The country also has a large refugee, asylum-seeker and migrant population: in 2017, the total refugee and asylum-seeker population was 280,395, whilst the estimated migrant population was 154,675.[596] The majority of this population are African and in particular Somali (255,000).[597]

This section of the report focuses on discrimination on the grounds of ethnicity and descent against the Muhamasheen community, with discrimination against refugees, asylum-seekers and migrants of African origin discussed in section 3.8 (discrimination against non-nationals).

Political and Social Context

The exact origins of the Muhamasheen are debated, with some groups linking their lineage back to fifth century Africa and others stressing their Yemeni roots.[598] There are difficulties accounting for the number of Muhamasheen in Yemen, which are compounded by a lack of disaggregated data on the ethnic composition of the state.[599] However, commonly quoted figures suggest that the Muhamasheen may account for anywhere between 500,000 and 3.5 million persons, or between 1.8% and 12.7% of the population.[600]

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594 "*Al-Muhamesheen*" means "The Marginalised", and was adopted by the group itself in order to move award from the derogatory label "*Al-Akhdam*" (Servants); however, in practice the two are used interchangeably. For a detailed discussion, see above, note 11.

595 Asia Dalit Rights Forum, *Towards a Unifying Global Identity: A Framework on Discrimination Based on Work and Descent, Including Caste,* 2017, pp. 16–17, available at: http://asiadalitrightsforum.org/images/imageevent/648455134Global%20report-single%20page%20format.pdf; See above, note 11, p. 12.

596 See above, note 437, p. 17.

597 United Nations High Commissioner for Refugees, "As Yemen Conditions Deteriorate, Somali Refugees Look to Return Home", *United Nations High Commissioner for Refugees,* 19 May 2017, available at: http://www.refworld.org/docid/591eb7004.html.

598 *Ibid*., pp. 16–17. See also, above, note 11, p. 12.

599 Joint Submission 1, *Submission to the Universal Periodic Review on Yemen,* 2013, p. 1, available at: https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=519&file=EnglishTranslation.

600 See above, note 595, pp. 16–17; See above, note 11.

The Muhamasheen are the lowest ranking group in Yemen's social hierarchy, with the Special Rapporteur on Minority Issues noting that they are "subjected to descent-based discrimination".[601] As explained in Part 1, descent and social status are complex issues in Yemen, and ones which have evolved over recent decades. Prior to the 1960s, a distinct system of social stratification could be identified. Whilst tribal membership was central to this system,[602] the country's social structure has also been likened to a caste system due to the "ascribed or inherited nature" of its various occupation-based categories.[603] At the top of the hierarchy were the S*ada* (Sayeed), also known as Hashemites, who claim descent from the prophet Muhammad;[604] they have traditionally occupied a prominent role in religious, judicial and political life, and are also landowners.[605] The next in status were the *Quda* (Qadi), individuals distinguished by their education, who are descended from judges and have tribal origins.[606] Below these two groups were the tribespeople, "the mainstream of Yemeni society", the majority of whom were agriculturalists.[607] Beneath the tribespeople were those groups considered to be "weak" (*da'if*), comprising the trading class.[608] At the very bottom of the Yemeni social stratum were individuals thought to be "lacking in origin" (*nuqqas al-asl*), including service-

601 Human Rights Council, *Report of the Special Rapporteur on Minority Issues*, UN Doc. A/HRC/31/56, 28 January 2016, Para 37.

602 Peterson, J. E., "Tribes, the State and the Awakening", 2012, p. 5, available at: http://www.jepeterson.net/sitebuildercontent/sitebuilderfiles/Peterson_-_Yemen_-_Tribes_State_Awakening_28AUG2012.pdf.

603 Nevola, L., "On colour and origin: the case of the akhdam in Yemen", *Open Democracy*, 13 February 2018, available at: https://www.opendemocracy.net/beyondslavery/luca-nevola/on-colour-and-origin-case-of-akhdam-in-yemen.

604 Adra, N., "Tribal Mediation in Yemen and its Implications to Development", *AAS Working Papers In Social Anthropology*, Vol. 19, 2011, pp. 1–2, available at: http://www.najwaadra.net/tribalmediation.pdf.

605 Lackner, H., "Understanding the Yemeni Crisis: The Transformation of Tribal Roles in Recent Decades", *Durham Middle East Papers: Sir William Luce Publication Series,* No. 17, 2016, p. 4, available at: http://dro.dur.ac.uk/19545/1/19545.pdf.

606 It has been noted that whilst *Quda* status is predominantly a hereditary title, "anyone can become a *Quda* through personal merit and religious studies": Peterson, J. E., "Tribes, the State and the Awakening", 2012, p. 9, available at: http://www.jepeterson.net/sitebuildercontent/sitebuilderfiles/Peterson_-_Yemen_-_Tribes_State_Awakening_28AUG2012.pdf. See also, above, *Ibid.*

607 *Ibid*., Lackner, H.

608 *Ibid*., pp. 4–5.

providers such as restaurateurs and barbers,[609] and the Muhamasheen, whose main occupations were cleaning and begging.[610]

From the 1960s onwards, Yemen's tribal and social structure underwent considerable change, driven primarily by economic factors (including wide-scale emigration to Saudi Arabia and neighbouring states) and the system of political patronage established by President Saleh.[611] An individual's tribal and birth status began to acquire less importance than control over economic resources and means of production.[612] However, whilst the increased importance of wealth and trade meant that the stature of the trading class within Yemeni society improved, the lowest social group – the Muhamasheen – "remained as it was".[613]

The continued social subordination of the Muhamasheen has led to observations that the discrimination they face does not relate solely to their social standing, but rather is "based on 'racial' and ethnic prejudice".[614] Often identified by their darker skin tone, the Muhamasheen are distinct from their "white counterparts" within the social group considered to be "lacking in origin": they "are perceived as a genealogically defined subset of the wider category of people *'lacking in origin'* and are therefore "more discriminated against".[615] As noted by Nu'man Al-Hudheyfi, a member of the Muhamasheen community who attended the National Dialogue Conference (NDC) to represent the interests of the "marginalised" (see further below), the Muhamasheen's "social, economic and political *marginalisation* intersects with discrimination based on their *skin colour*".[616]

The government has historically been reluctant to acknowledge the racial or ethnic nature of the discriminatory treatment of Muhamasheen, instead

609 See above, note 603; *Ibid*., p. 5.

610 *Ibid*., Lackner, H.

611 See above, note 602, pp. 8–9. See further discussion in Part 1.

612 Lackner, H., "Understanding the Yemeni Crisis: The Transformation of Tribal Roles in Recent Decades", *Durham Middle East Papers: Sir William Luce Publication Series,* No. 17, 2016, p. 8. available at: http://dro.dur.ac.uk/19545/1/19545.pdf.

613 *Ibid*.

614 See above, note 605, p. 8.

615 See above, note 603.

616 *Ibid.*

emphasising the "homogeneous nature" of the Yemeni population and the "adverse socio-economic [as opposed to ethnic or racial] circumstances that have led to the marginalisation of their existence and defined their role in society".[617] However, after being urged by the CERD in 2011 to recognise the "different ethnic characteristics" of the Muhamasheen community,[618] the Yemeni government provided the following information regarding the Muhamasheen in its 2013 state report:

> *[W]e wish to inform the Committee that the Akhdam category is a marginalised group at the bottom of the Yemeni social structure. The vast majority of them are dark-skinned and live in social, economic, cultural and political isolation.*[619]

Having been excluded from Yemeni economic, tribal and political structures for much of their history, the Muhamasheen have faced unique difficulties escaping poverty, and have had little to offer ruling elites in terms of money or influence (as compared, for instance, to members of the trading class). They remain limited to low-paid, low-skilled forms of work (such as street cleaning) and live in poverty without access to adequate standards of living, housing, education or political representation.[620]

Attempts by members of the Muhamasheen community to interact with broader society are often spurned. One man interviewed by the Equal Rights Trust's researchers explained the difficulties experienced by his daughter: "My daughter faced racism from the children of our neighbouring tribe; they said 'we won't play with a *Khadima* [meaning servant]."[621] Another interviewee, who had been living in his village for ten years, told researchers that despite his best efforts to integrate, he is often harassed by the community.[622]

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617 See above, note 593, Paras 20–21.

618 See above, note 232, Para 15.

619 See above, note 182, Para 32.

620 See above note 595, p. 8.

621 Interview E23.

622 Interview C245. A similar story was told by a man from Al-Medina, Haja, who told the Equal Rights Trust's researchers that he was often verbally harassed and called Khadim whilst working as a labourer in a local market: Interview C152.

Although these examples are only illustrative, they help to demonstrate the everyday problems that affect the Muhamasheen community.

The Muhamasheen are also subject to human rights violations, and the social stigma attached to them is a central factor in their experience of discrimination and a range of other human rights violations. They continue to face exclusion in the midst of conflict, with a resulting impact on their enjoyment of rights. As explained below and elsewhere in this report, the Muhamasheen's experience of conflict differs from many members of Yemeni society.[623] They have been subject to unique dangers and threats, which are compounded by the discrimination they face in everyday life.

Legal and Policy Framework

International law prohibits discrimination on the grounds of colour, ethnicity and descent, with discrimination on these grounds recognised as constituting a form of racial discrimination.[624] The CERD has explained that the term "descent" may include "discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status".[625] In its General Comment No. 20, the Committee on Economic, Social and Cultural Rights (CESCR) has stated that the term "birth" under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, which requires states to guarantee enjoyment of economic, social and cultural rights without discrimination, includes descent.[626]

In its 2014 submission to the CESCR, the Yemeni government stated that no laws directly discriminate against the Muhamasheen.[627] However, the *absence* of discriminatory laws is insufficient to fulfil Yemen's obligations under in-

623 See, for example, section 3.9 on discrimination against internally displaced persons.

624 International Convention on the Elimination of Racial Discrimination (ICERD), Article 1.

625 CERD, *General Recommendation No. 29: Article 1, Paragraph 1, of the Convention (Descent),* UN Doc. A/57/18, 2002, p. 112.

626 Likewise, descent is listed as a protected characteristic under Principle 5 of the Declaration of Principles on Equality. See Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 26, and *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 5.

627 See above, note 182, Para 35.

ternational human rights law: states are obliged to adopt comprehensive legislation which prohibits discrimination on all grounds recognised under international law, including on the grounds of descent.[628] The CERD stressed in its General Recommendation No. 29 that states should "enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention", including through the adoption of an explicit constitutional prohibition on descent-based discrimination.[629] It has also stated (in relation to descent-based discrimination) that state parties should adopt temporary special measures in order to ensure affected groups access to their rights.[630]

As noted in Part 2, Yemeni law does not provide explicit protection from discrimination on any grounds, including colour, ethnicity or descent. Article 24 of the Constitution provides that "[t]he state shall guarantee equal opportunities for all citizens in the fields of political, economic, social and cultural activities and shall enact the necessary laws for the realization thereof".[631] However, following constitutional amendments, Yemeni law (including the Constitution) does not expressly prohibit discrimination.[632]

In 2011, the CERD criticised Yemen for failing to adopt a definition of racial discrimination in its national law,[633] as well as for the absence of provisions on hate speech.[634] In anticipation of the CERD's views, Yemen committed to conducting a review of national legal provisions, with a view to ensuring compliance with the Convention.[635] Following a dialogue conference on criminal justice, several amendments to the Penal Code were recommended that would introduce, *inter alia,* a definition of racial discrimination and a pro-

628 International Covenant on Civil and Political Rights, Article 26; See above, note 626, Paras 26 and 36, CESCR.

629 See above note 625, Paras 1(c) and (d).

630 See above note 625, Paras 1(e) and (f). See also, ICERD, Article 1(4).

631 See above, note 24, Article 24.

632 See above, note 294, Para 77.

633 See above, note 232, Para 7.

634 See above, note 232, Para 12.

635 See above, note 593, Paras 82, 83, and 88.

vision permitting the adoption of temporary special measures.[636] Neither of these amendments was ever adopted.[637] It is also noteworthy that the criminalisation of racial discrimination would be inconsistent with international best practice, which requires that discrimination be treated as a civil, rather than criminal, matter.

Through participating in the NDC (see below), the Muhamasheen were able to advocate for the guarantee of their rights, including in relation to equal participation in public, civil and political life, with the President of the Yemeni Union of the Marginalized (who represented the Muhamasheen in the NDC) demanding a 10% quota across legislative and senior military posts for individuals from marginalised communities.[638] However, this recommendation was ultimately rejected and did not appear in the final Draft Constitution.[639]

Violence and Ill-Treatment

Allegations of discriminatory violence against the Muhamasheen are commonly reported by civil society.[640] Many Muhamasheen individuals interviewed by researchers for the Equal Rights Trust between 2015 and 2017 had experienced some form of violence. One man interviewed explained: "Any time I am in a public space in my town, Haja, people call me *Khadim* (servant) and I have been attacked in my own house. My landlord also threw me out. This is because I am *Muhamash*".[641]

Muhamasheen women in particular face a heightened risk of gender-based violence, including solicitation,[642] sexual assaults[643] and "hate-based attacks".[644]

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636 *Ibid*., Para 88. The definitions of "racial discrimination" and temporary special measures were taken directly from Articles 1(1) and (4) ICERD.

637 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

638 *Ibid,* Para 36.

639 See above, note 294, Para 77.

640 See above, note 11, p. 12.

641 Interview B109.

642 See above, note 599, p. 2.

643 See above, note 595, p. 17.

644 *Ibid*.

Several women interviewed by the Trust's researchers expressed concern regarding the intimidation they faced when out in public, and the retaliation they experienced after challenging such conduct.[645] For example, one woman explained as follows:

> *In 2012 it happened. I was getting sexually harassed every time I went to the well to collect water. One day, I shouted "Aib" [shame upon you] at the man, and everyone at the well also said it to him. I returned to my family and told them about what had happened. They went to the man while he was sitting around the well with a group of people from his tribe and asked him to stop the harassment. He replied, "She is only a member of the Muhamesheen class – a Khadima" [servant]. They started to fight. Afterwards the perpetrator took some young people from his village and went to my village. They beat my family and destroyed part of the house. My family was so scared, we left the village and never came back.*[646]

Similar testimony was recorded by Witness and the Sisters Arab Forum for Human Rights, a Yemeni non-governmental organisation (NGO), who produced a documentary concerning the treatment of the Muhamasheen.[647] In one case, a pregnant Muhamasheen woman was propositioned for sex by two men and, after declining the offer, she was attacked by the men who cut her eye-lid and hit her in the back with a rock. After her husband visited the family of the perpetrators, and asked the father to discipline his sons, the men returned to the woman's home, throwing rocks at her son and tearing the roof off her house. The woman and her family decided to leave for a period to escape the escalating tension; however, upon her return, she discovered that their house had been destroyed.[648]

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645 Interviews A156, A8, A12, A10 and A13.

646 Interview E29.

647 Witness, *Breaking the Silence: Yemeni Akhdam Women Speak out against Violence and Discrimination*, 2009, available at: https://witness.org/portfolio_page/taking-on-discrimination-against-women-in-yemen.

648 *Ibid*.

Access to Justice

There is evidence that members of the Muhamasheen face difficulties in securing legal redress where they are subject to violence or other unlawful conduct. A number of Muhamasheen individuals interviewed by the Trust's researchers reported having no means to secure redress for crimes committed against them or their families.[649] One man explained that he was beaten and threatened with a knife by a group of young men, but when he reported the incident to police and security services, they did nothing: "It is because I am *Khadim*".[650] A woman explained that her husband had been killed, and although she tried to bring a case to court, the security and judicial staff were uncooperative, reportedly on account of her Muhamasheen identity.[651] The Trust's researchers also spoke with the parents of a girl who had been raped by her uncle; because she was Muhamasheen, the police were reportedly dismissive of her parent's complaint and refused to investigate the matter.[652]

Case Study: Interviews with Muhamasheen persons on Access to Justice

My little brother was discriminated against at the police station. He was raped by someone in the neighbourhood while he was selling books. He was taken in front of other people, and raped somewhere inside the neighbourhood. Then we filed a report to the police about the incident, but they put the report away and didn't bring the person who raped my brother forward for investigation. Because my family is Muhamesheen, and therefore my brother is too, we were marginalised and we couldn't do anything [to take the case further].[653]

My brother was raped by a man on the street. The rapist confessed to his friend about this, and my brother brought an accusation against him. The courts were closed in [the governorate] because of the current events, so

649 Interviews A272, B48, D9, D12, D87, D88 and D90.

650 Interview D17.

651 Interview B48.

652 Interview A272.

653 Interview E265.

> instead we made a complaint to the head of the neighbourhood who locked the rapist up. The next day, however, he was released. When we asked the head of the neighbourhood why this had happened, he said to us, "You are Akhdam, you don't have the right to put someone on trial for this act. Your children are always raped on the streets, so what is the point of punishing this person now?" We have all suffered psychologically. We were frustrated, my brother has become scared of everyone, and he dropped out of school and stayed at home.[654]

The difficulties faced by the Muhamasheen in accessing justice are exacerbated by their historic exclusion from the tribal system. As explained in Part 2, the tribal arbitration system which functions alongside the formal justice system mean that tribal leaders play a large role in the determination of disputes and the application of customary and Islamic law.[655] It has been noted that the fact that the Muhamasheen fall outside the Yemeni tribal system "means they have little access to redress or mediation".[656]

Land Ownership and Tenure

Land administration in Yemen is extremely complex. The Law of Land and Real Estate[657] governs the land registration process and divides land-types into three categories: public, private and communal.[658] Although the Republican Resolution on the Land Register[659] requires land to be registered, in practice "only urban land appears to be registered pursuant to the formal law".[660] Consequently,

654 Interview E157.

655 Housing and Land Rights Network and Habitat International Coalition, *The Human Right to Adequate Housing in the Case of al-Akhdam (Yemen)*, 2007, pp. 14–15, available at: http://www.landpedia.org/landdoc/Analytical_materials/Akhdam_factsheet.pdf.

656 See above, note 11, p. 12.

657 Law No. 21 of 1995 "on Land and Real Estate".

658 Republic of Yemen, Ministry of Public Works and Highways, *Resettlement Policy Framework. Integrated Urban Development Project: Urban Upgrading for City of* Taiz, 2010, p. 8, available at: http://documents.worldbank.org/curated/en/209301468334287146/pdf/RP9240v20P10701PUBLIC10SCAN05491000.pdf.

659 Republican Resolution No. 39 of 1991 "on the Land Register".

660 See above, note 658, p. 13.

in rural areas, the majority of land registration and administration is carried out by tribal leaders under principles of Islamic customary law.[661]

The Muhamasheen's exclusion from tribal structures creates serious problems in relation to land acquisition and disputes as to legal title. NGOs have noted that the Muhamasheen community are generally prohibited from constructing properties and leasing land by local sheiks and landowners.[662] Additionally, the social stigma experienced by the Muhamasheen, coupled with the fact that many of them do not possess identification documents, means that they are excluded from traditional sources of land-tenure such as "sharecropping",[663] under which a proportion of harvested crops is given to the land-owner in exchange for use of the land.[664]

As a result of the discrimination they face, the majority of Muhamasheen persons live in settlements where they do not have land tenure; as a result, they live at risk of their homes being demolished, and Muhamasheen individuals are often instructed to leave by landowners.[665] In some cases, it has been reported, individuals are not given time to collect their possessions and have seen their personal property destroyed after being forcibly evicted.[666] In severe cases, fires are reported to have broken out, purportedly as a way to drive out Muhamasheen settlers.[667]

Living Conditions

The majority of Muhamasheen persons are forced to live on the edges of major towns and cities in makeshift accommodation constructed of basic building materials such as cardboard and sheet metal.[668] According to a report of the Office of the High Commissioner for Human Rights, the majority of these

661 *Ibid*.

662 See above, note 599, pp. 1–2.

663 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

664 See above, note 655, pp. 6–7.

665 See above, note 182, Para 33.

666 See above, note 599, pp. 8–9.

667 See above, note 655, pp. 3–4.

668 See above, note 182, Para 33.

settlements may be found on the edges of "Sana'a, Aden, Taiz, Lahij, Al-Abyan, Al-Hodeida and Al-Mukalla".[669]

Many of the Muhamasheen interviewed by the Equal Rights Trust's researchers stated that they had been prevented from establishing camps within towns.[670] Many also stated that they lived in inadequate housing, which sometimes lacked sewage systems,[671] possessed "sporadic" electricity,[672] and were predominantly constructed of cloth and wood.[673] One man interviewed in Al-Houta, an impoverished area predominantly populated by members of the Muhamasheen community, informed researchers that the area in which he lived had been without a water supply for several years.[674] In a 2014 Muhamasheen mapping report conducted by United Nations Children's Fund (UNICEF), less than 10% of the 9,200 Muhamasheen homes surveyed in Taiz Governate had access to piped water, as compared to 29% of the general population, and only 42% of Muhamasheen households had a latrine.[675] Three in four households lived in a single room, with the overwhelming majority of those households consisting of three or more persons.[676] One woman informed researchers of the unsanitary conditions she was forced to live in:

> *We live next to the stream with the other Muhamasheen families. Sewage comes to us daily from the neighbouring towns. We have raised our grievances with the local council but they don't care at all, because we are Muhamasheen.*[677]

669 See above, note 294, Para 77.

670 Interviews B256, B72, B94, B71, B70, B87, B96, B85, B86, B134, B93, B154, B81, B100, B83, B82, B98, B90, B89, B292, B80, B137, B78, B255, B84, B257, B151, D820 and D4.

671 Interview A151.

672 Interview A153.

673 Interviews A154, A137, A153, A148, and A152.

674 Interview A135.

675 United Nations Children's Fund (UNICEF), *Muhammasheen Mapping Update*, 2015, p. 2, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Yemen%20SitRep%20January%202015.pdf.

676 *Ibid*.

677 Interview D26.

Education

The Muhamasheen have very low levels of educational participation and attainment when compared to national and global averages. According to a household survey carried out in Aden, Sana'a and Hodeida in 2008, the majority (58%) of Muhamasheen children were not in education, with almost half (44%) having never attended school.[678] A separate study from Taiz in 2010 found that the overwhelming majority of Muhamasheen children drop out of full time education by grade nine (87%).[679] A more recent UNICEF survey of 9,200 households found that just one in five Muhamasheen over the age of 15 were literate, with the national average being almost twice this figure.[680] Around half of children between the ages of six and 17 were enrolled in school: a substantial deficit when compared to the general population.[681]

A large number of the Muhamasheen community interviewed by the Equal Rights Trust's researchers had dropped out of the education system.[682] Several reasons for school drop-outs were given by interviewees. In some instances, Muhamasheen children were withdrawn so that they could work and contribute toward the family income.[683] In others, children were reportedly prevented from enrolling in school because they did not have the requisite documentation, such as a birth certificate or personal identification card.[684] Many members of the Muhamasheen community do not possess birth certificates or identification,[685] meaning that the requirement to submit such

678 UNICEF, *Situation Analysis of Children in Yemen 2014*, 2014, p. 194, available at: https://www.unicef.org/mena/MENA-Situation_Analysis_report_-_English_Final(1).pdf.

679 In the earlier SOUL study a similar drop-out rate between Muhamasheen and non-Muhamasheen children was observed. Quoting UNICEF: "SOUL conjectures that barriers to education faced by Mohamasheen are primarily to do with access to education. Once Mohamasheen children are enrolled, their chances of progression are not too dissimilar from non-Mohamasheen communities." See *Ibid*.

680 See above, note 677.

681 According to UNICEF, "only two in four [Muhamasheen] children aged six to 17 are enrolled in school, though the average is twice this figure." See *Ibid*.

682 Interviews A11, B13, B92, B155, D16, D554, A9, D558 and D556.

683 Interviews B92 and A9.

684 Interviews A134, A129, A136 and A153.

685 For an overview of the exclusion of children from schools due to a lack of documentation, see section 3.9.

documents in order to enrol in school indirectly discriminates against Muhamasheen children.

In relation to those Muhamasheen children who do enter the classroom, the Trust's researchers received reports that many are subject to harassment and bullying by both teachers and students,[686] in some cases leading children to drop out of school.[687] In September 2015, researchers spoke to the parents of a child who left school at the age of 10; the parents explained that one of the reasons he left school was because of the harassment he faced, as other pupils would not talk to him and the teachers made him sit at the back of the class.[688] A 16 year old interviewed by researchers dropped out of school due to the harassment he was subject to by his teacher: "She called me inhumane, degrading names in front of all the other students; [this] made me drop out of school."[689] Some Muhamasheen children are reportedly tasked with menial and humiliating jobs by teachers, such as cleaning lavatories, thus reinforcing stereotypes about the social status of the Muhamasheen community.[690]

Case Study: Interviews with Members of the Muhamasheen Community on Education

I was forced to leave [school] by one of my teachers. He would kick me out of the class saying that because I was Muhamasheen I did not deserve to study with white people. My white classmates would avoid sitting next to me and refuse to play with me (…) I was the best behaved [student] in my class. I never hit anyone or caused any problems (…) I hate school, I hate the discrimination and the marginalisation I faced there. The teacher expelled me because he said I said a bad word, but I didn't. He said to me "You don't belong here, you are Khadim".[691]

686 Interviews A25, A9, A128, A131, B29, D58, D552, D581 and D592.

687 Interviews D16, D554, D558 and D556. For further discussion, see Equal Rights Trust, *Learning InEquality: Using Equality Law to Tackle Barriers to Primary Education for Out-of-School Children*, 2017, pp. 119-120, available at: http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality_e-version_2.pdf.

688 Interview A9.

689 Interview D16.

690 See above, note 599, pp. 5–6.

691 Interview E102.

> I was studying (…) until other students started to bully me. They shouted at me, calling me, in their words, "Khadim". [They asked] why was I studying? This made me abandon my studies and return to the streets, cleaning cars. I complained to the administration and they asked the students about it, but it didn't lead to anything (…) I've suffered a lot – I entered the institute and there were even problems at that stage registering because of my situation (…) The bullying and abuse has affected my mental health and I feel that us Akhdam are really neglected in society. I wanted to learn to get a good job – to move away from working on the streets – but the tribes won't let this happen to our people.[692]

For the most part, teachers did not appear to take complaints made by Muhamasheen children seriously.[693] The Trust's researchers spoke to one school girl who felt isolated by fellow pupils; despite complaining to the headteacher and other staff members on several occasions, the school never pursued her complaints.[694] In some instances, teachers actively prohibited Muhamasheen students from attending school. As one girl explained to researchers:

> *It was normal, everyday, everywhere, for me to hear the words "servant – muhamesha". (…) One day a nightmare happened at school. The teacher entered the classroom one day and screamed in a loud voice, "All Muhamasheen must get out!" I argued with her, but still, I was forced to leave the school.*[695]

Employment

As a result of poor education levels and negative social attitudes, many members of the Muhamasheen community are forced to work in low-paid, low-

692 Interview E12.

693 The same is true for other staff members. In September 2015, the Equal Rights Trust's researchers interviewed one woman who worked at a school. One day, she informed researchers, she entered a room where the school board were meeting. They called her "servant" and verbally abused her. Despite making an official complaint to the school's headteacher, no action was taken (Interview D559).

694 Interview D592.

695 Interview D5.

skilled jobs, including street cleaning and plastic collection.[696] Interviews conducted by the Trust's researchers indicate that discrimination against the Muhamasheen in employment is widespread,[697] with many individuals struggling to find work at all.[698]

Where members of the Muhamasheen community do find work, they may be paid at a lower rate than others.[699] One Muhamasheen man interviewed by the Trust's researchers stated that he earned around 1,000 Riyals (approximately 3.5 US$) per day, whereas his colleague earned double that amount.[700]

Case Study: Interviews with Members of the Muhamasheen Community on Work

I faced discrimination from [my employer], who would not accept my request to be selected for interior cleaning work – the inside of the offices – because only white women are able to do this sort of work. I am ill and cannot clean outside in the streets. He refused my application and told me that my place was not inside the office, but on the streets. This is wrong because my contract states clearly that I am contracted as a cleaner and not a street worker, just like all the other cleaners' contracts in the organisation. This discrimination is only against the Muhamasheen. Both male and female Muhamasheen are never allowed to work inside offices like people from the white social class, but always outside offices.[701]

I applied for [a supervisor] position to the general manager, who rejected my application because I was Muhamasheen. He said that I do not deserve it, adding that my job is in the streets, cleaning trash and unclogging sewers, which the white people would not touch or smell. Such a position is

696 All Youth Network for Community Development, *Submission to the Human Rights Committee on Yemen*, 2012, p. 4, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10338_E.pdf.

697 Interviews A37, A260, A261, A262, A263, A264, A265, A125, A127, A12, A7, B203, B40, B228, B204, B109, B252, C181, D841, D813, D14, D20, D24, D25 and D555.

698 Interviews A12, A37, A7, B203, B103 and D813.

699 Interview C181.

700 Interview D841.

701 Interview E48.

> exclusively for white people [he said]. Muhamasheen do not have the right to demand such a position. As for white people, they are directly appointed over the black or the marginalised people without their asking for it. We have to be silent and accept whatever work is given to us (…) and accept all that they impose on us, including the way they behave towards us and discriminate against us and look down on us.[702]

Many members of the Muhamasheen community who were interviewed by the Trust's researchers reported that they were denied basic employment rights.[703] Researchers spoke to one man who worked in a government department, but was denied his holiday entitlement, had been forbidden from forming a union, and was paid less than other employees; after he made an official complaint regarding his treatment, he stated that his supervisor physically and verbally attacked him.[704] According to the Office of the High Commissioner for Human Rights, in late 2011, many members of the Muhamasheen community who were working informally as sanitation workers went on strike requesting formal (and permanent) employment contracts.[705] Although some workers did have their contracts regularised, others were reportedly dismissed or threatened with dismissal.[706] Further strikes took place in Sana'a in April 2013, only to be suspended following government promises "to provide a solution within a two-month period."[707]

Access to Healthcare

Many individuals interviewed by researchers for the purposes of this report complained about a lack of adequate healthcare.[708] One woman explained that she had received poor service at a hospital after seeking treatment for issues relating to her reproductive health, which she believed was due to her Muha-

702 Interview E91.

703 Interviews B228, B204, B252, C108 and D841.

704 Interview B228.

705 See above, note 71, Para 50.

706 *Ibid*.

707 See above, note 18, Para 46.

708 Interviews A1, A132, A6, A7, A44, A12, A133, A130, A132, A135, A3 and A141.

masheen status; she left feeling ashamed and neglected by hospital staff, and returned home after receiving no medical assistance.[709] A second interviewee, who entered hospital with kidney stones, was ignored by hospital staff due to his Muhamasheen status:

> *Some doctors even refused to examine me because they felt disgusted to do that. My health condition got worse as a result of this continuous ill-treatment and I developed kidney failure.*[710]

In a serious incident, documented by Witness and the Sisters Arab Forum in 2009, a Muhamasheen woman explained how her sister was stabbed on the street and died in hospital after she was not given the medical attention she needed:

> *We went to [the hospital], we asked for help first before telling what had happened (…) They didn't help us. If they really had mercy, they would have taken her to the emergency room, or done something. At least they could have treated us as human beings.*[711]

The right to healthcare is particularly important during conflict, as individuals' lives and wellbeing are endangered by the volatile security situation. In 2015, the Equal Rights Trust's researchers spoke to the mother of a four year old girl who had suffered facial burns during an aerial attack. The hospital told her that her daughter needed to be transferred to a different hospital for treatment. However, at the time of our interview, they had not been able to do so. The family believed that this was because the girl is Muhamasheen.[712] The most serious allegation received by the Trust's researchers involved a 47 year old man, who claimed to have been shot in the hand and chest by members of the Ansar Allah movement. He was taken to hospital, where he remained overnight. During that time he was neglected by medical staff and bled heavily. The next day, Medicins Sans Frontiers took the man and operated on him

709 Interview A12.

710 Interview E155.

711 See above, note 647.

712 Interview A133.

in their own facilities. He believed that the negligent treatment he received in the state hospital was due to the colour of his skin.[713]

Humanitarian Aid

Among those individuals interviewed by the Trust's researchers, there was a widespread perception that the Muhamasheen are discriminated against in the provision of humanitarian aid.[714] As one woman told researchers: "We are deprived of (…) any donated food from aid agencies because we are Akhdam".[715]

Case Study: Interviews with Muhamasheen Persons on their Perceptions of Aid Distribution

I am Muhamasheen and I went to the local survey office to register as a person in need of support and aid from the World Food Programme, and to register as an Internally Displaced Person. The list of names of those who will receive aid is decided by the local council. My name was not on the list, as those "non-Muhamahseen" were counted as priority.[716]

We have applied for social security from the Rayma town council food depot, but our demand has been refused, just as we have been refused support and aid from organisations because we are Muhamasheen. We hope that the government will undertake initiatives to make the distribution of resources more equal.[717]

I was discriminated against by relief distributors who did not give me a share of the food aid (…) [They said] I would sell the food and that I am used to begging. They looked down on me and called me Khadim. However, they distributed the food baskets among those who belonged to tribes or those with personal connections [to the distributors]. They gave the assistance

713 Interview A141.

714 Interviews D1123, D0, D155, D156, D157, D167, D173, D1124 and D152.

715 Interview D157.

716 Interview D173.

717 Interview D1124

> to undeserving families whereas I could not cover my daily needs or the needs of my kids, who usually sleep with empty stomachs. I call upon all relief NGOs to stand by and save us from the scorn of society and treat us as humans.[718]

Participation in Political Life

The Muhamasheen have historically been excluded from modes of political participation.[719] They have no representation in Yemeni politics,[720] and have not participated in the formulation of government policy.[721] Indeed, in its 2013 report to the CESCR, the Yemeni government acknowledged that "[t]his group [the Muhamasheen], which carries no social weight and lacks political representation, obviously does not participate in public civil and political life".[722]

In a 2010 poll conducted by the Yemeni Polling Centre in 12 Governorates including Sana'a, Ibb, Taiz and Aden, 12% of respondents believed that members of marginalised groups, including the Muhamasheen, were either "forbidden to vote or did not know if [they] retained voting rights".[723] Even where the Muhamasheen do vote, there are no Muhamasheen candidates: the social stigma experienced by the Muhamasheen community has historically prevented its members from standing as candidates.[724] As one man explained to the Trust's researchers in 2015, "we have no voice – I vote in the elections, but we are not able to nominate a Muhamasheen candidate".[725]

718 Interview E173.

719 European Parliament, *Briefing: A Human Rights and Poverty Review: EU Action in Addressing Caste-Based Discrimination*, 2013, p. 19, available at: http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433805/EXPO-DEVE_NT(2013)433805_EN.pdf.

720 See above, note 601, Para 65.

721 See above, note 677, pp. 4–5.

722 See above, note 182, Para 34.

723 Centre on Democracy, Development, and The Rule of Law, *Democracy, Political Parties, and Reform: A Review of Public Opinion in Yemen*, 2012, p. 12, available at: https://cddrl.fsi.stanford.edu/sites/default/files/No_126_Yemen_English.pdf.

724 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

725 Interview D1128.

Political participation among the Muhamasheen grew somewhat prior to the outbreak of the current conflict, with members of the community actively involved in the wave of protests that broke out around the country in 2011.[726] The following year, a conference was held in Sana'a, the first for the Muhamasheen, in which demands were made for a place in negotiations at the NDC.[727] Despite the fact that no government representatives attended the meeting,[728] the Muhamasheen were granted their request to attend the NDC, although they were only permitted to send one representative to the 565 member conference:[729] Nu'man Al-Hudheyfi, the President of the National Union for the Marginalised.[730] While this was undoubtedly a positive achievement for the Muhamasheen and local advocacy, a representation rate of around 0.18% is nonetheless incredibly low for a community that constitutes up to 12.7% of Yemeni society. As noted above, the demands put forward by the Muhamasheen community for a quota across legislative and senior military posts for individuals from marginalised communities were not included in the Draft Constitution.

Conclusion

The Muhamasheen are the lowest ranking group in Yemen's social hierarchy, and the social stigma attached to them is a central factor in their experience of discrimination and a range of other human rights violations. Having been excluded from Yemeni economic, tribal and political structures for much of their history, the Muhamasheen have faced unique difficulties escaping poverty. They remain limited to low-paid, low-skilled forms of work and face various forms of discriminatory treatment, from discriminatory violence, to discrimination in land ownership, employment and education. Many of the individuals interviewed by the Equal Rights Trust's researchers had faced discrimination in access to healthcare and basic services. Moreo-

726 See above, note 182, Para 35.

727 Yemen Times, "Marginalized 'Akhdam' Receive No Government Support at Conference", *Yemen Times*, 4 October 2012, available at: http://www.yementimes.com/en/1613/news/1477/Marginalized-%E2%80%98Akhdam%E2%80%99-receive-no-government-support-at-conference.htm.

728 *Ibid*.

729 See above, note 11, p. 12.

730 See above, note 603.

ver, the majority are often forced to live on the edges of major cities in unsanitary conditions.

Whilst the conflict continues to claim lives and affects individuals in all areas of the country, the Muhamasheen experience war and displacement differently from other Yemeni groups. Members of the Muhamasheen community have faced new forms of discriminatory treatment since the outbreak of the conflict, including being discriminated against in the provision of humanitarian aid and assistance. Muhamasheen women are also reportedly particularly vulnerable to sexual violence and harassment by armed groups.

3.5 Discrimination on the Basis of Disability

On 26 March 2009, Yemen became the 30th state to ratify the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.[731] Yemen is therefore required to "ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability".[732] In addition, as a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Yemen is required to prohibit discrimination on the basis of disability in the enjoyment of all civil, political, economic, social and cultural rights.[733]

According to World Health Organisation estimates, approximately 15% of the world population has some form of disability.[734] In each country, national statistics regarding the prevalence of disability are likely to differ, in part as a result of differences in methodological approaches and definitions. Where disability is viewed as a predominantly medical issue, official statistics

731 United Nations Treaty Collection, Chapter IV, Human Rights, Convention on the Rights of Persons with Disabilities, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=_en&clang=_en.

732 Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 4.

733 The Committee on Economic, Social and Cultural Rights (CESCR) has stated that discrimination on the basis of disability in enjoyment of Covenant rights is prohibited by virtue of the term "other status" in Article 2(2). See CESCR, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 28.

734 World Health Organisation, *World Report on Disability*, 2011, p. 261, available at: http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf?ua=1.

may under-represent the total number of individuals requiring social assistance.[735] This appears to be the case in Yemen: when compared to world averages, disability in Yemen seems to be substantially underreported. A number of factors may explain this, including "low levels of screening and awareness of childhood disabilities,"[736] and narrow conceptions of disability in Yemeni legislation, which defines disability as a predominantly medical – as opposed to social – issue. Furthermore, Yemen has been criticised by UN treaty bodies for a lack of disaggregated data on persons with disabilities, in particular in relation to children.[737]

According to the 2004 census, just 1.93% of the Yemeni population (379,924 persons) had some form of disability.[738] However, separate surveys have produced different results. In 2003, a Family Health Survey was conducted in which 2.9% of respondents reported having a serious or moderate disability.[739] In its National Strategy for Disability, the Ministry of Work and Social Affairs estimated that 777,197 people live with a disability (around 2.8% of the overall population).[740] More recently, the prevalence of disability in Yemen was examined in the 2013 National Health and Demographic Survey, with 3.2% of respondents reporting having some form of disability.[741]

735 Oxford Policy Management, *Consultancy to Support Organisational Development of the Care and Rehabilitation Fund of the Disabled, and the National Union of Disabled Associations (Social Fund For Development)*, 2011, pp. 4–5, available at: http://www.opml.co.uk/sites/default/files/Yemen%20SFD.pdf.

736 See above, note 678, p. 148.

737 See above, note 309, Para 53.

738 Republic of Yemen Central Statistical Organisation, General Population, *Housing and Establishment Census*, 2004, Table No. 35, available at: http://catalog.ihsn.org/index.php/catalog/229/download/29548. This is

739 Republic of Yemen Ministry of Public Health & Population & Central Statistical Organisation, *Yemen Family Health Survey 2003*, 2003, p. 49, available at: http://www.moh.gov.ye/arabic/docs/Familyhealth_english.pdf.

740 National Strategy for Women Development, available at: https://yemen-nic.info/contents/popul/social/detail.php?ID=9265.

741 Republic of Yemen Ministry of Public Health & Population & Central Statistical Organisation, *Yemen National Health and Demographic Survey 2013*, 2015, p. 203, available at: http://dhsprogram.com/pubs/pdf/FR296/FR296.pdf.

According to CARE, persons with disabilities have been one of the most at risk groups in Yemen during the conflict.[742] Issues with mobility mean that some individuals may be "left behind" where communities and families are displaced from their homes.[743] Meanwhile, those suffering from hearing, vision-related or intellectual disabilities may be unaware of immediate dangers during airstrikes or open conflict.[744] Furthermore, the conflict itself has left thousands of individuals with disabilities after being injured by blasts, mines or gunshots: as at May 2016, the International Committee of the Red Cross reported that "an estimated 6,000 people have been left disabled" since the conflict began in 2015.[745]

Cultural Attitudes and the Position of Persons with Disabilities in Society

The existence of social prejudice against persons with disabilities in Yemen has been noted by a number of UN treaty bodies. The Committee on the Rights of the Child (CRC) has expressed concern regarding the "persistence of discriminatory social attitudes against categories of children in marginalised and disadvantaged situations including (…) children with disabilities".[746] The Committee on Economic, Social and Cultural Rights (CESCR) has noted that persons with disabilities in Yemen face "continued discrimination and marginalisation",[747] urging the state to adopt measures aimed at eliminating "discrimination and stigma attached to disabilities in all spheres of life".[748]

Interviews conducted by the Equal Rights Trust's researchers in 2015 and 2016 indicate that significant stigma surrounds persons with disabilities.

742 CARE et al, *From the Ground Up: Gender and Conflict Analysis in Yemen*, 2016, p. 12, available at: http://www.carenederland.org/content/uploads/2016/11/Yemen-gender-conflict-analysis-201016-en.pdf.

743 International Research & Exchanges Board, *Disability Inclusion Among Refugees in the Middle East and North Africa: A Needs Assessment of Libya, Egypt, Yemen, Jordan, and Turkey*, 2016, pp. 7-8, available at: http://www.disabledpeoplesinternational.org/documents/DPO-Report-FINAL.pdf.

744 *Ibid*.

745 International Committee of the Red Cross (ICRC), *The scars of war: Yemen's disabled*, 23 May 2016, available at: https://www.icrc.org/en/document/scars-war-yemens-disabled.

746 See above, note 309, Para 29.

747 See above, note 327, Para 12.

748 *Ibid*.

One woman explained that her neighbours kept their child isolated and hidden from view because he has Down Syndrome,[749] whilst another individual told researchers that his parents had kept him out of education after discovering he had learning disabilities that affect his speech.[750] A number of individuals with disabilities expressed feelings of isolation or societal condemnation.[751] One woman told the Trust's researchers that persons with disabilities are distrusted and "hated" by Yemeni society, and explained that she regularly suffers from verbal abuse in the street.[752]

In part as a consequence of their marginalisation, persons with disabilities in Yemen face difficulties exercising their rights in relation to employment, education and social security. These difficulties are compounded by a weak legal framework and, in relation to certain categories of disabled persons, the existence of discriminatory laws.

Legal and Policy Framework

Although Article 41 of the Yemeni Constitution declares that all citizens are "equal in rights and duties,"[753] no provision explicitly prohibits discrimination, including on the grounds of disability. In the absence of constitutional protection, persons with disabilities must look to ordinary legislation for the protection of their rights. Several pieces of Yemeni legislation provide specific guarantees to persons with disabilities, including in relation to employment,[754] education,[755] and social security.[756] These laws are discussed in greater detail below.

The primary piece of disability legislation in Yemen is the Law on the Care and Rehabilitation of Disabled Persons of 1999, which sets out the duties of

749 Interview B227.

750 Interviews B261.

751 Interviews C185, C180, C176, D814, D591, D1135 and D614.

752 Interview B293.

753 See above, note 24, Article 41.

754 Law No. 5 of 1995 (the "Labour Code") and Law No. 19 of 1991 (the "Law on the Civil Service").

755 Law No. 45 of 1992 (the "General Law on Education") and Law No. 45 of 2002 (the "Law on the Rights of the Child").

756 Law No. 31 of 1996 "on Social Welfare", Law No. 10 of 1997 "on the Social Fund for Development" and Law No. 2 of 2002 "on the Welfare and Rehabilitation Fund for Persons with Disabilities".

certain bodies, including the Ministry of Social Affairs and Labour, toward persons with disabilities, and provides for the establishment of training, rehabilitation and care services.[757] Under Article 2, a person with disabilities is defined as "any person, male or female, proven by medical examination to be in a permanent or total disability, caused by an injury or illness and leading to his/her inability to learn or engage in any activity, in whole or in part".[758] This definition follows a medical model of disability, where disability is viewed as a "condition" requiring treatment. It is thus inconsistent with international human rights law – as exemplified in the CRPD – which adopts a "social" model of disability:

> *Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*[759]

The social model of disability requires the state to address the "attitudinal and environmental barriers" faced by persons with disabilities,[760] and thus ensure the full and effective participation of persons with disabilities in society.

In 2010, Yemen adopted a National Disability Strategy, which explicitly recognises the social model.[761] The Strategy sets out a vision of creating a "society for all", whereby persons with disabilities are granted access to their rights on a basis of equality with others, aiming to create an inclusive environment and remove social and physical barriers.[762] The policy briefly analyses key challenges and obstacles faced by persons with disabilities in several areas of life,

757 Law No. 61 of 1999 (the "Law on the Care and Rehabilitation of Disabled Persons"), Articles 3–14.

758 *Ibid.*, Article 2.

759 Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S. 3, 2006, Article 1.

760 *Ibid*., Preamble, Paragraph e.

761 Republic of Yemen, Ministry of Social Affairs and Labour, *National Disability Strategy*, 2010, p. 3, available at: http://www.inclusive-education.org/system/files/publications-documents/Tines_National%20Strategy%20on%20Disability%20in%20Yemen.pdf.

762 *Ibid*., p. 2.

including education,[763] employment[764] and accessibility.[765] Among its stated objectives is the review and amendment of national disability legislation, in line with the CRPD.[766] As noted in Part 2, due to the ongoing conflict, there has been limited progress in relation to the implementation of the National Disability Strategy.[767]

As explained in Part 2, Yemen has established a number of funds that either directly (in the case of direct money transfers), or indirectly (through allocating funds to social development projects and rehabilitative services) support persons with disabilities, including the Social Welfare Fund, the Social Fund for Development, and the Disability Welfare and Rehabilitation Fund (DWRF). The DWRF was created to provide financial support for the provision of rehabilitative, healthcare and other services for persons with disabilities.[768] By the end of 2012, 47,000 beneficiaries were receiving individual support through the DWRF, 24.4% of whom were children.[769] However, the conflict has had a devastating impact on the provision of social welfare to persons with disabilities in Yemen. As early as December 2014, the government was reportedly experiencing difficulties allocating money to the DWRF.[770] According to Abdullah Al-Hamdani, then chairman of the DWRF, who spoke to the Yemen Times in December 2014:

> *The fund's financial committee, which is tasked with allocating funds from Yemen's budget for specific projects to be sponsored by the fund, such as programs for medi-*

763 *Ibid*., p. 22.

764 *Ibid*., p. 20.

765 *Ibid*., p. 27.

766 *Ibid*., p. 2.

767 Information provided to the Equal Rights Trust by a lawyer from Sana'a on 21 May 2018; Saba News Agency, "صندوق رعاية المعاقين ينظم ورشة عمل خاصة بالتقييم المؤسسي للصندوق" (The Fund for the Care of the Disabled organises a workshop on institutional evaluation of the Fund), 20 July 2016, available at: http://sabanews.net/en/print434012.htm.

768 Law No. 2 of 2002 "on the Welfare and Rehabilitation Fund for Persons with Disabilities".

769 Machado, A. C. et al, International Policy Centre for Inclusive Growth, *Overview of Non-contributory Social Protection Programmes in the Middle East and North Africa (MENA) Region Through a Child and Equity Lens*, p. 325, available at: http://www.ipc-undp.org/pub/eng/JP18_Overview_of_Non_contributory_Social_Protection_Programmers_in_MENA.pdf.

770 See above, note 743, p. 12.

> *cine and school supplies, has failed to provide us with revenues for quite some time (…) I can't comment as to why this is.*[771]

The same year, the International Research & Exchanges Board reported that there was a 54% reduction in the DWRF's revenue, which resulted in around 40% of the estimated 50,000 persons who were previously provided with medicine through the DWRF "no longer receiving medication".[772] State funding through the DWRF was discontinued in 2015,[773] leading "to the total paralysis of all associations dealing with persons with disabilities and to the total or partial cessation of their activities".[774] According to Human Rights Watch, around 300 organisations which previously provided care and services to persons with disabilities closed in 2015.[775]

In early 2015 the Social Welfare Fund also ceased operating, with fund allocations dropping from around 25.3% "to zero" in 2016.[776] In January 2017, the World Bank authorised a grant of 450 million US$ "aimed at protecting the medical system and providing livelihoods for rural Yemenis, through the Social Fund for Development and Social Welfare Fund".[777]

771 A. Al-Moshki, "Local NGO: Number of Disabled Citizens in Yemen Exceeds Two Million", *Yemen Times,* 4 December 2014, available at: http://www.yementimes.com/en/1839/news/4648/Local-NGO-Number-of-disabled-citizens-in-Yemen-exceeds-two-million.htm.

772 See above, note 743, p. 12.

773 Machado, A. C. et al, "Overview of Non-contributory Social Protection Programmes in the Middle East and North Africa (MENA) Region Through a Child and Equity Lens", *International Policy Centre for Inclusive Growth*, p. 327, available at: http://www.ipc-undp.org/pub/eng/JP18_Overview_of_Non_contributory_Social_Protection_Programmers_in_MENA.pdf.

774 See above, note 743, p. 22.

775 Human Rights Watch, "People with Disabilities at Added Risk in War, Displacement", Human Rights Watch, 3 December 2015, available at: https://www.hrw.org/news/2015/12/03/people-disabilities-added-risk-war-displacement.

776 CARE et al, *From the Ground Up: Gender and Conflict Analysis in Yemen*, 2016, p. 23, available at: http://www.carenederland.org/content/uploads/2016/11/Yemen-gender-conflict-analysis-201016-en.pdf.

777 The Arab Gulf States Institute in Washington, *Bickering While Yemen Burns: Poverty, War, and Political Indifference*, 2017, available at: http://www.agsiw.org/wp-content/uploads/2017/06/Salisbury_Yemen_ONLINE.pdf.

Discriminatory Laws and Policies

Whilst a number of laws have been adopted with the aim of securing the rights of persons with disabilities in Yemen, in some instances the legal framework actively discriminates against such persons.

The most serious example of discrimination arises under Article 4(b) of the Nationality Law of 1990, as amended:[778] this provides that the conferral of Yemeni nationality to an individual born to foreign parents on Yemeni soil is conditional upon that individual being "of sound mind" and "free of impairments" that may render such a person "a burden on society".[779] In 1994, further regulations were published pursuant to the Nationality Law that require an individual born to foreign parents in Yemen to submit, *inter alia*, a medical certificate that proves they are free from any disability and are of sound "mental capabilities".[780] The Nationality Law thus discriminates against children with disabilities, contrary to the requirements of the Convention on the Rights of the Child[781] and the CRPD, which provides that all persons have a right "to acquire and change a nationality" and imposes an obligation on states to ensure that individuals are "not deprived of their nationality arbitrarily or on the basis of [their] disability".[782] The state amended its Nationality Law in 2010, yet maintained Article 4(b), demonstrating an unwillingness to repeal laws that discriminate against persons with disabilities, as required under the CRPD.[783] The Committee on the Rights of the Child (CRC Committee) has since urged Yemen to amend its nationality legislation to ensure that all children, including those with disabilities, have an equal right to acquire Yemeni nationality.[784]

778 Law No. 6 of 1990 "on the Yemeni Nationality", Art. 4(b).

779 *Ibid*.

780 Executive Regulation of law No. 6 of 1990 "on the Yemeni Nationality"; Republican Decree No. 3 of 1994, Article 10.

781 Under which all children have a "right to acquire a nationality". This provision is to be applied by states without discrimination on the grounds of disability. See Convention on the Rights of the Child, 1577 U.N.T.S. 3, 1989, Article 7(1) and 2(1).

782 CRPD, Article 18(1)(a).

783 CRPD, Article 4(1)(b).

784 See above, note 309, Para 39.

Employment

Under Article 27 CRPD, state parties are required to "recognise the right of persons with disabilities to work on the basis of equality with others".[785] Appropriate steps must be taken to ensure the equality of persons with disabilities in the employment sphere,[786] including through the provision of reasonable accommodation,[787] the denial of which is a form of prohibited discrimination.[788] In addition, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has recently emphasised that states "must take positive action" in order to facilitate the enjoyment by persons with disabilities of rights on an equal basis with others.[789]

Article 29 of the Constitution affords all citizens the right to work,[790] including – by virtue of the Law on the Care and Rehabilitation of Disabled Persons of 1999 – persons with disabilities.[791] However, the Yemeni legal framework contains a number of deficiencies that, in practice, limit protection from discrimination in employment. The Yemeni Labour Code,[792] and the Law on the Care and Rehabilitation of Disabled Persons,[793] each contain provisions relevant to the employment of persons with disabilities. Article 23 of the Law on the Care and Rehabilitation of Disabled Persons states that persons with a disability shall not be deprived of any privileges or rights on the basis of their disability, but does not explicitly protect against all forms of disability discrimination in employment. Under Article 5 of the Labour Code, discrimination in employment is prohibited; however, this Article contains a closed list of protected characteristics, which does not include disability.[794] Neither piece of legislation imposes a requirement of reasonable accommodation in employment.

785 CRPD, Article 27(1).

786 *Ibid*.

787 *Ibid*., Article 27(1)(i).

788 See below, note 800, Para 18(c), Committee on the Rights of Persons with Disabilities.

789 *Ibid*., Para 16.

790 See above, note 24, Article 29.

791 See above, note 757, Article 3.

792 See above, note 386.

793 See above, note 757,

794 See above, note 386, Article 5.

As noted in Part 2, one of the few legal provisions which purports to secure the working rights of persons with disabilities is the disability jobs quota, introduced first through the adoption of the Civil Service Law in 1991 and then, four years later, through the Labour Code of 1995.[795] In 1999, these provisions were consolidated under the Law on the Care and Rehabilitation of Disabled Persons, which states that employers shall employ persons with disabilities "up to a proportion of 5% of their total workforce".[796] There is a lack of adequate enforcement of the quota in practice. This much has been accepted by the state which, in 2010, noted that persons with disabilities have failed to gain access to the labour market "primarily because these schemes have not been monitored and enforced by the national government".[797]

Under the Law on the Care and Rehabilitation of the Disabled, persons with disabilities are required to obtain a "disability certificate" in order to gain employment. This requirement presents an obstacle to persons with disabilities accessing work which does not apply to others seeking employment, and is thus directly discriminatory. An individual who is considered to have a disability as defined in Article 2 of the Law must apply for a "certificate" to one of the care and rehabilitation centres established by the Ministry of Labour and Vocational Training; the certificate provides a diagnosis of the individual's "condition", indicates his or her professional abilities, and makes a recommendation regarding the profession(s) the individual is deemed to be capable of joining.[798] Without such a certificate, an individual cannot obtain employment in the public sector.[799] This practice is in breach of the state's obligation to ensure that persons with disabilities are able to work on an equal basis with others under Article 27(1) CRPD, which includes the right to gain a living by work freely chosen in a labour market that is open, inclu-

795 See above, note 386, Article 15, and, see above, note 754, Law on the Civil Service, Article 24.

796 See above, note 757, Article 18 and 19.

797 Republic of Yemen, Ministry of Social Affairs and Labour, *National Disability Strategy,* 2010, p. 8, available at: http://www.inclusive-education.org/system/files/publications-documents/Tines_National%20Strategy%20on%20Disability%20in%20Yemen.pdf.

798 See above, note 757, Articles 7, 15 and 16.

799 See above, note 757, Article 16; Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

sive and accessible to persons with disabilities.[800] In November 2015, the Equal Rights Trust's researchers interviewed a man with a hearing impairment who had attempted to gain a job in the civil service, but was informed after submitting his application that he would need to provide a disability certificate; he explained that such certificates can be very expensive and are often only provided to individuals with "*wasta*" (social connections).[801]

There is also evidence that persons with disabilities face difficulties in finding employment outside the public sector.[802] The Trust's researchers interviewed several individuals who had been denied access to employment on account of their disability.[803] One individual explained to researchers that he could not find a job in the private sector because he is blind, even where he was able to demonstrate that he met all listed job requirements.[804] Another individual stated that he was told he would not be able to work with a group of men responsible for collecting food from a global aid agency after the director discovered he was deaf.[805]

Education

Under the CRPD, access to education should be afforded without discrimination.[806] States should ensure that persons with disabilities are provided access to the "general education system",[807] with reasonable accommodation provided where necessary,[808] and consideration given to the adoption of "effective individualized support measures".[809] The CRPD Committee has made clear that the right to non-discrimination under the CRPD "includes

800 CRPD, Article 27(1); Committee on the Rights of Persons with Disabilities, *General Comment No. 6: equality and non-discrimination*, UN Doc. CRPD/C/GC/6, 26 April 2018, Para 67.

801 Interview B206.

802 Interviews B211, B212 and B215.

803 Interviews A35, A146, A221, B198, B1, B67, D428 and D859.

804 Interview B1.

805 Interview D31.

806 CRPD, Article 24.

807 *Ibid*., Article 24(2)(a).

808 *Ibid*., Article 24(2)(c).

809 *Ibid*., Article 24(2)(e).

the right not to be segregated", and that states must instead ensure the right of persons with disabilities to education through an "inclusive education system".[810]

Under the Yemeni Constitution, "education is a right for all citizens".[811] Basic education is compulsory and the state is required to ensure access to education through the building of schools and other such institutions.[812] Article 3 of the Law on the Care and Rehabilitation of Disabled Persons makes clear that this provision extends to persons with disabilities.[813]

In 1992, Yemen adopted the General Law on Education, which required the state to establish "special schools" for persons with disabilities and provide such persons with appropriate basic education.[814] Ten years later, in 2002, a new Law on the Rights of the Child was enacted, containing a full chapter detailing the obligations of the state to ensure the "care and rehabilitation" of children with disabilities.[815] Under Article 118 of the Law, the Ministry of Education is required to "establish special classes attached to schools of regular education for the teaching of disabled children in accordance with their abilities and aptitudes".[816] The maintenance of separate classes for children with disabilities within mainstream educational facilities is a form of segregation, and is thus discriminatory.[817]

Yemen has also adopted some measures to improve children with disabilities' access to education. The DWRF, established in 2002, provided financing for inclusive education, and children with disabilities were also able to apply for school fee waivers and for funding to cover the cost of "accommodation,

810 See above, note 800, Paras 8 and 13, Committee on the Rights of Persons with Disabilities.

811 See above, note 24, Article 54.

812 *Ibid*.

813 See above, note 757, Article 3.

814 See above, note 755, The General Law on Education, Article 28.

815 See above, note 755, Law on the Rights of the Child, Chapter III.

816 *Ibid*., Article 118.

817 See above, note 800, Para 11, Committee on the Rights of Persons with Disabilities.

food, and transport".[818] In its reporting to the CRC Committee, Yemen stated that between 2003 and 2008, teachers and social workers received training in Braille, educational workshops and awareness raising seminars were held, and several schools were provided with new and specialised equipment.[819] According to the state, this resulted in "50,440 boys and girls with special needs enrolled in the basic and secondary levels of education".[820]

In practice, however, inclusive education for many Yemeni children with disabilities is "far from a reality".[821] A number of factors, including social stigma,[822] and a lack of facilities and equipment,[823] mean that the total number of children with disabilities in education remains low.[824] The CRC Committee has expressed concern regarding the "widening gap between the rate of enrolment in school of children with disabilities (…) and the overall nationwide rates".[825]

When conducting research for this report, the Equal Rights Trust's researchers found that a large number of children faced exclusion from the education system.[826] For the majority, the main reason for non-attendance was the lack

818 Disability Welfare and Rehabilitation Fund, "Services and activities provided by the Fund", last accessed 22 May 2018, available at: http://www.yehwrf.org/content.php?lng=arabic&id=1. See also World Bank et al, *Joint Social and Economic Assessment for the Republic of Yemen,* 2012, p. 69, available at: https://openknowledge.worldbank.org/bitstream/handle/10986/11920/693880ESW0P1300sment0pub08031012web.pdf?sequence=1&isAllowed=y; Machado, A. C. et al, "Overview of Non-contributory Social Protection Programmes in the Middle East and North Africa (MENA) Region Through a Child and Equity Lens", *International Policy Centre for Inclusive Growth*, p. 327, available at: http://www.ipc-undp.org/pub/eng/JP18_Overview_of_Non_contributory_Social_Protection_Programmers_in_MENA.pdf.

819 Committee on the Rights of the Child, *Fourth Periodic Report: Yemen*, UN Doc. CRC/C/YEM/4, 23 October 2012, Para 332.

820 *Ibid.*, Para 330.

821 Republic of Yemen, Ministry of Social Affairs and Labour, *National Disability Strategy,* 2010, p. 23, available at: http://www.inclusive-education.org/system/files/publications-documents/Tines_National%20Strategy%20on%20Disability%20in%20Yemen.pdf.

822 See above, note 678, p. 193.

823 *Ibid*.

824 See above, note 678, p. 193.

825 See above, note 309, Para 69(f).

826 Interviews A139, B240, B209, B219, B142, B218, B139, D176, D608, D894, D1112, A209, B138, B10, D890, B37, D46, D163, D574, D604, D1132, D875, A11, A5, B218, D888, C232, D834, D1091 and D1138.

of adequate facilities and resources within schools for children with disabilities, and the failure of schools to provide reasonable accommodation for their specific needs.[827] In September 2015, the Trust's researchers spoke to a man who had a severe visual impairment; due to the lack of adequate facilities in the schools in his area, he had never received an education and was consequently illiterate.[828] Another individual interviewed by researchers explained that he did not have access to any books in Braille and reported the lack of any accommodation for the needs of students with visual impairments.[829] One 16 year old boy from Haja with physical and psychosocial disabilities explained that there was a lack of assistance or support available at school, which had affected his motivation to learn.[830] A nine year old boy who is almost completely deaf told the Trust's researchers that he stopped attending school in the third grade, as he could not hear what was being said to him and was bullied by the other students as a result.[831]

Bullying of children with disabilities was a common complaint amongst individuals interviewed by researchers for the Trust. One mother recounted the following:

> *My son has a mental disability (…) When he was in the third grade, the teachers used to treat him inhumanely and beat him. We went to make a complaint to the school but they didn't do anything. He dropped out of school. If he had finished his studies, he would have given a job instead of being dependent on his father. Because the teachers did not take into consideration his health condition, he dropped out of school.*[832]

The bullying experienced by some children led to them dropping out of school altogether.[833] For example, one girl informed the Trust's researchers that the

827 Interviews B209, B219, B142, B218, B139, D176, D608, D894 and D1112.

828 Interview B3.

829 Interview D571.

830 Interview B141.

831 Interview D1113.

832 Interview E52.

833 Interviews D816, D1127.

school administration did not seem interested when she complained about the bullying she was subjected to, and she left school as a result.[834] A failure by schools to prevent bullying of students on the grounds of their disability may constitute harassment, which is a prohibited form of discrimination under the CRPD.[835]

The current conflict has exacerbated the challenges faced by children with disabilities in accessing education. Firstly, the adverse impact of the conflict on social welfare benefits under the DWRF – which provides services and disability aids to persons with disabilities[836] – has had a severe impact on the ability of many Yemenis to enjoy their right to education. One girl explained that, as her school did not receive the payments that it was due from the DWRF, there were no hearing aids available and she was not able to attend classes.[837] Another woman explained that, due to difficulties with the DWRF, schools had shortages in their supply of wheelchairs and other equipment.[838]

Healthcare

Persons with disabilities in Yemen have historically faced difficulties in receiving the healthcare and medication they need due to a lack of resources. In 2012, interviews conducted by the Overseas Development Institute revealed that some individuals had been required to purchase their own medicines, which should have been provided free of charge by the state, due to a lack of availability.[839] Many individuals were also found to be reliant on non-governmental organisations to meet their healthcare needs. As one individual recalled, "buying drugs for my children with the money I have available is very difficult. There is an association (…) that helps us by providing free check-

834 Interview D818.

835 See above, note 800, Para 18(d), Committee on the Rights of Persons with Disabilities.

836 See discussion above.

837 Interview B207.

838 Interview B210.

839 Overseas Development Institute, *Transforming Cash Transfers: Beneficiary and Community Perspectives on the Social Welfare Fund in Yemen*, 2012, p. 38, available at: https://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8181.pdf+&cd=2&hl=en&ct=clnk&gl=uk.

ups and investigation; if the association receives some support from donors it provides free medicine".[840]

The conflict has exacerbated these issues, particularly given that there has been a rise in the cost of certain medicines. One woman interviewed by the Equal Rights Trust's researchers needed insulin to manage her diabetes, and explained that the price of insulin had been increased by the Ministry of Health, such that she could no longer afford it because of her vulnerable economic situation.[841] In interviews conducted by Human Rights Watch in November 2015, individuals explained how medication for conditions such as cerebral palsy and epilepsy had become unaffordable due to the conflict.[842] The closure of many disability organisations due to a lack of funding from the DWRF also means that some Yemenis with disabilities who previously received social assistance are now solely responsible for their own health needs, and face the risk of deepening inequalities.[843]

The conflict has also seen the destruction of healthcare facilities and rehabilitation centres, which has exposed individuals to a greater risk of death, injury and displacement.[844] For example, the Illumination Center for the Protection and Rehabilitation of Persons with Visual Impairments was destroyed in an aerial bombing in January 2016; at the time, the centre was being used to house around 60 students, and after the attack it was left "unusable and inappropriate for housing".[845] By the end of 2016, at least 270 hospitals and healthcare facilities had been destroyed or damaged, with "more than half of 3,500 assessed health facilities (…) closed or only partially functioning".[846] The UN Office for Humanitarian Affairs has noted that there is a lack of healthcare

840 *Ibid*., p. 44.

841 Interview B223.

842 Human Rights Watch, *People with Disabilities at Added Risk in War, Displacement*, 3 December 2015, available at: https://www.hrw.org/news/2015/12/03/people-disabilities-added-risk-war-displacement.

843 *Ibid*.

844 See above, note 743, p. 9.

845 *Ibid*.

846 Disasters Emergency Committee, "Yemen Hospitals on the Brink of Closure as Health System Collapses Leaving 8 Million Children Without Access to Healthcare", *Disasters Emergency Committee,* 19 December 2016, available at: http://reliefweb.int/report/yemen/yemen-hospitals-brink-closure-health-system-collapses-leaving-8-million-children.

services for individuals disabled by landmines and unexploded ordinances, thus exposing them to additional vulnerability.[847]

Multiple Discrimination against Persons with Disabilities

The Equal Rights Trust's research has demonstrated that persons with disabilities in Yemen experience multiple discrimination: this can be *additive*, in the sense that the discrimination they face on the grounds of disability is compounded or aggravated by discrimination on one or more other grounds (such as gender or ethnicity), or *intersectional*, in that the discrimination they experience only arises because of the combination of two or more identities, such as disability and ethnicity.

For example, Muhamasheen persons with disabilities have faced cumulative disadvantage due to their ethnicity.[848] One man explained to the Trust's researchers that he had attempted to register his disability with the authorities, but believed that he was ignored on account of his skin colour: "I am 70 years old, I am paralysed. I went to the Centre for Persons with Disabilities in Abyan [and] asked to register there, but they did not respond".[849] Another man, who had a hearing impairment, told researchers that he had been removed from school as a result of his disability and skin colour.[850]

Members of the Muhamasheen community who have disabilities are particularly affected by a lack of access to healthcare. One mother who spoke to the Trust's researchers had a daughter with a disability, and stated that she could not provide for their daughter's health needs as the government distanced itself from the Muhamasheen and disabled communities in Aden.[851] Another mother recounted the difficulties she faced in securing treatment for her son:

> *My son has a physical disability caused by cerebral atrophy. For this reason he cannot walk. We could not afford to buy treatment for him because the treatment*

847 See above, note 437, p. 50.

848 Interviews A150 and A133.

849 Interview A137.

850 Interview A149.

851 Interview A1.

> *was very expensive. I went to a centre for the disabled to see if they could look after him, and they said they could not. When I asked why, they said it was because he was Muhamesheen (…) I felt very sad that they refused to register my son.*[852]

Conclusion

Persons with disabilities in Yemen face difficulties participating in society on an equal basis with others due to strong social prejudice against persons with disabilities, and a weak legislative framework. The Constitution affords very limited protection to persons with disabilities, and the primary piece of disability legislation in Yemen – the Law on the Care and Rehabilitation of the Disabled of 1999 – adopts a medical, rather than social, model of disability, which is inconsistent with international human rights law. Whilst Yemen demonstrated a willingness to adopt a rights-based, social approach in its 2010 National Disability Strategy, persons with disabilities nonetheless continue to face discrimination and exclusion in various areas of life, including in employment, education and healthcare.

The conflict has increased the marginalisation experienced by persons with disabilities: for example, it has exacerbated the challenges faced by children with disabilities in enjoying their right to education, due in part to shortages of equipment at schools such as wheelchairs and hearing aids. It has also led to the closure of various social funds established to cater for the welfare and needs of persons with disabilities, with a detrimental impact on organisations providing care and services to persons with disabilities.

852 Interview E25.

3.6 Discrimination on the Basis of Health Status

Health status is a well-recognised ground of discrimination in international law. The Committee on Economic, Cultural and Social Rights has confirmed that health status, including human immunodeficiency virus (HIV) status, falls within the "other status" category for the purposes of Article 2(2) of the International Covenant on Economic, Cultural and Social Rights (ICESCR).[853] This has been seen as reflecting a consensus position that discrimination on grounds of "health status" is a prohibited "other status".[854] In accordance with the principle that international human rights instruments should be applied in a manner which is consistent,[855] Yemen is required to guarantee not only the rights contained in the ICESCR but also the rights in the International Covenant on Civil and Political Rights without discrimination on the grounds of health status, and to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination", including on the grounds of health status.[856]

The research for this report found evidence of discrimination on the basis of health status against persons living with HIV. The first case of HIV in Yemen was reported in 1987.[857] There has been a steady increase in the number of people living with HIV in Yemen since then, with an estimated 1,100 new infections in 2016.[858] According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), in 2016 there were an estimated 9,900 people living with HIV in Yemen.[859] Furthermore, it is estimated that there were somewhere between 250 and 500 acquired immunodeficiency syndrome (AIDS)-related deaths in 2016.[860] There

853 See above, note 626, Para 33, Committee on Economic, Social and Cultural Rights (CESCR).

854 See, for example, Commission on Human Rights, *Report on the Fifty-First Session,* UN Doc. E/CN.4/1995/176, 30 January – 10 March 1995, Para 1.

855 Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, Para 4.

856 International Covenant on Civil and Political Rights, Articles 2(1) and Article 26.

857 Shaher, M., "Yemenis still reject people living with HIV", *Yemen Times*, 26 September 2011; Colburn, M., "The Republic of Yemen: Development Challenges in the 21st Century", *CIIR*, 2002, p. 64.

858 *Ibid*.

859 Joint United Nations Programme on HIV/AIDS (UNAIDS), *Country Factsheets: Yemen*, 2016, available at: http://www.unaids.org/en/regionscountries/countries/yemen.

860 *Ibid.*

are concerns that HIV is going to grow into a "major epidemic", in large part due to a lack of information and awareness about HIV amongst Yemenis.[861]

Cultural Attitudes

People living with HIV and AIDS in Yemen are subject to high levels of societal stigma,[862] with many facing exclusion from social, family and religious activities: in a 2012 UNAIDS-funded Stigma Index Report, persons living with HIV and AIDS reported being excluded from social gatherings and weddings, and being subjected to gossip and verbal abuse on account of their health status.[863] This stigma can also manifest itself within the family, with 15% of respondents to the survey reporting that they had been excluded from activities such as cooking and eating with other members of their family.[864] In a 2010 study of 501 Yemeni university students, 56.5% of respondents stated that they would be ashamed if one of their relatives got AIDS, with 60.3% of respondents agreeing that "AIDS is a punishment from God".[865] In some cases, individuals have been "abandoned by their families" once they were discovered to have HIV.[866] One woman explained to Medecins Sans Frontieres (MSF) how she had been rejected by her father after discovering she was HIV positive:

> *I found out I was HIV-positive after my husband died. I faced discrimination from a very close person: my own father. He disappointed me. He told me that I had to leave and go to the place where I had caught the virus. He abandoned me.*[867]

861 *Ibid*.

862 See above, note 857, Shaher, M.

863 Attal, B., *The Yemen Stigma Index Report*, UNAIDS, 2012, pp. 17-18, available at: http://www.stigmaindex.org/sites/default/files/reports/Yemen%20People%20living%20with%20HIV%20%20Stigma%20Index%20Report%202012.pdf. See also interviews F61 and F194.

864 *Ibid*., p. 17.

865 Badahdah, A. M., and Sayem, N., "HIV-related knowledge and AIDS stigma among college students in Yemen", *Eastern Mediterranean Health Journal*, Vol. 16, No. 8, 2010, p. 903.

866 See above, note 857, Shaher, M.

867 Medecins Sans Frontieres, "HIV/AIDS in Yemen: Fighting discrimination", *Medecins Sans Frontieres*, 12 June 2013, available at: http://www.msf.org/en/article/hivaids-yemen-fighting-discrimination.

The stigma surrounding HIV/AIDS also extends to the family members of persons with HIV and AIDS, with a quarter of respondents to the Stigma Index Report reporting that their family suffered stigma due to their HIV positive status.[868]

Legal and Policy Framework

As discussed in Part 2, Law No. 30 of 2009 "on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS" was promulgated on 30 August of 2009 (the "Law on HIV/AIDS").[869] The objectives of the Law on HIV/AIDS include the provision of medical services to persons living with HIV and AIDS, the coordination of efforts to reduce the prevalence of HIV/AIDS, raising community awareness about the rights of persons with HIV and AIDS, promoting health awareness amongst individuals with HIV/AIDS, and guaranteeing their rights without discrimination on the grounds of their health status.[870] However, the protections set out in the Law are undermined by a number of provisions which exacerbate the stigma experienced by persons with HIV/AIDS, and thus run counter to its stated objectives, such as Article 19 which establishes the right of a woman to request a divorce if her husband is infected with HIV/AIDS.

Yemen is one of seven countries that deny non-citizens with HIV and AIDS entry into the country, regardless of the purpose and duration of their stay, and which thus require individuals to declare their HIV status prior to entry.[871] Yemen also deports non-citizens who are discovered to be HIV positive.[872]

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868 See above, note 863, p. 24.

869 Law No. 30 of 2009 "on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS".

870 *Ibid.*, Article 3.

871 The Global Database on HIV-Specific Travel & Residence Restrictions, *Yemen – Regulations on Entry, Stay and Residence for PLHIV*, visited 27 April 2018, available at: http://www.hivtravel.org/Default.aspx?PageId=143&CountryId=197; International Task Team on HIV-related Travel Restrictions, "Mapping of restrictions on the entry, stay and residence of people living with HIV", *UNAIDS*, 2009, p. 7, available at: http://www.unaids.org/sites/default/files/media_asset/jc1727_mapping_en_0.pdf.

872 *Ibid.*, International Task Team on HIV-related Travel Restrictions, p. 8.

Access to Healthcare

The Law on HIV/AIDS provides for a right to free healthcare for persons with HIV and AIDS,[873] and imposes sanctions on health workers who discriminate on the basis of HIV/AIDS status.[874] However, there is evidence that persons with HIV and AIDS have been discriminated against in the provision of healthcare and been denied services due to their HIV positive status, in direct contravention of the provisions of the Law.[875]

Research conducted by Human Rights Watch in 2014 revealed incidents of doctors in state-run facilities refusing to treat HIV-positive patients and ordering that they be removed from the hospital, with one doctor demanding that a patient's spouse be arrested for failing to disclose their partner's HIV status.[876] Additionally, one third of the people interviewed in the Stigma Index Report referred to above reported having their HIV status disclosed by health professionals without their consent.[877] Discrimination in public healthcare is so commonplace that in one study of persons with HIV and AIDS in Sana'a and Aden, 97% of participants reported that they conceal their HIV status when visiting health facilities.[878] A doctor from Sana'a's Republican Hospital interviewed by Human Rights Watch described the issue as "pure discrimination":

> *The same healthcare workers have no problem dealing with patients who have other diseases that carry a higher risk of infection. The biggest problem is that no staff members are ever held accountable for discriminating against patients with HIV.*[879]

873 See above, note 869, Article 4.

874 *Ibid.*, Article 6.

875 See above, note 879.

876 *Ibid*.

877 See above, note 863, p. 41.

878 Murungu, R. J. K., *HIV and AIDS Support mechanisms for PLWHAs in Yemen*, 2008, p. 7, available at: https://poseidon01.ssrn.com/delivery.php?ID=580124069074122011017075018 067091126116045031036095011024098025122100103064112118090025045023032105055 11709812511509612202607100709403103505308912312509110107802510208908908209308011908611509006611908909411512000901109900712109506510301112610008 5065127&EXT=pdf.

879 Human Rights Watch, "Yemen: HIV Patients Denied Health Care", *Human Rights Watch*, 2014, available at: https://www.hrw.org/news/2014/11/03/yemen-hiv-patients-denied-health-care.

This discrimination in state-run facilities means that many persons with HIV and AIDS are driven to use private facilities.[880] However, discrimination is also a problem in these facilities, with patients reporting that they were charged higher fees for the same or similar medication and treatment than patients who did not have HIV.[881] One HIV-positive woman interviewed by Human Rights Watch stated that she was forced to leave a private clinic whilst in labour once doctors learned of her HIV status.[882]

Prior to the outbreak of the current conflict, access to antiretroviral (ARV) treatment was already reported as limited.[883] This problem has been exacerbated as the conflict has unfolded. Towards the end of 2015, MSF reported that patients were facing difficulties in physically accessing clinics to receive ARV drugs due to the conflict or lack of fuel or money to travel, with some persons with HIV and AIDS having to reduce their dosage of ARV drugs as they were unable to collect further supplies.[884] MSF also reported that a man who had risked his life to attend the clinic in Sana'a was imprisoned for two weeks after being accused of smuggling ARV drugs through a checkpoint.[885]

Housing, Employment and Education

Persons with HIV and AIDS are also reported to face discrimination when accessing housing, employment and education. In the 2012 Yemen Stigma Index Report, just under a third of respondents reported having to change their residence or being unable to rent a home in the previous 12 months on account of their HIV status.[886]

The Law on HIV/AIDS prohibits the dismissal of an employee on the grounds of their HIV status, and imposes sanctions on employers who violate this prohi-

880 *Ibid*.

881 *Ibid*.

882 *Ibid*.

883 See above, note 863, p. 51.

884 Medecins Sans Frontieres, "Treating HIV/AIDS as Conflict Rages in Yemen", *Medecins Sans Frontieres*, 30 October 2015, available at: https://www.doctorswithoutborders.org/article/treating-hivaids-conflict-rages-yemen.

885 *Ibid*.

886 See above, note 863, p. 23.

bition.[887] However, there have been reports of individuals being dismissed from employment on account of their HIV status, or of having job applications rejected, being denied a promotion, or having the nature of their work altered due to being HIV positive.[888] One HIV-positive individual interviewed by researchers for this report explained that he was dismissed from his job in a small café, as his co-workers were afraid of being infected with HIV.[889] Another individual who worked in a hospital explained that, when his colleagues discovered that he suffered from HIV, they avoided him and refused to work the same shifts as him.[890]

Article 10 of Law on HIV/AIDS states that children living with HIV have a right to education, and prohibits educational institutions from expelling or transferring children living with HIV to other schools on account of their HIV status. However, there is evidence that some children are still being discriminated against in education on the grounds that they, or one of their parents, is HIV positive, including by being expelled from school.[891] In the 2012 Stigma Index Report, one mother participating in the survey stated that she was afraid that her daughter would not be able to complete her education if the school were to find out that she (the mother) was HIV positive.[892]

Conclusion

The number of persons with HIV and AIDS in Yemen has grown steadily since the early 1990s, in part due to a lack of understanding and information regarding HIV/AIDS. In 2009, the Law on HIV/AIDS was adopted, which has the aims of raising awareness of the rights of persons with HIV/AIDS and of guaranteeing their rights without discrimination. However, persons with HIV/AIDS still face high levels of stigma in society, with individuals being ostracised by their communities and even families after being discovered to be HIV positive. Persons with HIV and AIDS also face discrimination in a range

887 See above, note 869, Articles 6 and 38.

888 See above, note 863, pp. 23–24; Ghouth, A., "Role of Stigma and Discrimination in People Living with HIV (PLHIV) in Hadramout Governorate/Yemen", *J Community Med Public Health Care*, Vol. 3, No. 1, 2016.

889 Interview F194.

890 Interview F2.

891 See above, note 863, pp. 23 and 50.

892 *Ibid*.

of different areas of life, including in access to housing, work, education and health. The conflict has created further difficulties for persons with HIV and AIDS in obtaining the health services they need, as travel to healthcare clinics has been obstructed, and medical supplies have decreased.

3.7 Discrimination on the Basis of Sexual Orientation

Under Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR), Yemen is required to "ensure to all individuals (…) the rights recognised in the (…) Covenant, without distinction of any kind", on grounds including "other status".[893] The same obligation to ensure enjoyment of Covenant rights without discrimination arises under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights.[894] In addition, under Article 26 ICCPR, Yemen is required to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground".[895]

The Committee on Economic, Social and Cultural Rights has stated that sexual orientation and gender identity fall within the category of "other status" within the meaning of Article 2(2).[896] The Human Rights Committee (HRC) in its jurisprudence has held that the prohibition of discrimination under Articles 2(1) and 26 extends to discrimination on the grounds of sexual orientation.[897] The HRC has also held that laws criminalising homosexual conduct breach Article 17 ICCPR, under which no person "shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation".[898]

The size of the lesbian, gay, bisexual and transgender community in Yemen is unknown. Indeed, an aide to the Minister of Human Rights reportedly de-

893 International Covenant on Civil and Political Rights (ICCPR), Article 2(1).

894 International Covenant on Economic, Social and Cultural Rights, Article 2(2).

895 ICCPR, Article 26.

896 See above, note 626, Para 32, CESCR.

897 Human Rights Committee (HRC), *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003, Para 10.4.

898 HRC, *Toonen v Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 1994, Para 8.7.

clared in 2013 that "[we] don't have gays in Yemen".[899] The Joint United Nations Programme on HIV/AIDS has estimated that there are 44,000 men who have sex with men in Yemen;[900] no statistics are available regarding the number of lesbian, bisexual or transgender persons.

Evidence gathered by human rights organisations indicates that lesbian, gay and bisexual (LGB) individuals are afraid to reveal their sexual orientation due to the severe threats they face: same-sex intercourse is criminalised in Yemen, and there are high levels of social stigma surrounding homosexuality.[901] As a result, victims of homophobic hate crimes and other forms of discrimination are reportedly reluctant to go the authorities to seek support and redress.[902] As such, there is little information available regarding the discrimination faced by the LGB community in Yemen. Furthermore, Yemen's treatment of LGB persons has also received very little international attention: in the second Universal Periodic Review of Yemen in 2014, there were no recommendations made by any states in relation to Yemen's stance towards homosexuality,[903] and only one passing mention was made to this in the 18 civil society and other submissions.[904]

The Equal Rights Trust has sought to obtain information regarding the existence of discrimination on the basis of gender identity but has not identified any such information either through desk-based or field research. As such, this section of the report is limited to discussion of discrimination on the grounds of sexual orientation. However, the absence of *evidence* of dis-

899 Almosawa, S., "No Place for Gays in Yemen", *Inter Press Service*, 16 August 2013, available at: http://www.ipsnews.net/2013/08/no-place-for-gays-in-yemen.

900 UNAIDS, *Country factsheets: Yemen*, 2016, citing data from the Global AIDS Response Progress Report, available at: http://www.unaids.org/en/regionscountries/countries/yemen.

901 Freedom House, *Freedom in the World 2015: The Annual Survey of Political Rights and Civil Liberties*, December 2015, p. 755.

902 Gladstone, B., "Will Yemen's Gay Community Survive the Iran-Backed Militias Trying to Take Over?", *The Tower*, August 2015, available at: http://www.thetower.org/article/will-yemens-gay-community-survive-the-iran-backed-militias-trying-to-take-over.

903 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Yemen*, UN Doc. A/HRC/26/8, 7 April 2014.

904 International Lesbian, Gay, Bisexual, Trans And Intersex Association (ILGA), *State Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, 2017, p. 140, available at: https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

crimination on the basis of gender identity does not indicate the absence of such discrimination; rather, we consider it to be indicative of the social stigma surrounding sexual and gender minorities in Yemen. Indeed, the limited information which the Trust was able to obtain suggests that members of the trans community do not feel able to disclose their gender identity due to the existence of high levels of societal stigma, and therefore have to conceal their gender identity even from their families.[905]

Discriminatory Laws and Policies

Homosexuality is criminalised in Yemen, and the country is one of only a handful of countries in which same-sex sexual acts are punishable by death.[906] Article 264 of the Yemeni Penal Code states that:

> *[H]omosexuality between men is defined as penetration into the anus. Unmarried men shall be punished with 100 lashes of the whip or a maximum of one year of imprisonment, married men with death by stoning.*[907]

Article 268 of Penal Code further criminalises "intercourse between one female and another".[908] Violation of latter provision may result in imprisonment of up to three years.[909]

Whilst the Penal Code prescribes the death penalty for consensual same-sex relations for men, reports suggest that this penalty is not enforced in practice and that imprisonment is the more usual punishment;[910] for example, the US Department of State asserts that there have been no known executions of gay people for over a decade.[911] Nonetheless, the criminalisation of same-sex

905 Information provided to the Equal Rights Trust by a lawyer from Sana'a, 28 May 2018.

906 See above, note 904, p. 40.

907 See above, note 342, Article 264.

908 *Ibid*., Article 268.

909 *Ibid*.

910 See above, note 902.

911 United States Department of State, Bureau of Democracy, Human Rights and Labour, *Yemen 2017 Human Rights Report*, 2017, p. 33, available at: https://www.state.gov/documents/organization/277517.pdf.

sexual acts is a matter of grave concern. The Human Rights Committee has urged Yemen to "repeal or amend" those provisions in its criminal legislation that result in the prosecution of sexual minorities,[912] which should include the removal of Articles 264 and 268 of the Penal Code.

Discriminatory Violence

The UN Human Rights Council has noted that laws criminalising homosexuality perpetuate social intolerance and form "part of the background environment that leads to violence and discrimination".[913] As indicated above, there is little information publicly available in relation to discriminatory violence against sexual minorities in Yemen. However, a media article from August 2013 suggested eight men had been killed in the preceding months because they were gay, with the attackers believed to be members of Al-Qaeda in the Arabian Peninsula (AQAP).[914] According to this report, the killings were reported to the authorities, but no action was taken.[915]

Although reports are scarce, those available indicate that the LGB community face new risks as a result of conflict,[916] with the International Lesbian, Gay, Bisexual, Trans and Intersex Association stating that the situation for sexual minorities in Yemen has become progressively worse since much of the country was taken over by Ansar Allah forces.[917] Alongside fears regarding the attitudes of political groups within Yemen towards sexual minorities, the perceived threat from organisations such as AQAP and Islamic State of Iraq and the Levant, also appears to have increased.[918] There are reports of four targeted assassinations of gay men in Aden in August and September 2015

912 See above, note 34, Para 13.

913 Human Rights Council, *Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, UN Doc. A/HRC/35/36, 19 April 2017, Para 52.

914 Almosawa, S., "No Place for Gays in Yemen", *Inter Press Service*, 16 August 2013, available at: http://www.ipsnews.net/2013/08/no-place-for-gays-in-yemen.

915 *Ibid.*

916 See above, note 902.

917 ILGA, *State Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*, May 2017, p. 140, available at https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf.

918 *Ibid*.

after AQAP took control of parts of the city.[919] During the research stage of this report, the Equal Rights Trust's researchers spoke to individuals who knew those affected by a number of similar incidents; however, given the potential safety risks for those interviewed, the Trust has not reproduced their testimony in this report.[920]

Freedom of Expression, Assembly and Association

The criminalisation of same-sex relations has implications for LGB persons' ability to exercise their rights to freedom of expression, assembly and association. The outlawing of same-sex relations means that there are no LGB organisations in Yemen.[921] Notwithstanding this, there have been attempts to advocate for improvements to the situation of sexual minorities, with a Facebook group for Yemeni sexual minorities being used to raise awareness of incidents of hate crime against LGB persons.[922]

Prior to the outbreak of the conflict, sexual minorities were beginning to form a community, albeit underground, with one individual interviewed by a journalist stating that a "nascent gay community" existed in Aden, Sana'a and a number of cities.[923] However, such communities have now reportedly dissipated: whilst the conflict has made socialising more dangerous in general, it has had a particularly severe impact on LGB persons as they no longer have any space in which they can express themselves.[924]

Conclusion

Yemen is one of the most repressive countries in the world for LGB persons. Laws criminalising same-sex sexual relations contain harsh penalties, includ-

919 Manea, E., "4 Murders of Gay Men in Yemen", *Huffington Post*, 9 November 2015, available at: https://www.huffingtonpost.com/elham-manea/four-murders-of-gay-men-i_b_8474468.html.

920 Interviews A137, A148 and A149.

921 See above, note 911, p. 33.

922 Gladstone, B., "For Yemen's gay community social media is a saviour", *Irish Times*, August 2015, available at: https://www.irishtimes.com/news/world/middle-east/for-yemen-s-gay-community-social-media-is-a-saviour-1.2324447.

923 *Ibid.*

924 See above, note 902.

ing death by stoning in the case of married men. Stigma surrounding homosexuality is high, with individuals having to conceal their sexual orientation. As such, there is very little information available regarding the situation of the LGB community in Yemen. However, there have been several reports of men being killed on the basis of their actual or perceived sexual orientation, with the risks of discriminatory violence reportedly having increased since the outbreak of the conflict. The limited space for LGB persons to associate and express themselves has also shrunk yet further as the security situation has deteriorated across the country.

3.8 Discrimination against Non-Nationals

Yemen has committed to respect, protect and fulfil the right to non-discrimination on the grounds of nationality: under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR), Yemen must ensure all individuals in its jurisdiction the rights recognised in the ICCPR without distinction on grounds of "national origin" or other status. The Committee on Economic, Social and Cultural Rights has found that nationality falls under the category of "other status" in the ambit of Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).[925] Furthermore, despite being one of the poorest countries in the Middle East region, Yemen is one of the few states in the region – and the only one on the Arabian Peninsula – to have ratified the Refugee Convention and its additional Protocol.[926]

This section examines the situation of non-nationals in Yemen, focussing on the discrimination experienced by refugees, asylum-seekers and migrants. It should be noted that the sources referred to in this section do not always clearly differentiate between these categories of persons, with the terms "refugee", "asylum-seeker" and "migrant" sometimes being used interchangeably or without regard to their specific legal definitions. As such, whilst efforts have been made to identify whether the persons subject to the discriminatory treatment discussed below are refugees, asylum-seekers or migrants, this has not been possible in all cases due to the insufficiency of the information available.

925 See above, note 626, CESCR.

926 United Nations High Commissioner for Refugees (UNHCR), *Yemen Factsheet: February 2017*, 2017, p. 2, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Yemen%20-%20Fact%20Sheet%20February%202017.pdf.

Social and Political Context

As explained in Part 1, Yemen has a long history of migration, with thousands of people making the arduous journey to Yemeni shores each year.[927] A large number of individuals arriving in Yemen are considered to be economic migrants, who use Yemen as a transit country to seek employment in neighbouring Saudi Arabia.[928] However, for some, the decision to travel to Yemen comes as a consequence of political persecution in their country of origin.[929] For example, a large number of Somalis have travelled to Yemen to escape persecution in their home country since the early 1990s.[930] The overwhelming majority of the refugee population in Yemen are Somali; Somalis account for approximately 91% of all refugees,[931] and are granted *prima facie* refugee status by the Yemeni government.[932]

The ongoing conflict in Yemen has led to "complex external migration flows" between the country, states in the Horn of Africa and neighbouring Gulf countries, with Yemen serving as "a country of origin, transit and destination" for refugees, migrants and returnees.[933] Significant numbers of refugees and mi-

927 See further discussion in Part 1.

928 Some of those individuals would also likely qualify as refugees due to the persecution they face in their country of origin. As noted by the Regional Mixed Migration Secretariat in relation to Ethiopian migrants, "some of the migrants to Yemen could also qualify as refugees but are not seeking international protection." See Regional Mixed Migration Secretariat, *Desperate Choices: Conditions, Risks & Protection Failures Affecting Ethiopian Migrants in Yemen*, 2012, p. 6, available at: http://www.regionalmms.org/images/ResearchInitiatives/RMMSbooklet.pdf.

929 Regional Mixed Migration Secretariat, *Mixed Migration in the East Africa and Yemen Region,* 2017, p. 3, available at: http://regionalmms.org/trends/RMMS%20Mixed%20Migration%20Trends%20Q1%202017.pdf.

930 Regional Mixed Migration Secretariat, *Yemen Country Profile: 2017*, 2017, p. 4, available at: http://www.regionalmms.org/images/CountryProfile/YemenCountryProfile.pdf; UN High Commissioner for Refugees, "As Yemen Conditions Deteriorate, Somali Refugees Look to Return Home", *UNHCR,* 19 May 2017, available at: http://www.refworld.org/docid/591eb7004.html.

931 UNHCR, "As Yemen Conditions Deteriorate, Somali Refugees Look to Return Home", *United Nations High Commissioner for Refugees,* 19 May 2017, available at: http://www.refworld.org/docid/591eb7004.html.

932 See above, note 930.

933 International Organisation for Migration, *Yemen: Migration Crisis Operational Framework,* 2017, p. 4, available at: https://www.iom.int/sites/default/files/MCOF%202017%20Yemen%20Final.pdf.

grants have continued to travel to Yemen since the outbreak of the conflict:[934] according to United Nations High Commissioner for Refugees (UNHCR) data, 207,186 refugees and migrants were documented as having arrived in Yemen from the Horn of Africa between March 2015 and March 2017, 15% of whom were Somali and 85% of whom were Ethiopian,[935] with the latter group composed mostly of economic migrants.[936] However, in the same time period, 95,078 refugees, migrants and returnees were documented as having arrived in the Horn of Africa from Yemen (approximately 30% of whom were Yemeni citizens and 35% of whom were Somali) and 90,880 individuals were reported to have travelled from Yemen to Saudi Arabia and Oman.[937]

Yemen has historically drawn praise from UN treaty bodies for its efforts to accommodate refugees.[938] However, the insufficient resources at the disposal of the government and the ongoing conflict in the country have dramatically worsened the living condition for refugees and asylum-seekers in Yemen.[939] The UNHCR's capacity to protect refugees has been adversely affected by the ongoing conflict. After the Saudi-led coalition began its aerial bombing campaign, over 100 UN and non-governmental organisation staff were reportedly forced to leave the country.[940] Displacement and humanitarian assistance have become priority issues for the UNHCR, with progress on both issues having been impeded by the challenging security situation and further "bureaucratic obstacles".[941] In early 2017, it was reported that the "registration of asylum

934 UN Office for the Coordination of Humanitarian Affairs, *Humanitarian Needs Overview*: *Yemen*, 4 December 2017, p. 17, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/yemen_humanitarian_needs_overview_hno_2018_20171204_0.pdf.

935 UNHCR, *Yemen Situation: Population movement between Yemen and the Horn of Africa*, 31 March 2017.

936 See above, note 928, p. 3.

937 See above, note 935.

938 See above, note 34, Paras 5 and 21; and note 309, Para 75.

939 See above, note 934, p. 17.

940 Van der Klaauw, J., "Yemen: Exotic and Utterly War-Torn", *Diplomat and International Canada,* 16 December 2016, available at: http://diplomatonline.com/mag/2016/12/yemen-exotic-and-utterly-war-torn.

941 Mantoo, S., "Q&A: Yemenis Face a 'Struggle for Survival', *UNHCR,* 20 December 2016, available at: http://www.unhcr.org/afr/news/latest/2016/12/5858eb774/qa-yemenis-face-struggle-survival.html.

seekers [was] suspended in the northern part of the country".[942] Recent reports regarding the treatment of asylum-seekers and refugees in detention centres have also shed light on how the breakdown in the rule of law in Yemen has heightened their vulnerability to ill-treatment by the authorities.[943]

Legal and Policy Framework

As noted above, Yemen has ratified the Refugee Convention and its additional Protocol. Under Article 1 of the Refugee Convention, a refugee is defined as any person who, "owing to well-founded fear of being persecuted" on the basis of one of several listed characteristics (such as political opinion and nationality), is unable to return to his or her country of origin.[944] Article 3 requires that the Refugee Convention is applied without discrimination, on the basis of race, religion or country of origin.[945] Yemen has not, however, ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which obliges states parties to respect and ensure the rights of all migrant workers and members of their families without discrimination.[946]

As noted in Part 2, Yemeni law does not provide explicit protection from discrimination on any grounds, including nationality or citizenship. In fact, the Constitution creates a distinction between the equality rights of citizens and non-citizens, with the general equality guarantee in Article 41 being limited to citizens: "[a]ll citizens are equal in rights and duties". This is a significant shortcoming and is inconsistent with international human rights law.[947]

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942 Humanitarian Country Team et al, *Periodic Monitoring Review: Yemen,* 2017, p. 40, available at; https://www.humanitarianresponse.info/system/files/documents/files/2017_pmr_yemen_final_en_1.pdf.

943 Human Rights Watch, *Yemen: Detained African Migrants Tortured, Raped*, 17 April 2018, available at: https://www.hrw.org/news/2018/04/17/yemen-detained-african-migrants-tortured-raped.

944 See Convention relating to the Status of Refugees, 189 U.N.T.S. 137, 1951, Article 1(a)(2), read together with Article 1(2) of the Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, 1967.

945 *Ibid*., Article 3.

946 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2220 U.N.T.S. 39481, 1990, Article 7.

947 See, for instance, the non-discrimination clause under Article 26 of the ICCPR which extends to "all persons". See ICCPR, Article 26.

Subsequent articles of the Constitution also distinguish between the rights and freedoms of citizens and non-citizens. Article 42 stipulates that every citizen has the right to participate in the political, economic, social and cultural life of the state. Subsequent provisions of the Constitution limit the enjoyment of key constitutional rights and freedoms to citizens, including the rights to personal freedom, dignity and security (Article 48(a)), the prohibition of physical and psychological torture (Article 48(b)), the right to education (Article 54), the right to healthcare (Article 55), freedom of movement (Article 57) and freedom of association (Article 58).

It should be noted that the international human rights treaties to which Yemen is party do not require that *all* rights and freedoms guaranteed to citizens be guaranteed to non-citizens. However, as discussed in Part 2, exceptions to the general principle of equality between citizens and non-citizens are extremely limited. Under the ICCPR, certain political rights contained within Article 25 are guaranteed only to citizens, and the right to liberty of movement and to choose one's residence under Article 12(1) is guaranteed only for persons "lawfully within the territory of a State". Under the ICESCR, whilst Article 2(2) provides that the rights contained therein must be guaranteed "without discrimination of any kind", developing countries – such as Yemen[948] – may limit economic rights (and economic rights only) in respect of non-citizens.[949] The exclusions contained in the Yemeni Constitution, as described above, go far beyond the exceptions permitted under the ICCPR and ICESCR.

Yemen does not have any comprehensive refugee legislation,[950] despite repeated recommendations from UN treaty bodies.[951] Although the government agreed upon the development of a draft refugee law in 2014,[952] no law has

948 Determining whether a state is a "developing country" is not straightforward as there is no single universal definition of what constitutes a "developing country"; however as noted in Part 1, the UN Development Programme (UNDP) ranked Yemen in 168th place in its Human Development Index (HDI) for 2015, with an HDI of 0.482: UNDP, *Human Development Report: Yemen,* 2016, available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/YEM.pdf.

949 ICESCR, Article 2(3).

950 See above note 309, Paras 75 and 76.

951 *Ibid*. See also, above, note 232, Para 14; and note 139, Para 22, Committee against Torture.

952 Al-Junaid, M., "UNHCR, Human Rights Ministry Sign Refugee and IDP Protection Agreement", *Yemen Times,* 9 September 2014, available at: http://www.yementimes.com/en/1814/news/4309/UNHCR-Human-Rights-Ministry-sign-refugee-and-IDP-protection-agreement.htm.

since been adopted, as a result of the breakdown in domestic political relations. As a result, there is a lack of legislative protection for refugees. The Committee on the Rights of the Child (CRC Committee) has expressed concern at a refugee policy that is applied in an "inconsistent" and "ad hoc" manner, since it is scattered across a range of legal instruments, decrees and policy documents.[953]

Discriminatory Laws and Policies

In addition to the articles of the Yemeni Constitution discussed above, there are a number of legal provisions which restrict the rights of non-nationals. As noted above, international law provides for certain exceptions to the general prohibition on discrimination on the basis of nationality or citizenship, although such exceptions are limited. Of greatest relevance in this context is the exception under Article 2(3) ICESCR, which permits developing states to limit economic rights in respect of non-citizens.

Under Yemeni law, non-nationals are excluded from occupying certain jobs and positions. For example, under Article 7 of the Press and Publications Law, the qualifications required by an individual in order to work as a journalist include the stipulation that individuals must possess Yemeni nationality.[954] Whilst Article 2(3) ICESCR permits developing countries to differentiate between citizens and non-citizens in respect of the right to work, there are legitimate questions over the extent to which laws which prevent non-citizens from accessing certain types of employment meet the requirement arising under Article 26 ICCPR – whose application is "not limited to those rights which are provided for in the Covenant" – that the content of legislation should not be discriminatory.[955]

Violence and ill-treatment

Refugees and asylum seekers travelling to Yemen are at risk of violence during the journey, with reports of passengers being subjected to sexual violence

953 See above, note 309, Para 75.

954 See above, note 32, Articles 7 and 17.

955 HRC, *General Comment No. 18: Non-discrimination,* UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 12.

and even killed by smugglers whilst aboard boats travelling to Yemen.[956] Unfortunately, these risks do not disappear upon reaching land: absent adequate protection, refugees and asylum seekers arriving in Yemen have been subject to violence and ill-treatment, including rape.[957] In focus groups conducted by the UN Office for Humanitarian Affairs in 2017, 70% of female refugees and asylum-seekers reported having been sexually harassed, abused or exploited whilst in Yemen.[958] Such individuals reportedly face impediments in accessing justice and obtaining redress, and some fear reporting crimes due to the risk of deportation.[959] Where crimes are reported, the authorities are often unwilling to intervene: as explained by an aid worker interviewed by Human Rights Watch in 2014, "when the perpetrator is Yemeni nothing will ever be done by way of justice. There is a high degree of discrimination".[960]

One of the biggest dangers facing non-nationals is the risk of trafficking.[961] A 2014 Human Rights Watch report found that once on Yemeni soil, criminal organisations target new arrivals,[962] reportedly kidnapping individuals (often at gunpoint) and taking them to camps where they are subject to torture and ill-treatment.[963] In 2014, around 30 such criminal groups were reportedly active, operating around 30 camps in the Haradh region.[964] Human Rights Watch presented information on these so-called "torture camps", documenting several instances of individuals being hung up by their thumbs, raped, burnt, whipped, beaten, or left with broken bones or teeth or with deep lacerations to the flesh.[965] Prior to the present conflict, the government's measures to

956 Human Rights Watch, *Hostile Shores: Abuse and Refoulement of Asylum Seekers and Refugees in Yemen*, 2009, pp. 19–21, available at: https://www.hrw.org/sites/default/files/reports/yemen1209web.pdf; See above, note 18, Para 50.

957 *Ibid.,* Human Rights Watch.

958 See above, note 934, p. 17.

959 See above, note 956, p. 3.

960 Human Rights Watch, *Yemen's Torture Camps: Abuse of Migrants by Human Traffickers in a Climate of Impunity*, 2014, pp. 63–66, available at: https://www.hrw.org/report/2014/05/25/yemens-torture-camps/abuse-migrants-human-traffickers-climate-impunity.

961 See above, note 928, p. 6.

962 See above, note 960, pp. 35–36.

963 *Ibid*.

964 See above, note 960, p. 38.

965 See above, note 960, pp. 40–45.

prevent and prosecute individuals responsible for running Yemen's "torture camps" were severely inadequate.[966] It was noted that government had "made no discernible anti-trafficking law enforcement efforts"[967] and, although camp raids were carried out in 2013, government officials were reluctant to share information on prosecutions.[968] According to Human Rights Watch, several individuals accused of trafficking offences in relation to the camps have escaped justice.[969]

Since the outbreak of the current conflict, the breakdown in the political and security situation has impacted on efforts to prevent trafficking. As noted by the International Organisation for Migration (IOM), "with virtual impunity, the criminal networks thrive and profit considerably from the thousands of irregular migrants who hope to work either in Yemen or one of the Gulf countries".[970] Some individuals who travel to Yemen also do not appear to be aware of the current instability in the country.[971] According to returnees interviewed by the IOM, smugglers in Ethiopia have attempted to "share false information that Yemen has ample work opportunities", thereby encouraging migrants to make the dangerous journey.[972] Out of 3,701 new arrivals recorded by the Regional Mixed Migration Secretariat in early 2017, "1,941 instances of kidnap and abduction were reported".[973]

As the rule of law in the country has deteriorated as a result of the ongoing conflict, there have been reports that both the government authorities and Ansar Allah forces have been detaining migrants and asylum seekers in poor conditions and subjecting them to ill-treatment.[974] There is evidence that An-

966 *Ibid*, p. 5.

967 See above, note 928, p. 18.

968 See above, note 960, pp. 63–66.

969 *Ibid*.

970 See above, note 933, p. 7.

971 UNHCR, "Insecurity in Yemen Threatens Incoming Refugees", *UNHCR*, 7 February 2017, available at: http://www.unhcr.ca/news/insecurity-yemen.

972 International Organisation for Migration, *Yemen Situation Regional Refugee and Migrant Response Plan*, 2015, p. 34, available at: https://www.iom.int/sites/default/files/country/docs/yemen/IOM-Yemen-Regional-Refugee-and-Migrant-Response-Plan-2016.pdf.

973 See above, note 928, p. 6.

974 See above, note 943.

sar Allah forces have arbitrarily detained migrants in inadequate conditions in a facility in Hodeida, where detainees have been subject to physical abuse and denied access to medical care.[975] Recent reports by Human Rights Watch and the UNHCR have also revealed that migrants and asylum seekers held in a government-controlled detention centre in Aden's Buraika district have been subjected to beatings and sexual abuse and, in some cases, killed, with other individuals being made to witness summary executions.[976] According to former detainees interviewed by Human Rights Watch:

> *[G]uards beat [detainees] with steel bars and sticks, whipped them, kicked and punched them, threatened to kill or deport them, sexually assaulted them, and fatally shot at least two men. Male guards forced women to take off their abayas (full-length robes) and headscarves.*[977]

Detainees have reported that boys, women and girls are regularly raped by guards, with one Ethiopian woman explaining that she was severely beaten after refusing to have sex with one of the guards.[978]

After Human Rights Watch presented its preliminary findings to the Ministry of Interior by way of a memo dated 27 March 2018, the Minister stated that it had removed the centre's commander, Colonel Khaled Alwani, and had ordered that the detention centre be moved to Lahj governorate.[979] The Minister also explained that the migrants had been rounded up by the Security Belt forces, acknowledging that "many of the security institutions remain outside the control of the Ministry of Interior, [including] the forces of the Security Belt".[980] On 19 April 2018, the Minister of Interior ordered the security ser-

975 *Ibid.*

976 *Ibid.*; Mantoo, S., "Fleeing Horn of Africa, new arrivals find more peril in Yemen", *UNHCR*, 17 April 2018, available at: http://www.unhcr.org/uk/news/latest/2018/4/5ad5b6ca4/fleeing-horn-africa-new-arrivals-find-peril-yemen.html.

977 See above, note 943.

978 *Ibid*.

979 Republic of Yemen Ministry of Interior, *Letter to Mr. Michael Page, Deputy Director, Middle East and North Africa Division, Human Rights Watch*, 2 April 2018, available at: https://www.hrw.org/sites/default/files/supporting_resources/yemen_ministryofinterior_response_hrw.pdf.

980 *Ibid*.

vices to arrest Colonel Alwani and "refer him for investigation over human rights violations and cases of rape against African migrants".[981]

Detention

In 2015, the Regional Mixed Migration Secretariat released a report on migrant detention, which included an analysis of Yemeni state practice.[982] According to the report, it is often considered "routine" to detain new arrivals, including those seeking asylum.[983] Within detention centres, asylum seekers may be screened by the UNHCR and partners, but can often remain in detention for some time.[984] Asylum seekers are sometimes deported before being able to make a refugee application, and "protection teams are not always allowed access to determine if there are any refugees or asylum seekers among new arrivals".[985] However, due to their *prima facie* refugee status, Somali individuals tend to be released by authorities.[986]

New arrivals are predominantly held in immigration detention, but also in prisons where prisoner categorisation and separation is poor, resulting in some detained migrants and asylum seekers being held with convicted felons and, in the case of children, with adults.[987] Reports have documented many cases of non-Somali asylum seekers being detained in prison facilities: in 2012, for example, 280 Eritreans were reportedly held in "inhuman conditions" in Hodeida prison.[988] The UNHCR has occasionally intervened in detention cases, at one point reportedly registering 200 Eritreans as refugees.[989]

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981 Arab News, "Yemen orders arrest of colonel who oversaw notorious detainee center", *Arab News*, 19 April 2018, available at: http://www.arabnews.com/node/1287976/middle-east.

982 Regional Mixed Migration Secretariat, *Behind Bars: The Detention of Migrants in and From the East and Horn of Africa,* 2015, pp. 76-81, available at: http://www.regionalmms.org/images/ResearchInitiatives/Behind_Bars_the_detention_of_migrants_in_and_from_the_East___Horn_of_Africa_2.pdf.

983 *Ibid*., p. 76.

984 *Ibid*., pp. 76–77.

985 *Ibid*., p. 77.

986 *Ibid*.

987 See above, note 982, p. 79.

988 See above, note 71, Paras 52–53.

989 See above, note 940.

According to a 2014 report, the majority of Eritreans in detention were released following acknowledgement of their refugee status by the UNHCR.[990]

The Human Rights Committee has warned Yemen that refugees and individuals seeking asylum "should not be held in penal conditions".[991] Likewise, the CRC Committee has criticised Yemen for mixing children and adult migrant, refugee and asylum seeking detainees, which may increase the risk of sexual abuse.[992] The UNHCR has issued guidelines on detention, which stress that individuals seeking asylum may only be detained as a "last resort".[993] In all circumstances, individuals should be allowed to challenge their detention,[994] and asylum seekers should be afforded access to asylum application procedures.[995]

The UNHCR has appealed to all state and non-state actors in control of detention facilities to ensure that all those detained are treated in compliance with international human rights and refugee law and has demanded unfettered access to detainees.[996]

Refoulement

Refoulement is prohibited under international law, except where "there are reasonable grounds for regarding [a particular refugee] as a danger to the security of the country", or following the conviction of a refugee for a serious offence, where such a person "constitutes a danger to the community of that country".[997] Under international human rights law, the prohibition of *refoulement* where an individual stands at risk of torture is absolute.[998]

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990 Al-Junaid, M., "Dreams of Eritrean Refugees Turn to Ashes in Yemen", *Yemen Times*, 19 August 2014, available at: http://www.yementimes.com/en/1808/report/4214/Dreams-of-Eritrean-refugees-turn-to-ashes-in-Yemen.htm.

991 See above, note 34, Para 21.

992 See above, note 309, Para 75.

993 United Nations High Commissioner for Refugees, *Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Para 2, available at: http://www.unhcr.org/505b10ee9.pdf.

994 Including an initial review of the detention decision and subsequently of the legality of detention. *Ibid*., Paras 47(iii)–(v).

995 *Ibid*., Para 47(vi).

996 See above, note 976, Mantoo, S.

997 Convention Relating to the Status of Refugees, Article 33.

998 Committee against Torture, *Gorki Ernesto Tapia Paez v Sweden*, Communication No. 39/1996, UN Doc. CAT/C/18/D/39/1996, 1997, Paras 14.4–14.5.

Although the Yemeni Constitution prohibits the "extradition of political refugees",[999] legislation adopted in 2010 permits the state authorities to detain and deport any refugee whose "justifications to remain and stay in the Republic have ceased", or who is otherwise considered "a threat to the security and public order".[1000] These provisions are overly broad and could potentially breach the principle of *non-refoulement*, contrary to Yemen's obligations under the Refugee Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[1001] Moreover, the Committee against Torture has expressed serious concern regarding the "numerous cases of forced return of foreign nationals", the lack of legal avenues to challenge deportation decisions and the lack of information on state measures to ensure that persons who stand a risk of torture or ill-treatment are not forcibly returned.[1002]

Since the early 1990s, numerous examples of refugees and asylum seekers being deported from Yemen (contrary to the norms of international law) have been documented. In 2009, Human Rights Watch reported that Ethiopians, who were detained before being able to lodge a refugee claim, were often deported without recourse to any appeal procedure or mechanism whereby they could apply for asylum.[1003] Ethiopia has historically encouraged the *refoulement* of nationals from neighbouring states[1004] and, whilst current information does not suggest that Yemen has acceded to these requests,[1005] it is clear that Ethiopians face a real risk of deportation prior to seeking asylum,[1006] including following direct encouragement from embassy officials.[1007]

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999 See above, note 34, Article 45.

1000 See Republican Decree No. 39 of 2010, as quoted by Amnesty International. See Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2012, pp. 12–13, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_104_10336_E.doc.

1001 See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, 1984. Article 3(1); and above, note 139, Para 22, Committee against Torture.

1002 *Ibid*.

1003 See above, note 956, p. 3.

1004 See above, note 960, p. 26.

1005 *Ibid*.

1006 See above, note 928, p. 7.

1007 See above, note 982, pp. 77–78.

Human Rights Watch has recently reported the *refoulement* of a number of Ethiopians from the government-controlled detention centre in Aden's Buraika district (discussed above), with a group of around 100 Ethiopians allegedly sent out to sea in early April 2018.[1008]

Freedom of Movement

The right to freedom of movement is protected by Article 12 ICCPR, under which it is guaranteed to all persons "lawfully within the territory of a State". It includes the right to liberty of movement, freedom to choose one's residence and the right to leave any country, including one's own. Freedom of movement may only be restricted under national law as necessary to protect national security, public order, public health, or the rights and freedoms of others; any restrictions must be consistent with other rights.[1009]

Under Article 57 of the Yemeni Constitution, the right to freedom of movement is guaranteed to citizens only. Whilst Article 12 ICCPR provides that the right to liberty of movement shall be enjoyed only by those "lawfully within the territory of a State", this does not permit the state to deny the right to freedom of movement to non-citizens who are lawfully within Yemen, such as legal migrants and individuals recognised as having refugee status.

Prior to the outbreak of the conflict, refugees were reportedly restricted from moving between Yemeni cities, with bus companies and taxi drivers having been instructed by the authorities not to transport them.[1010] Furthermore, there are "frequent reports of Somalis being detained at checkpoints, asked to pay bribes, and being abused, arrested or dumped at the roadside without the means to return to their families".[1011]

The conflict has had a further severe impact upon the freedom of movement of the refugee and migrant population. Individuals have been detained and deported by both government officials and Ansar Allah forces due to a

1008 See above, note 943.

1009 HRC, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, Para 2.

1010 Morris, T., "Urban Somali refugees in Yemen", *Forced Migration Review*, Vol. 34, February 2010.

1011 *Ibid*.

perceived risk that such persons may participate in the fighting by joining rival armed groups.[1012] Equally, as discussed above, there have been recent reports of hundreds of African migrants and asylum seekers being detained by the recognised government in a detention centre in Aden without due process, where they have been subject to severe ill-treatment, denied the opportunity to seek protection and, in some cases, deported back to their home countries.[1013]

Employment

Refugees' employment rights are not protected under national legislation.[1014] Accordingly, refugees in Yemen tend to be treated in the same way as other foreign workers.[1015] The lack of a codified legislative framework for refugees' employment rights (including the right to work) has historically caused difficulties for some individuals in obtaining required work permits.[1016] Research has indicated that, prior to the conflict, male Somali refugees struggled to find formal employment in urban areas, and had to make a living through washing cars, emptying latrines, and running kiosks or internet cafes.[1017] Somali refugee women in regular employment were mostly employed as domestic servants, with those not in employment forced to resort to begging.[1018] Where refugees did manage to secure a job, they were at risk of being denied key labour rights and treated with indifference if they try to bring a complaint against their employer.[1019]

1012 See, above, note 940; and Middle East Eye, "1,000 Ethiopians Escape Yemen Detention: Security Official", *Middle East Eye.* 12 October 2016, available at: http://www.middleeasteye.net/news/1000-ethiopians-escape-yemen-detention-security-official-1021496404.

1013 See above, note 943; note 976, Mantoo, S.; and Reuters Staff, "Detained African migrants stuck in limbo in wartime Yemen", *Reuters*, 21 March 2018, available at: https://www.reuters.com/article/us-yemen-security-migrants/detained-african-migrants-stuck-in-limbo-in-wartime-yemen-idUSKBN1GX2JG.

1014 Hughes, N. H. B., *Report on the Situation of Refugees in Yemen: Findings of a one month exploratory study August/September 2002,* 2002, pp. 21–22, available at: http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/nesya.pdf.

1015 *Ibid.,* p. 8.

1016 *Ibid.,* pp. 21–22.

1017 See above, note 1010.

1018 *Ibid*.

1019 *Ibid.*

Interviews conducted by researchers for the Equal Rights Trust in 2015 revealed widespread perceptions of discrimination among Ethiopian and Somali workers, including those lawfully residing within the state, who tend to receive lower wages than Yemeni nationals.[1020] One Ethiopian interviewed by the Trust's researchers stated that he earned around 1500 Riyals (approximately 6 US$) per day as a construction worker, and told researchers that his Yemeni colleagues are paid 3000 Riyals (approximately 12 US$) for the same work; he explained that his employer knows that he is reliant on the income, so is able to exploit him.[1021] A Somali refugee explained that he was only paid 1000 Riyals (approximately 4 US$) per day, which was 500 Riyals (approximately 2 US$) less than that paid to a Yemeni national for the same work.[1022]

Both Somalis and Ethiopians also reported facing discrimination and harassment in employment. One man interviewed stated that he worked in a car wash in Sana'a, and told researchers that his colleagues tease him, beat him and have stolen his money on account of his Somali origin.[1023] The Trust's researchers also interviewed an Ethiopian man working as a cleaner in a hospital, who told researchers that his treatment was different to that of other staff, as he was verbally abused by colleagues and made to perform additional tasks.[1024]

Where refugees are living in camps, employment opportunities are limited. As one man explained to the IOM in 2016:

> *There are schools, clinics and food rations, but no decent jobs. For over 10 years I made a living washing cars and collecting rations from humanitarian organisations (…) My children were born in the camp and knew of little else outside of camp life.*[1025]

1020 See above, note 928, p. 6.

1021 Interview C241.

1022 Interview C230.

1023 Interview C108.

1024 Interview B70.

1025 International Organisation for Migration, "Migration Reception Centre in Bossaso, Puntland Gives Hope to Families Fleeing Yemeni Crisis", *International Organisation for Migration Blog*, 30 September 2016, available at: http://weblog.iom.int/migration-reception-centre-bossaso-puntland-gives-hope-families-fleeing-yemeni-crisis.

Access to Services

Refugees have historically faced difficulties in accessing primary healthcare in Yemen. Research from 2004 showed that women who did not have formal refugee registration cards were not entitled to subsidised healthcare services, and that refugees' economic constraints made access to healthcare difficult for most women.[1026] In June 2011, the Ministry of Public Health and the UNHCR adopted a Memorandum of Understanding that would reportedly allow refugees access to healthcare facilities and services across the state,[1027] and in 2017, the UNHCR confirmed that the government has "mainstreamed access for refugees into public health services".[1028]

However, refugees and asylum seekers reportedly still face difficulties accessing services such as healthcare; this is due in part to the suspension of the registration system in northern Yemen as a result of the conflict, which means that many refugees and asylum-seekers in the north are undocumented, whilst others are unable to renew their documentation.[1029] This lack of documentation has prevented refugees and asylum seekers from accessing certain services and humanitarian assistance.[1030]

Conclusion

Yemen has a long history of migration, with large numbers of refugees, asylum seekers and economic migrants travelling to Yemen from the Horn of Africa and neighbouring Gulf countries. These individuals face a perilous journey, and those who arrive safely on Yemeni soil are at risk of being subject to number of rights violations, including arbitrary detention, discriminatory violence and other ill-treatment, and – in the case of refugees – being returned to their country of origin in breach of the principle of *non-refoulement*. Those

1026 Jaffer, F. H., Guy, S. and Niewczasinksi, J., "Reproductive health care for Somali refugees in Yemen", *Forced Migration Review*, Vol. 19, 2004.

1027 Saeed, A., "Refugees to Get Access to National Health Services", *Yemen Times,* 30 June 2011, available at: http://reliefweb.int/report/yemen/refugees-get-access-national-health-services.

1028 UNHCR, *Yemen: UNHCR Operational Update*, 14 February 2017, p. 8, available at: http://reporting.unhcr.org/sites/default/files/UNHCR%20Yemen%20Operational%20Update%20-%2014FEB17.pdf.

1029 See above, note 934, p. 17.

1030 *Ibid.*

that remain experience various forms of discrimination, including in employment and in accessing services such as healthcare.

As the rule of law in the country has deteriorated as a result of the ongoing conflict, both the government authorities and Ansar Allah forces have been detaining migrants and asylum seekers in poor conditions and exposing them to abuse. The UNHCR's capacity to protect refugees has also been affected by the conflict, with the registration of asylum seekers having been suspended in certain parts of the country.

3.9 Discrimination and Inequality affecting Internally Displaced Persons

The Committee on Economic, Social and Cultural Rights has stressed that the right to non-discrimination arising under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibits discrimination against internally displaced persons (IDPs).[1031] In accordance with the principle that international human rights instruments should be applied in a manner which is consistent,[1032] Yemen is required to guarantee not only the rights contained in the ICESCR but also the rights in the International Covenant on Civil and Political Rights (ICCPR) without discrimination on the grounds of IDP status, and to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination", including on the grounds of IDP status.[1033]

UN human rights treaties impose particular obligations on states to ensure the rights of displaced persons, including in respect of the provision of humanitarian assistance;[1034] the right to water;[1035] social security;[1036] the right

1031 See above, note 626, Para 34, CESCR.

1032 See above, note 855.

1033 International Covenant on Civil and Political Rights (ICCPR), Articles 2(1) and Article 26.

1034 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food*, UN Doc. E/C.12/1999/5, 1999, Para 38.

1035 CESCR, Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*, UN Doc. E/C.12/2002/11, 2003, Para 16.

1036 CESCR, Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security*, UN Doc. E/C.12/GC/19, 2008, Para 39.

to return home;[1037] *non-refoulement*;[1038] the restoration of property lost as a result of conflict;[1039] access to public services;[1040] the health needs of IDP women;[1041] and IDP children with disabilities.[1042] These rights are elaborated in the Guiding Principles on Internal Displacement (the Guiding Principles), a set of standards that outline the protections available to IDPs.[1043] Whilst the Guiding Principles themselves are not binding law, the standards contained therein are binding insofar as they are based upon existing international humanitarian law and human rights instruments.[1044] The Guiding Principles have also been recognised by the UN General Assembly as "an important international framework for the protection of internally displaced persons".[1045] Principle 4 of the Guiding Principles states that the Principles must be applied "without discrimination of any kind".[1046]

Political and Social Context

Since unification in 1990, the Republic of Yemen has experienced several serious periods of violent conflict, which have had a devastating impact on the local population. Fighting between government and Ansar Allah forces between 2004 and 2010 forced hundreds of thousands of Yemenis to leave their homes, in many cases without personal documents and identification; resulting in difficulties in accessing schools and property, and in register-

1037 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 22: Article 5 of the Convention on Refugees and Displaced Persons*, UN Doc. A/51/18, 1996, p. 126, Para 2.

1038 *Ibid*.

1039 *Ibid*.

1040 *Ibid*.

1041 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc. A/54/38/Rev.1, 1999, p. 2, Para 6.

1042 Committee on the Rights of the Child, *General Comment No. 9: The Rights of Children with Disabilities*, UN Doc. CRC/C/GC/9, 2007, Para 79.

1043 United Nations Commission on Human Rights, *Guiding Principles on Internal Displacement*, UN Doc. E/CN./4 /1998/53/Add.2, 1998.

1044 Foreword to the Guiding Principles on Internal Displacement by Under-Secretary-General for Humanitarian Affairs Mr. Sergio Vieira de Mello, June 2001.

1045 UN General Assembly, *Resolution adopted by the General Assembly on 16 September 2005: 2005 World Summit Outcome*, UN Doc. A/60/L.1, Para 132.

1046 See above, note 1043, Principle 4.

ing with government IDP programmes.[1047] As protests broke out across the country in opposition to the Saleh administration in 2011, tens of thousands of Yemenis were displaced as pro-government forces fought with armed groups.[1048] By 2013, the total number of IDPs had decreased as the security situation progressively improved and individuals began to return home.[1049] Nevertheless, the following year sporadic clashes resulted in the displacement of a further 80,000 persons.[1050] By the end of 2015 Yemen had the highest number of new IDPs in the Middle East and North Africa region – 2.2 million[1051] – with the commencement of the coalition airstrikes in March 2015 playing a contributory role.[1052] In 2016, between 500,000 and 750,000 new displacements were recorded,[1053] and in 2017 there were 160,000 new displacements.[1054]

As at September 2017, the Task Force for Population Movement had identified 2.014m IDPs in Yemen (335,671 households) dispersed across 21 governorates, alongside 956,076 returnees (159,346 households).[1055] This number has since increased: in February 2018, for example, the United Nations High Commissioner for Human Rights (UNHCR) recorded that over 85,000 people had been displaced in the 10 weeks from 1 December 2017 following an up-

1047 Internal Displacement Monitoring Centre, *Yemen: IDPs Facing International Neglect*, 2010, pp. 5, and 53–54, available at: http://www.internal-displacement.org/assets/library/Middle-East/Yemen/pdf/Yemen-August-2010.pdf.

1048 Human Rights Watch, *World Report 2012: Yemen*, 2012, available at: https://www.hrw.org/world-report/2012/country-chapters/yemen.

1049 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/24/34, 25 July 2013, Paras 47–49.

1050 See above, note 402, p. 7.

1051 Internal Displacement Monitoring Centre, *Global Report on Internal Displacement*, 2016, pp. 9–10, 2016, available at: http://www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf.

1052 Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/31, 7 September 2015, Paras 73–74.

1053 *Ibid*., p. 10. In total 500,000 new IDPs were recorded, although the Internal Displacement Monitoring Centre notes that this figure could rise up to 750,000 persons when accounting for returnees and multiple displacements. See *Ibid*., p. 16.

1054 Internal Displacement Monitoring Centre, *Yemen: Country Information*, 1 January – 31 December 2017, available at: http://www.internal-displacement.org/countries/yemen.

1055 Task Force on Population Movement, *Yemen: 16th Report*, October 2017, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/tfpm_16th_report_oct2017.pdf.

surge in violence across the country after the assassination of former President Saleh by Ansar Allah forces on 4 December 2017.[1056] It is estimated that 88.5% of the country's IDPs have been displaced for over a year, with around 69% having been displaced for more than two years;[1057] many have been displaced on multiple occasions.[1058] As at March 2018, the UNHCR recorded that there were a total of 2.014m IDPs in Yemen.[1059]

Many IDPs are extremely poor, having been subject to multiple displacements,[1060] and they face considerable difficulties in accessing shelter, healthcare, food and water.[1061] Research also indicates that displacement operates in conjunction with other characteristics to exacerbate the vulnerability of certain groups to discrimination, with individuals experiencing multiple discrimination on the grounds of, for example, their IDP status and their gender or ethnicity and descent. As such, IDPs belonging to groups that are already exposed to marginalisation and discrimination, such as women and the Muhamasheen, experience unique risks and challenges.

Legal and Policy Framework

Yemen has not enacted any legislation relating to the rights of IDPs. However, following a multi-stakeholder consultative process and engagement with the UNHCR, a National Policy for Addressing Internal Displacement was adopted by the Hadi government in June 2013, shortly after the commencement of the National Dialogue Conference. The National Policy sets out three core aims relating to the protection of IDP rights:

1056 Pouilly, C., "85,000 people displaced in 10 weeks as hostilities rage across Yemen", *UNHCR*, 9 February 2018, available at: http://www.unhcr.org/uk/news/briefing/2018/2/5a7d68a04/85000-people-displaced-10-weeks-hostilities-rage-across-yemen.html.

1057 See above, note 934, p. 16.

1058 See above, note 933, p. 7.

1059 United Nations High Commissioner for Human Rights (UNHCR), *Yemen Update*, March 2018, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Yemen%20Update%20-%20March%202018.pdf.

1060 Amnesty International, *Submission to the Human Rights Committee on Yemen*, 2010, p. 51, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/YEM/INT_CCPR_NGO_YEM_101_10328_E.pdf.

1061 See above, note 1056.

***Goal 1**: Protecting civilians from involuntary displacement and being prepared to respond to possible displacement;*

***Goal 2**: Protecting and assisting IDPs during displacement and supporting displacement-affected communities;*

***Goal 3**: Creating conditions enabling safe, voluntary and durable solutions.*[1062]

The Policy is based on international human rights law standards, taking into account the Guiding Principles on Internal Displacement, and expressly states that IDPs "shall enjoy in full equality and without discrimination the same rights and freedoms under international and domestic law as do other persons in their country".[1063] The Executive Unit for Internally Displaced Persons was tasked with implementing the policy,[1064] and a Supreme Committee for Addressing Internal Displacement was established to provide strategic guidance and support in the implementation of the Policy.[1065]

The Committee on the Rights of the Child, whilst welcoming the adoption of the state IDP policy in 2013, expressed concern regarding its implementation, specifically noting that many IDP children suffer from poor living conditions.[1066] Furthermore, marginalised communities such as the Muhamasheen remain largely excluded from protection.[1067] It is also clear that the current conflict has impacted upon the implementation of the policy: whilst the Executive Unit for IDPs continues to operate with UNCHR assistance,[1068] as with

1062 Republic of Yemen Council of Ministers, Executive Unit for IDPs, *National Policy for Addressing Internal Displacement in the Republic of Yemen,* 2013, p. 4, available at: http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Yemen/files/Yemen_National_IDP_Policy_2013_EN.pdf.

1063 *Ibid*., p. 7.

1064 *Ibid.*, p. 31.

1065 *Ibid*., p. 32.

1066 See above, note 309, Para 77.

1067 UNHCR, *UNHCR IDP Protection Report, January – April 2016*, 2016, p. 11, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Protection%20Report%20Jan%20-%20April%202016.pdf.

1068 UNHCR, *Yemen: UNHCR Flash Update 2–8 June 2017*, 2017, p. 1, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/Flash%20Update%20Yemen%20Situation%208%20June%202017%20%28Final%29.pdf.

many government agencies its capacity is severely limited as a result of conflict and it lacks sufficient funding to discharge its mandate.[1069]

Violence and Ill-treatment

The conflict has increased the prevalence of certain forms of violence and ill-treatment, including sexual violence and child marriage.[1070] IDPs are particularly vulnerable to such violence, with women, children and Muhamasheen IDPs being at particular risk.[1071] This is one of a number of ways in which IDP women and Muhamasheen IDPs suffer from multiple discrimination, with IDP status combining with the characteristics of gender and ethnicity/descent to render these individuals particularly vulnerable to violence.

According to CARE, the "increase in displacement has increased the risk of gender-based violence, including sexual abuse".[1072] For example, in 2016, the Office of the High Commissioner for Human Rights recorded the case of a 10 year old displaced girl from the Sa'ada governorate who was raped whilst walking to the shops to purchase food.[1073] A report by the UN Population Fund from October 2016 noted that 788,643 of the IDP population as at that date were women and girls aged between 15 to 49 years old, who were at risk of gender-based violence.[1074] CARE has noted that sexual violence against IDPs is perpetuated by pervasive cultural attitudes that inhibit the reporting of offences.[1075]

As noted in section 3.3, girls from displaced families are more vulnerable to being victims of child marriage, with reports that "host communities exploit the vulnerabilities of internally displaced families and get them to marry off

1069 See above, note 933, p. 7.

1070 See above, note 1051, pp. 25–26. For further discussion, see Part 3, section 3.3.

1071 See above, note 1051, p. 9.

1072 See above, note 1051.

1073 See above, note 107, Paras 61–62.

1074 United Nations Population Fund, *Humanitarian Crisis in Yemen: Preventing Gender-based Violence & Strengthening the Response*, October 2016, p. 4, available at: http://yemen.unfpa.org/sites/default/files/resource-pdf/Final%20-GBV%20Sub-Cluster-%20Yemen%20Crisis-Preventing%20GBV%20and%20Strenthening%20the%20Response.pdf.

1075 See above, note 1051, pp. 25–6. See also section 3.3 for further discussion.

their daughters".[1076] According to research by the United Nations Children's Fund and the International Center for Research on Women, child marriage is a "coping mechanism" for families who are struggling with economic hardship as a result of their displacement.[1077] An expert from a Yemeni non-governmental organisation explained as follows:

> *[W]e asked communities if they had observed an increase and overall, they said that whilst prior to the conflict, child marriage had decreased, war and displacement had increased the practice.*[1078]

There have been reports of Yemeni girls being trafficked to neighbouring countries, such as Oman, in order to be sold as brides;[1079] research suggests that girls from displaced families are particularly vulnerable, as their families "[see] it as a good opportunity to preserve their family honour".[1080]

Education

The ongoing conflict has restricted access to education across Yemen: multiple schools have been closed or destroyed, many (particularly male) students have been recruited as combatants, and some schools have been actively occupied by armed groups.[1081] IDPs, of whom over 400,000 are of school age, have been particularly affected, and many risk exclusion from the classroom.[1082] In the UNHCR's Multi-Cluster Needs Assessment of IDPs, Returnees and Host Communities in Yemen, IDPs were listed as the population most likely to find

1076 See above, note 448, p. 6.

1077 UNICEF and the International Center for Research on Women, *Child Marriage in the Middle East and North Africa*, 2017, p. 53, available at: https://www.icrw.org/wp-content/uploads/2018/04/Full-Report-FINAL.pdf.

1078 *Ibid*.

1079 Al Shaibany, S. and Al Wasmi, N., "Child marriage on the rise as conflict in Yemen continues", *The National*, 17 April 2018, available at: https://www.thenational.ae/world/mena/child-marriage-on-the-rise-as-conflict-in-yemen-continues-1.722499.

1080 See above, note 1077, p. 54.

1081 See above, note 1051, 2016, p. 39.

1082 World Bank, *Country Engagement Note for the Republic of Yemen for the Period FY17-FY18*, 2016, Para 11, available at: http://documents.worldbank.org/curated/en/458181467103791708/pdf/106118-CEN-P157686-IDA-R2016-0175-Box396255B-OUO-9.pdf.

it difficult to access education (29%) in IDP locations.[1083] The main reasons given for non-attendance in IDP locations were a lack of funds (26% for both boys and girls); child labour (25% for boys and 12% for girls); distance from educational institutions (12% for boys and 17% for girls); and child safety (12% for boys and 13% for girls).[1084]

IDP children can also face difficulties registering in schools due to a lack of documentation, an issue compounded by low levels of birth registration in the country,[1085] despite relevant national[1086] and international law.[1087] Despite the Yemeni government having removed documentation requirements in schools in 2009 in order to facilitate the education of children who lacked the relevant certification,[1088] several reports indicate that IDP children continue to be turned away due to a lack of official papers.[1089] School overcrowding, exacerbated by the current conflict, has contributed to the issue, with undocumented IDP children being among the first to be turned away from classrooms which are suffering from limited space, teachers and resources.[1090] In 2017, Save the Children documented the case of Sarah, a 12 year old girl who has been displaced since the beginning of the conflict:

> *I used to go to school every day, but now I don't. I lost all of my school documents and certificates when I fled with my family from the deadly airstrikes. I could have been in the sixth grade now if I had not missed two*

1083 UNHCR, *Multi-Cluster Needs Assessment of IDPs, Returnees and Host Communities in Yemen,* 2017, p. 32, available at: http://reliefweb.int/report/yemen/multi-cluster-needs-assessment-idps-returnees-and-host-communities-yemen-task-force.

1084 *Ibid*.

1085 According to the 2013 Demographic Health Survey, just 30.7% of children under the age of five had their births registered: Republic of Yemen Ministry of Public Health & Population & Central Statistical Organisation, *Yemen National Health and Demographic Survey 2013*, 2015, p. 17, available at: http://dhsprogram.com/pubs/pdf/FR296/FR296.pdf.

1086 Law No. 23 of 1991 "on Civil Status and Civil Registration", as amended by Law No. 23 of 2003, and Decision of the Prime Minister No. 120 of 2006; See above, note 819, Paras 84–91.

1087 See, in particular, Article 24(2) ICCPR, which provides that "every child shall be registered immediately after birth and shall have a name".

1088 See above, note 1051, pp. 53–54.

1089 See above, note 1051, p. 40.

1090 See above, note 534, p. 3.

> *years during my displacement. I feel sad when I see my cousins going and coming back from school, but I hide my feelings.*[1091]

Housing and Shelter

IDPs are at risk of experiencing a lack of adequate accommodation and shelter, particularly as the United Nations Humanitarian Country Team adopted a "no camp" policy in 2015, meaning that no IDP camps have been established in Yemen,[1092] with 77% of IDPs housed in private settings.[1093] In 2017, the New York Times interviewed Bushra Aldukhainah, who works as a coordinator for CARE, in relation to the situation of IDPs in the country; she explained that, although it is commonly assumed that IDPs are living in camps receiving humanitarian assistance, the reality is very different:

> *People are just spread out everywhere. The displaced are in urban communities and people just take them in as much as they can (…) Even before the crisis Yemen was in a really bad position (…) now the war has worsened the situation. This absolutely feels like the forgotten war.*[1094]

Statistics from 2017 from the Task Force on Population Movement indicate that around 36% of IDPs in Yemen live with relatives, compared to 22% who rent property, 11% who live with friends or other non-relatives, and 7% who live in a second home.[1095] Around 6% of IDPs in Yemen reside in "collective centres", which include public buildings such as schools and hospitals. A further 17% are housed in "spontaneous settlements",[1096] which are often

1091 *Ibid*.

1092 See above, note 1055, p. 12.

1093 See above, note 934, p. 16.

1094 Boynton, E., Bushra Aldukhainah, a Humanitarian Coordinator for CARE, Tells of the Forgotten War in Yemen, *New York Times,* 13 March 2017, available at: http://nytlive.nytimes.com/womenintheworld/2017/03/13/bushra-aldukhainah-a-humanitarian-coordinator-for-care-tells-of-the-forgotten-war-in-yemen.

1095 See above, note 1055, p. 7.

1096 *Ibid*.

overcrowded with "little to no protection from the elements" and a "lack of access to basic services".[1097] The unsanitary, overcrowded conditions in which many IDPs are living means that they are particularly vulnerable to contracting diseases such as cholera.[1098] Humanitarian assistance is focussed on the collective centres, meaning that IDPs living in rented accommodation or with host communities often do not receive the aid they need.[1099]

Displaced members of the Muhamasheen community have been particularly affected by the lack of adequate housing and shelter,[1100] with their IDP status intersecting with their ethnicity/descent to exacerbate their difficulties in finding adequate accommodation and shelter. Whereas many IDPs have taken refuge in schools and hospitals, or have been supported by host communities and local authorities, the Muhamasheen have been unable to find such accommodation due to social stigma and discrimination, and have been "largely left to their own devices".[1101] Many have been forced to leave their temporary settlements by local sheiks, and their lack of tribal affiliation means they do not have a native village to return to.[1102] In a particularly serious incident, several Muhamasheen IDPs were forced to abandon a school in which they had sought shelter after members of the surrounding community prevented them "from accessing basic necessities such as collecting water and firewood and had resorted to detonating stun-grenades and firing weapons at night in order to intimidate them".[1103]

Conclusion

There are large numbers of IDPs in Yemen, and many of the displaced are extremely poor, following multiple displacements during previous periods of violence conflict. Whilst Yemen has not enacted any legislation relating to the

1097 *Ibid.*, p. 13.

1098 See above, note 934, p. 10.

1099 *Ibid*.

1100 UNCHR, *UNHCR IDP Protection Report January – April 2016*, 2016, p. 12, available at: https://www.humanitarianresponse.info/system/files/documents/files/unhcr_protection_report_jan_-_april_2016.pdf.

1101 See above, note 934, pp. 20 and 46.

1102 See above, note 11, p. 13.

1103 See above, note 1100, p. 12.

rights of IDPs, a National Policy for Addressing Internal Displacement was adopted by the Hadi government in June 2013. However, the implementation of this policy has been impeded by the current conflict, which has also led to a significant increase in levels of displacement. IDPs are particularly vulnerable to certain forms of violence and ill-treatment, and certain issues arising from the conflict – such as the impact on access to education – have had a particular effect on IDPs. The Equal Rights Trust's research also indicates that displacement has been operating in conjunction with other characteristics to exacerbate the vulnerability of certain groups to discrimination, with individuals experiencing multiple discrimination on the grounds of, for example, their IDP status and their gender or ethnicity and descent. As such, IDPs belonging to groups that are already vulnerable to marginalisation and discriminatory treatment, such as women and the Muhamasheen, experience unique risks and challenges.

3.10 Conclusion

Our research in Yemen has found substantial evidence of discrimination and disadvantage arising on a range of grounds, including political opinion, religion or belief, gender, ethnicity and descent, disability, health status, sexual orientation, nationality and internal displacement.

Our research has found that, prior to the conflict which began in late 2014, discrimination and inequality in Yemen were widespread and severe. Before the outbreak of hostilities in 2015, Yemen was, on some metrics, already the worst place in the world to be a woman. The Muhamasheen ethnic minority were subject to widespread social stigma which exposed them to discriminatory violence and legitimised their exclusion from the economy and society. Yemen was – and remains – one of only eight countries in the world where same sex conduct between men can be punished by death.

However, the main conclusion of our research is that the conflict has not had a uniform impact on the population: those groups already experiencing or exposed to discrimination have experienced new forms of discrimination, or more severe forms of discrimination, as a result of the conflict. For example, journalists, political activists and civil society representatives – long the subject of discriminatory restrictions on freedom of expression, assembly and association – have increasingly been exposed to violence, arbitrary de-

tention and torture. The conflict has also created a new group vulnerable to discrimination – internally displaced persons (IDPs) – whose enjoyment of fundamental rights is severely restricted. Indeed, our research has found that displacement operates in conjunction with other grounds of discrimination, exposing groups such as female IDPs and Muhamasheen IDPs to particular harms.

Thus, the conflict which continues to rage in Yemen has exacerbated the severe discrimination and inequality already prevalent in the country, with marginalised and disadvantaged groups experiencing increased discrimination and new discriminatory rights violations. It has, in the words of Yemeni poet Abdullah Al-Baradouni, plunged Yemen's most marginalised people from "night to darker night".

Established Patterns of Discrimination

The primary pattern of discrimination on the grounds of **political opinion** is the suppression of political dissent, through the application of discriminatory and restrictive laws, and through discriminatory violence against actual or perceived political opponents. During the era of former President Saleh, successive clashes between the Ansar Allah movement and the administration, brutal responses to southern independence protests, and the "war on terror" all provided pretext for the restriction of essential civil and political rights, in ways which discriminated against those whose political opinion was, or was perceived to be, in conflict with the regime.

There is a broad range of **religious** communities in Yemen, including different schools of the Islamic faith, and members of non-Muslim religious groups. However, legal primacy is afforded to Islam in the Constitution, with the Constitution recognising Islamic Shari'a as the source of domestic legislation. A number of laws discriminate against religious minorities, including provisions of the Press and Publications Law and the Penal Code which prohibit blasphemy, and provisions of the Penal Code relating to apostasy. Instances of discrimination and abuse have been documented against members of religious minorities, including in particular the Bahá'í community.

Yemen has consistently ranked at the bottom of global gender rankings on account of the severe discrimination and inequality faced by Yemeni **women** in

all areas of life. A combination of negative societal stereotypes, a weak legislative framework and discriminatory laws means that gender-based violence and child marriage are prevalent, women are treated unequally in relation to marriage, divorce and inheritance, and they face discrimination in work, education, healthcare and public life.

The Muhamasheen are the lowest ranking group in Yemen's social hierarchy, and the social stigma attached to them is a central factor in their experience of discrimination on the basis of **ethnicity and descent** and their vulnerability to a range of other human rights violations. Having been excluded from Yemeni economic, tribal and political structures for much of their history, the Muhamasheen have faced unique difficulties escaping poverty. They remain limited to low-paid, low-skilled forms of work and face various forms of discriminatory treatment, from discriminatory violence, to discrimination in land ownership and housing, employment and education.

Persons with disabilities face difficulties participating in various areas of life on an equal basis with others, due to strong social prejudice and a weak legislative framework. The Constitution affords very limited protection to persons with disabilities, and the primary piece of disability legislation in Yemen – the Law on the Care and Rehabilitation of Disabled Persons of 1999 – adopts a medical, rather than social, model of disability, which is inconsistent with international best practice. Persons with disabilities face discrimination and exclusion in various areas of life, including in employment, education and healthcare.

The number of persons living with **HIV and AIDS** in Yemen has grown steadily since the early 1990s, in part due to a lack of understanding and information regarding HIV/AIDS. In 2009, the Law on Community Protection from HIV/AIDS and the Protection of the Rights of Persons Living with HIV/AIDS was adopted; the aims of the Law include raising awareness of the rights of persons with HIV/AIDS and of guaranteeing their rights without discrimination. However, persons with HIV/AIDS still experience high levels of stigma in society, and face discrimination in the areas of housing, work, education and health.

Yemen is one of the most repressive countries in the world for **Lesbian, Gay and Bisexual** (LGB) persons. Laws criminalising same-sex sexual relations contain harsh penalties, including death by stoning. Stigma surrounding ho-

mosexuality is high, with individuals having to conceal their sexual orientation. As such, there is very little information available regarding the situation of the LGB community in Yemen. However, there have been several reports of men being killed on the basis of their actual or perceived sexual orientation, and LGB persons' ability to exercise their rights to freedom of assembly and association is severely limited. Our research found no evidence of discrimination on the basis of **gender identity**, something which Yemeni experts attributed to the fact that transgender persons do not disclose their gender identity, due to fear.

Yemen has a long history of migration, with large numbers of **refugees, asylum seekers and economic migrants** travelling to the country from the Horn of Africa and neighbouring Gulf countries. These individuals face a perilous journey, and those who arrive safely on Yemeni soil are at risk of being subject to number of rights violations, including arbitrary detention, discriminatory violence and other ill-treatment, and being returned to their country of origin in breach of the principle of *non-refoulement*. Those that remain experience various manifestations of discrimination, including in employment and in accessing services such as healthcare.

Impact of the Conflict

The Equal Rights Trust's research has found that the conflict has not affected the Yemeni population in a uniform manner. Given the deterioration in the rule of law in the country, **groups already exposed to discrimination and marginalisation have suffered new forms of discrimination** and discriminatory rights violations since the outbreak of the conflict.

For example, whilst discrimination on the basis of actual or perceived **political opinion** was prevalent prior to the outbreak of the conflict, those perceived to be political opponents of the various parties to the conflict have been subject to new rights violations. Journalists, human rights defenders and civil society activists have been targeted by all parties to the conflict on the grounds of their perceived political opinions. **Religious minorities** have been subject to new discriminatory rights violations since the outbreak of the conflict; for example, members of the Bahá'í community have increasingly been subject to severe discrimination on account of their religious beliefs. Other minorities have also been subject to discriminatory violence, including

Christians and those considered to be atheists, and there has been a marked increase in the destruction of sites of worship and other sites of religious and cultural importance by non-state armed groups. Members of the **Muhamasheen** community have also faced new forms of discriminatory treatment since the outbreak of the conflict, including being discriminated against in the provision of humanitarian aid and assistance.

The Trust's research has also found considerable evidence that the **discriminatory treatment of historically marginalised groups has been exacerbated by the conflict**, with pre-existing patterns of discrimination and inequality being more pronounced than before. For example, the conflict has exacerbated the entrenched discrimination and inequalities faced by **women and girls** in Yemen, with rates of gender-based violence and child marriage increasing. **Muhamasheen women** are reportedly particularly vulnerable to sexual violence and harassment by armed groups. The conflict has also increased the exclusion experienced by **persons with disabilities**: for example, children with disabilities have faced increased challenges in accessing education, due in part to shortages of equipment at schools such as wheelchairs and hearing aids.

Furthermore, **the conflict has created new groups vulnerable to discrimination**. Most obviously, the conflict has given rise to large numbers of **IDPs**, many of whom are extremely poor, having been subject to multiple displacements; they face considerable difficulties in accessing shelter, healthcare, food and water. Certain issues arising from the conflict – such as the impact on access to education – have had a particular effect on IDPs. Moreover, the Trust's research indicates that displacement has been operating in conjunction with other characteristics to exacerbate the vulnerability of certain groups to discrimination, with individuals experiencing multiple discrimination on the grounds of, for example, their IDP status and their gender or ethnicity/descent. As such, IDPs belonging to groups that are already vulnerable to marginalisation and discriminatory treatment, such as women and the Muhamasheen, experience unique risks and challenges.

Thus, Part 3 has found that the conflict has had a particular impact on certain groups in Yemen, who have experienced increased discrimination and new discriminatory rights violations, in a context where violations of the rights to equality and non-discrimination were already prevalent. Whilst

there is currently no end to the conflict in sight, it is imperative that all interested parties consider what steps should be taken to ensure respect for the rights to equality and non-discrimination in Yemen in the immediate term, and how such rights should be protected and fulfilled in any future transitional process.

4. RECOMMENDATIONS

This Part sets out recommendations aimed at ensuring enjoyment of the rights to equality and non-discrimination.

The Equal Rights Trust recognises that, whilst the conflict in Yemen persists, action to secure the enjoyment of these rights is necessarily constrained. The conflict has engendered a humanitarian and human rights crisis, in which patterns of discrimination have been entrenched and exacerbated. It has also been accompanied by the deterioration in the rule of law and effective governance in the country, and a necessary focus on addressing immediate humanitarian needs, which have limited the capacity of the state to take steps to protect and fulfil the rights.

As such, before making specific recommendations aimed at increasing respect, protection and fulfilment of the rights to equality and non-discrimination, we **call upon all parties to the conflict, and to all third-party states which provide support to the parties to the conflict (whether financial, military or otherwise) to bring an end to the current hostilities.** We further call for all parties to **commit to resolving the conflict through inclusive, peaceful political dialogue** and to **facilitate the delivery of humanitarian assistance and provide unhindered access for humanitarian actors**.

As our research has served to underline, the cessation of hostilities is the essential first step to addressing the humanitarian needs of the population, and restoring respect for human rights, including the rights to equality and non-discrimination. While, as indicated below, there are some critical immediate steps that may and must be taken now to ensure respect for the right to non-discrimination by parties to the conflict, pursuing much of the work which is required to achieve equality will remain futile until hostilities cease.

Beyond this first, and overarching, recommendation, our recommendations are organised into three categories, based on their respective urgency: (1) Recommendations for immediate implementation; (2) Recommendations applicable to any future transitional process; and (3) Recommendations for post-conflict implementation.

As demonstrated in Part 3, all parties to the conflict are failing to respect the rights to equality and non-discrimination. Thus, our first set of recom-

mendations calls on all parties cease and refrain from discrimination and discriminatory human rights violations. We also call on all actors involved in the provision of humanitarian aid to take steps to ensure respect for the rights to equality and non-discrimination in their actions. Our second set of recommendations focus on the transitional process which must follow the cessation of the conflict, calling for this process to be grounded on the principles of equality and non-discrimination, and to be genuinely inclusive of all groups in Yemeni society. Our third set of recommendations focus on the post-conflict situation: calling for the restoration of the rule of law to be accompanied by steps to ensure the comprehensive protection and guarantee of the rights to equality and non-discrimination in accordance with Yemen's international obligations.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.[1]

1. Recommendations for immediate implementation

Ensuring Respect for the Rights to Equality and Non-Discrimination by all Parties to the Conflict

The UN Security Council has called upon all parties in Yemen to "comply with their obligations under international law, including (…) international human rights law as applicable".[2] The Trust echoes this call by urging all parties in Yemen to abide by their obligations under international humanitarian and human rights law. Such obligations include, but are not limited to, the obligation to respect the rights to equality and non-discrimination.

The Trust calls for all parties to respect the rights to equality and non-discrimination, immediately ceasing and refraining from all acts of discrimina-

1 See the Introduction for a detailed discussion of the Declaration of Principles on Equality (2008).

2 UN Security Council, Resolution 2402 (2018) Adopted by the Security Council at its 8190th meeting, on 26 February 2018, UN Doc. S/RES/2402 (2018), Preamble.

tion and discriminatory violations of human rights. In particular, the Trust urges all parties to:

- Cease and refrain from discriminatory violations of the right to life, including the killing of political and civil society activists, Human Rights Defenders (HRDs) and journalists, the fatal targeting of religious minorities and those perceived to be atheists, and the killing of sexual and gender minorities.
- Cease and refrain from discriminatory torture and ill-treatment, including the torture and ill-treatment of individuals on the basis of their actual or perceived political opinion or religious beliefs, the torture and ill-treatment of refugees and migrants in detention, and all forms of gender-based violence, including sexual violence against women and girls from marginalised groups such as the Muhamasheen and Internally Displaced Persons, and the trafficking of child brides to neighbouring Gulf states.
- Cease and refrain from discriminatory violations of the right to liberty and security of the person, including releasing individuals arbitrarily detained on the basis of their actual or perceived political opinion or religious beliefs, such as journalists, HRDs and members of the Bahá'í community, and refraining from using specialised courts to prosecute individuals without adherence to judicial procedural safeguards.
- Cease the discriminatory destruction of sites of religious worship and other sites of religious and cultural importance, which undermines both the right to freedom from discrimination, as well as the rights to freedom of thought, conscience and religion.
- Cease and refrain from discriminatory restrictions on the right to freedom of expression, including through refraining from all direct and indirect interference with media institutions and organisations, newspapers and websites.
- Cease and refrain from discriminatory interferences with the right to freedom of association, including by ceasing the unlawful seizure of the bank accounts of Yemeni civil society organisations and non-governmental organisations.
- Cease and refrain from discriminating against members of the Muhamasheen in the provision of shelter and healthcare.
- Cease and refrain from excluding internally displaced children from schools on account of their lack of documentation.

Ensuring Respect for the Rights to Equality and Non-Discrimination by Actors involved in the Provision of Humanitarian Aid

The Trust calls upon international actors involved in the provision of humanitarian aid to ensure respect for the rights to equality and non-discrimination in Yemen, including through:

- Ensuring that the provision of humanitarian aid and assistance is not discriminatory and complies with the four humanitarian principles, including the principles of neutrality and impartiality. In particular, all international actors are urged to ensure that the Muhamasheen are not denied humanitarian aid on the basis of their ethnicity/descent.
- Ensuring that humanitarian programming and assistance are attentive to the particular needs of vulnerable groups, including but not limited to women, members of the Muhamasheen community, persons with disabilities, persons with HIV/AIDs and internally displaced children.

2. Recommendations applicable to any future transitional process

Whilst there is currently no end to the conflict in sight, the restoration of the rule of law will be central to the consolidation of peace in any future post-conflict transition, as well as to the long-term maintenance of peace.[3] Respect for international human rights law – and, in particular, respect, protection and fulfilment of the rights to equality and non-discrimination – will be integral to the restoration and advancement of the rule of law.

The parties to any post-conflict transition process are urged to mainstream the principles of equality and non-discrimination in all peace-building initiatives and post-conflict reconstruction, including through:

- Ensuring the effective participation by all groups in post-conflict planning and political dialogue, including ensuring the proportionate

3 UN Security Council, *Report of the Secretary General: The rule of law and transitional justice in conflict and post-conflict societies*, UN Doc. S/2004/616, 24 August 2006, Para 2.

representation of women, members of the Muhamasheen community, persons with disabilities, members of religious minorities, and individuals from all political factions.
- Ensuring that the particular needs of vulnerable and marginalised groups are taken into account during post-conflict needs-assessments and planning and are factored into subsequent programming by government and non-governmental actors.
- Integrating equality principles based on non-discrimination and positive action in comprehensive policies to redress past abuses (including those committed prior to the current conflict), including severe forms of discrimination committed against groups and persons on grounds of political opinion, religious belief, gender, ethnicity/descent and other prohibited grounds.
- Ensuring fair, effective and prompt access to justice for victims of past abuses and ensuring adequate, effective, prompt and appropriate remedies, including reparation.
- Ensuring that the alleged perpetrators of gross human rights violations, including discriminatory killings, torture, sexual and other violence and ill-treatment, are brought to justice.

3. Recommendations for post-conflict implementation

Following the restoration of peace, Yemen should take steps necessary to ensure respect, protection and fulfilment of the rights to equality and non-discrimination, as an integral part of efforts to build an inclusive society, in which all can participate on an equal basis. Following the resolution of the conflict, the state is urged to take immediate measures to increase enjoyment of the rights to equality and non-discrimination, as follows:

Strengthening of International Commitments Related to Equality

Yemen should ratify the following United Nations human rights treaties, which are relevant to the rights to equality and non-discrimination:

- Optional Protocol to the International Covenant on Civil and Political Rights (1966).
- Second Optional Protocol to the International Covenant on Civil and Political Rights (1989).

- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008).
- Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.
- Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (1999).
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002).
- Optional Protocol III to the Convention on the Rights of the Child (2011).
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
- International Convention for the Protection of all Persons from Enforced Disappearance (2006).

Yemen should further ratify the following international treaties, which have an important bearing on the rights to equality and non-discrimination:

- Convention relating to the Status of Stateless Persons (1954).
- Convention on the Reduction of Statelessness (1961).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).
- Rome Statute of the International Criminal Court (1998).
- *United Nations Educational, Scientific and Cultural Organization* Convention against Discrimination in Education (1960).
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

Repeal or Amendment of Discriminatory Laws and Legal Provisions

Yemen is urged to undertake a review of the Constitution and all legislation in order to (i) assess compatibility with the rights to equality and non-discrimination, as defined in international agreements to which it is party and the Declaration of Principles on Equality; and (ii) amend, and where necessary, repeal, laws or legal provisions which discriminate or otherwise conflict or are incompatible with the right to equality. This process should include, but not be limited to, a review of:

- Article 31 of the Constitution, which denotes women as the "sisters of men";
- Provisions of the Press and Publications Law which:
  - Permit the discriminatory limitation of the right to freedom of expression on the basis of political opinion (in particular, Articles 103 and 197); and
  - Discriminate on the basis of religious belief, including provisions relating to blasphemy and apostasy (in particular, Articles 103(a) and 103(j));
- Provisions of the Law Governing Political Parties and Organisations which discriminate indirectly on the basis of political opinion in respect of the right freedom of association (in particular Articles 8, 9(d) and 14);
- Provisions of the Law on the Organisation of Demonstrations and Assemblies which permit the discriminatory limitation of the right to freedom of assembly (in particular, Articles 3, 4, 5 and 16);
- Provisions of the Penal Code which:
  - Discriminate against, or permit discriminatory violence against, women including provisions relating to honour-based violence (including Articles 42, 232 and 263); and
  - Criminalise same-sex sexual relations (Article 264 and 268);
- Provisions of the Law of Evidence (including Article 45), Personal Status Law (including Articles 6, 15, 23, 40, 41 and 59) Labour Code (in particular, Article 46) and Nationality Law (in particular, Article 11) which discriminate, directly and indirectly, against women.

Constitutional, Legislative and Policy Reform Regarding the Right to Equality

Constitution

Yemen should ensure that its Constitution guarantees the rights to equality and non-discrimination in accordance with its international human rights law obligations. Whether the current Constitution is maintained and amended, or a new Constitution is drafted, Yemen should ensure that its Constitution, *inter alia*:

- Includes both a right to equality and a right to non-discrimination, defined in line with the Declaration of Principles on Equality,

- Includes a substantive right to non-discrimination, prohibiting direct and indirect discrimination, harassment, and failure to make reasonable accommodation on the basis of all grounds recognised at international law and in all areas of life governed by law;
- Requires that the state takes positive action in order to fulfil the right to equality;
- Ensures that all rights, including the rights to equality and non-discrimination, are provided to both citizens and non-citizens;
- Clarifies that international human rights treaties to which the state is party have direct effect in the domestic system.

Yemen should ensure that any Constitutional reform process is inclusive, including by ensuring the proportionate representation of women, members of the Muhamasheen community, persons with disabilities, members of religious minorities, and individuals from all political factions in the reform process.

Adoption of Comprehensive Equality Legislation

Yemen should adopt comprehensive equality legislation appropriate for the implementation of the right to equality. Such legislation should build on a robust constitutional protection for the rights to equality and non-discrimination. In particular, it should:

- Prohibit direct and indirect discrimination, harassment and failure to make reasonable accommodation, in all areas of life regulated by law;
- Prohibit discrimination on all grounds listed in Principle 5 of the Declaration of Principles on Equality, and permit the inclusion of new grounds by the courts;
- Prohibit discrimination on the basis of association and perception and multiple discrimination;
- Mandate positive action measures in accordance with Principle 3 of the Declaration of Principles on Equality;
- Establish the procedural framework necessary for the effective functioning of the rights to equality and non-discrimination, including *inter alia* through: providing for the transfer of the burden of proof, providing protection from victimisation and permitting standing by interested parties;
- Ensure effective access to remedies and sanctions for violations of the rights to equality and non-discrimination; and

- Attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

Reform of National Law and Policy

Yemen should review existing legislation or legal provisions which purport to protect the rights to equality and non-discrimination, and make such amendments as are necessary to ensure that such laws are compatible with international best practice. This process should include, but not be limited to:

- Amending the Labour Code to prohibit discrimination on all grounds recognised under international law; and
- Amending the definition of disability in the Law on the Care and Rehabilitation of Disabled Persons to bring it into line with definition in the Convention on the Rights of Persons with Disabilities, and introducing a comprehensive prohibition of disability discrimination in the Law.

Yemen should review other legislation to ensure that it is adequate to provide for the enjoyment of human rights without discrimination and to ensure compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party, and amend such laws as necessary. This process should include, but not be limited to:

- Introducing a legislative prohibition of torture which complies with international standards under the International Covenant on Civil and Political Rights and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Amending the Penal Code to satisfactorily addresses hate-motivated violence by treating the existence of a discriminatory motive as an aggravating circumstance in the commission of violent crimes;
- Enacting specific legislation on gender-based violence, including domestic violence;

- Enacting legislation to prohibit child marriage and setting the marriageable age for both men and women at the age of majority (18 years);
- Amending the law prohibiting the practice of female genital mutilation, to ensure that it is prohibited under all circumstances; and
- Enacting legislation to guarantee the equal rights of IDPs and non-citizens.

Access to Justice and Enforcement

Yemen should introduce reforms to ensure the full and effective implementation of legislative provisions aimed at prohibiting discrimination. In this respect, Yemen is urged, *inter alia*, to:

- Review all legislation and ensure that monitoring mechanisms, specific sanctions and remedies for violations are provided for in law;
- Ensure that persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy;
- Ensure that legal aid is made available in cases concerning a breach of the rights to equality and non-discrimination, in line with international law and best practice;
- Ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality; and
- Establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality, ensuring that such body or bodies comply with the UN Paris Principles, including in terms of their independent status and competences, as well as adequate funding and transparent procedures for the appointment and removal of their members.

Measures to Fulfil the Rights to Equality and Non-discrimination

In addition to its obligations to respect and protect the rights to equality and non-discrimination, Yemen has an obligation to fulfil these rights, by ensuring

that they can be enjoyed in practice. This obligation includes *inter alia* obligations to introduce positive action measures to overcome past disadvantage and accelerate progress towards equality; and measures to raise awareness of the rights to equality and non-discrimination and to combat negative social stereotypes and prejudice against groups exposed to discrimination. In this respect, Yemen is urged to:

- Adopt positive action measures designed to accelerate progress towards equality for all groups exposed to discrimination and inequality, including in particular measures aiming to achieve the equal participation of women, the Muhamasheen and persons with disabilities in education, employment and in political and public life;
- Take measures to raise public awareness and understanding of the rights to equality and non-discrimination and to eliminate prejudices and associated cultural practices which are based on the idea of the superiority or inferiority of one group over another, including *inter alia* harmful cultural practices and stereotypical attitudes that legitimise or result in discrimination against women, the Muhamasheen, persons with disabilities, persons living with HIV and LGBT persons.

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We pursue and promote the right to equality as a right to participate in all areas of life on an equal basis, which requires taking a holistic, comprehensive approach to different inequalities.

On 25 February 2015, the President of Yemen, Abd Rabbu Mansour Hadi, fled the capital Sana'a, following months of mounting tensions between his government and the rebel Ansar Allah movement, which had culminated in the takeover of the capital. Ansar Allah's takeover of Sana'a marked the escalation of a bitter and bloody conflict which continues today, engendering a humanitarian and human rights crisis.

Since the outbreak of the conflict, the international community's attention has largely been focussed on this humanitarian crisis and, to a lesser extent, on violations of international humanitarian law and human rights law being committed by all parties to the conflict. Less attention has been paid to the pre-existing circumstances in the country, and the way in which the conflict has exacerbated the patterns of inequality, disadvantage and discrimination faced by certain groups in Yemen.

This report – conceived before the outbreak of the conflict but completed in its shadow – examines these patterns of discrimination and disadvantage. It finds that, while the conflict has ravaged the country, affecting the entire population, the effect has not been uniform. Rather, the conflict has had a particular impact on groups historically subjected to discrimination and marginalisation – including women and girls, the Muhamasheen community, and religious minorities – who have become more vulnerable to pre-existing types of discrimination and have faced new forms of discriminatory treatment and exclusion. The conflict has also created a new group vulnerable to discrimination – internally displaced persons – who experience severe deprivation and dislocation.

Thus, the conflict which continues to rage in Yemen has, in the words of Yemeni poet Abdullah Al-Baradouni, plunged Yemen's marginalised groups from "night to darker night". As such, this report's first and primary recommendation is that the parties to the conflict cease hostilities. The report then makes recommendations for immediate implementation, for a future transitional process, and for implementation after the conflict has concluded, all with the aim of increasing enjoyment of the rights to equality and non-discrimination, and so improving the lives of the country's most marginalised.

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