

# YEMEN

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## INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee (the Committee) ahead of its examination of Yemen's fifth periodic report on the implementation of the International Covenant on Civil and Political Rights (ICCPR). The document provides an overview of Amnesty International's main ongoing human rights concerns in Yemen in relation to a number of questions on the Committee's list of issues to be taken up in connection with its review of the state report at the 104<sup>th</sup> session in March 2012.<sup>1</sup> Further details on these concerns can be found in the Amnesty International publications enclosed with this briefing:

- *Moment of truth for Yemen* (Index: MDE 31/007/2011), published in April 2011, at <http://www.amnesty.org/en/library/info/MDE31/007/2011/en>
- *Yemen: Cracking down under pressure* (Index: MDE 31/010/2010), published in August 2010, at <http://www.amnesty.org/en/library/info/MDE31/010/2010>
- *Yemen's dark side: Discrimination and violence against women and girls* (Index: MDE 31/014/2009), published November 2009, at <http://www.amnesty.org/en/library/info/MDE31/014/2009>
- *Yemen: One year on since the start of mass protests: Q and A*, published in February 2012, at <http://www.amnesty.org/en/library/info/MDE31/002/2012/en>.

## 1. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ARTICLE 2)

### *Immunity*

A law passed by the Yemeni parliament on 21 January 2012 has provided complete immunity from prosecution for President Ali Abdullah Saleh and immunity from criminal prosecution "in connection with politically motivated acts carried out during the course of their official duties" to all those who worked with him during his 33-year rule. The law provides that "immunity shall not apply to acts of terrorism".

Indefinite immunities that prevent prosecution of individuals who are suspected of being criminally responsible for crimes under international law are tantamount to amnesties for such crimes and are inconsistent with international law.<sup>2</sup> They also prevent individuals whose rights under the Covenant have been violated to have access to justice, truth and full reparation.

**For more information, see *Yemen: One year on since the start of mass protests: Q and A***

## **2. COUNTER-TERRORISM MEASURES AND RESPECT OF COVENANT GUARANTEES**

### ***Question 4***

Amnesty International is concerned that the Yemeni authorities have failed to address a recommendation made by the Committee in its previous concluding observations on Yemen, adopted at its 84<sup>th</sup> session in July 2005, to ensure that utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities.

Amnesty International's concerns relate, in part, to information gathered by the organization indicating that the Yemeni authorities have gravely violated non-derogable rights under the Covenant, in particular under Articles 6 and 7, in the course of undertaking what they have described as counter-terrorism measures (see section 4.2.4 below).

They also relate to new counter-terrorism legislation – some of which has been passed, some of which remains in draft form – that in some instances threatens to further undermine human rights protection. Article 4 of the Law on Combating Money Laundering and Financing of Terrorism, introduced in January 2010, provides a broad definition of the criminalization of financing terrorism. For instance, the definition includes “the financing of the commission of... any action regarded as a crime within any of the relevant treaties and conventions that the Republic has become a party to or ratified.”<sup>3</sup> However, it does not provide any list of such treaties and conventions. Amnesty International considers that the uncertainty this creates is incompatible with the principle of legality enshrined in Article 15 of the ICCPR. Article 14 of this law requires lawyers to disclose to the authorities information about their clients if they suspect their clients have committed offences under this law, breaching the principle of lawyer-client confidentiality. A draft Counter Terrorism Law lacks legal procedures to protect the rights of suspects during arrest and detention, and proposes to expand the number of crimes punishable by death.

## **3. NON-DISCRIMINATION, EQUALITY BETWEEN MEN AND WOMEN (ARTICLES 2, 3, 23 AND 26)**

### ***Questions 6 and 8***

Information gathered by Amnesty International indicates that the Yemeni authorities have failed to address the Committee's recommendation from the previous concluding observations, adopted at its 84<sup>th</sup> session, to review Yemeni laws in order to ensure full equality between men and women in matters of personal status and to actively promote measures to combat polygamy, which is not in accordance with the Covenant. The Yemeni authorities neither enacted adequate penal legislation to reduce domestic violence nor abolished legislation that provides for lower sentences in cases of so-called “honour crimes”, as called for by the Committee in 2005.

Article 31 of Yemen's Constitution describes women as “sisters of men”, an expression with cultural and traditional meanings which support the rule of women by brothers and other

male family members. This phrasing falls far short of acknowledging women's equality. Discrimination against women in Yemeni legislation is reflected in family law, the exercise of male authority, and the lack of respect for women's personal integrity. In some instances, discrimination amounts to gender-based violence, such as extreme restrictions on woman's freedom of movement, and forced marriage of girls and women by their male guardian (*wali*). (For information on forced marriages of young girls see section 5).

Local NGOs, the quasi-governmental National Women's Committee and others have identified 27 discriminatory provisions in Yemeni law that require amendment to ensure conformity with Yemen's international obligations.

The Personal Status Law (Law No. 20 of 1992, as amended in 1997 and 1999) covers matters relating to marriage, divorce, custody of children and inheritance. It contains numerous discriminatory provisions that severely constrain women's lives and put them at risk of abuse. For example, Article 40 specifies that a wife must obey her husband and cannot leave the home without his permission. If she disobeys him or goes out without his agreement, he is entitled to make her return to the matrimonial home.

Article 12 states that a man can have up to four wives if he is fair to them all, can support them all, and informs his wife or wives that he plans to marry again. By contrast, for a woman to marry at all, she must obtain the permission of her guardian, who would normally be her father or another male relative. If the male guardian does not consent, the woman may apply to a court for permission but this may not be granted. The guardian can file for an annulment of a marriage if the woman has married without his permission, even if this is against her wishes. The requirement for women to obtain the permission of a guardian to marry clearly restricts women's rights guaranteed by international law, including the rights to freely choose a spouse, to marry and to equality before the law.

Women who assert their right to marry a partner of their choice against the wishes of their families risk physical violence and restrictions on their freedom of movement. In some cases, women are forced into marriage. The Personal Status Law is also discriminatory in relation to divorce. Under Article 59, a man may divorce his wife at will, without even needing to provide a reason, yet a woman seeking a divorce must petition a court if she wishes to obtain one and can only do so on very limited grounds.

Additionally, the Penal Law codifies blatant discrimination against women. Article 12, for example, provides that blood money or *diya* (financial compensation paid to the family of a murdered victim) for the murder of a woman is half that paid for the murder of a man. A similarly discriminatory rule in Article 42 applies to financial compensation paid for actual or grievous bodily harm (*'arsh*). The law also provides lenient punishments for men who commit "honour killings" (murder of a female relative for her perceived "immoral" behaviour or if she is found committing *zina* – sexual intercourse outside of marriage). Article 232 provides that a man who murders or injures his wife or her partner having caught them committing adultery should receive a maximum prison sentence of a year or a fine. In most other murder cases, the punishment is death.

**For more information see Yemen's dark side: Discrimination and violence against women and girls.**

## 4. RIGHT TO LIFE, PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLES 6 AND 7)

### 4.1. *Death penalty (Question 9)*

Although the Committee called on Yemen in its previous concluding observations to limit the cases in which the death penalty is imposed and, in particular, to ensure the death penalty is applied only for the most serious crimes, Amnesty International is not aware of any steps taken by the authorities to reduce the number of crimes punishable by death. The death penalty continues to apply to a wide range of offences in Yemen, including for offences not involving lethal violence, and the draft Counter Terrorism Law proposes to actually expand the number of crimes punishable by death.

The Yemeni authorities have also failed to officially abolish the sentence of death by stoning, provided for in the Penal Code. The last sentence of stoning that Amnesty International is aware of was issued in 2002 but was not carried out due to an international campaign against the implementation of the sentence.

Proposed amendments to the Penal Code<sup>4</sup> could also allow the death penalty to be used against juvenile offenders, a practice that is currently prohibited by law, even if it sometimes occurs in practice, as described below.

Hundreds of people are believed to be under sentence of death in Yemen, including men, women and individuals who were alleged to have been below 18 years old at the time of the crime of which they were convicted. In 2011, at least 41 people, including a woman, were reportedly executed and at least 29 men, including three foreign nationals, reportedly received the death sentence. In 2010, at least 62 people<sup>5</sup> were reportedly executed and 27 reportedly sentenced to death. In 2009, at least 30 people were reportedly executed and at least 53 people reportedly sentenced to death. Many of those sentenced to death, most after being convicted of murder, received trials which are reported to have fallen short of international fair trial standards. Executions are carried out by shooting, with the executioner firing at close range to shoot the condemned person in the heart.

Two Yemeni men, **Shaikh Khalid Nahshal** and **Abduh Muhammad Nahshal**, were executed on 31 January 2012 despite unfair trial concerns. A third man, **Mabkhout 'Ali Nahshal**, who was convicted of the same crime, is believed to be still under sentence of death. Amnesty International believes that he is at imminent risk of execution. The three were reported to be leading members of Islah, an opposition party. Their lawyers had complained that they were not given full and effective opportunity to challenge the evidence against the three men.

**Fatima Hussein Badi** remains at imminent risk of execution more than 10 years after she was sentenced to death along with her brother, Abdullah Badi, for the murder of Fatima's husband. Prior to her February 2001 conviction, Fatima was reportedly questioned by the police for more than five hours during the night, without a lawyer. Abdullah apparently only confessed to the murder after the authorities threatened to rape Fatima. During a number of their trial hearings, Fatima and Abdullah had no legal representation and were prevented from speaking in court. In September 2003, the Supreme Court reduced Fatima's sentence to four years' imprisonment but following a review after an intervention by President Saleh,

this decision was overturned. Abdullah was executed in 2005 and Fatima remains at imminent risk of execution.

Despite the fact that Yemeni law currently prohibits both the imposition and application of the death penalty for juveniles, executions of alleged juvenile offenders continue to take place because of disputes over whether they were over or under 18 years of age at the time of the alleged crime, in some cases because they do not have a birth certificate.

**Fuad Ahmed Ali Abdulla** was executed in Ta'izz prison on 21 January 2012 after being convicted of a murder in June 2004 he was alleged to have committed while he was below the age of 18. **Muhammed Taher Thabet Samoum**, held in Ibb prison, is at imminent risk of execution for a murder he allegedly committed in June 1999 while under 18 years old. He has no birth certificate but was sentenced to death in September 2001 by the Criminal Court in Ibb. His death sentence was upheld by an appeal court in May 2005, confirmed by the Supreme Court in April 2010 and has since been ratified by the President of Yemen. In October 2011, his lawyer submitted a grievance to the Yemeni President, and is awaiting a decision. In another case **Walid Haykal** was sentenced to death in 2000 for murder that he committed when he was allegedly under the age of 18. He is held in the Central Prison in Sana'a and is believed to be at imminent risk of execution.

Amnesty International has called on the Yemeni authorities to apply a full range of appropriate criteria in cases where age is in dispute. In the organization's view, good practice in assessing age includes drawing on knowledge of physical, psychological and social development. Each of these criteria should be applied in a way that gives the benefit of doubt in disputed cases so that the individual is treated as a juvenile offender, and accordingly should ensure that the death penalty is not applied. Such an approach is consistent with the principle that the best interests of the child shall be a primary consideration in all actions concerning children, as required by Article 3(1) of the Convention on the Rights of the Child.

## ***4.2 Unlawful killings (Questions 10, 16 and Questions 35-36 in the section on freedom of expression and assembly)***

### **4.2.1 Killings of anti-government protesters in 2011**

2011 saw brutal repression of protests. More than 200 protesters were killed and thousands injured after security forces resorted to excessive and disproportionate force, including live ammunition to break up demonstrations.

In central Sana'a on 18 March 2011, snipers believed to be from the security forces fired into the protest camp from the tops of buildings after Friday prayers, and security forces at street level also opened fire in what quickly became known as "Bloody Friday". At least 52 protesters were shot dead; hundreds more were wounded. The President issued a public apology but denied that the police were responsible. According to the Office of the High Commissioner for Human Rights, an official investigation – the only judicial investigation Amnesty International is aware of into incidents of killings by the security forces – resulted in 78 people being charged in connection with the 18 March events, but it was unclear whether these included members of the security forces. The authorities offered compensation to some of the victims' families.

Other incidents in 2011 included the following:

- In Aden on 25 February, security forces fired on protesters from armoured vehicles and attacked houses in which they suspected protesters had taken shelter, killing some 12 people, two of them in their homes, and reportedly prevented the injured being taken to hospital.
- On 4 March in Harf Sufyan in the northern 'Amran governorate, soldiers at a military post fired at protesters as they sought to leave the area in cars, reportedly killing two and wounding others.
- In Ta'izz, the security forces fired into a protest camp and makeshift field hospital on 29 May, reportedly killing at least a dozen people, before bulldozing and burning the camp.
- In Aden on 24 June, soldiers backed by tanks shot dead Dr Jiyab Ali al-Sa'adi, son of one of the leaders of the Southern Movement, when he reportedly urged them not to fire on mourners at the funeral of Ahmed al-Darwish, who had died in custody in June 2010, reportedly after torture.
- Between 18 and 22 September in Sana'a, security forces used snipers and fired rocket-propelled grenades at protesters demanding the resignation of President Saleh, killing tens of people and injuring hundreds.

Amnesty International is not aware that the authorities have conducted judicial investigations into any of these events.

**For more information regarding the killing of protesters between February and April 2011 see *Moment of Truth for Yemen*, pages 5-15.**

#### **4.2.2 Killings of protesters in the context of unrest in the south**

Since August 2007, tens of thousands of people in the south of Yemen have engaged in demonstrations to protest about what they believe to be discrimination by the government and, increasingly, to express support for secession from the north. Since the unrest started, more than 100 people have been killed during demonstrations and thousands injured. Many of the demonstrators are reported to have been killed when they were posing no risk to the lives of the security forces or others, most of them when the security forces used live bullets or other lethal force and, on various occasions, without advance warning or without first seeking to use non-lethal methods to control or disperse them.

Amnesty International has learned that the state prosecutor had opened investigations into some of the killings, but there has been no information to indicate that any of the investigations have been completed.

**For more information see *Yemen: Cracking down under pressure*, pages 61-63 and 64-67, and *Moment of Truth for Yemen*, pages 16-18.**

#### 4.2.3 Alleged summary killings of activists in the south

The authorities appear to have resorted to summary killings of Southern Movement activists, particularly in 2009 and 2010. For example, **Ali Ahmad al-A'jam**, a leading member of the Southern Movement, was killed by security forces at his home in front of his family in the town of Lahj on 3 July 2009. According to information received by Amnesty International, security forces shot him dead when he was said to have presented no threat to their lives. No independent investigation is known to have been carried out into the killing. On 8 July 2009, Amnesty International wrote to the Yemeni authorities seeking clarification about the case and calling for an investigation, but has received no response to date.

**Ali al-Haddi**, a relatively new member of the Movement, was killed after security forces stormed his house at 3.30am on 1 March 2010. Hours after shooting and injuring him in the leg, they shot him dead. The soldiers then poured petrol on the house and set it alight. They also shot dead an unarmed relative, 28-year-old **Ahmad Muhsen Muhammad**. Afterwards, the authorities claimed that Ali al-Haddi was a member of al-Qa'ida, an allegation ridiculed by activists. No independent investigation is known to have been carried out into his killing. **(For a more detailed account of the killing see *Yemen: Cracking down under pressure*, pages 63-64.)**

**Faris Zaid Tamah**, a member of the Southern Movement, was killed on 1 February 2010, at least two days after he was arrested with two other men following a road traffic incident, according to reports. He was detained at al-Ma'alla police station in Aden where he was allegedly questioned by Political Security officials about his links with the Southern Movement, beaten and then shot in the back of his head.

#### 4.2.4 Killings in the context of counter-terrorism operations

Since 2009 scores of people have been killed in operations as part of a campaign launched by the security forces which the government said were targeting people they described as "terrorists". In some cases, people were said to have been killed during exchanges of fire between militants and security forces trying to apprehend them. In others, the security forces appear to have made no attempt to detain the militants, and the killings may have amounted to extrajudicial executions. In yet other cases, the security forces unlawfully killed people by using excessive force. Amnesty International is not aware of judicial investigations into any such incidents to determine whether or not the use of lethal force by security forces was justified or not in the particular circumstances or unlawful.

One of the most serious incidents was the missile attack on two settlements in the **al-Ma'jalah village** in the southern governorate of Abyan at dawn of 17 December 2009 that resulted in the killing of 41 people, including 21 children and 14 women in an attack on what the government had announced was a "terrorist training camp". A leaked US diplomatic cable from January 2010 corroborated images released in June 2011 by Amnesty International indicating that the US military carried out the missile strike.<sup>6</sup> **(For more information on the Abyan attacks, see *Yemen: Cracking down under pressure*, pages 31-33, and *Moment of Truth for Yemen*, pages 23-24.)**

Another attack apparently involving US forces took place on 25 May 2010 in **Ma'rib** and

killed four people, including the deputy governor of Marib, Jaber al-Shabwani, while he was reportedly travelling to meet and mediate with al-Qa'ida members to persuade them to surrender to the authorities. **(For more information see *Yemen: Cracking down under pressure*, page 33.)**

#### **4.2.5 Aerial raids and indiscriminate attacks**

Civilian deaths as a result of aerial bombardments were reported as part of the Yemeni government's "Scorched Earth" operation between August 2009 and February 2010 in the province of Sa'dah. The "Scorched Earth" operation – which is the sixth round of a conflict that began in June 2004 – signalled the deployment of military force against the armed group known as the Huthis on a scale not witnessed before, particularly after Saudi Arabian forces joined in to support Yemeni government forces in November 2009.

In September 2009 for instance at least 80 civilians, most of them women and children, were said to have been killed when the Yemeni air force bombed 'Adi village in the Harf Sufyan district of 'Amran.<sup>7</sup> The government was reported to have appointed a commission to investigate the killings, but no findings have been announced.<sup>8</sup>

**For more information see *Yemen: Cracking down under pressure*, pages 39-50.**

### **4.3 Torture and other ill-treatment (Questions 11-12 and 15)**

Yemen's domestic law does not include a comprehensive definition of torture as set out in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Constitution prohibits physical and psychological torture as a means of coercing a confession during arrest, investigation, detention and imprisonment, as stated in Article 48 (b), but neither identifies the elements of such torture nor mentions other circumstances in which it would be prohibited. Article 48 (e) states that those who order or participate or carry out acts of torture shall be punished and that the law shall determine the punishment.

Yemen's Penal Code, which also fails to provide a comprehensive definition of torture, 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. Consequently, the law does not penalize state employees participating in such acts of torture. Acts of torture sanctioned by law and other acts of torture are punishable if they are carried out by state employees without a court order. Such torture is punishable in situations described in Articles 166,<sup>9</sup> 167<sup>10</sup> and 168<sup>11</sup> of the Penal Code.

Listed below are some of the articles in the Penal Code allowing acts of torture:

- Article 263 punishes the act of *zina* or sexual intercourse outside marriage by 100 lashes if the person (male or female) who allegedly committed the "crime" was single, and by stoning to death if the person is married. The same punishment applies to male and female persons convicted of *luwat*, or anal intercourse, as stated in Article 264. Article 289 imposes

the punishment of 80 lashes against those who accuse a married person of adultery without providing evidence and those who deny parentage without proof. Article 283 states that those drinking alcohol shall be punished by receiving 80 lashes. Amnesty International has not received reports of sentences of flogging or stoning to death being either issued or implemented in recent years.

- Article 298 states that anyone who steals shall have his or her right hand amputated, and if the person repeats the same crime, he or she shall have their left foot cut off; if more than one person is involved in the act of stealing, all shall receive the amputation punishment regardless of their role.
- Article 307 punishes those engaged in armed robbery who are also in possession of stolen money to amputation of the right hand and the left foot. The same article punishes anyone who killed a person during armed robbery to death and crucifixion of their body after. Amnesty International has not received reports of crucifixion sentences being issued or implemented in recent years.
- Article 179 punishes those who give false testimonies on crimes punishable by the death penalty or stoning or amputation by sentencing them to the punishment prescribed for the crime if that punishment was implemented against the convicted criminal.

Torture and other ill-treatment are widespread practices in Yemen and are committed, generally with impunity, against detainees held in connection with politically motivated acts, peaceful protests or ordinary criminal offences. Methods of torture and other ill-treatment are reported to include beatings on different parts of the body with sticks, rifle butts, punching, kicking, prolonged suspension by the wrists or ankles, burning with cigarettes, being stripped naked, denial of food and prompt access to medical help, as well as threats of sexual abuse.

Torture and other ill-treatment are often carried out during interrogation as a means of extracting “confessions” that are generally accepted by the court and used as evidence. Torture and other ill-treatment usually take place during the early stage of detention before the detainee is referred to the judiciary and while he or she has no access to a lawyer or their families.

On 25 June 2010, a day after his arrest, **Ahmed Darwish**, an activist in the Southern Movement, died in custody in the southern province of Aden. Security forces contacted his family in the morning of 25 June 2010 to say that he had been taken to hospital; when they arrived, they were told he had died. His lawyer and his family refused to collect his body until it had been examined by a pathologist and demanded an investigation into his death. An officer on duty at the detention centre where Ahmed Darwish died was arrested in connection with the death and held at al-Mansoorah Central Prison in Aden pending an investigation, but was reported to have been smuggled out of jail before it was concluded. On 23 March 2011, the prosecutor’s office at the Appeal Court in Aden began an investigation into the incident and accused Aden’s former security chief, Brigadier General Abdullah Qayran, of ordering his release. Qayran has since gone into hiding. On 27 September 2011, the state prosecutor’s office in Seera in the province of Aden ordered the arrest of both Abdullah Qayran and the duty officer arrested in connection with the death of Ahmed Darwish and issued travel bans against the two men. They both reportedly remain in hiding. Ahmed Darwish’s family buried him in June 2011 after a pathologist concluded that he died from injuries he received on his head as a result of blunt force trauma.

#### **4.4 Refoulement (Question 14)**

The Yemeni authorities have for years afforded protection to many asylum-seekers from the Horn of Africa, but in recent years they have moved to end the automatic recognition of Somalis fleeing the ongoing conflict in Somalia. In May 2010, the government established the General Department for Refugees' Affairs by Republican Decree No. 39 of 2010, which amended Republican Decree No. 3 of 1999, which provides for the regulations of the Immigration Authority. The Department was created in the absence of any other law on refugees and Amnesty International is concerned about some provisions of the Decree. Article 8 of the Decree is vague and broadly worded such that it is incompatible with Yemen's *non-refoulement* obligations. It provides that the Department can return or deport refugees whose "justifications to remain and stay in the Republic have ceased", but does not define how an assessment of this criterion should be made, thereby leaving it open to the interpretation of the Department. The same Article also allows for the return or deportation of refugees whose presence is considered to "form a threat to the security and public order". Amnesty International has not been able to conduct research into the implementation of this provision since it came into force, but is concerned that it could result in refugees and asylum-seekers being subjected to *refoulement* despite being at risk of torture, a threat to their life or other serious human rights violations.

### **5. PROTECTION OF MINORS (ARTICLES 8, 23 AND 24)**

#### ***Forced marriages of young girls (Question 18)***

Despite the recommendation made by the Committee in its previous concluding observations, Yemen has neither raised the minimum age of marriage nor, as far as Amnesty International is aware, taken other steps to end this practice.

Local non-governmental organizations have told Amnesty International that all too often girls are forced by their families to marry men who are considerably older than them. Forced marriages, especially those involving school-age girls, are frequently associated with domestic violence. There are no reliable statistics on such marriages in Yemen because births, especially in rural areas, and marriages are often not registered or not registered properly. Article 14 of the Personal Status Law requires marriages to be registered within a month, but there are no penalties for failing to do so. Non-governmental organizations have called for a fine to be imposed if a marriage is not registered.

Initially, Article 15 of the Personal Status Law prohibited the marriage of girls under the age of 15. However, the subsequent Law No. 24 of 1999 removed the age restriction and legalized the marriage of girls under the age of 15 provided that the guardian consents and the marriage is not consummated before the girl reaches puberty.

Public attention was sparked by the case of eight-year-old **Nojoud Nasser**, who eventually became the youngest divorced woman at the age of 10 after her parents married her off to an older and abusive man, and that gave impetus to the campaign of the National Women's Committee and non-governmental organizations to raise the minimum age of marriage to 18. In February 2009, the majority in parliament voted in favour of a bill to make 17 the

minimum age, but parliamentarians opposed to the bill requested that it be reviewed by the Shari'a Legislative Committee to ensure the bill was compatible with Islamic Shari'a. In April 2010, the Shari'a Legislative Committee concluded that bill was in contradiction with Islamic beliefs, effectively blocking its passage.

Amnesty International considers that states should prohibit forced marriages. In the case of the marriage of a child under 18, the state must establish that the consent is meaningful. In order to establish that a child's full and free consent is credible, it must be clear that the child is of an age that is consistent with her or his full comprehension of the consequences and obligations of marriage. In all cases both parties to the marriage must be entering into it freely without any undue influence or coercion, including the threat or violence or financial incentive. No parent or guardian can substitute their understanding and consent for the child's. For children who do marry before the age of 18, they should never be subjected to discrimination based on their marital status, for example, girls should not be forced to withdraw from school.

**For more information see *Yemen's dark side: discrimination and violence against women and girls*.**

## **6. RIGHT TO LIBERTY AND SECURITY OF PERSON, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY, IMPRISONMENT FOR A DEBT AND FAIR TRIAL (ARTICLES 9, 10, 11 AND 14)**

### ***6.1 Arbitrary arrest and detention (Question 19-20)***

Hundreds of people detained on security grounds in recent years appear to have been arrested arbitrarily in that they were neither presented with an arrest warrant nor apprehended while committing a criminal act, the two conditions under which an arrest is lawful according to Yemen's Constitution and Code of Criminal Procedures.<sup>12</sup> Such people are also not informed of the reasons for their arrest or allowed to contact a person of their choice and to have access to a lawyer upon arrest, as the Code of Criminal Procedures requires.<sup>13</sup>

According to former detainees as well as relatives of prisoners and lawyers interviewed by Amnesty International, people detained as security suspects or because they are government critics are generally detained by both the Political Security and National Security agencies, which report directly to the President and are subject to no judicial oversight. They are frequently held for weeks or months, without judicial supervision and without their detention even being acknowledged by the authorities, in cells and prisons under the control of these security agencies. By concealing or failing to disclose their detention, often for weeks or months, the Yemeni authorities are committing crimes of enforced disappearance. While held in such secret conditions by National Security, detainees are frequently tortured, including by being suspended by the wrists for long periods during interrogation. Thereafter, they are usually transferred to a Political Security prison and given access, at last, to their families. Some remain detained without charge or trial for months or years. Others are charged with offences and passed into the justice system, often to face trial before the Specialized

Criminal Court. In other cases, detainees have been released without charge. Detainees are also reported to have been tortured or otherwise ill-treated while held by Political Security. Both Political Security and National Security do not permit detainees to have contact with lawyers engaged to represent them until they are charged.

The three main arresting authorities in Yemen - Political Security, National Security and the Criminal Investigation Department (CID) – sometimes work independently of one another and at other times in co-ordination. For example, people arrested by National Security are sometimes detained at CID detention centres. All three bodies, however, rarely comply with the legal requirement to produce a warrant prior to carrying out an arrest and generally ignore other supposed safeguards against arbitrary arrest and detention. As a result, families may experience great difficulties and delay in finding out, first, whether a missing relative has been detained and, thereafter, where their relative is being held and the reasons for the detention. Relatives often spend days, weeks or even months shuttling from one authority to another and one detention centre to another, with deepening anxiety in what seems to be a vain quest for information about their loved ones.

Countrywide protests that began in 2011 led to hundreds of arrests of those suspected of taking part in the protests. Many of them appeared to be arbitrary. In late 2011 and early 2012 amnesties were announced for people detained in connection with protests but it is not clear who has been released under them and who remains detained.

**For more information, see *Yemen: Cracking down under pressure and Moment of Truth for Yemen, pages 34-36 and 67-71.***

## **6.2 Specialized Criminal Court (Questions 25 and 27)**

In 1999, the Specialized Criminal Court (SCC) was established by a presidential decision<sup>14</sup> following an incident in which a number of foreign tourists were kidnapped and killed in December 1998 in Abyan.<sup>15</sup> Initially, the SCC was given jurisdiction to try the crime of *hiraba*, a Shari'a term, which in Yemen's Penal Code covers the acts of attacking, terrorizing or robbing people on public highways, deserts, buildings, ships or planes.<sup>16</sup> In 2004, a further presidential decision was issued which expanded the SCC's jurisdiction to include "offences harmful to state security and offences with serious repercussions for society or the economy."<sup>17</sup> In 2009, however, the Supreme Judicial Council issued a decision clarifying that the SCC has jurisdiction over a wide range of security-related offences.

Since the SCC was first established in 1999, security suspects and other alleged critics and opponents of the state have invariably been tried before the SCC rather than the ordinary criminal courts and serious questions have arisen as to the fairness of their trials. In some cases, for example, the SCC appears to have failed to adhere to the Code of Criminal Procedures, although it is required to do so, and it has failed to take adequate steps to investigate defendants' allegations that they were tortured and that "confessions" they made in pre-trial incommunicado detention were false and extracted under torture or duress. Indeed, a number of defendants are reported to have been convicted solely or largely upon the basis of such contested confessions.

On 27 October 2009 the SCC convicted **16 defendants** who were accused of killings and other serious crimes relating to the Sa'dah conflict (see *Yemen: Cracking down under pressure*, pages 54-56). At least four of them were sentenced to death and the rest to terms of imprisonment. They were convicted on the basis of "confessions" which they repudiated in court and said they had been forced to sign under duress. The only other evidence presented was lists of destroyed properties and military vehicles. The court did not examine any of the allegations of duress nor was the prosecution required to establish that the contested "confessions" had been made freely and voluntarily by the defendants even though the charges carry the death penalty.

While the Code of Criminal Procedures provides that courts and trials are normally open to the public with the exception of when discretion is required for national security or other pressing considerations,<sup>18</sup> Amnesty International delegates seeking to attend the trial of journalist Muhammad al-Maqalih before the SCC in Sana'a in March 2010 were denied entry on their two attempts. No explanation was given. Activists and family members of those accused had previously reported of being denied from attending certain trial sessions of the court for undisclosed reasons.

In some cases before the SCC, defence lawyers contend that the prosecuting authorities have withheld documents from the case file which could be of benefit to their clients, including evidence of their arrest and detention by Political Security during which "forced confessions" may have been obtained from the defendant.

Also, defence lawyers have reported to Amnesty International that the prosecution appears to have unrestricted access to all documents at all times and is free to make copies for its own use. On the other hand, defence lawyers can only view the case file at the prosecutor's office during specified times and are prohibited from making copies of any documents in the file other than the charge sheet and the prosecution's summary of the case.

Additionally, lawyers told Amnesty International that they have frequently faced restrictions in accessing their clients who are tried before the SCC. When they asked the SCC to authorize private meetings with their clients, the prosecuting authorities have at times objected to such meetings and the SCC failed to take action to ensure such access.

**For more information, see *Yemen: Cracking down under pressure*, pages 17-22.**

### **6.3 Judicial independence (Question 26)**

There are serious questions regarding the independence of the judiciary in Yemen, as the executive authorities of the state are able to wield very considerable influence because they play a key role in the promotion and discipline of judges. The President of the Supreme Judicial Council, which oversees the judiciary, is directly appointed by the Yemeni President (up until June 2006 the Yemeni President even headed the Supreme Judicial Council). The Minister of Justice sits on the Supreme Judicial Council, and the Ministry of Justice appraises the work and competence of the judges, which can affect their promotion and lead to disciplinary action.

**For more information, see *Yemen: Cracking down under pressure*, pages 21-22.**

## 7. FREEDOM OF MOVEMENT, FREEDOM OF OPINION AND EXPRESSION AND FREEDOM OF ASSEMBLY (ARTICLES 12, 19, 20 AND 21)

### *Questions 34-36*

Since 2009, Yemen has seen a deterioration of freedom of expression and has become a dangerous place for media workers and peaceful critics of the state. Journalists, editors and proprietors have been detained, held incommunicado, ill-treated and jailed on spurious charges after unfair trials. Security forces have attacked and raided newspaper offices and television stations. Demonstrators protesting against repression of free speech have been fired on and arrested. The government appears to be particularly sensitive to references to human rights violations in the Sa'dah conflict and coverage of protests and dissident views in the south.

The independent media came under attack after newspaper coverage of protests that took place in the south in the run-up to 27 April 2009, the 15th anniversary of the start of the civil war of 1994. On 30 April 2010 the authorities confiscated every copy of *al-Ayyam*, Aden-based and one of Yemen's largest-circulation daily newspapers, from newsstands and distribution points in Sana'a and southern cities. In early May they took similar action against several other newspapers, and security forces physically blockaded the offices of *al-Ayyam* to forcibly prevent distribution of the paper. The government also announced a suspension of all newspapers that it considered were harming the unity of Yemen. Several newspapers were forced to close. All have since been permitted to resume publication apart from *al-Ayyam*. **For more information, see *Yemen: Cracking down under pressure*, pages 73-75.**

The Supreme Judicial Council issued a decision in May 2009 establishing the Specialized Press and Publications Court (SPPC) and ordered all pending cases relating to press and publications around the country to be referred to the new court. Some 150 pending cases were subsequently referred to it.

On 2 May 2010, for example, the trial began before the SPPC of four journalists from *al-Nedaa* newspaper: editor **Sami Ghalib** and reporters **Abd al-Aziz al-Majidi**, **Mayfa Abd al-Rahman** and **Fuad Mas'ad**. All were charged, convicted and handed down suspended three-month prison sentences in early June, in connection with articles written in 2009 about unrest in the south and the government's response to it. Their sentences were cancelled following the presidential amnesty in June. Also on 2 May 2010, the SPPC was reported to have convicted 25-year-old **Hussain Mohammad al-Leswas**, editor of the news website Sanaa Press, of undermining national foundations, the revolution and the Republic and "defamation of a public official", and sentenced him to one year in jail. The charges related to articles he wrote in early 2009 about corruption in al-Baydah's local administration. He was released following the presidential amnesty in late May 2010, having spent 25 days in detention. **For more information, see *Yemen: Cracking down under pressure*, pages 80-82.**

**Muhammad al-Maqalih**, a journalist and member of the Socialist Party, was released from prison on 25 March 2010, after suffering enforced disappearance for four months, arbitrary detention, torture and unfair trial. He was charged with broadcasting information against security forces and making statements in defence of Huthi supporters in Sa'dah. Such charges are punishable by death. He was then referred to the SCC. In April 2010 he was told that he also faced prosecution for "defaming the President" before the SPPC, apparently in

relation to articles he wrote in 2005. During their visit to Yemen in March 2010, Amnesty International delegates were twice refused admission to attend sessions of Muhammad al-Maqalih's trial before the SCC. In at least one of these sessions, the court was presented with recordings of phone calls made by Muhammad al-Maqalih. His lawyer said that the tapping had been carried out by Political Security and National Security. The law states that such monitoring of phone calls can be carried out for a maximum of 30 days, and when authorized by the public prosecution on the basis of a particular suspected offence. Permission can be repeatedly renewed for periods of up to 30 days at a time. The case file for Muhammad al-Maqalih includes National Security documents referring to tapping between 1 January 2009 and 17 September 2009, while in SPPC papers relating to charges faced by Muhammad al-Maqalih there is reference to a period of tapping stretching from 15 June 2007 to 17 September 2009. His lawyer claimed that there was nothing within the case file that showed that there was prior authorization for the telephone monitoring. On 20 May, in a welcome move, the President issued a directive halting all legal proceedings against Muhammad al-Maqalih before the SCC and the SPPC. However, Amnesty International is concerned that the charges against him have not been dropped, so that at any point the trials may resume and this may be used to deter him from exercising his freedom of expression in future. **For more information, see *Yemen: Cracking down under pressure*, pages 81-82.**

For information relevant to questions 35 and 36 on the list of issues in relation to killings during demonstrations and suppression of protests see sections 4.2.1 and 4.2.2 on unlawful killings above.

# ENDNOTES

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<sup>1</sup> List of issues to be taken up in connection with the consideration of the fifth report of Yemen (CCPR/C/YEM/5), 20 April 2011, UN Doc. CCPR/C/YEM/Q/5, <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-YEM-Q-5.doc>.

<sup>2</sup> See also OHCHR's report on the Rule-of-Law Tools for Post-Conflict States: Amnesties, United Nations, New York, Geneva, 2009, available at [http://www.ohchr.org/Documents/Publications/Amnesties\\_en.pdf](http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf).

<sup>3</sup> See Article 4 of the Law on Combating Money Laundering and Financing of Terrorism, which states:

“Is regarded as having committed the crime of financing terrorism anyone who:

A. collects or provides money directly or indirectly by any method knowing that it will be used fully or partly for the financing of the following acts:

1) any act of violence or threat thereof, whatever its motives or purposes that occurs in the advancement of an individual or collective criminal agenda and seeks to sow panic among people or to alarm them by harming them and placing their lives, freedom or security in danger or to cause damage to the environment or to any public or private facilities or property, or to occupy or seize them, or to jeopardize any national resources or to force the government or an international organization to carry out any unlawful act or not to carry out any lawful act;

2) any action constituting a crime within any of the relevant treaties and conventions that the Republic has ratified or become a party to;

3) any action constituting a crime provided by the Law on Combating the Crimes of Kidnapping and Highway Robbery.

B. anyone who entered into or participated or incited or aided the commission of any of the acts mentioned in Subsection A of this article. Cases of struggle by different methods against foreign occupation or aggression, for the purpose of liberation and self-determination in accordance with the principles of international laws, are not deemed to be among the crimes included in this article. Any act that infringes the territorial unity, of any of the Arab states is not deemed to be among these cases.”

Article 2(2) of the draft Counter Terrorism Law defines “terrorism” as follows: “Any act or threat of violence, whatever its motives or purposes, that the perpetrator resorts to in the advancement of a criminal agenda, whether individual or collective, with the aim of massively disrupting public order or damaging the public interest or causing damage to the environment or to public health or to the national economy or to any public or private facilities, property or installations, or seizing them, or obstructing the public authorities of the state from carrying out their work or placing the security and safety of the society in danger or threatening the stability and security of the territory of the Republic or its political unity or its sovereignty or hindering the application of the provisions of the constitution or laws or harming individuals or sowing panic among them, or placing their lives, freedoms or security in danger.”

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<sup>4</sup> Law no. 12 of 1994 on Crimes and Punishments.

<sup>5</sup> Amnesty International received a letter from the Embassy of Yemen in London, UK, on 31 January 2012 in response to an enquiry it had made about statistics regarding the use of the death penalty. The letter stated that 62 individuals were executed in 2010, but provided no further information. Amnesty International had previously recorded the names of 53 individuals, all male, who had been executed for murder.

<sup>6</sup> Amnesty International, *Wikileaks cable corroborates evidence of US airstrikes in Yemen*, 1 December 2010, at <http://www.amnesty.org/en/news-and-updates/wikileaks-cable-corroborates-evidence-usairstrikes-yemen-2010-12-01>.

<sup>7</sup> “More than 80 civilians killed in Yemen air raid: witnesses”, AFP, 17 September 2009.

<sup>8</sup> “Committee formed to investigate over allegations of Adi air raid”, Saba, 17 September 2009, at <http://www.sabanews.net/en/news193895.htm>, accessed on 30 June 2010.

<sup>9</sup> Article 166 states: “Any state employee who lies while carrying out his duty or uses violence or threatens to use violence either directly or through a third party against an accused or a witness or an expert in order to force him to confess to a crime or make statements or give information relating to it will be punished by a maximum imprisonment of 10 years without prejudicing the victim’s right to seek *qisas* (retribution), blood money or compensation.”

<sup>10</sup> Article 167 states: “Any state employee who punishes or orders the punishment of a person with a penalty not passed by a court or with a more severe penalty than that decided by a court or refuses to implement a release order of that person or keeps the person deliberately detained beyond the period specified by the detention order shall be punished by a maximum imprisonment of three years or by a fine and in all cases by his dismissal.”

<sup>11</sup> Article 168 states: “Any state official who by virtue of his job uses violence deliberately and unjustly against people in such a way as to harm their honour or cause them physical injury shall be punished by a maximum imprisonment of one year or a fine, without prejudicing the victim’s right to *qisas* (retribution), blood money and compensation. In all cases the state official shall be dismissed from his job.”

<sup>12</sup> See Article 47(b) of the Yemeni Constitution and Article 172 of the Code of Criminal Procedures.

<sup>13</sup> Article 73 of the Code of Criminal Procedures.

<sup>14</sup> Republican Decision no. 391 of 1999 on the Establishment of the Specialized Criminal Court of First Instance and the Specialized Criminal Appeal Branch.

<sup>15</sup> “Abu Hamza and the Islamic Army, Kidnapping of tourists, 28-19 December 1998”, al-Bab, at <http://www.al-bab.com/yemen/hamza/hostage.htm>.

<sup>16</sup> Article 306 of the Penal Code.

<sup>17</sup> Decision of the President of the Republic no. 8 of 2004.

<sup>18</sup> See Article 263 of the Code of Criminal Procedures.