

# YEMEN

HUMAN RIGHTS AGENDA  
FOR CHANGE

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# INTRODUCTION

Yemen is still reeling from a human rights crisis that shook it to the core last year. The killing of hundreds of protesters, and injuring of thousands of others, across Yemen during the uprising of 2011 showed how far the country's human rights situation has deteriorated since 2000. The crackdown, which also involved hundreds of people being subjected to arbitrary detention and in some cases enforced disappearance or torture and other ill-treatment, was carried out by a range of security and military forces, as well as armed government supporters.

Meanwhile, armed clashes in 2011 between pro-government and anti-government forces, involving the security forces and rival military and tribal factions, in the al-Hasaba area of Sana'a, and in Arhab, Nihm and Ta'izz, caused the death and injury of more civilians. Further human rights violations have been committed by law enforcement officials repressing protests in southern Yemen, part of a pattern of abuses ongoing since 2007, while a humanitarian crisis in many parts of the country has seriously impaired people's access to water and other essential services.

The situation has been exacerbated by attacks on suspected al-Qa'ida operatives by US forces, primarily through the use of unmanned aerial vehicles (drones). Violations of international humanitarian law are reported to have been committed by government forces and Ansar al-Shari'a, which is believed to be affiliated to al-Qa'ida, in the context of a non-international armed conflict in Abyan, Shabwa and al-Bayda in 2011 and 2012. The fighting displaced tens of thousands of people in the Abyan governorate in southern Yemen. Ansar al-Shari'a reportedly carried out summary killings and amputations in areas that they controlled.

In the north, clashes continue between two non-state armed groups: the Huthis, a Zaidi Shi'a group who previously had fought a series of conflicts against the central government between 2004 and 2010 and are in control of many parts of the governorate of Sa'da, and a group believed to include Sunni Salafists who oppose the Huthis, at least in part, on sectarian grounds.

Recent months have seen some improvements, including the release of hundreds of prisoners following the inauguration of a new government. Yet serious human rights violations continue. Protests in southern cities such as Aden continue to be met with unnecessary and excessive force, resulting in the unlawful killing and injuring of peaceful protesters. As a result, increasing numbers of people in the south are calling for secession, citing the frequent deaths and injuries to their fellow citizens as a reason for their demand.

All this has taken place in a climate of impunity, further entrenched by the immunity granted to former President Ali Abdullah Saleh and his officials.

Today, Yemen is at critical juncture. Either it brings to an end the persistent human rights abuses and begins to tackle the problem of impunity for decades of violations, or it risks

further instability and the worsening of the human rights situation. Concrete and effective remedial action must be taken now to ensure Yemen emerges from the human rights and humanitarian crises it has been facing, rather than slipping ever deeper into them.

The new Yemeni authorities, under the leadership of President Abd Rabbu Mansour Hadi, face huge challenges in ensuring law and order is upheld and national institutions are rebuilt. As part of this process, a clear break with past violations must be made, and addressing the human rights situation must be a priority for the Yemeni government. Stability cannot be achieved in Yemen unless adequate attention is given to ensuring that human rights are respected, protected and fulfilled for all.

Amnesty International urges the Yemeni authorities to define and implement a clear human rights agenda for change. This should bring an end to impunity, unnecessary and excessive use of force against peaceful protesters, arbitrary arrest and detention and enforced disappearances. It must also ensure fair trials, combat torture and other ill-treatment, and bring an end to the use of the death penalty in Yemen.

The authorities must respect, protect, fulfil and promote freedom of expression, association and assembly, non-discrimination and equality for all, and guarantee the rights of women and girls, and internally displaced persons, refugees and asylum-seekers.

Finally, in order to achieve lasting human rights change, Yemen must ratify international human rights conventions and bring domestic legislation into line with international human rights law and standards.

Amnesty International is calling on the Yemeni government to commit to adopting and implementing an agenda for change that respects, protects, fulfils and promotes human rights. In the spirit of assisting the Yemeni government in this regard, Amnesty International presents the following 11-point agenda for human rights change.

# HUMAN RIGHTS AGENDA FOR CHANGE

## 1. END UNLAWFUL KILLINGS AND ABUSES IN ARMED CONFLICT

Among the biggest challenges facing Yemen is addressing unlawful killings committed by its military and security forces, as well as armed conflict abuses carried out by both government forces and non-state armed groups, and ensuring that those responsible are held accountable.

Protesters, suspected al-Qa'ida members and people suspected of having connections with the Huthis or with the Southern Movement (a loose coalition of political groups, many of whom call for the peaceful separation of southern Yemen) have been among those most affected by unlawful killings by government forces in recent years.

Hundreds of peaceful protesters were killed and thousands injured during the protests of the 2011 uprising by security and military forces including the Central Security Forces and the Republican Guard. Plain-clothes snipers believed to be members of, or connected to, security forces were also implicated in the killings.

The exact number of peaceful protesters who were killed or injured is not known, partly because the authorities have not carried out thorough, independent and impartial investigations into these events. Local NGOs have stated that more than 2,000 people were killed during the protest period in 2011. However, this figure also includes people killed during armed clashes such as those in the al-Hasaba area of Sana'a. The number of peaceful protesters killed is believed to be in the hundreds but not thousands.

In the south of the country, largely peaceful protests calling for secession have been met with excessive force resulting in the killing and injury of hundreds of protesters since 2007. These practices show no sign of abating, even after the transfer of power to President Hadi and the inauguration of a new government. Peaceful protesters continue to be killed by security forces and snipers, particularly in the southern city of Aden.

In May 2011, clashes erupted in al-Hasaba, northern Sana'a. These quickly escalated into an armed conflict between government forces and armed supporters of a leading tribal sheikh, Sadeq al-Ahmar, who declared his support to the protests against President Ali Abdullah Saleh. Both parties to the conflict appear to have committed violations of international humanitarian law. Government forces are reported to have carried out indiscriminate and disproportionate attacks, and, in at least one incident, directly attacked civilians. Those fighting under al-Ahmar are reported to have used weapons indiscriminately, fired from residential areas thereby exposing civilians to danger, fired on residential areas that were

under the control of government forces and recruited civilians against their will through threats and intimidation. The clashes lasted until late 2011.

Government forces including the Republican Guard are also reported to have carried out indiscriminate or disproportionate attacks during armed clashes with tribes supporting the uprising in 2011 in the areas of Arhab and Nihm, leading to the deaths of civilians.

Tens of people suspected of links to al-Qa'ida or other armed Islamist groups have been killed by Yemeni military forces and US armed forces outside of armed conflict situations in recent years, some in circumstances suggesting that no attempt was made to arrest them. In some instances, local residents who apparently were not connected to Islamist groups have been killed and injured as a result of these attacks.

In 2011 and 2012, large parts of the governorates of Abyan, Shabwa and al-Bayda in southern and central Yemen came under the control of Ansar al-Shari'a, which is believed to be affiliated to al-Qa'ida in the Arabian Peninsula.

Between April and June 2012 Yemeni government forces launched a major military offensive that resulted in Ansar al-Shari'a being driven out of the areas they controlled. During this conflict, both government forces and Ansar al-Shari'a are reported to have committed violations of international humanitarian law. Government forces, including aircraft and ground troops, appear to have carried out indiscriminate and disproportionate attacks in crowded and residential areas in the town of Ja'ar and possibly elsewhere, resulting in civilian deaths and injuries. Government forces and allied tribal paramilitary militia, known as *lejan sha'biya* (popular committees), reportedly subjected people to enforced disappearance.

Amnesty International has also received reports that members of Ansar al-Shari'a fired weapons from crowded and residential areas, subjected civilians to enforced disappearances, summarily killed captured Yemeni army soldiers, and left unexploded munitions in residential areas, including in homes they occupied during the conflict, such as in the village of al-Kod. In addition, during the time it controlled territory, Ansar al-Shari'a is alleged to have carried out summary killings of civilians and hand amputations.

Reports suggest that children have been recruited to take part in armed conflicts by government forces, the First Armoured Division and by the Huthis and Ansar al-Shari'a. Civil society organizations seeking to investigate these reports face extreme difficulty in establishing the age of soldiers due to the lack of birth certificates or other reliable records. At the same time, the Yemeni authorities have told Amnesty International that soldiers are only recruited into the army once their records are checked, including their national identification record, which bears their age. Amnesty International opposes the voluntary or compulsory recruitment, not just the participation in hostilities, of persons below 18 years of age by governments or armed opposition groups.

The power transfer agreement brokered by the Gulf Cooperation Council in 2011 calls for the restructuring of Yemen's military and security forces, and President Hadi, elected in February 2012, has committed to this. However, the Yemeni authorities do not yet appear to have taken specific steps towards that goal.



Amnesty International calls on the government of Yemen to reform the country's military and security forces and address unlawful killings and armed conflict abuses by both government and non-state actors. To this end, it should:

- Make public the exact nature of the proposed reform of the military and security forces, including by identifying which forces will be reformed, how they will be reformed, the timeline for this process and the proposed new structure and chain of command;
- Ensure that any reform of the military and security forces includes a vetting system to ensure that, pending investigation, anyone suspected of committing or ordering serious violations of human rights and international humanitarian law are not placed in positions where they could repeat such violations;
- Issue orders to all security forces with immediate effect not to use live ammunition against protesters who do not pose a risk to the lives of others;
- Make public, as a matter of urgency, clear instructions on the use of force, including the use of firearms. All law enforcement personnel deployed to police demonstrations should be given rigorous operational training and clear rules of engagement fully consistent with international human rights standards designed for law enforcement officials, such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials;
- Clarify the rules that Yemeni security forces are required to apply when carrying out operations against individuals suspected of being members of, or otherwise affiliated with, al-Qai'da. Ensure that those rules comply with applicable international law and standards, and disclose the measures taken by the government to ensure that Yemeni security forces comply with these requirements;
- Fully monitor any weapons borne by drones in Yemen and clarify which military or security agency is responsible for the deployment of drones and the chain of command and rules governing the use of such drones;
- Ensure that government forces participating in armed conflict, including the Yemeni army, other security forces and any tribal groups allied to the government, are fully aware of and comply with their obligations under international humanitarian law;
- Order the military to cease the use of imprecise battlefield weapons such as artillery and mortars in populated residential areas as their use in such circumstances violates the prohibition of indiscriminate attack;
- Ensure prompt, impartial and thorough investigations, in accordance with international standards, of evidence indicating that any of its forces, including local militias, committed serious violations of international human rights and humanitarian law during the conflict in Abyan, Shabwa and al-Bayda. In cases where there is sufficient admissible evidence that individuals ordered or carried out war crimes or other crimes under international law ensure they are prosecuted in proceedings that meet international standards on fair trial and without recourse to the death penalty;

- Immediately transfer to civilian law enforcement agencies any detained suspected members of Ansar al-Shari'a, or other armed groups allied to it, who are suspected of having committed serious human rights abuses, war crimes or other crimes under international law. In cases where there is sufficient admissible evidence, ensure that suspected perpetrators are prosecuted in proceedings that meet international standards on fair trial and without recourse to the death penalty;
- Ensure prompt, impartial and thorough investigations, in accordance with international standards, of evidence indicating that government and non-state forces committed serious violations of international humanitarian law and human rights abuses during the conflicts in al-Hasaba, Arhab, Nihm and Ta'izz. Anyone suspected of war crimes or other crimes under international law should be brought to justice in fair trials and with no possibility of the death penalty;
- Strengthen the capacity of law enforcement agencies in Yemen to protect the civilian population from abuses by armed groups, including forced recruitment. To this end, improve training for members of law enforcement agencies, including training in human rights law;
- Investigate allegations that child soldiers have been used by state and non-state actors;
- End the recruitment and use of child soldiers and strengthen and enforce legislation forbidding their use.

## 2. END IMPUNITY

Yemen has a long history of impunity. For decades, security forces have committed serious human rights violations and crimes under international law such as torture, enforced disappearances and extrajudicial executions in the name of security and counter-terrorism, without being held criminally accountable. Some cases of enforced disappearance date back to the 1960s, 1980s and the 1994 civil war and remain unresolved to this day. Amnesty International and local activists have documented numerous incidents in Yemen that may constitute crimes under international law, including torture, extrajudicial execution and enforced disappearances and has brought scores of cases of such human rights violations to the attention of the Yemeni authorities, yet concrete action to ensure accountability has rarely been taken.

The recent response of the authorities to the high death toll of protesters in 2011 illustrates the enduring inadequacies. So far the Yemeni authorities appear to have opened investigations into only four incidents during the 2011 uprising: the killing of dozens of protesters on 18 March 2011 in Sana'a; the killing of a protester and the injuring of some 15 others in Ta'izz on 17 February 2011 during a grenade attack in Freedom Square; the killing of protesters on 29 May 2011 in Freedom Square; and an attack on the Presidential Palace in June 2011. To Amnesty International's knowledge, no other judicial investigations have been carried out into the dozens of other incidents in which protesters were killed in Sana'a, Ta'izz and other cities in Yemen. Some Yemen senior government officials have proposed that a commission of inquiry be set up to investigate human rights violations committed during the 2011 uprising, but this is yet to materialize.

The investigation into the killing of dozens of protesters on 18 March 2011 in Sana'a has apparently led to 79 men being charged. The Attorney General told Amnesty International in June 2012 that 14 of the 79 suspects were then in detention. Some had been released on bail and others were still at large. Families of victims have expressed concerns that the real perpetrators have not been apprehended and will not be brought to justice. Furthermore, activists have told Amnesty International that they fear that, in any case, perpetrators will be granted amnesty under the immunity law and so escape justice.

The investigation into the Ta'izz grenade attack on 17 February 2011 led to the trial in absentia of three men believed to be connected with the local authorities, who were sentenced to death in June 2012. Despite the fact that a prosecution was carried out, Amnesty International calls on the Yemeni government to commute these death sentences as it rejects trials in absentia as inherently unfair and opposes the death penalty in all circumstances. Anyone suspected of carrying out the grenade attack should be given a fair trial and sentenced, if found guilty, without recourse to the death penalty.

The investigation into the killing of protesters in Freedom Square on 29 May 2011, in what is commonly known as the "burning incident" when protesters' tents were set on fire apparently by members of the Republican Guard and the Central Security Forces, has not progressed to Amnesty International's knowledge.

The failure by Yemeni authorities to explain why no concrete steps have been taken to fully investigate all such incidents has sparked legitimate concerns by families of victims that the investigations are selective, incomplete and therefore lack credibility. Victims' families have told Amnesty International that some suspects have been freed by the authorities, and they fear that the perpetrators will never be held accountable. Another obstacle cited is the immunity granted to the former President and other officials. This immunity effectively means that even if an investigation identifies an official as a suspected perpetrator, or as having given orders to open fire on peaceful protesters, the official may still not be brought to justice.

The deal brokered by the Gulf Cooperation Council (GCC) offered former President Ali Abdullah Saleh immunity from prosecution in return for him leaving office. The deal also offered officials immunity from prosecution in connection with decisions they have taken on political grounds. Former President Saleh signed the deal in November 2011. The GCC deal was also signed by the then opposition political parties in Yemen. Under the deal a new Prime Minister was appointed to head an interim "government of national reconciliation" for two years, consisting of the Joint Meeting Parties (a coalition of political parties who were in opposition to the government until November 2011) and the former ruling General Congress Party.

To implement the immunity section of the GCC deal, on 21 January 2012 the Yemeni authorities passed Law No. 1 of 2012 concerning the Granting of Immunity from Legal and Judicial Prosecution (immunity law). The law grants former President Ali Abdullah Saleh complete immunity from prosecution and provides his associates with immunity from criminal prosecution for "politically motivated acts" carried out during the course of their official duties.

Amnesty International is concerned that the law prevents victims' families and victims of crimes such as arbitrary detention, torture, extrajudicial executions and enforced disappearances from accessing justice, truth and reparation. Permanent immunities preventing prosecution of individuals suspected of being criminally responsible for crimes under international law are tantamount to amnesties for such crimes and are inconsistent with international law.

Those who defend immunity argue that it is necessary to ensure stability in Yemen and that, without it, the country could descend into civil war. However, it is Amnesty International's view that the legacy of impunity has fed the feeling of injustice in Yemen and partially contributed to the public outrage expressed during the protests. The protesters themselves have rejected the immunity deal as a betrayal of those who were killed during the protests and vowed to continue their opposition to it. In addition, the immunity law appears to have done little to improve stability in Yemen, and the situation in the country remains fragile, undermining the argument that the immunity law is crucial to ensure Yemen's stability. Amnesty International believes that stability in Yemen can only be achieved by ensuring justice.

The immunity law breaches Yemen's international legal obligations to investigate and prosecute crimes under international law and other human rights violations. International human rights law, codified in treaties such as the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment, to which Yemen is a party, gives states the obligation to investigate and prosecute anyone suspected of carrying out torture or other crimes under international law where there is sufficient admissible evidence. Suspected perpetrators must be given fair trials without recourse to the death penalty.

Accountability for crimes under international law, including gender-based violations, can serve as an effective deterrent to would-be perpetrators of future violations, as well as being a necessary measure to ensure justice, truth and reparation for victims and their families. By contrast, the immunity law sends a message to perpetrators that they have nothing to fear and that they will be rewarded with immunity in the name of security no matter how poor their human rights record.

Amnesty International welcomes the Yemeni government's stated commitment to put in place mechanisms to prevent further crimes under international law and other human rights violations through "transitional justice and national reconciliation". A draft Transitional Justice and National Reconciliation law (transitional justice law) was put forward recently for consultation in early 2012, resulting in significant amendments to the initial draft. However, despite these amendments, Amnesty International is concerned that the draft law attempts to link the success of national reconciliation to an absence of legal and judicial criminal measures against those who committed human rights violations and crimes under international law as it emphasizes the concept of forgiveness and ignores that of individual criminal responsibility.

The draft law currently defines "transitional justice" in Article 2 as "The entire scope of the processes and mechanisms related to the society's attempts at understanding the legacy of the large-scale violations of the past in order to achieve reconciliatory justice to reveal the truth, guarantee reparations to the victims, preserve national memory, and ensure the non-repetition of the human rights violations in the future." This definition fails to cover all elements of the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity, especially the need for criminal investigation, and where there is sufficient admissible evidence, prosecution of those responsible for crimes under international law and grave human rights violations. Article 2 also does not specify any concrete and meaningful measures of redress and reparation available to the victims and their families.

The same article defines national reconciliation as "the process for national consensus based on which the relation between political and societal parties will be established. This process is based on forgiveness, justice, and removing the effect of the conflicts of the past through a set of measures stated by this law and the other laws that aim at achieving security, social peace and reconciliation among the members of the society." While justice is mentioned in this definition, it is vague. The achievements of national reconciliation, according to the definition, are security, social peace and reconciliation – again, omitting the judicial components of transitional justice.

Article 3 lists the goals that this draft law hopes to achieve – again omitting individual criminal responsibility of those who committed crimes under international law and grave human rights violations. The goals include a political transition in Yemen based on values of forgiveness, granting victims their rights, and individual, collective and national

reconciliation. They also mention the need to take necessary measures to “highlight the actions of political actors that led to the human rights violations”. These measures fall far short of Yemen’s obligations under international law to hold the perpetrators of such violations criminally responsible.

The draft transitional justice law provides for the creation of an Equity and National Reconciliation Commission that would investigate allegations of human rights violations in the context of the unrest in Yemen since 1990, and claims of violations that were committed prior to 1990 if the consequences of the violations persist. Amnesty International is concerned that this will exclude many violations committed prior to 1990 from the Commission’s remit, and recommends that the draft law be altered to give the Commission a mandate to investigate violations committed before 1990 regardless of whether consequences persist. Some families of people subjected to enforced disappearance in previous decades remain hopeful that their relatives are still alive and in detention and will be released if the authorities investigated their disappearance. They are concerned that, as currently drafted, this law might be an obstacle to them ever finding out the fate of their loved ones.

Article 11 of the draft law states that the Commission shall submit a “comprehensive report, from the establishment of the Commission and until the end of its mission, on the facts and findings it has reached and those responsible for the related acts”, but that this report “shall not be judicial in nature”. The article also states that the Commission’s report must identify the reasons for past human rights violations and provide recommendations to avoid their repetition, as well as steps to promote national reconciliation and the protection of individual rights. It emphasizes the need to promote the rights of women, children and vulnerable groups and to improve their “conditions”. It also says that the report must include recommendations, proposals and actions that support and promote democratic transformation and contribute to building a civil state based on the rule of law, good governance, equal citizenship and institutional reform in order to ensure non-recurrence of grave violations of human rights in the future. However, the “comprehensive report” that the Commission is tasked with submitting at the end of its mandate omits the component of justice for past violations.

The draft transitional justice law, if implemented in its current form, risks reinforcing the immunity law adopted in January 2012 and thereby helping to create an amnesty for perpetrators of grave human rights violations and crimes under international law. This would further prevent victims from accessing justice. Amnesties for crimes under international law – including war crimes, torture, enforced disappearance and extrajudicial executions – also constitute violations of international law.

Amnesty International calls on the Yemeni government to end impunity by:

- Repealing the immunity law passed in January 2012 and ensuring that no person, whether acting in an official capacity or not, is immune from prosecution;
- Amending the draft transitional justice law to ensure that it delivers justice by:

- clearly defining the term “transitional justice” to cover all elements of the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity;
  - specifying concrete and meaningful measures of redress and reparation available to the victims of all human rights violations and crimes under international law;
  - ensuring that the Equity and National Reconciliation Commission is mandated to cover crimes committed in the period prior to 1990;
  - ensuring criminal accountability for perpetrators of human rights violations;
- Enlisting the assistance of the international community to set up a commission of inquiry into human rights violations during the events of 2011, and co-operating fully with the commission of inquiry when it is set up. The commission of inquiry should:
    - involve and consult civil society and those affected by the matters under inquiry, including survivors, victims’ families and other interested parties;
    - be given the power to compel officials to appear before them and testify;
    - ensure the protection of witnesses and their families from intimidation;
    - ensure that anyone identified as suspected of having committed, ordered or failed reasonably to prevent crimes under international law and other human rights violations are brought to justice in fair proceedings without recourse to the death penalty;
    - ensure adequate reparation to survivors and families of victims;
    - recommend a set of measures to ensure that the practices of the security forces when policing demonstrations comply fully with international human rights standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
    - make public the results of the inquiry and the methodology used;
- Establishing an independent and impartial investigation, with international expertise and assistance to ensure it functions effectively, to investigate human rights violations prior to 2011;
- Establishing an independent and effective complaints mechanism, with no structural or organizational connection to the security and law enforcement agencies, to receive, register, examine and investigate future complaints against security officials alleged to have committed human rights violations, including unlawful killings. This mechanism should also have the power to order disciplinary measures against security and law enforcement personnel and to refer cases to judicial investigation, where appropriate;
- Setting up a reparation system for all victims of human rights violations committed by the security forces, which includes reparations in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as provided by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;
- Taking the necessary additional measures to ensure that gender-specific barriers to accessing justice are removed. This includes ensuring that gender-based crimes are criminalized under Yemeni law with punishments, other than the death penalty, that reflect their gravity and vigorously investigated.

### 3. END ARBITRARY ARREST AND DETENTION AND ENFORCED DISAPPEARANCES

Hundreds, possibly thousands, of people suspected of involvement in the anti-government protests in 2011 or ongoing protests in the south or of links with the Huthi rebel movement in Sa'da or armed Islamist groups have been subjected to prolonged detention without charge or trial in recent years. Many have reportedly been subjected to torture or other ill-treatment, which is widespread in places of detention. Many were arrested and detained by Political Security and National Security, which report directly to the president without judicial oversight.

Arrests and detentions outside the rule of law became routine in Yemen in the aftermath of the attacks on the USA on 11 September 2001. Scores of suspected members of al-Qa'ida were arrested, mostly by Political Security, and were subjected to a wide range of abuses, including incommunicado detention, prolonged detention without charge or trial, torture or other ill-treatment and enforced disappearance.

Similar treatment has been afforded to hundreds of suspected Huthi fighters or supporters, who were generally arrested by National Security or Political Security and held in prisons in Sa'da, Sana'a and elsewhere. Some disappeared for weeks or months following capture or arrest. Most have since been released.

Hundreds of members of the Southern Movement, and people who have taken part in protests organized by the Southern Movement, have been detained in waves of arrests by forces such as the Central Security Forces and the Criminal Investigation Department. Most detainees have been released without charge, many soon after their arrest, but some after longer periods of incommunicado detention. Others have been tried and sentenced to prison terms and remain detained until now.

Hundreds of people suspected of involvement in the anti-government protests in 2011, including children, were subjected to arbitrary arrest and detention. Many were held, it seems, by Political Security and National Security, but other forces, such as the Central Security Forces, a paramilitary force reporting to the Ministry of the Interior, and the Republican Guard. Many were held for periods of weeks or months without charge or trial and some were subjected to enforced disappearance. Most of those still in detention were released in early 2012, but there is ongoing uncertainty about the number of those still arbitrarily held or disappeared. The Minister of Interior and the Attorney General told Amnesty International in June 2012 that no one was still being detained in connection with the 2011 protests and that detainees arrested during the period of the uprising who remained in the custody of Political Security were detained on suspicion of involvement in the attack on the Presidential Palace in June 2011 or of membership of al-Qa'ida.

In 2011 in the areas of Arhab and Nihm, the Republican Guard reportedly also subjected defected soldiers and local residents to prolonged incommunicado detention in irregular places of detention. According to information received by Amnesty International, the Republican Guard had arrested them on suspicion of supporting tribes involved in fighting the Republican Guard in those areas or, in the case of military personnel, of deserting and taking part in the fighting.



Amnesty International has also received reports that the First Armoured Division, which allied itself to the protests in March 2011, carried out arrests of some individuals involved in protests in Taghyeer (Change) Square in Sana'a who had publicly criticized the First Armoured Division or were perceived by them to be political opponents and detained them at irregular places of detention.

Most of those subjected to arbitrary arrest and detention have been men. Generally, arrest and detention of women is frowned upon in Yemeni society, making it more difficult for the authorities to arrest women, particularly in relation to political or other kinds of activism. In at least one case, the family of a woman suspected by the authorities of having links to the Huthi movement managed to convince the authorities to release her and detain a male relative instead. In addition, with a limited number of exceptions, women are not generally perceived by the authorities as having links with armed opposition groups and as such have not been targeted for arrest.

Large numbers of women took part in the anti-government protests in 2011, but relatively few were arrested in comparison with the number of protesters. Among those who reportedly were arrested and subjected to short-term detention by security forces were at least four women medical workers involved in providing medical assistance to injured protesters. They were released apparently after a public uproar about their arrests.

The impact of long-term unlawful detention of spouses, sons and other male relatives has affected women greatly. Many women have told Amnesty International that they have lost their family's breadwinner and face severe financial hardship. In a society where women face discrimination in law and practice, including in their access to education and consequently employment, unlawful detention of males has resulted in severe financial and emotional distress. Women whose husbands are detained also face greater societal restrictions on their movements and general behaviour. This includes societal expectations that they should not go out of their homes alone and that they should be accompanied by others, including other females, or that they do not go out to socialize often.

The three main arresting authorities in Yemen – Political Security, National Security and the Criminal Investigation Department – sometimes work independently of one another and at other times co-ordinate their operations. For example, people arrested by National Security are sometimes detained at Criminal Investigation Department detention centres. All three bodies, however, rarely comply with the legal requirement under Yemeni law to produce a warrant prior to carrying out an arrest and generally ignore other supposed safeguards against arbitrary arrest and detention, including the right to challenge the legality of one's detention and the right to contact one's family and have a lawyer present during interrogation. Often security forces hold suspects and conceal their whereabouts for weeks or months, while refusing to acknowledge or otherwise failing to disclose their detention to family members. The detained person is thereby placed outside of the protection of the law, making them victims of the international crime of enforced disappearance.

Amnesty International calls on the Yemeni government to end arbitrary arrest and detention and enforced disappearances and ensure legal safeguards, by:

- Releasing immediately and unconditionally anyone held solely for the peaceful exercise of their rights to freedom of conscience, expression, association or assembly, regardless of whether their conduct may have constituted a criminal offence under national law in Yemen, and dropping any criminal charges relating to such conduct;
- Disclosing to family members, lawyers representing them and other persons with a legitimate interest in a detainee's case, all relevant information about the place of and reasons for their arrest and detention;
- Ensuring that detainees are held only in officially recognized places of detention;
- Ending the practice of incommunicado detention and ensuring that all detainees currently held by any security force in Yemen, including Political Security and National Security, are given prompt and regular access to their families, any necessary medical care and a lawyer of their choosing. Detainees' families and lawyers must be permitted regular contact with them, by correspondence, telephone and visits. Detainees and their lawyers must be told the specific allegations against them and allowed to challenge the legality of their detention;
- Ensuring that all detainees held by security and law enforcement agencies, including National Security, Political Security and the Criminal Investigation Department, are promptly brought before a competent judge as required by Yemeni law and charged with an internationally recognizable criminal offence, or are released;
- Amending the provisions of the Code of Criminal Procedures, which allows prolonged detention without criminal charge for a period of up to six months, to curtail such excessive detention;
- Ensuring that arrests and detentions are always carried out under independent and impartial judicial supervision;
- Bringing Political Security and National Security under judicial oversight immediately or dismantling them;
- Ending enforced disappearances by immediately disclosing the whereabouts of all those detained, ensuring that they are officially registered and their families and lawyers notified. If convicted, any prison sentence must reflect time already deprived of liberty while subjected to enforced disappearance;
- Ending the practice of holding relatives of persons wanted by the authorities, effectively as hostages, to force the suspects to give themselves up;
- Ensuring that the victims of enforced disappearance and arbitrary arrest and detention are afforded full reparations.

## 4. END TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment are common in Yemen, and detainees are reported to be subjected to such treatment by members of National Security and Political Security, the Republican Guard and the Central Security Forces, as well as by police and prison guards. Torture and other ill-treatment frequently occur in the first weeks of detention and during incommunicado detention.

Methods of torture or other ill-treatment reported to Amnesty International include beatings with sticks and rifle butts, kicking, prolonged suspension by the wrists and ankles, sleep deprivation, providing detainees with food and drink that contains urine or is otherwise unfit for human consumption and, in one reported case, the use of a snake to frighten detainees. Some former detainees have told Amnesty International that they were detained in small, cramped cells of 1.5m x 1m for months without being allowed outside. Others have said that guards in detention facilities have humiliated them by occasionally refusing to allow them to use the toilet, limiting time allowed in the toilet or walking in on them while they were using it. Others have reported being unable to change their clothes for months as clean clothes were not provided by prison authorities and they were unable to request clothing from their families. According to former detainees, some became mentally ill as a result of the treatment they faced.

Amnesty International has received reports that several children have been among those subjected to torture and other ill-treatment over recent years. A child who was subjected to enforced disappearance for months in 2011 told Amnesty International in June 2012 that he had lost his hearing in one ear after being hit repeatedly on the face in secret detention.

The Yemeni Penal Code prohibits torture, but is inadequate as it fails to define torture in accordance with international law, as set out in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Yemen is a state party. The Penal Code also stipulates specific acts of torture and other cruel, inhuman and degrading punishments, such as amputation and flogging, as sentences which may be handed down by competent courts against persons convicted of committing certain crimes.

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, participate in or carry out acts of torture shall be punished, and that the law shall determine the punishment.

The use of torture and other ill-treatment has been facilitated and perpetuated by the lack of accountability of security forces and the prevailing impunity they enjoy.

The Yemeni government should:

- Comply with the recommendation made by the UN Committee against Torture in 2009 to “announce a policy of eradication of torture and ill-treatment” and “take immediate steps to prevent acts of torture and ill-treatment throughout the country”;

- Bring the crime of torture in Yemeni law into conformity with the definition in Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and abolish all legislation that condones corporal punishment, such as amputation, flogging and stoning, including Articles 38, 179, 263, 264, 283, 289, 298 and 307 of the Penal Code;
- Amend domestic legislation to ensure that the prohibition of torture cannot be suspended under any circumstances, including during war or other public emergency;
- Take immediate measures to protect detainees from torture and other ill-treatment by ending the practice of incommunicado detention, disclosing the locations of all detainees, and ensuring that all detainees receive prompt and regular access to a lawyer of their choosing, their family and any medical treatment they may require;
- Ensure that all places of detention, including those run by Political Security, are officially registered and periodically inspected by an independent authority with powers to ensure that all prisoners and detainees are treated humanely and in accordance with relevant international laws and standards;
- Ensure prompt, effective, independent and impartial investigations into all complaints of torture or other ill-treatment and enforced disappearances, and ensure that perpetrators are brought to justice and victims receive appropriate reparations;
- Ensure that prosecutions of perpetrators of torture include any public official or other person acting in an official capacity who is complicit in torture or other ill-treatment.

## 5. ENSURE FAIR TRIALS

In 1999, former President Ali Abdullah Saleh established the Specialized Criminal Court (SCC) to try the crime of *hiraba*, a Shari'a term that in Yemen's Penal Code covers the acts of attacking, terrorizing or robbing people on public highways, in deserts, in buildings, or on ships or planes. In 2004 a further presidential decision was issued expanding the SCC's jurisdiction to include "offences harmful to state security and offences with serious repercussions for society or the economy". No further detail was provided of the specific acts or offences considered to fall under this broad definition. This prompted concerns that the formulation was intended deliberately as a "catch-all" definition, the interpretation of which would be largely in the hands of the government and security authorities and could be used at their discretion against people whose actions or criticism of the government they find intolerable. In 2009, the Supreme Judicial Council issued a decision clarifying that the SCC has jurisdiction over a wide range of security-related offences and establishing three additional SCCs to sit alongside the SCC in Sana'a, determining that these should be located in Aden, al-Hudayda and Hadramawt.

Security suspects and other alleged critics and opponents of the state have invariably been tried before SCCs rather than in ordinary criminal courts. Serious questions have arisen as to the fairness of these trials. Violations of defendants' rights to a fair trial begin before the case even reaches court; suspects and those targeted for their criticism of the government are subjected to arbitrary arrest, enforced disappearance, incommunicado detention and torture and other ill-treatment, often to extract "confessions" that are then used as evidence against them.

Under Yemeni law, prosecuting authorities are obliged to examine and assess all the evidence compiled against a detainee to decide whether to bring formal charges against them. However, they invariably fail to do so and detainees report that, when they make a complaint about torture or other ill-treatment, prosecutors do no more than note the complaint and then fail to investigate. Similarly, trial judges often ignore violations of the rights of detainees at the pre-trial stage.

The SCCs have failed to adhere to the Code of Criminal Procedures, although they are required to do so. It has failed to take adequate steps to investigate defendants' allegations that they were tortured and that "confessions" 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 on the basis of such contested confessions. Defence lawyers also contend that prosecuting authorities have withheld documents from case files that could be of benefit to their clients.

Activists and family members of defendants before the SCCs complain of being barred from attending particular court sessions for unspecified reasons, despite public trials being generally provided for in the Code of Criminal Procedures. On occasions, it appears that specific individuals have been barred from attending the court without legitimate reason, even when the court is otherwise in open session.

Since the inauguration of President Abd Rabbu Mansour Hadi, most of those detained in connection with the conflict between the government and the Huthis in Sa'da, including

those who were initially handed down death sentences or prison terms by SCCs, have been released. Their exact legal status is not clear, but they were apparently released in an attempt to defuse the tension brought on by their unfair trials and imprisonment. However, those tried, imprisoned – and in one case sentenced to death – by the SCCs in connection with their activism in the Southern Movement have not been released. At least 10 people are currently on trial before an SCC in connection with their involvement in the Southern Movement on charges of “undermining national unity”.

A current case before the SCC in Sana’a is that of some 28 people suspected of involvement in an assassination attempt on former President Ali Abdullah Saleh and the killing and injury of several government officials and members of security forces in June 2011. Amnesty International is concerned that proceedings before the SCCs have led to unfair trials in the past, and therefore has concerns that current and future trials may also be conducted unfairly.

The Yemeni government must:

- Ensure the right to a fair trial for all accused individuals, including their rights during the pre-charge and pre-trial period and during trial proceedings. This must include the right to public hearing as enshrined in Article 14 of the International Covenant on Civil and Political Rights, to which Yemen is a state party. Exceptions to the right to a public hearing must only be made for the reasons provided in Article 14;
- Ensure that defence lawyers are given full access to all relevant documents, including court files, evidence and interrogation records, to allow them to mount an effective defence;
- Guarantee in domestic law: equality before the courts; the right to compensation in cases of a miscarriage of justice; and the right not to be tried or punished again for an offence for which the individual has already been tried;
- Ensure that the SCCs fully adhere in practice to the Code of Criminal Procedures and meet international fair trial standards in all cases.

## **6. UPHOLD AND DEFEND THE RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY**

Yemen has seen a marked deterioration in freedom of expression in recent years and has become a dangerous place for media workers and peaceful critics of the state. Civil society groups, which previously had been allowed to develop and operate relatively freely, to protest openly and to campaign against alleged abuses of state power and economic and social injustices, have been among the casualties of an increasingly repressive trend.

Journalists, editors and media proprietors have been detained, held incommunicado, ill-treated and jailed on spurious charges after unfair trials before the SCCs and the Specialized Press and Publications Court (SPPC) in Sana'a, which was established by the Supreme Judicial Council in May 2009, when all pending cases relating to press and publications were referred to it. Many Yemeni human rights defenders and lawyers believe that the SPPC was created to reintroduce the type of "exceptional" court that is explicitly banned in the Constitution. The SPPC is widely accused of bias in favour of the government and in effect acts as a part of an overall system of censorship through which the government controls and suppresses various forms of criticism, dissent and other beliefs, under a set of laws that arbitrarily restrict freedom of expression. As such, rather than being a legitimate court in which those charged with internationally recognized criminal offences can be tried, the SPPC is essentially designed as a specialized mechanism for violating the right to freedom of expression.

Security forces have attacked and raided newspaper offices and television stations. Demonstrators peacefully protesting against repression of free speech have been fired on and arrested. The government appears to have been particularly sensitive to references in the media to protests, human rights violations in the Sa'da conflict and calls for secession in the south.

Many activists, journalists and NGOs, including those working on gender issues, have been targeted by forces believed to be connected to the security forces that policed the 2011 protests. According to information received by Amnesty International, activists and journalists have been threatened, harassed, beaten and in some cases injured and killed. Some offices of NGOs have been stormed and had their property damaged and confiscated.

The guarantee of freedom of expression in the Yemeni Constitution is undermined by restrictive laws, as well as the repressive practices of security forces and special courts. Since 1990, freedom of expression has been restricted by the Press and Publications Law (PPL). While reaffirming the right of the press in general and of journalists in particular to freedom of expression, the PPL contains several provisions which severely restrict freedom of expression. Although the impact of this law has varied according to the political and security situation in the country, its shadow has been consistently felt by human rights defenders as well as by many journalists, lawyers, government critics and civil society activists.

Freedom of expression will be further restricted if draft laws currently going through the legislative process are adopted. This draft legislation includes a proposed new Press and Publications Law, initiated in 2005, draft amendments to the Penal Code announced in April

2010, and the draft Organization of Private Audiovisual Media and Electronic Media Law (hereafter Audiovisual Media Law), which was announced in March 2010. The government says the harsher provisions are needed to confront the serious security challenges it faces, but in light of the past practices of the government at least part of the intention appears to be to stifle criticism. All the draft laws have two things in common – expanding restrictions on the press and increasing punishments for transgressors.

The many restrictions that already exist in the PPL and Penal Code are replicated and in some cases expanded in the draft laws. Article 103 of the current PPL lists 12 restrictions, prohibiting protected speech including “prejudicing” religions, beliefs and national interest, and criticizing the President. Other provisions, while not necessarily designed to restrict legitimate activities, have been used in practice to curtail and violate the right to freedom of expression.

The Penal Code contains many of the restrictions in the PPL as well as a blanket criminalization of “anyone who calls or incites [others] not to apply or respect existing laws”. The Penal Code also includes some further restrictions. For example, Article 197 criminalizes “anyone who publicly insults the President by offending him or undermining his personal status in society”, “anyone who publicly denigrates a king, president or representative of a foreign [state]... because of matters related to their function” and “anyone who publicly insults the Presidency or Council of Ministers or other representative or state institutions or the army or the courts or the public authorities or agencies”.

The draft new PPL retains the prohibitions of the current PPL and would further ban publication of material about any activity considered a crime by law, without specifying to which crimes or laws this refers. In addition to retaining the criminalization of insulting the President, it prohibits “the printing or publication or dissemination of any material including a direct and personal attack on kings and presidents of brotherly and friendly states”.

The draft Audiovisual Media Law focuses on allowing private broadcasters and websites to operate while ensuring that the government maintains its grip on them. It proposes subjecting employees of radio and television companies and websites to the PPL, and reproduces in similar although not identical terms many prohibitions in the current PPL. Some of these prohibitions are very vague, such as “not to negatively impact social peace, national unity and public morals”, “refrain from anything that is offensive to the person of God, divine religions, prophets and doctrines (*madhahib*)”, and “not to be involved in revealing state secrets”. Laws criminalizing criticism of religions and religious practices can be used to suppress and harass, and violate the rights of human rights defenders, especially those working for gender equality and the rights of women and LGBTI people. The draft Audiovisual Media Law also bans the broadcast of anything that may have a negative impact on Yemen’s economy, currency or investments. It proposes giving certain officials the power to exercise judicial oversight over the implementation of this law. These officials will be appointed by the Minister of Justice in agreement with the Minister of Information.

Amnesty International calls on the Yemeni government to:

- End the harassment and intimidation of human rights activists, government critics and former political prisoners;



- End the arbitrary restrictive measures against individuals, lawyers, and human rights organizations who defend human rights, the rule of law or the independence of their professions, including by abandoning the use of arbitrary or abusive measures such as travel bans;
- Ensure that the SPPC fully adheres in practice to the Code of Criminal Procedures and meets international fair trial standards in all cases;
- Repeal all laws that criminalize peaceful dissent and otherwise violate the right to freedom of expression, which Yemen is legally obliged to protect and respect, such as Article 103 of the Press and Publications Law, Article 197 of the Penal Code and other restrictions that appear in both these laws;
- Overhaul draft legislation that would arbitrarily restrict freedom of expression, including the new draft Press and Publications Law, the draft Organization of Private Audiovisual Media and Electronic Media Law and draft amendments to the Penal Code to make them compatible with Article 19 of the International Covenant on Civil and Political Rights, or otherwise withdraw them altogether;
- Repeal Articles 263, 264, 267 and 268 of the Penal Code, which criminalize consensual sexual relations between individuals of the same sex, as well as consensual heterosexual sexual relations outside of marriage;
- Amend or repeal vaguely worded and broadly defined crimes such as “harming the unity of Yemen” to ensure compliance with the principle of legality which, among other elements, requires laws to be clear and specific, as defined in Article 15 of the International Covenant on Civil and Political Rights, and to avoid arbitrary interference in the exercise of human rights, including the rights to freedom of conscience, expression, association and peaceful assembly.

## 7. UPHOLD THE RIGHTS OF WOMEN AND GIRLS

Women and girls in Yemen face severe and widespread discrimination in law and practice. 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. These include the Personal Status Law (Law No. 20 of 1992, as amended in 1997 and 1999) which 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. 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 and girls are forced into marriage, particularly those living in rural areas.

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, legalizing 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.

A draft law to raise the minimum age for marriage for girls to 17 was approved by the parliament in 2009, but parliamentarians opposed to the bill requested that it be reviewed by the Shari'a Legislative Committee to ensure it was compatible with Islamic Shari'a law. In April 2010, the Shari'a Legislative Committee concluded that the bill was in contradiction with Islamic beliefs, effectively blocking its passage.

The Penal Code also codifies and reinforces the very low status that women and girls in Yemen endure. For example, it provides lenient punishments for men who commit "honour killings", the murder of a female relative for her perceived "immoral" behaviour, including if she is found to have committed *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. While Amnesty International opposes the death penalty in all circumstances and in general takes no position on sentencing, the organization also believes that all prison sentences or fines imposed should be commensurate with the gravity of the crime. In this situation Amnesty International is concerned that providing such a low sentence for the crime of murder creates an atmosphere of near impunity in relation to crimes committed against women.

Article 31 of Yemen's Constitution describes women as "sisters of men", an expression with cultural and traditional meanings that support the rule of women by brothers and other male family members. This phrasing falls far short of acknowledging or guaranteeing women's equality with men.

Women activists told Amnesty International that the protests of 2011 led to both positive and negative effects on women's rights in Yemen. Many women protesters felt that they were treated with respect and acceptance by male protesters and were able to participate in a political movement like never before. At the beginning of the protests, they said, women were

prominent within the protest areas, chanted “our revolution is revolution by men and women” and did not face intimidation.

However, as the protests continued, both the authorities and some fellow protesters subjected women protesters to gender-based intimidation. Former President Ali Abdullah Saleh, for example, publicly criticized the presence of women in the protests, stating that mixing between men and women was forbidden. Women were subjected to abuses by forces and “thugs” allied to the former government. For example, women who marched in Ta’izz to condemn violations against protesters and to celebrate the Nobel Prize awarded to Tawakkol Karman in 2011 had stones thrown at them by government “thugs”. In addition, several women protesters were killed and injured by the security forces alongside their male counterparts.

With the growth of the protests and a leading role being assumed by the Islah party (an Islamist political party), some women began to be pushed to the fringes of the protest area in Sana’a against their will. Women activists told Amnesty International that women members of the Islah party enforced a strict cordon on women to ensure segregation. Any woman who defied this was physically restrained to ensure compliance. They told Amnesty International that, later, a barrier was constructed and an iron door was put in place. They said that women who did not cover their faces were told by people believed to be Islah party supporters that “they damage the image of the revolution”. Women complained that their situation and status in the protest camp had been completely reversed, and that there was no effort to ensure women’s voices were heard.

During some marches, women protesters were even physically attacked and beaten by other women believed to be members of the Islah party. It appears that the motive for the attacks was the fact that both women and men were marching together. One female attacker reportedly told women protesters not to take photos of the incident and confiscated a camera from a woman protester. The woman protester told Amnesty International that the camera was returned to her without the memory card. She said that this incident was investigated by the organizing committee in the protest camp but nothing was done.

Women protesting against Ali Mohsin al-Ahmar, chief of the First Armoured Division, were also subjected to beatings, apparently by those loyal to the Islah party. A group of women activists brought a court case against Hamid al-Ahmar, head of the Islah party, for defamation and slander after he was reported to have told a foreign journalist that women in the camp “have turned the protest camp area into a place for prostitution”. Hamid al-Ahmar issued a statement denying he had made the remarks.

Following the protests, the regression in women’s participation was reflected in decision making and governance, where attempts to adequately increase the percentage of women in key political and decision-making positions failed.

The Yemeni government must take effective measures to address discriminatory laws and practices, protect the rights of women to equality with men and to be free from all forms of discrimination, and address the underlying social and cultural attitudes that lead to discrimination against women.

In particular the Yemeni government must:

- Ensure that women have full equality with men in law and practice, including in the Yemeni Constitution;
- Bring all laws, practices, policies and procedures into full conformity with international human rights law and standards, in particular the Personal Status Law, which deals with matters relating to divorce, marriage, custody of children; also amend or repeal laws on “immoral” behaviour to ensure that such laws conform to international standards and do not impact in a discriminatory way on women;
- Protect women and girls from domestic violence, and ensure that violence in the family is fully investigated and those responsible are held to account;
- In relation to the draft law on the minimum age of marriage, currently pending in parliament, ensure that forced marriages are prohibited in all cases. In the case of the marriage of a child under the age of 18, the state must establish that they gave full, free and informed consent. In order to establish that a child’s full and free consent is credible, it must be established that the child is of an age and has sufficient mental capacity to fully comprehend the consequences and obligations of marriage. The law should assume that children who have not entered puberty are unable to understand fully the consequences and obligations of marriage. In all cases, both parties must enter into marriage freely without undue influence or coercion, including financial incentive or the threat of violence. No parent or guardian can substitute their understanding and consent for that of the child. 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;
- Ensure that law enforcement officials, public officials and members of the judiciary receive training in gender-sensitivity in general and specifically in responding to and investigating violence against women and girls and other violations of their human rights, and that women who are subjected to violence are not re-victimized because of gender-insensitive law enforcement practices;
- Take steps to recruit and train women police officers, prosecutors, interrogators and judges in sufficient numbers so that women officers are present whenever women are arrested and detained or interviewed by the police or members of the judiciary;
- Take concrete steps to ensure women’s participation in conflict resolution and decision making, including during the transitional political process, in line with UN Security Council Resolutions 1325 and 1889.

## 8. END THE USE OF THE DEATH PENALTY

The death penalty continues to be applied to a wide range of offences in Yemen, including for offences not involving lethal violence, for example drug offences, and is possible for consensual heterosexual and same-sex sexual intercourse for a married person if the act is not with the marital partner. Executions are usually carried out by shooting.

The draft Counter-Terrorism Law proposes to expand the number of crimes punishable by death. Proposed amendments to the Penal Code could also allow the death penalty to be used officially against juvenile offenders (people under 18 years old when they allegedly committed the offence). Despite being prohibited by existing Yemeni law and international law, executions of alleged juvenile offenders continue to take place, usually because of disputes over the individual's age at the time of the alleged crime. In some cases this is because the individual lacks a birth certificate.

Hundreds of people are believed to be under sentence of death in Yemen, including men, women and juvenile offenders. In 2010, according to official sources at least 62 people were executed and 27 sentenced to death. In 2011, at least 41 people, including one woman, were reportedly executed and at least 29 men, including three foreign nationals, were reportedly sentenced to death. The true number is believed to be higher.

Most people on death row in Yemen have been sentenced for committing murder. However, recently the state has passed death sentences for “communicating” with foreign countries. In most cases, those found guilty were tried at one of the Specialized Criminal Courts (SCCs), where trials fall significantly short of international fair trials standards. Most, if not all, of those sentenced to death in connection with their support for the Huthi rebels have been released, although their exact legal status is not known to Amnesty International. However, in at least one other case from April 2012, the Supreme Court confirmed a death sentence passed in connection with activity relating to the Southern Movement, involving an individual found guilty of communicating with Iran.

Amnesty International opposes the use of the death penalty in all circumstances as a violation of the right to life and ultimate cruel, inhuman and degrading punishment.

The Yemeni government must:

- Immediately cease all executions by whatever judicial or other means available, including those of children or juvenile offenders;
- Review all death penalty cases, including those ratified by the President, with the aim of commuting the death sentence in each case, or providing a new and fair trial without resort to the death penalty;
- Impose an official moratorium on executions with a view to abolition of the death penalty, as called for by UN General Assembly resolution 65/206 (2010);

- Pending abolition, ensure full compliance with all international standards on the use of the death penalty, and prohibit the imposition of the death penalty on anyone for a crime committed when under 18;
- Apply a full range of appropriate criteria in cases where age is in dispute for the purposes of determining whether an individual was under 18 years of age at the time of the alleged crime. 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.

## 9. PROTECT THE RIGHTS OF INTERNALLY DISPLACED PERSONS

The conflicts in Sa'da, Arhab, Nihm and Abyan in recent years have caused the internal displacement of thousands of people. While Yemen is co-operating with the international community to ensure that internally displaced persons are protected, there have been instances where displaced people have complained about the provision of service they are afforded.

There are tens of thousands of internally displaced persons from Abyan, most of whom are women and children currently living in about 79 schools in Aden. Their return is delayed due to the large number of mines which have been planted, reportedly by Ansar al-Shari'a, in Abyan. The Yemeni authorities have told Amnesty International that their priority is to resettle internally displaced people in mostly private accommodation so that schools can be renovated for the academic year 2012-2013. However, many humanitarian organizations operating in Yemen say it is unrealistic that such a measure could be carried out in the time frame suggested.

The Yemeni government should:

- Fully implement the UN Guiding Principles on Internal Displacement and take all other necessary measures to fulfil the rights of internally displaced people in Yemen.

In particular, it should:

- Ensure that internally displaced persons are fully informed of their rights to return or to resettle and be integrated with local society if they so wish, and that mines are cleared so that they can choose to return safely;
- Promptly co-ordinate government efforts, including at the ministerial and local level, to provide protection and assistance to internally displaced persons;
- Promptly prepare a timetable for the return of internally displaced people and ensure all displaced people who return do so voluntarily and with adequate information, given in a timely manner, about the security and material conditions to which they will return;
- Take appropriate measures to ensure the safe return to their homes, including to Sa'da, Arhab, Nihm, Abyan and other areas from which people have been displaced and wish to return, including rebuilding homes and infrastructure, providing education, health and other vital services, and funding adequate levels of assistance without discrimination on grounds of sex or any other status;
- Prioritize ensuring safe, timely, unconditional and unimpeded humanitarian access, including for delivering humanitarian goods to all displaced people, as well as assessing and monitoring the displacement situation. To this end, ensure the safety of humanitarian personnel and respect for their integrity, protect humanitarian transports and supplies and refrain from diverting humanitarian goods;

- Develop, in consultation with women, a plan for addressing the special needs of women in post-conflict reconstruction, rehabilitation and resettlement;
- Enhance the reception capacities of host communities by strengthening basic infrastructure, in particular water and sanitation, as well as basic services such as health and education, upgrading shelters and education programmes and generating livelihood opportunities;
- Ensure sustainable livelihoods and access to economic opportunities in host communities, and support local integration for women and men on an equal basis;
- Consult effectively with those most affected, especially women who make up the majority of IDPs, on the development and implementation of resettlement plans, including timing of resettlement, as well as on infrastructure projects and the provision of education and opportunities to develop sustainable livelihoods.



## 10. PROTECT THE RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

The Yemeni authorities have for years afforded protection to many asylum-seekers and refugees from the Horn of Africa and generally maintained an open-door policy towards refugees fleeing the ongoing conflict in Somalia. The UN High Commissioner for Refugees (UNHCR) has offices in Yemen and operates in a number of cities and areas of the country. However since 2001, and in the context of its anti-terrorism policies, Yemen has deported many foreign nationals to countries where they were at risk of torture and other ill-treatment. More recently, Yemen moved to end the automatic recognition as refugees 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 in turn amended Republican Decree No. 3 of 1999, which regulates the Immigration Authority. Amnesty International is concerned that Article 8 of the 2010 Decree is vague and broadly worded such that it is incompatible with Yemen's obligation to respect the principle of *non-refoulement*, a binding norm of international law. For example, it provides that the General Department for Refugees' Affairs can return or deport refugees whose "justifications to remain and stay in the Republic have ceased" and those whose presence is considered to "form a threat to the security and public order [of Yemen]". The Decree does not define who would make these assessments or how, and does not include any procedural safeguards to ensure that those still in need of international protection are not forcibly removed.

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, including women, being forcibly returned to countries where they face a risk of torture, a threat to their life or other serious human rights violations. This concern has increased since 2001, when Amnesty International began documenting incidents of foreign nationals in need of international protection being deported from Yemen, disregarding Yemen's *non-refoulement* obligations.

The government of Yemen should:

- Amend Article 8 of the Republican Decree No. 39 of 2010, to bring it into line with Yemen's *non-refoulement* obligations, or otherwise repeal it;
- Fully respect its *non-refoulement* obligations and refrain from deporting individuals to countries where they could be at risk of serious human rights abuses.

## 11. IMPROVE THE HUMAN RIGHTS FRAMEWORK

Until relatively recently Yemen showed promising signs that it was taking meaningful steps towards greater respect for human rights. By the 1990s, Yemen had become a party to many of the core international human rights treaties, and in 2003 it created a Ministry of Human Rights, which has developed into an important official advocate for the promotion of human rights in the country. It also allowed civil society to flourish. National non-governmental organizations and media were generally able to scrutinize and publicly criticize government policy and practice without negative repercussions. International non-governmental organizations were generally given access to the country, albeit with restrictions on the areas they could visit, and the state engaged in substantive dialogue with them.

However, what was an improving human rights situation has been eroded by a series of institutional changes, such as the creation of flawed specialized courts and proposed legislative amendments. In 2002 the government created a new security force, National Security, which, like Political Security, reported directly to the President and was not subjected by law to judicial oversight, effectively giving it licence to operate outside the framework of the law.

In addition, new or draft legislation threatens to further undermine human rights protection in the country.

The Law on Combating Money Laundering and Financing of Terrorism, introduced in January 2010, requires lawyers to disclose to the authorities information about their clients if they suspect that their clients have committed offences under this law, thus breaching the principle of attorney-client privilege. Article 4 of this law 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”. However, it does not provide a list of such treaties and conventions. The uncertainty this creates is incompatible with the principle of legality, which, among other elements demands precision in laws defining criminal offences.

The 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.

Amnesty International is calling on the Yemeni government to carry out a complete overhaul of its existing legislation in order to ensure that Yemen’s laws conform to its obligations under international human rights law and standards. In particular, the Yemeni government should:

- Bring the Law on Combating Money Laundering and Financing of Terrorism into line with international human rights law and standards, including by narrowing the definition of the criminalization of financing terrorism under Article 4 to make it compatible with the principle of legality, which demands precision in the laws defining criminal offences, and repealing

Articles 13 and 14, which require lawyers to disclose information to authorities about their clients, in breach of the principle of attorney-client privilege;

- Amend draft laws such as the draft Counter-Terrorism Law, the draft Press and Publications Law, the draft Organization of Private Audiovisual Media and Electronic Media Law and amendments to the Penal Code to bring them into line with international human rights law and standards before passing into law. This must include ensuring that they include necessary safeguards to protect the rights of suspects, respect freedom of expression and association, and do not increase the number of crimes punishable by death;
- Ensure that women have full equality with men in law and practice, including in the Yemeni Constitution, and bring all laws, practices, policies and procedures into full conformity with international human rights law and standards, in particular the Personal Status Law, which deals with matters relating to divorce, marriage, custody of children).

The Republic of Yemen has previously shown a great deal of willingness to engage and co-operate with UN human rights mechanisms. It became a state party to many key human rights treaties, in 1990 as a result of inheriting the legacy of ratifications before unification by the southern People's Democratic Republic of Yemen and in the early 1990s at its own initiative. Those treaties to which Yemen is a state party include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the 1951 UN Refugee Convention and its 1967 Protocol. It is also party to the 1949 Geneva Conventions and their Additional Protocols I and II. In this regard Yemen has set itself ahead of many neighbouring Gulf countries.

However, there remain other important conventions that Amnesty International calls on the Yemeni government to ratify and implement, as well as reservations to treaties that Yemen should lift.

The government of Yemen should:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Upon ratification, Yemen should make the declarations under Articles 31 and 32 recognizing the competence of the Enforced Disappearances Committee, and put in place domestic measures to give full effect in practice to this Convention;
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Optional Protocols 1 and 2 to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol;

- Remove reservations to Article 29(1) of the Convention on the Elimination of All Forms of Discrimination against Women and to Articles 17(1) ,18(1) and 22 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- Ratify the Rome Statute of the International Criminal Court, which Yemen signed on 28 December 2000, and implement it into national law in an open and transparent process in consultation with civil society;
- Ratify the Agreement on the Privileges and Immunities of the International Criminal Court;
- Ratify the Palermo Protocol, the 1954 and 1961 Conventions on Refugees and Stateless Persons, and the UNESCO Convention against Discrimination in Education;
- Ratify and enforce the Convention on Cluster Munitions;
- Ratify Additional Protocol III of the Geneva Conventions of 12 August 1949, and make a declaration under Article 90 of Additional Protocol I recognizing the competence of the International Humanitarian Fact-Finding Commission.

Finally, 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 disciplining of judges. The President of the Supreme Judicial Council, which oversees the judiciary, is directly appointed by the President (up until June 2006 the President 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.

The government of Yemen must ensure the independence of the judiciary by:

- Reviewing and amending the procedures for appointing members of the judiciary to ensure the full independence of judges;
- Enshrining the security of tenure of judges in the Constitution, creating an independent body to appraise the work and competence of judges, and including safeguards against direct or indirect pressure, improper influence or interference.





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