



Research paper

## Right to peaceful assembly in the context of Yemen's armed conflict



**Mwatana**  
for Human Rights

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## Research paper

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context of Yemen's armed conflict

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Mwatana is an independent Yemeni organization established in 2007 and advocates for human rights. Even though the former regime of president Ali Abdullah Saleh declined to provide the organization with the permit to conduct its work, Mwatana was able to implement its activities and participate with other parties in advocacy campaigns against the violations of human rights committed in various parts of Yemen, including those committed against the peaceful Southern Movement sit-ins, during the Saadah wars, and the arrests of activists, opponents and journalists. Furthermore, "Mwatana" cooperated and coordinated with international partners in documenting human rights violations in Yemen.

In April 2013, Mwatana finally obtained its permit and was able to expand its institutional capacities and intensify its activities. Mwatana is currently documenting the violations committed by the parties to the conflict and the various authorities and is publishing the results of its investigations in multiple publications. Mwatana also provides legal support and advice to victims of arbitrary detention and enforced disappearance, in addition to implementing advocacy activities and campaigns at the international level and among decision-makers. It also works to ensure accountability for violators and justice for victims and to build the capacity in the human rights field.

In 2018, the Baldwin Award recognized Mwatana's work. Human Rights First announced awarding the 2018 Roger N. Baldwin Medal of Liberty to Mwatana. In the same year, the 10th International Hrant Dink Award was granted to Mwatana for depicting to the world the status of human rights in Yemen and for fighting against human rights violations in the country. In 2019, the American magazine "Time" listed Radhya Almutawakel (Chairperson of the organization) among its 100 most influential people in the world.

In February 2021, Mwatana for Human Rights and Campaign Against Arms Trade (CAAT) were nominated for the 2021 Nobel Peace Prize.



# Foreword

The current conflict in Yemen has resulted in a highly catastrophic and tragic situation, both in terms of the repercussions on the humanitarian situation and in terms of the repercussions on rights. Warring parties have resorted to a pattern of violent practices and systematically violated human rights. Perhaps the gravest result of the extended conflict is the normalization of violence and violent methods –across the country, which has been exacerbated by policies and practices that prevent individuals and communities from using other options and methods to seek solutions.

Warring parties have adopted aggressive policies and restrictive procedures that have suffocated the civil space in the country, closed the public space, and undermined peaceful expression. The warring parties oppress these channels of expression, which are beneficial to society. Instead what reigns in Yemen is oppression, and discourses of war that are destructive to rights and freedoms.

The war in Yemen has escalated and expanded geographically, and the number of armed entities has increased, which has further undermined rights and freedoms. Despite this, and in the midst of a raging war that has been going on for more than seven years, the largest Yemeni cities, such as Sana'a, Taiz and Mukalla, have seen large groups of society come together in peaceful gatherings and marches that raised human rights demands and slogans rejecting the war. The phenomenon of continued, peaceful assemblies during wartime indicates that, despite the normalization of violence and the suffocation of the civil space in the country, people in Yemen are continuing to find means of peaceful action to raise their demands, and clearly indicates that the warring parties do not hold a monopoly on Yemeni society, and that many in Yemeni society do not see their demands represented through the warring parties. The fact that people continue to protest highlights that peaceful assembly remains an option for individuals and groups seeking to express their demands, and that their right to peaceful assembly must be promoted and advocated.

Respecting and protecting the right to peaceful assembly plays a fundamental role in building a tolerant society of coexistence, open to pluralism and difference. Mwatana believes that it is necessary to work on advocating the right to peaceful assembly, including during times of war, and as an entryway through which people can regain their sway on public affairs and express their demands for rights and freedoms. This research paper highlights of what constituted the exercise of this right of a social choice that exists outside the agenda of the warring parties and their means.

# First:

## The general framework (the concept and its legal basis)

### A Key concepts related to the right to peaceful assembly

#### Assembly:

An assembly is “an intentional and temporary gathering in a private or public place for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies, or even sit-ins.”<sup>1</sup> Said another way, an “assembly” is the intentional and temporary presence of a group of people in a public place for a common expressive purpose.<sup>2</sup> Right to peaceful assembly is a basic right enjoyed by individuals and communities.<sup>3</sup>

#### Peaceful:

An assembly is deemed peaceful when the organizers or demonstrators have explicit peaceful intentions, and participants refrain from using violence. The peaceful nature of an assembly should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in this assembly intend to use, advocate or incite imminent violence.<sup>4</sup>

<sup>1</sup> Report by the Special Rapporteur on right to peaceful assembly and right to association, Maina Kyai, 21 May 2012, Human Rights Council, A/HRC/20/27, pp. 24.

<sup>2</sup> European Commission for Democracy through Law (Venice Commission), OSCE/ODIHR Venice Commission Guidelines of Freedom of Peaceful Assembly (June 2010), p. 7.

<sup>3</sup> BIDD (Venice Committee), Op. Cit. , p.9.

<sup>4</sup> Ibid, p. 25.

**B** The right to peaceful assembly in national and international law**01****Right to peaceful assembly in international and regional law**

Several international treaties and instruments protect the right to peaceful assembly. The Universal Declaration of Human Rights (issued in Paris on December 10, 1948) states that, "Everyone has the right to freedom of peaceful assembly and association."<sup>5</sup> The International Covenant on Civil and Political Rights (ICCPR - promulgated by the United Nations in December 1966 and entered into force in March 1976), includes the right to peaceful assembly, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."<sup>6</sup> The UN Convention on the Rights of the Child states that state parties shall recognize the rights of children to freedom of association and peaceful assembly.<sup>7</sup> The International Convention on the Elimination of All Forms of Racial Discrimination states that state parties shall "guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [including]... the right to freedom of peaceful assembly and association"<sup>8</sup> The Arab Charter on Human Rights also affirmed the right to freedom of peaceful assembly and association.<sup>9</sup>

**Right to peaceful assembly in national law****02**

The Republic of Yemen ratified key international treaties that guarantee the right to

5 Universal Declaration of Human Rights, article 20.

6 ICCPR, article 21.

7 Convention on the Right of the Child, article 15.

8 EU Charter on Fundamental Rights, Article 12.1

9 Arab Charter on Human Rights, Article 28.

peaceful assembly, including ICCPR,<sup>10</sup> CERD,<sup>11</sup> and CRC.<sup>12</sup> As such, Yemen is obliged to respect, protect and fulfill the human right to peaceful assembly.

## 2.1 Yemeni Constitution

The right to peaceful assembly is not explicitly mentioned in the Yemen's Constitution, or in its amendments.<sup>13</sup> None of the Constitution's 162 articles explicitly state that the right to peaceful assembly is protected, unlike international treaties, which explicitly mention this right. A number of jurists and rights defenders have argued that the right to peaceful assembly is implicitly incorporated through the rights and duties for citizens included in the Constitution, particularly through Article (6) and Article (58).<sup>14</sup> The right to peaceful assembly should be explicitly constitutionally protected, and that includes at least a declaration explicitly providing for this right and a positive obligation to protect it. In addition, a constitutional text must be drafted that guarantees the fairness of procedures that allow identifying the rights recognized.

## 2.2 Yemeni laws

Law No. 29/2003 deals with the organization of demonstrations and marches in Yemen.<sup>15</sup> However, the substance of the law restricts and inhibits the exercise of the right to peaceful assembly, rather than protect and regulate this right and associated freedoms.

Law No. 29/2003 does not stipulate that measures restricting the right to assembly must be consistent with the principles of necessity and proportionality, as required under international human rights law.<sup>16</sup> The law also gives the authorities great latitude to suppress the right to peaceful assembly, and ignores the principle that assemblies should be presumed to be peaceful in the absence of compelling and demonstrable

<sup>10</sup> Yemen joined the ICCPR in February 9, 1978.

<sup>11</sup> Yemen joined CERD in October 18, 1972.

<sup>12</sup> Yemen joined CRC in May 1, 1991.

<sup>13</sup> Yemeni Constitution, 19991 and amendments in 1994 and 2001.

<sup>14</sup> Article 6 confirms Yemen's commitment to abide by the UN charter and UDHR, and Article 58 confirms the right of every citizen to political and professional organization, and freedom to form associations and unions.

<sup>15</sup> Law no. 29/2003, on the organization of demonstrations and marches in Yemen.

<sup>16</sup> According to the Rapporteur on peaceful assembly, "Only certain restrictions can be applied, which clearly means that freedom of assembly should be considered the norm, not the exception, while the restrictions are the exception". See report of the Rapporteur on peaceful assembly, and HRC, 20th session, (A/HRC/20/27), para. 16. See also HRC, General Comment 31, para. 6.



evidence otherwise.<sup>17</sup>

Rather than restricting the right to peaceful assembly, the state should effectively protect peaceful assemblies, including by explicitly ensuring any domestic legislation related to freedom of assembly, police governance, or regulations on military forces accords with international human rights law. The state also has a duty to effectively protect participants in a peaceful assembly from any persons or groups, including armed groups, mobs, and counter-protesters, who attempt to obstruct or prevent a peaceful assembly.

## C

### Political Context

The political scene in Yemen, before the outbreak of the popular protests in 2011, was dominated by authorities whose methods were characterized by hostile practices and a plethora of human rights violations. This included the long-term marginalization of the rule of law. Repressive policies dominated, which contravened democratic standards in managing the regime's relations with society, and with rights and freedoms.

Establishing a modern state that observes rights and freedoms requires building a democratic political system based on the principle of neutralizing violence from political life and public space, and following a peaceful approach in the process of political and social change.

In Yemen, armed conflict remains associated with political change. It appears that Yemeni democracy is a democracy in words only, as Yemen's democracy did not lead to a peaceful transfer of power or prove the feasibility of political pluralism. The political rights and civil liberties protected by the Constitution have not been translated into reality. Rather, the regime has, in many cases, frozen, replaced and failed to implement laws and judicial rulings. With tribal customs and authoritarian governance, it established the hegemony of authoritarian forces and expanded their influence, which generated a corrupt situation.<sup>18</sup>

International studies and reports have indicated that corruption in Yemen has reached record levels. Even before the current conflict, the state came close to the brink of failure. The International Legitimacy Foundation and the US Peace Fund report

<sup>17</sup> Guidelines on peaceful assembly, (BIDD), section A, paras 1,2.

<sup>18</sup> See, Abdulbari Tahir [in Arabic]: مسار الثورة الشعبية السلمية: الواقع والتحديات: a paper submitted to the National Conference held in Cairo in 2012, "Yemen: where to?"

described Yemen during 2005 and 2006 as a “failed state”<sup>19</sup> in a critical situation: according to the report, Yemen had failed in all 12 criteria for classifying a failed or in danger state because Yemen lacked full control over its lands and territorial waters, the security and military conditions were unstable, the government did not adhere to the standards of good governance, and the form of a petro-state, based on loyalty and submission, prevailed.<sup>20</sup> In addition, public positions were transformed into a source of personal wealth accumulation, and decision-making power was granted to individuals not to institutions, chosen on the basis of loyalty and clientelism, not competence.

## D Peaceful assembly as exercised in Yemen before the current armed conflict

In Yemen, those exercising the right to peaceful assembly have often been met with violence. Before the current conflict, the authorities regularly resorted to the use of force to disperse peaceful gatherings and pursue protesters, who were themselves subjected to various types of violations. In response to demonstrations and other legitimate means of expressing demands for stolen rights and freedoms, the security forces regularly excessively and violently reacted.

Perhaps the most prominent episode of peaceful protest that the country witnessed before 2011 was the protests, demonstrations, and sit-ins organized by citizens in the southern governorates in 2007. These assemblies rejected the ways in which the central government in Sana'a treated those in southern governorates. Government security forces committed widespread violations against protesters, including extrajudicial killings, arbitrary detention, beatings, and the suppression of freedom of assembly and freedom of the press.<sup>21</sup>

With the emergence of popular protests in early 2011, and with large sectors of society joining protests, Yemen witnessed a widespread effort across society to exercise the right to peaceful assembly. Among the demands of these protests were to promote

19 <https://www.swissinfo.ch/ara/%D8%A7%D9%84%D8%AF%D9%88%D9%84-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9-%D8%A8%D9%8A%D9%86-%D9%85%D8%B7%D8%A7%D8%B1%D9%82--%D8%A7%D9%84%D9%81%D8%B4%D9%84--%D9%88%D8%B3%D9%86%D8%AF%D8%A7%D9%86--%D8%A7%D9%84%D8%A8%D8%AD%D8%AB-%D8%B9%D9%86-%D8%A7%D9%84%D8%A8%D9%82%D8%A7%D8%A1-/1087216>

20 Nawa Al-Jam'i & Fatima Al-Zahra Sahid [in Arabic]: وفاطمة الزهراء صاهد، في أسباب عسر تشكل: رؤية سوسيو – سياسية، مجلة المواطنة في العالم العربي

21 For details about the peaceful protests in the southern governorates, see Human Rights Watch's report “In the Name of Unity: The Yemen Government's Brutal response to Southern Movement protests”, December 15, 2009: <https://www.hrw.org/report/2009/12/15/name-unity/yemeni-governments-brutal-response-southern-movement-protests>

freedoms, change power, and correct the path of Yemen towards democratization.<sup>22</sup> These protests constituted a decisive turning point that led to a major change in the general political formula of the country.

However, since late 2014, and the outbreak of armed conflict, the exercise of the right to peaceful assembly has witnessed a significant decline compared to previous years. The parties to the conflict have confronted attempts at peaceful assembly with violence and systemic repression, permitting only demonstrations and gatherings by their supporters aimed at expressing clear support for the warring parties themselves.



22 د/ عادل مجاهد الشرجبي المسار الثوري للتحوّل الديمقراطي: تحليل [In Arabic]: paper submitted to the National Conference held in Cairo in 2012, "Yemen: where to?"

# Second:

## Peaceful assembly during the current conflict

### A The current situation

The first feature of the human rights crisis in Yemen is the continuation of the armed conflict, which is now in its seventh year. The conflict has turned the country into the largest humanitarian crisis in the world. The various stages of the conflict have been accompanied by violations of international human rights and international humanitarian law by all parties to the conflict, including: indiscriminate and disproportionate air raids and ground attacks, extrajudicial killings, arbitrary arrests, enforced disappearances, torture, attacks on and occupation and use of hospitals and schools for military purposes, child recruitment, the use of landmines, starvation and denial of humanitarian access.<sup>23</sup>

In Yemen, different authorities have militarized the public space. The space for peaceful work has shrunk in favor of violent and oppressive practices, and any attempt to exercise the right to peaceful assembly has become a target of extreme repression and violence.

### B Examples of governmental and de-facto authorities' violations of this right (2015-2019)

Authoritarian regimes do not protect the right to peaceful assembly, but instead treat peaceful demonstrations demanding rights and freedoms as rebellious acts that require the use of all methods and means to suppress them. The internationally

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<sup>23</sup> See reports and press releases by Mwatana for Human Rights: <https://mwatana.org/>

recognized government and the Ansar Allah (Houthi) group have sought to suppress peaceful protesters demanding their rights. These authorities spared no effort to disperse and end peaceful marches, using excessive violence and brutal repression, and the occasional use of live bullets. To better illuminate the behavior and actions of the internationally recognized government and the Ansar Allah (Houthi) group, we will use a number of incidents that have been documented by Mwatana for Human Rights as case studies.<sup>24</sup>

## The Capital, Sana'a, under the de facto authority of the Ansar Allah (Houthi) group

# 01

### ● Sana'a University, 2018 ●

In light of the accelerating collapse of the value of the national currency, the Riyal, and the deterioration of the economic conditions and living conditions of the citizens in the country, activists on social media began to circulate call to marches in all Yemeni cities, denouncing the decline of the national currency and the rising prices.

In the morning of Saturday, October 6, 2018, the Ansar Allah (Houthi) group (Houthis) suppressed these demonstrations, attacking civilians who had answered the call to march. Members of Ansar Allah assaulted demonstrators, dispersing them using batons and electric sticks at gathering points in front of Sana'a University and in Tahrir Square. Ansar Allah had deployed its gunmen and its military patrols extensively in most of Sana'a's streets, and set up security checkpoints, including some with armed women.

Ansar Allah's means of repression of these demonstrations included insults, verbal assaults, and beating of demonstrators. Dozens of male and female students and other citizens were arrested. These people were crammed into buses and taken to the "Al-Jadiri" police station, which is located in Al-Zira'a Street in Sana'a. Ansar Allah forces also stormed the Commerce and Media departments of Sana'a university campus, and subjected students to searches by armed men and women. In the early afternoon of the same day, Ansar Allah held a military parade on the university campus, followed by a protest by their supporters condemning the "coalition forces' war on Yemen."

<sup>24</sup> Mwatana for Human Rights. Sana'a, Yemen.



## 02

**The temporary capital, Aden, under the internationally recognized government**● **Al-Sirah neighborhood, 2016** ●

On May 21, 2016, a peaceful protest took place in the Sirah neighborhood of Aden. The demonstration was protesting the continuous electricity outages and demanding the improvement of the power supply situation. Some demonstrators were in front of the house of the Sirah District Commissioner, whose personal guard shot live bullets at the demonstrators. The guard hit one of the protestors, who died after being transported by his colleagues to the Republican Hospital, according to his mother during an interview with Mwatana for Human Rights. The man's mother said that during that period peaceful demonstrations were taking place in all directorates across the governorate of Aden to protest against the continuous electricity cuts. She said that the case had been submitted to the prosecution office to conduct an investigation in the case but that the prosecution closed the case, claiming it was unknown who did the shooting and there were no witnesses. She suspected the guard, or his employer, had intervened to close the case.

**D****Conclusion: The consequences of failing to respect the right to peaceful assembly**

The government and the de facto authorities have sought to justify their repression of the population and their suppression of the right to peaceful assembly in several ways. This has included hiding behind the scarecrows of external aggression, restoring legitimacy and national independence. But, these claims do not justify confiscating basic rights and freedoms, including the right to peaceful assembly, as well as other rights and freedoms, including the right to life and personal integrity, the right to dignity, and the right to freedom of expression.

Failing to respect, and actively violating, the right to peaceful assembly has resulted in several devastating and incalculable consequences for Yemen, including: the absence of means to express discontent and criticism of authorities' performance

failures, and through this to exercise some form of civil response to these failures and to the persistence of grave violations of rights, as well as facilitating authorities more easily ignoring demands to pay the salaries of state employees, and to evade their responsibilities to provide basic services, including health services, education, electricity, and water.

The continuation of the armed conflict also undermines the idea of the right to peaceful assembly and its many dimensions, including the right of individuals to actively participate in public affairs, and to promote rights, freedoms, and accountability and to demand the rule of law. The right to peaceful assembly is one of the most prominent alternative democratic channels of expression that provides an alternative to violence.

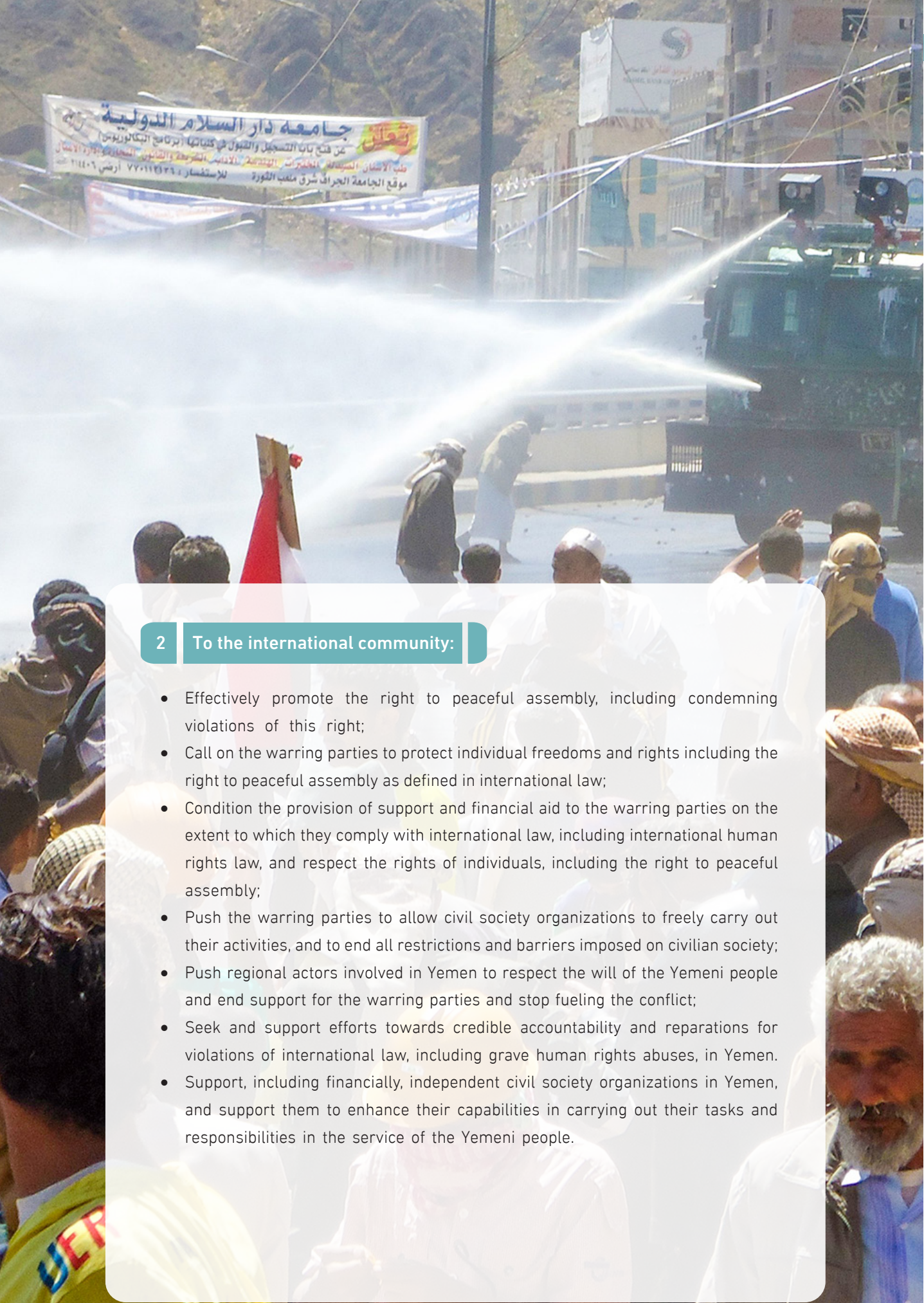
One of the most pernicious impacts of armed conflict is the adoption of violence and fighting as the only viable option for expression and political participation, where the language of guns and cannons, and the means of killing and abuse, controls social life and public affairs. Meanwhile, freedoms and rights are marginalized and confiscated, including the right to peaceful assembly. Under this scenario, society is militarized, cemeteries expand, while the space for coexistence and peace shrinks, and life becomes colored with violence and conflict, where the fittest survive.

# Third:

## Recommendations

### 1 To parties to the conflict:

- Respect the right to peaceful assembly for individuals and groups, including, but not limited to, political and civil organizations, unions, trade unions, as well as for university students, women, and persons belonging to minority groups;
- Ensure the protection of peaceful protesters, and respect their right to assembly and demonstration;
- Ensure that no person is arrested, detained or prosecuted for exercising their right to peaceful assembly, nor is subjected to threats, or acts of violence, harassment, persecution, intimidation, or reprisals;
- Ensure that any legal restrictions on the right to peaceful assembly comply with international human rights law, with democratic standards, and do not violate the principles of pluralism and equality. Any restrictions imposed should also be subject to an independent, impartial and immediate judicial review;
- Ensure full compliance with the right to life and the right to be free from torture and other forms of inhuman or degrading treatment or punishment;
- Ensure that violators of the right to peaceful assembly are held accountable through a fair and impartial judicial process;
- Ensure that victims whose right to peaceful assembly has been violated are provided an effective remedy
- Stop harassing civil society organizations, and stop restricting their movement and activities.



## 2 To the international community:

- Effectively promote the right to peaceful assembly, including condemning violations of this right;
- Call on the warring parties to protect individual freedoms and rights including the right to peaceful assembly as defined in international law;
- Condition the provision of support and financial aid to the warring parties on the extent to which they comply with international law, including international human rights law, and respect the rights of individuals, including the right to peaceful assembly;
- Push the warring parties to allow civil society organizations to freely carry out their activities, and to end all restrictions and barriers imposed on civilian society;
- Push regional actors involved in Yemen to respect the will of the Yemeni people and end support for the warring parties and stop fueling the conflict;
- Seek and support efforts towards credible accountability and reparations for violations of international law, including grave human rights abuses, in Yemen.
- Support, including financially, independent civil society organizations in Yemen, and support them to enhance their capabilities in carrying out their tasks and responsibilities in the service of the Yemeni people.











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