

Study

Institutional Reform of the Security and Justice Sectors

Towards Transitional Justice in Post-Conflict Yemen



Mwatana
for Human Rights

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Executive Summary

Yemen has been embroiled in an armed conflict for more than nine years, lacking agreement on a transitional political process or a legally-recognized authority encompassing the entire country. The nation also suffers from the absence of established legislation on transitional justice and lacks inherited experiences that could be relied upon to address reparations, uncover the truth, and confront the systemic denial of past human rights violations. Therefore, considering approaches to institutional reform presents a formidable challenge in a reality marked by uncertainty, the potential for renewed violence, and the continued perpetration of grave human rights abuses by conflicting parties, including enforced disappearances, extrajudicial killings, arbitrary and unlawful detention, and torture, as well as cruel and degrading treatment.

This study, prepared by Mwatana for Human Rights in collaboration with a local expert, reflects the determination of Yemeni civil society to advance the discourse on institutional reform and contribute to establishing some foundational conditions for a post-conflict transitional justice process. The study analyzes the current institutional and legal environment in the justice and security sectors and identifies the structural, legal, and procedural deficiencies that have contributed to the perpetration of violations and the absence of accountability. It also examines the capacity of national justice and security institutions in the areas of investigation and prosecution, identifying the needs that must be met for these institutions to perform their duties efficiently and in a manner consistent with national law and international standards related to the administration of justice.

Methodology

The study is based on field data and case studies of severe human rights violations that occurred during the conflict period (2014–2024) at the hands of public officials, law enforcement agents, and non-state actors in the governorates of Sana'a, Aden, Al Hudaydah, Hadhramaut, Taiz, Marib, Abyan, Hajjah, Lahij, Dhamar, Shabwah, Al Bayda, and Amran. Research for the study focused on tracking the progress of complaints, evidence collection, investigations, and litigation related to these violations, the obstacles victims faced in accessing justice mechanisms, the responses of security and justice institutions (judicial enforcement officers, public prosecutors, and specialized courts) to victims' needs for justice, the challenges to the processes of redress, and the violations committed by security and judicial institutions through lack of adherence to legal and procedural requirements during arrest, detention, investigation, and trial. The research also explored how these institutions handled their duties related to prosecution and combating impunity.

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The qualitative information for this study was collected using various methods, including reviewing records and information provided by victims, conducting supplementary individual interviews, analyzing field reports, and gathering data from local civil society. Additional information was obtained by reviewing relevant literature, analyzing the content of legal texts, and conducting focus group discussions.

The General State of Security and Justice Sector Institutions in the Context of the Conflict

The armed conflict in Yemen has led to an increase in political interference in judicial matters and intensified the influence exerted on judges and the administration of justice across the country. The unity of the legal and legislative system has been jeopardized due to the fragmentation of the higher judicial bodies along political lines, with some parties to the conflict unilaterally imposing changes to the law. This has resulted in the emergence of unlawful structures that have compromised judicial independence in certain areas.

At the local level, the conflict has complicated avenues for redress and access to justice. Courts and prosecution offices are divided among the conflicting parties according to their territorial control, leading to a significant breach of the principles of equality and non-discrimination in legal proceedings. This division has also deprived populations in areas controlled by opposing parties of access to justice. Judicial fragmentation has also reinforced impunity, allowing some perpetrators of human rights violations to find safe havens from prosecution by fleeing to areas controlled by other parties.

The wide territorial jurisdiction of Yemen's specialized criminal courts and prosecutors exacerbates difficulties in accessing justice, as these institutions are limited to a few governorates, despite being the bodies authorized to handle many cases related to human rights violations. Victims face significant challenges in pursuing legal proceedings due to the difficulty in reaching courts, the large caseloads these courts handle, the irregular functioning of prosecution offices and courts, the long intervals between sessions, the lack of adequate facilities, and the shortage of judges and prosecutors.

The proliferation of judicial enforcement authorities, including unofficial entities and security supervisors affiliated with conflict parties, has created additional sources of abuse and procedural violations during arrest, detention, investigation, and evidence collection. These illegitimate judicial actors obstruct the enforcement of court and prosecution orders to release detainees or defendants, prevent certain cases from reaching the courts, interfere in the distribution of cases across courts, and hinder the execution of court rulings, all without effective oversight from the public prosecutor's office.

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The police forces and security agencies have suffered from extensive administrative and functional interventions by the conflict parties. These parties have redirected the capacities and resources of these agencies toward their own internal security priorities, alongside newly formed and inexperienced unofficial entities that are organically linked to the conflict parties. The excessive influence of security and military agencies (both official and unofficial) over the public prosecutor's office and the courts is the biggest obstacle to the administration of justice during the conflict. The impact of these agencies extends beyond committing violations, as they actively work to obstruct victims' access to justice and derail the enforcement of the law. Often, these security agencies enjoy broad political cover from authorities in various regions, as unstable politicians rely on them for continued protection. This mutual support between politicians and security officials complicates access to redress and the administration of justice, systematically reinforcing impunity and enabling continued violations without fear of accountability. Notably, this mutual protection relationship extends to the Saudi/UAE-led Coalition, which provides broad immunity from accountability to security and military agencies suspected of committing serious violations of international humanitarian law.

General Principles of Justice in Yemeni Legislation

A comprehensive review of Yemeni national legislation, particularly as it relates to the principles of justice and the criminalization and punishment of human rights violations, reveals significant and widespread legislative gaps. One of the key principles inadequately protected by constitutional and legal guarantees to ensure its effective implementation and minimize the impact of political fluctuations is the principle of judicial independence. The systemic weaknesses in Yemen's criminal justice system can largely be attributed to legal gaps related to this principle, such as the judiciary's lack of autonomy in selecting judges and other important personnel based on competence, integrity, and independence. Additionally, there are insufficient safeguards to prevent interference in the judiciary's administrative and financial affairs. It is difficult to attribute the failure of this principle solely to errors in application and practice as long as these legal deficiencies persist.

Conversely, the failure to enforce existing, strong legal provisions is another factor contributing to the absence of criminal justice in Yemen. The constitution and other Yemeni laws contain many fundamental principles, judicial procedures, and guarantees of basic human rights and public freedoms. The challenge lies in the activation of these legal texts, which should remain amenable to practical application and open to revision and improvement.

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One of the significant gaps in Yemeni legislation concerning justice and criminal accountability for human rights violations is the ambiguity and contradictions within the text of the law, which fails to fully encompass the principles of justice and the necessary legal protections. This lack of clarity, detail and comprehensiveness creates opportunities for wrongful practices to flourish. Although Yemeni legislation criminalizes actions recognized as serious human rights violations, it does not consistently treat all such crimes with the gravity they deserve. For instance, offenses like unlawful detention are not classified as serious crimes under Yemeni law, and the penalties prescribed for them do not reflect their severe criminal nature. This is particularly concerning because many grave crimes, such as enforced disappearance, torture, and even extrajudicial killing, often stem from this initial violation. Moreover, Yemeni law lacks precise legal definitions for various types of serious human rights violations, instead offering broad and generalized definitions for these crimes.

Yemeni law holds public officials criminally accountable for acts committed in the course of their duties and tends to impose harsher penalties when the perpetrator is a public official or law enforcement agent. However, vague and broad exceptions undermine this principle. If an act is associated with one or more of the recognized grounds for justification, it is stripped of its criminal nature, absolving the public official or equivalent from both criminal and civil liability. This has a detrimental impact on achieving criminal justice and on victims' rights to appropriate compensation, as the actions of public officials and law enforcement officers are often linked to these justifications (such as performing duties, exercising legal rights, or acting in self-defense). Additionally, Yemeni legislation does not adequately adhere to the principle of providing appropriate compensation for harm suffered by victims as result of crimes committed by public officials and law enforcement personnel. This shortcoming prevents the achievement of the principle's primary purpose: to alleviate or remedy the harm suffered by victims without subjecting them to additional litigation.

The ambiguity and contradictions within legal texts necessitate legislative reforms to make those texts precise, bold, and clear. Crafting legal provisions with accuracy and resolving any ambiguity or conflicts, while applying adequate legal safeguards to the principles of justice and public rights, undoubtedly reduces the likelihood of misapplication or errors in practice when the law is implemented. Conversely, the absence of such clarity and safeguards increases the potential for such issues.

Procedural Rules for Redress, Prosecution, and Administration of Justice in Yemeni Legislation

First: Police and Judicial Enforcement Agency Procedures in Investigation and Evidence

Collection

The Yemeni procedural system exhibits significant weaknesses and shortcomings in facilitating redress and access to justice during the investigation and evidence-gathering stages. Notably, the procedural rules fail to provide the Public Prosecution with effective mechanisms to ensure the legality and integrity of investigations and preliminary inquiries conducted by the police and other judicial enforcement agencies, particularly in the case of serious human rights violations allegedly committed by public officials and law enforcement personnel. The reliability of the Public Prosecution's investigations depends heavily on the accuracy and correctness of the investigations and evidence collection reports provided by judicial enforcement officers.

The Yemeni procedural system lacks accountability mechanisms to ensure that complaints and reports submitted to judicial officers are acted upon and included in formal records. There is no guarantee that judicial officers will immediately proceed to the scene to gather evidence, prevent its loss, or protect the crime scene from tampering. Moreover, the system fails to ensure the preservation of evidence, material traces, and seized items in their original condition. It also lacks procedures to ensure that suspects are located and arrested in a legally compliant manner and that they are not classified as fugitives or unidentified unless proper, timely investigations are conducted. Additionally, there are no mechanisms in place to verify that judicial officers have accurately recorded all findings in their evidence collection reports, nor are they required to promptly submit these reports to the Public Prosecution after signing them and ensuring their legal completeness. This step is crucial for the Public Prosecution to be able to process and investigate cases lawfully and effectively.

Additionally, the procedural rules governing arrest and custody are generally broad and do not sufficiently restrict the powers of judicial enforcement officers. Arrests without a warrant, when carried out by these officers, are not subject to a clear chain of command, making it difficult to pinpoint responsibility for unlawful arrests. Yemeni law does not mandate specific procedures for the arrest of juveniles and women nor does it contain the necessary legal protections to shield these groups from arbitrary and unlawful arrest. There are no procedural requirements mandating that police officers and judicial enforcement officers submit immediate reports to the relevant authorities explaining their use of force during an arrest and the exceptional circumstances that justified such actions.

The procedural rules for prisons also fail to define the types of violations that warrant disciplinary action against prisoners, leaving prisoners vulnerable to such penalties without cause. Moreover, in the event of a prisoner's death or illness, there are no effective

mechanisms to ensure prompt notification of the appropriate authorities and the prisoner's family.

Second: Procedures of the Public Prosecution in Deciding on Charges and Initiating Criminal Proceedings

The Yemeni procedural system mandates that prosecutors accept complaints lodged against government employees or officials for actions committed during the performance of their duties or due to their official capacity. The prosecutor is required to promptly hear the complainant's statement and those of any witnesses upon receiving the complaint or becoming aware of it, as the prosecution typically initiates investigations into criminal cases without requiring a formal complaint. However, the procedural rules concerning complaints against public officials grant the chief prosecutor sole authority to determine the seriousness of the complaint and decide whether to proceed, without any judicial oversight or review process. The investigator is also empowered to legally classify and describe the charges, a decision that influences all subsequent actions by the Public Prosecution and potentially impacts how courts will consider the criminal case.

Yemeni procedural law grants the Public Prosecution significant discretionary power in determining the outcome of justice, despite concerns about the independence of the prosecution. The Public Prosecution has the authority to issue a final dismissal of charges based on preliminary investigation reports if the crime is linked to one or more of the justifications that legally exonerate the actions of public officials. This decision effectively halts any further investigation into the charges. While the Yemeni criminal justice system allows the victim to appeal and challenge this decision, the appeal must be filed within ten days of the date of notification—a timeframe that is insufficient for the victim to adequately prepare their case.

Members of the Public Prosecution personally conduct investigations into allegations against military and police officers, as well as judicial enforcement officers, and also investigate incidents that occur in detention facilities. The prosecution has the authority to detain public officials as part of the investigation, and must immediately notify the official's department upon issuing an arrest or detention order. Additionally, the prosecution may request any government agency to provide documents and records necessary to uncover the truth, and may visit the location to review the documents if they cannot be transferred.

However, there is no specific procedure for investigating serious human rights violations allegedly committed by public employees, officials, or law enforcement personnel. There is

also no requirement that investigations be conducted immediately and swiftly, nor that the suspect be suspended from official duties during the investigation.

The authority to make decisions regarding serious crimes after an investigation has been conducted lies solely with the chief prosecutors, rather than being distributed among prosecution members and investigative judges to ensure procedural integrity. The prosecution may decide to issue a "no case to answer" ruling due to insufficient evidence, inability to identify the perpetrator, or lack of significance attributed to the case. Furthermore, the Public Prosecution has the right to issue a decision not to proceed with criminal charges against a public official if it determines that the official should be subject to disciplinary, military, or administrative penalties instead.

If the chief appellate prosecutor decides to pursue the case, an indictment is issued to refer the criminal case to the competent court. The Public Prosecution can refer fugitives from justice for trial, but cannot refer unidentified fugitives to the courts. While Yemeni law ensures that the Public Prosecution can initiate and conduct investigations against public officials and judicial enforcement officers, prosecuting them in the competent court requires authorization from the Attorney General or, in the case of judges, approval from the Supreme Judicial Council.

Observation of the procedural rules governing the handling of cases after investigation reveal that the prosecution's decision to dismiss charges for crimes committed by public officials and law enforcement officers often stems from illogical justifications. These justifications, such as determining that the case should be subject to administrative penalties or dismissing the case as insignificant, can lead to impunity, failing to distinguish between serious and non-serious offenses.

Third: Court Procedures

The Yemeni procedural system imposes restrictions on the authority of the competent court to alter the legal classification of charges presented by the Public Prosecution. The court is not allowed to independently adjudicate a crime that was not included in the indictment submitted by the prosecution, nor can it change the foundation of the case by adding new facts not mentioned in the indictment or attributing facts to individuals whose names were not included in the indictment, even if their names appeared in evidence-gathering reports or the prosecution's investigations. This restriction on the court's authority negatively impacts the pursuit of justice and inhibits the comprehensive revelation of the truth surrounding violations, including all involved parties. As a result, the prosecution,

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through the boundaries it sets for the case and the legal characterization it assigns to the crime in the indictment, effectively plays the decisive role in determining the course of justice, rather than the competent court.

In cases where the accused is a fugitive from justice, the court appoints a representative on their behalf and proceeds with the trial as if it were held in the accused's presence. The court is also empowered to order the seizure of the fugitive's assets to prevent them from being disposed of, although in practice, there is little evidence to suggest that this occurs.

Although the Yemeni procedural system upholds the principle of continuous trials through successive sessions, it provides excessively wide grounds for postponing, suspending, and interrupting proceedings in ways that undermine the principle of timely trials. The system also specifies a broad range of incidental matters that the court must first resolve before it can address the actual case, neglecting to establish reasonable timeframes for the various stages and procedures of the trial.

Key Recommendations

Regarding Legislative Reforms

- **Post-Conflict Constitution Building: Ensure that** post-conflict constitution-building includes the main principles and foundations of criminal justice based on the rule of law, the protection of human rights, and the separation of powers. This process must ensure the establishment of a genuinely independent national judiciary, which includes prohibiting any interference by the executive branch in the affairs of judicial bodies. It should also involve revoking the Minister of Justice's authority over the financial and administrative affairs of courts and public prosecutions. Additionally, the admission policy for the High Judicial Institute must be scrutinized to align with legal standards and promote national inclusivity without resorting to sectarian quotas. Judges and prosecutors should be appointed based on merit and integrity, and the Supreme Judicial Council should be formed through elections by a general assembly comprising judges, prosecutors, lawyers, and law professors from Yemeni universities. Furthermore, sufficient legal guarantees must be provided to ensure the independence of the Public Prosecution from the executive branch and to minimize the influence of the latter.
- **Human Rights Violations:** Introduce a constitutional provision that explicitly prohibits all human rights violations under any circumstances, including exceptional situations and periods of political instability.

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- **Reorganization of Criminal Courts:** Reform the criminal court system through legislation by restricting its jurisdiction to state security cases, providing adequate legal safeguards to ensure the proper administration of justice in its procedures and rulings, and protecting the rights of victims, witnesses, and experts.
- **Specialized Human Rights Courts:** Establish specialized public prosecutions and courts dedicated to investigating and adjudicating human rights violations. These bodies should have jurisdiction over all violations committed by public officials, law enforcement personnel, and individuals affiliated with non-state actors.
- **International Human Rights Instruments:** Ratify international human rights treaties and instruments approved by previous governments and bring human rights issues under the jurisdiction of national courts. The judiciary should comply with international human rights law and humanitarian law standards and be guided by best practices in facilitating access to justice and prosecuting perpetrators.
- **Precise Definitions of Human Rights Violations:** Develop precise definitions of serious human rights violations based on the nature of the criminal act. These definitions should encompass, without exception, all crimes classified as such under international treaties and conventions, including crimes related to detention and deprivation of liberty in any form.
- **Distinction Between Human Rights Violations and Other Crimes:** Differentiate between serious violations of fundamental human rights and other criminal acts. Rules concerning statutes of limitations, the right to file lawsuits, the principle of non bis in idem (no double jeopardy), and the prohibition of retroactive application should not apply to serious violations of fundamental human rights.
- **Mandatory Compensation for Victims:** Amend the Criminal Procedure Code to require courts to include in their criminal convictions a mandate for the perpetrator to pay compensation to the victim that appropriately reflects the material and moral harm caused by the crime.
- **Clarification of Law Enforcement Powers:** Establish clear legal boundaries for the jurisdiction and powers of judicial enforcement officers to ensure effective accountability. The supervisory and oversight role of the Public Prosecution—beyond just the Attorney General—over the actions and potential abuses of these officers should be strengthened. Additionally, judicial enforcement officers should be administratively subordinate to the Public Prosecution in their investigative and

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evidence-gathering activities in criminal cases.

- **Witness Protection and Statements Obtained Under Duress:** Address legislative gaps related to the protection of witnesses from intimidation or harm, and explicitly invalidate any statements obtained through torture, ensuring that this invalidity extends to all subsequent legal proceedings.
- **Court Authority to Reclassify Charges:** Grant courts the authority to modify the legal classification of crimes in the indictment submitted by the Public Prosecution, including through the addition of new facts or individuals to the charges. This would enable the judicial process to achieve its intended outcomes, by empowering the judge to intervene where necessary to uncover the truth and deliver proper justice.
- **Amending Inconsistent Legal Provisions:** Amend legal provisions that are inconsistent with the constitution and other legal texts, such as Article 38 of the Criminal Procedure Code, which contradicts the principle of non-prescription for serious crimes as established in the constitution.
- **Reform of Police Law:** Amend the current Police Authority Law by incorporating specific provisions from Law No. (24) of 1991 regarding the duties and powers of the police.

Institutional Measures and Strategies for Non-Recurrence

- **Comprehensive Post-Conflict Review:** Following the end of the conflict, undertake a comprehensive review process to assess judicial and prosecutorial appointments made by all parties involved in the conflict across the country. Appointees' files should be examined to verify their credentials and qualifications according to standards set by an independent national body established for this purpose. This body should also be empowered to address grievances related to judicial transfers, promotions, and other related issues. Additionally, it should review the legality of judicial and administrative directives issued by the Public Prosecution, the Ministry of Justice, and the Judicial Inspection Authority during the conflict.
- **Establishing an Independent National Preventive Mechanism:** Establish an independent national preventive mechanism to protect individuals deprived of their liberty from torture and other forms of cruel and degrading treatment. This mechanism should have access to comprehensive databases on prisoners and be granted the right to direct communication with them. It should also take necessary

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protective measures, including undertaking regular prison visits, conducting interviews with prisoners, and addressing reports of torture or mistreatment.

- **Restructuring Security Institutions:** Restructure security institutions that systematically violated human rights during the conflict or became notorious for repeated violations of legal procedures. This includes changing their names, leadership, operational rules, and governance to eliminate the institutional and organizational factors that led to or facilitated these violations. The restructuring should also aim to restore public trust in these institutions as reliable public entities.
- **Creating Employee Records in Security and Justice Sectors:** Create special records for employees in the police, armed forces, and all other justice and security institutions. These records should contain comprehensive data on employees, their professional conduct, and any disciplinary actions taken against them, to help in assessing their suitability for public service.
- **Exclusion of Certain Security Officials:** Undertake vetting of employee records after the conflict and exclude security and military officials from official positions if there are reasonable grounds to believe they were involved in human rights violations, issued orders leading to such violations, or neglected to act within their legal responsibilities to prevent such violations. This should also apply to security sector personnel known for their unethical professional behavior and their tendency to disregard the law during the conflict, particularly where there is a likelihood they were involved in acts of torture, killing, or enforced disappearances that are difficult to legally prove.
- **Governance and Oversight of the Security Sector:** Strengthen governance, oversight, and accountability mechanisms within the security sector, incorporating respect for human rights as a criterion for the promotion of police officers and public prosecutors.
- **Digitalization and Automation of Legal Processes:** Update, digitize, and automate legal procedures and documents, starting from arrest orders, evidence collection, records, attachments, and documents, through to release or referral. This should include the public prosecution's and courts' operations, creating a fully electronic case documentation and data system to facilitate prosecutors' and judges' work, accelerate proceedings, and expedite case resolutions.
- **Gradual and Secure Disbanding of Non-Official Security Forces:** Implement a gradual and secure disbanding of non-official security forces and demobilize or reintegrate their personnel into corresponding official structures in a manner consistent with

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the principles of justice and guarantees of non-recurrence of previous violations. This process should be part of a broader strategic vision for institutional reform and post-conflict transitional justice, which should include reviewing employment standards in public institutions.

- **Promotion of Human Rights Culture:** Promote human rights awareness among police and security sector personnel, emphasizing procedures that ensure respect for the rights and needs of victims in the performance of their duties, particularly considering the needs of vulnerable groups such as women and children.
- **Internal Oversight and Disciplinary Measures:** Strengthen internal oversight mechanisms, accountability measures, and disciplinary actions within security and justice sector institutions.
- **Victims' Rights Awareness Programs:** Organize targeted awareness programs to educate victims about their rights to access justice mechanisms, including understanding the competencies of justice bodies, their procedures, and how to access them.
- **National Mechanisms for Torture Monitoring:** Establish national mechanisms for the systematic monitoring of all cases of torture, along with a national fund to provide legal and financial assistance to victims of human rights violations.
- **Adequate Resource Allocation:** Allocate sufficient resources to ensure that justice-related agencies can effectively carry out their legal duties.
- **Prompt Payment of Salaries Post-Conflict:** Immediately after the conflict, ensure the prompt payment of overdue salaries to judges, their assistants, prosecutors, and all employees in the security and justice sectors. Their financial and employment conditions should be addressed, including issues related to incentives, bonuses, and promotions.

Procedural Rules

- **Regulating the Detention Process:** Establish strict controls over detention procedures, limiting the power to summon, arrest, and detain individuals to the police, while minimizing the exceptions to this rule as much as possible. Police powers in matters of arrest and detention should be further restricted by requiring subsequent actions such as the prompt submission of reports to the Public Prosecution immediately after the arrest or detention occurs. Detention procedures should be subject to review by the

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Public Prosecution, with regular reassessments of the need for continued detention.

- **Streamlining Complaint and Grievance Mechanisms:** Simplify the process for submitting complaints and grievances to the Public Prosecution and strengthen rapid response mechanisms to address them effectively.
- **Expedited Referral of Evidence Collection Reports:** Mandate that judicial enforcement officers quickly forward evidence collection reports to the Public Prosecution without delay in cases involving human rights violations.
- **Searching for Illegal Detention Centers:** Require the Public Prosecution to proactively search for illegal detention centers, and render it responsible for opening investigations and pursuing legal actions against those responsible for illegal detention, instead of merely releasing detainees or transferring them to legal facilities.
- **Independent Oversight of Detention Facilities:** Ensure that the Public Prosecution exercises genuine, effective, and independent oversight over all detention facilities without exception.
- **Suspension of Suspected Public Officials:** Suspend public officials suspected of committing human rights violations from their official duties while they are under investigation and trial.
- **Direct Prosecution of Human Rights Violations:** Grant the Public Prosecution the authority to directly prosecute cases of human rights violations committed by judicial enforcement officers, public officials, and prosecutors without prior permission, with the obligation only to notify the relevant entity of the charges and actions taken against their staff member/s.
- **Prohibition of Case Closure for Unknown Perpetrators:** Prohibit the closure of cases involving serious human rights violations due to the inability to identify the perpetrator through evidence collection reports.
- **Legal Sanctions for Non-Compliance:** Prohibit individuals who refuse to present themselves before the Public Prosecution or the courts from accessing certain civil rights, such as conducting financial transactions or obtaining official documents. Additionally, enforce the seizure of their assets.
- **Limiting Justifications for Legal Immunity:** Ensure that the justifications for exoneration associated with crimes committed by public officials or law enforcement

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personnel do not preclude prosecution and conviction. The effect of such justifications should be limited to reducing the sentence, not exempting the individual from accountability.

Recommendations to the International Community

- **Reevaluate UN Standards on Transitional Justice Support:** Reconsider certain United Nations standards related to supporting transitional justice worldwide, particularly the standard of withholding assistance from courts that permit the death penalty. This is especially relevant in post-conflict countries that urgently need support to rebuild the justice sector and establish peace.
- **Promote Specialized Legal Studies:** Encourage the production of specialized legal studies on criminal justice in Yemen and the legal remedies provided by the Yemeni criminal procedure system for vulnerable groups (children, women, individuals with special needs, and marginalized groups) and assess the gaps and effectiveness of these remedies in achieving justice for victims of human rights violations.
- **Research Informal Remedies in Local Contexts:** Conduct in-depth studies on the role of informal (customary) remedies in local Yemeni communities, analyzing the strengths, weaknesses and potential contribution of these remedies to achieving transitional justice at the national level while conforming with international standards.
- **Support Civil Society Institutions:** Provide support to civil society organizations dedicated to legal awareness and the promotion of judicial independence.

Introduction

Requirements for Institutional Reform in the Justice and Security Sector

Institutional reform holds vital importance in stabilizing post-conflict societies, deepening security and peace, and healing the deep societal wounds left by war. It serves as the community's optimal means to renew its legislation, restore civil trust in its indispensable institutions, repair their societal legitimacy, subject them to the rule of law, and ensure they are continuously held accountable and under popular oversight. Moreover, it aims to embed standards of respect for human rights and the preservation of human dignity within their structures, regulations, administrative systems, and executive procedures. This is to ensure that, unlike during the conflict, these institutions become the tools of society for guaranteeing non-repetition of past violations, achieving justice, preventing future systemic abuses, and combating impunity.

However, institutional reform in post-conflict societies is always fraught with difficulties and challenges, which vary in how communities can confront and address them. These challenges generally hinge on two factors: the presence of genuine political will among governments and competing elites, and the community's serious and ongoing commitment to learning from the lessons of the past.

For a country like Yemen, which remains in a state of armed conflict despite a decline in its intensity, considering approaches to institutional reform presents a formidable challenge amid an environment dominated by uncertainty and the risk of renewed violence. There is currently no peace agreement or official ceasefire that lays the groundwork for a political transition with a reasonable level of consensus. Moreover, there is no authority with a legal mandate that is comprehensive and geographically encompassing the entire country, which could take on the responsibility of enabling promising institutional reforms and transitional justice.

Additionally, there are no established legislations in the field of transitional justice, nor are there any prior experiences that can be relied upon for reparations, truth-seeking, or confronting institutional denial of the systematic violations that occurred in the past. On top of this, the warring parties continue to sharpen their weapons with pride, threatening further rounds of violence and vowing to continue fighting in every direction. The security and justice sector institutions remain divided and are being used by the conflicting parties to pursue rivals and persecute opponents under the guise of justice. The conflict continues to fill people's lives with unbearable repression and misery, constantly generating blatant violations that undermine their rights, dignity, security, and lives.

Despite all of this, such a context should not exempt civil society from considering institutional reform as an indispensable lifeline for the future. This study is a call for fair

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justice, which is longed for by thousands of victims and their families across various regions of Yemen. Justice cannot be achieved without reforming legislation and institutions, correcting official and unofficial practices and behaviors, and activating accountability for anything that affects citizens' rights, freedoms, and dignity. Therefore, this study will focus on these three levels—legislation, institutions, and practices—in its analysis of the current state and challenges of justice in Yemen, aiming to identify the needs and requirements for justice and institutional reform that guarantee non-repetition of violations and address impunity.

Problem Statement

Requirements for Institutional Reform in the Justice and Security Sector

What does effective and applicable institutional reform in the justice and security sectors in Yemen require, considering the legal, structural, and administrative imbalances within judicial institutions and security apparatuses comprising these sectors, the legacy of human rights violations, and the ongoing abuses by law enforcement and other security entities linked to conflict parties? Additionally, how can the judicial bodies' failure to hold perpetrators accountable and ensure non-impunity be addressed?

What challenges are anticipated in implementing institutional reform that aligns with relevant international standards after the conflict ends? And what are the ways to enhance future prospects for addressing these challenges in a manner that meets Yemenis' need for comprehensive and constructive transitional justice?

Study Objectives

Main Objective:

The primary objective of this study is to analyze the current institutional and legal environment of the justice and security sectors. This includes identifying the structural, legal, and procedural imbalances that have contributed to violations, lack of accountability, and impunity. Additionally, the study aims to assess the capabilities of national justice and security institutions in effective investigation and prosecution, and to identify their needs, ultimately providing realistic insights into the requirements for institutional reform and ways to address its challenges after the conflict ends.

Sub-Objectives:

1. **Review of National Legislation:** Examine national legislation related to criminalizing human rights violations and assess its alignment with relevant international and regional laws and standards.
2. **Judicial Remedies Analysis:** Analyze the available judicial remedies for victims of human rights violations within national legal frameworks and legislation.
3. **Commitment Evaluation:** Evaluate the extent to which justice and security sector institutions adhere to the rule of law, human rights protection standards, and procedural rules while performing their duties.
4. **Capacity Analysis:** Analyze the current national capacities of official justice and security sector institutions and estimate the diverse future needs to enhance their ability to operate independently and with integrity.
5. **Problem Diagnosis:** Diagnose the real-world issues facing official justice and security sector institutions, understand the changes they have undergone due to the conflict, and assess the impact on their structures and roles.
6. **Challenges Anticipation:** Forecast both anticipated and unforeseen challenges that hinder the aspirations for institutional reform.

Study Scope

Temporal Scope:

The study covers the duration of the ongoing armed conflict from September 2014 to 2023.

Geographical Scope:

The study encompasses the governorates of Sana'a, Aden, Al Hudaydah, and Hadhramaut, these are governorates that have exclusive seats for criminal courts and prosecutions as per the Supreme Judicial Council's Decision No. 131 of 2009 regarding the establishment and organization of specialized criminal courts. Each criminal court in these four governorates has jurisdiction over several other Yemeni governorates. In addition to these four governorates the study covered governorates of: Taiz, Marib, Abyan, Hajjah, Lahj, Dhamar, Shabwah, Al-Bayda, and Amran.

Subject Scope:

Institutional Aspects of Human Rights Violations: This study examines the institutional aspects of serious human rights violations in Yemen since the onset of the armed conflict in September 2014. It focuses on the structural, legal, and procedural imbalances in the Yemeni judicial system and its justice-related institutions, as well as security agencies. The study explores how these imbalances, alongside other conflict-induced factors, have contributed to severe human rights violations by law enforcement agencies and unofficial security entities affiliated with different parties to the conflict. It also examines how these practices have persisted due to entrenched impunity.

Grave human rights violations committed by official law enforcement agencies arise during the execution of their legal or de facto duties. These violations may also occur outside the scope of their defined legal mandates. This situation is particularly relevant for entities that either lack legitimate legal standing and are affiliated with various parties to the conflict or for legal entities that have expanded their activities beyond their lawful jurisdiction during the conflict period. Grave human rights violations refer to those actions deemed by international human rights law and international humanitarian law as crimes requiring severe penalties commensurate with their severity and level of danger. The study addresses four of these violations.

Study Methodology

Requirements for Institutional Reform in the Justice and Security Sector

This study relied on qualitative information gathered from the field in the form of real-life cases and significant examples of severe human rights violations that occurred during the conflict period, perpetrated by public officials, civil servants, law enforcement personnel, and individuals affiliated with non-state actors. The tools and sources used to gather qualitative information were designed to be complementary and diverse to address the multiple facets of the issues and concerns covered in the study, which could not be fully met using a single tool or information source.

The methods and tools used in the study included: information from victims, where the documentation records of human rights violations from "Mwatana for Human Rights" for the period 2014-2023 were reviewed. A suitable number of cases were selected based on criteria that met the study's objectives, such as cases where the victim or their relatives or lawyer had filed a complaint with an official body about the violation. This enabled the study to assess the complaint procedures, how relevant authorities handled them, and the available mechanisms for accessing justice and pursuing remedies through practical cases.

To maximize the positive impact of this methodological approach, it was necessary for some cases to conduct supplementary interviews to complete the information or clarify procedural aspects not covered in the original case documentation.

Information from Official Records and Litigation Documents: This included sufficient examples of the procedures taken regarding reports and criminal cases related to severe human rights violations committed by law enforcement officers, which were officially reported by the victims, their families, or their lawyers, or for which criminal cases were filed in courts. This information constituted an essential part of the field reports prepared by field lawyers in the provinces covered by the study. These records were accessed through lawful means as guaranteed by national law, providing the study with the appropriate capability to track the judicial bodies' responses to the reports and criminal cases during the investigation and litigation phases. It also allowed for an evaluation of the practical roles of these bodies in prosecuting offenders, administering justice, and combating impunity.

Information from Local Civil Society: A number of local civil society actors were involved as an important field source to expand the study's scope of information regarding civil society's experiences with security and justice sector institutions when following up on cases of severe violations against victims in prosecutors' offices and courts, as well as their practical experiences with the most frequently violated procedural rules by those institutions. In this context, four interviews were conducted with civil society organizations involved in documenting violations, following up on cases of abductees, and monitoring the judiciary

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sector. Some of these interviews were conducted over the phone and included the Abductees Mothers Association in Sana'a, Aden, and Marib; the Committee for the Forcibly Disappeared in Taiz; as well as representatives of the National Commission for the Investigation of Alleged Violations of Human Rights in Aden and Marib, an official justice body established by presidential decree in 2012.

Focus Group Discussions: These included judges, prosecutors, legal professors, security sector experts, and lawyers, including lawyers representing victims of violations, as well as representatives from civil society organizations (a list of participants is provided in the appendix).

**Section one: The
general context and
the state of justice and
security sectors**

First: General Context of the Conflict: A Brief Background

The armed conflict in Yemen is entering its tenth year, with a fragile de-escalation maintained across various battlefronts throughout the country. About three years ago, a temporary humanitarian truce brokered by the United Nations (UN) led to a relative calm that has managed to endure despite a complex environment fraught with internal tensions and regional and international crises. This truce was accompanied by limited and wavering diplomatic efforts led by the UN and regional mediators aiming to achieve a political settlement for the conflict. However, the outcomes remain uncertain and are at risk of collapse at any moment.

The conflict between the internationally recognized government (IRG) and the Ansar Allah (Houthi) group erupted in September 2014 when the Houthis led their forces to militarily seize the Yemeni capital, Sana'a. This followed political consultations that failed to produce a more inclusive and participatory framework for power-sharing and wealth distribution. These consultations did not result in a genuine consensus on key contentious issues, particularly state-building, the number of regions constituting the state, and the form of government.

Following the Houthis' takeover of Sana'a and other cities in northern Yemen, and their advance towards southern governorates to seize the city of Aden, Saudi Arabia, in coordination with the United Arab Emirates (UAE), led a military coalition of nine Arab and Islamic countries. This coalition succeeded in expelling the Houthis from Aden and other southern areas within a few weeks.

The Saudi/UAE-led coalition continued its air campaigns against the Ansar Allah (Houthi) group but lacked a clear strategy to militarily defeat the Houthis beyond the geographical scope of Aden and some southern and coastal areas of strategic importance, such as the Bab al-Mandab Strait. Over time, the Ansar Allah (Houthi) group consolidated their control over Sana'a, Al Hudaydah (on the Red Sea), parts of Taiz, and other governorates in northern and eastern Yemen. They began launching medium- and long-range missile and drone attacks on vital targets deep within Saudi territory, showing little interest in prioritizing peace and ending the conflict through comprehensive negotiations with other Yemeni parties under UN auspices.

On the other hand, the internationally recognized Yemeni government, officially supported by the Saudi/UAE-led coalition, faced a military rebellion led by STC, backed by the UAE. In August 2019, STC forces expelled government forces from Aden and expanded their

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influence in many southern regions. The influence of the IRG steadily diminished due to the proliferation of local military actors within its controlled areas. In April 2022, consultations were held in Riyadh to restructure the IRG by integrating all military and political actors within the government's control areas into a unified authority structure. These consultations resulted in the formation of an eight-member "Presidential Leadership Council," representing these actors.

The Presidential Leadership Council adopted an encouraging political stance regarding resolving the conflict through negotiations with the Ansar Allah (Houthi) group, eschewing military options. However, it failed to establish itself as a reliable and effective partner in potential negotiations due to its lack of a unified vision or common agenda for peace, stemming from its fragile composition and the discord among its military and political components.

Yemen has a substantial legacy of severe human rights and international humanitarian law violations committed during past internal conflicts, cycles of violence, and periods of political instability. The collective memory of ordinary Yemenis and political actors alike retains the names of hundreds of individuals—ordinary citizens, politicians, prominent social and tribal figures—who experienced or were affected by more than six decades of internal strife and violence. The fates of these individuals remain unknown, despite the fact that some of their contemporaries, who held legal responsibilities within security, military, and law enforcement agencies, are still alive today.

The culture of impunity and lack of accountability for past human rights violations is pervasive. Families of victims who were forcibly disappeared or extrajudicially killed have had to suppress their emotions, neglect their rights, and rely on patience due to their lack of trust in the existing justice system. Throughout Yemen's history, including after the establishment of a democratic state following the unification in May 1990, no authority has undertaken institutional reforms from a transitional justice perspective to prevent the recurrence of past human rights and international humanitarian law violations. Nor has any authority declared policies or initiatives aimed at combating impunity.

Since 2011, particularly during the popular protests against the regime of former President Ali Abdullah Saleh and the rise of civil, human rights, and youth movements, transitional justice gained significant attention among Yemeni opposition political elites, intellectuals, and activists. This interest intensified as the previous regime continued to commit severe human rights violations in its efforts to suppress protests and quash the associated human rights movement, which loudly demanded accountability. These movements managed to

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document a substantial portion of ongoing violations and build effective partnerships with the international community for monitoring and documenting abuses and sharing information about victims and perpetrators. Consequently, any new authority in that context found it difficult to overlook or bypass the issue of transitional justice.

Instead of continuing repression and violations with no clear path to retaining power, the former regime sought to impose immunity for its key figures, integrating them into the framework of existing political transition arrangements. In 2012, the controversial immunity law was enacted, which did not include political exclusion. Under this law, former President Ali Abdullah Saleh received comprehensive amnesty, and all those who served under him during his rule were granted immunity from prosecution for all political crimes, except terrorist acts. The United Nations High Commissioner for Human Rights (OHCHR) considered this law to "effectively prevent accountability" and to be non-compliant with international human rights law, which prohibits granting immunity to those responsible for serious human rights violations.¹

In September 2012, the new government quickly established a commission to investigate allegations of human rights violations committed during the 2011 protests. That same year, it issued a decree to release all detainees held for participating in the protests. In 2013, the government approved several international human rights instruments and convened the first Human Rights Conference in December 2012. Additionally, in 2012, a committee was formed to draft the Transitional Justice and National Reconciliation Law. In November 2013, the parliament passed amendments to the Judicial Authority Law, transferring the supervisory powers of the Minister of Justice over the judiciary to the Supreme Judicial Council.

Nevertheless, the government's response to popular demands for transitional justice remained minimal and lacked practical measures. Many initiatives ended without achieving notable results in establishing justice and redressing victims. For instance, the parliament failed to pass the Transitional Justice and National Reconciliation Law after it was presented in April 2014. The independence of the National Commission to Investigate Alleged Violations to Human Rights since 2011 was not assured², and the UN High Commissioner for Human Rights report described the judicial investigations into human rights violations during the

1 Office of the United Nations High Commissioner for Human Rights [OHCHR], Yemen Periodic Report, November 2013.

2 Human Rights Council, Situation of human rights in Yemen, including violations and abuses committed since September 2014, August 2018, p. 18.

2011 protests as selective and lacking credibility.³

Despite parliamentary amendments to the Judicial Authority Law aimed at enhancing judicial independence, judges organized a widespread strike in March 2014 to demand comprehensive judicial reforms and protest against the assaults they faced.⁴ Additionally, international interest in transitional justice in Yemen declined after the United Nations Human Rights Council rejected the extension of the mandate of the UN Group of Eminent International and Regional Experts on Yemen, established by the High Commissioner in December 2017, to investigate human rights violations committed by conflict parties.

3 Ibid.

4 Judges were subjected to a total of 63 attacks in 2013, and 58 attacks in the first quarter of 2014, including "death threats, armed attacks inside courtrooms, kidnappings, and physical and verbal assault." Human Rights Council, Situation of human rights in Yemen, Report of the Office of the United Nations High Commissioner for Human Rights [OHCHR], August 2014, p. 13.

Second: General Condition of the Justice and Security Sectors in the Context of the Current Conflict

1- Politically Divided Judiciary

The political division in the country has extended to the judiciary, affecting all its core official institutions without exception. This has manifested in both a vertical binary split and numerous horizontal fractures at the local level of justice institutions. Essentially, the two main conflict parties (the internationally recognized government (IRG) and the Ansar Allah (Houthi) group) have established independent judicial entities, each with its own Supreme Judicial Council, High Court, Judicial Inspection Authority, Public Prosecution, as well as ordinary and specialized courts.

Primary and appellate courts, as well as public prosecutions including specialized criminal prosecutions, are distributed among the local conflict parties according to each party's field control lines. In practice, any party controlling a specific geographic area (a governorate or district based on the country's administrative division) exercises jurisdiction over the courts and prosecutions within that area or acquires them as part of its conflict gains. The controlling party quickly begins appointing heads of courts and prosecutions or forces them to follow its directives, often disregarding the independence of the judiciary.

The judicial division has adversely impacted daily life for residents, who now lack formal means to manage disputes and purify and regulate community relations safely. These daily hardships are perceived by residents as more pressing than the political symbolism and general legal implications of the division of the judiciary at the national level. While Yemen's justice system has been problematic for decades prior to the conflict, access to justice and judicial settlement in its simplest forms has become elusive due to the judicial split and fragmentation of its institutions. For instance, the concentration of court buildings or judicial complexes under one party's control has created a judicial vacuum in the areas controlled by the opposing party. In other cases, the implementation of court judgments related to property and agricultural land has faltered because the execution sites are under the control of the opposing party. Ordinary litigants have either been unable to travel to follow their cases in court or have avoided doing so out of fear of political retaliation from their adversaries in the other party's areas. Additionally, the presence of two primary courts with the same territorial jurisdiction but under the control of different conflict parties can result in contradictory judgments for the same case. Some parties to the conflict have expanded the jurisdiction of courts within their control to cover areas of the opposing party to demonstrate political dominance. For example, in Taiz city, the Supreme Judicial Council in Sana'a extended the

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jurisdiction of Al-Taiziyah Court to include the city's three districts (Salah, Al-Mudhafar, and Al-Qahirah), which fall within the internationally recognized government's geographical area.

Specific patterns of complex community impacts of judicial division, with significant implications for justice and prosecution of perpetrators, can be observed. For instance, a report from the Taiz governorate team of lawyers illustrates how judicial division has facilitated impunity for some criminals and human rights violators who have fled to areas controlled by the opposing party. Criminals can escape to territories controlled by the other party, and it is widely believed that individuals who committed severe human rights violations have evaded justice. One notable case is Ghazwan Al-Mekhlafi, a leader of a notorious small armed group in Taiz. For a period, Ghazwan enjoyed immunity from accountability in areas controlled by the IRG despite committing severe violations against citizens, acts of thuggery, murder, and home invasions. In late 2023, Ghazwan's situation changed unexpectedly, and he became a fugitive sought by the government's security agencies. However, he managed to escape and sought refuge in areas controlled by the Ansar Allah (Houthi) group north of Taiz, where he was initially welcomed. He soon met an unclear fate under circumstances that remain shrouded in mystery.

2- Judicial Laws Nearly Disabled and Undergoing Change

The legal framework related to the judiciary has undergone limited modifications during the protracted conflict lasting over nine years. The Ansar Allah (Houthi) group has uniquely introduced unilateral changes to the Civil Procedures Law and the Court Fees Law, in addition to enacting new laws that did not previously exist, imposed through unconstitutional mechanisms. In a comprehensive and troubling development for many judicial circles, the Ansar Allah (Houthi) group established a Judicial Reforms Committee tasked with preparing an "Emergency Path Matrix" for reforms.

Judicial circulars and periodic reports issued by the Judicial Inspection Authority, the Office of the Attorney General, and the Ministry of Justice in the areas controlled by the two main conflict parties (the internationally recognized government (IRG) and the Ansar Allah (Houthi) group) are a primary source of destabilization for Yemen's judicial legislation system and adversely affect justice. While some of these circulars are routine, aimed at facilitating judicial operations and simplifying procedural matters under highly specific and exceptional circumstances, others involve restrictions or obstructions to clear legal provisions or create new rules that contradict existing laws. Such as, the instructions regarding preventing accused of crimes of aiding the enemy from submitting requests for sentence mitigation or release requests even if the initial sentence has been served, in the event that the

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prosecution appeals the verdict. Instructions have been issued to exclude these cases from being included. In practice, these circulars often hold more weight than the laws themselves, with violations leading to severe penalties for judges and prosecutors that are not otherwise mandated by the law. Consequently, the exceptions and violations outlined in these circulars are enforced more rigorously than correct and familiar legal standards.

Since judicial and administrative circulars are issued by divided judicial institutions, some of them prioritize political agendas over the abstract goal of justice. For example, Circular No. 22 of 2017, issued by the Ministry of Justice in Sana'a, directed courts and prosecutions to facilitate the reception of lawsuits and complaints from victims of the "Aggression Coalition" (the Saudi/UAE-led coalition supporting legitimate government of Yemen) without mentioning victims of human rights violations committed by Yemeni conflict parties, including the Ansar Allah (Houthi) group. Another circular from the Ministry of Justice in Sana'a (Circular No. 1 of 2018) exempted plaintiffs in cases related to aggression from court fees to ease their ability to file lawsuits. In Marib, a change in judicial regulations allowed judges to handle cases already under consideration by other judges without considering the possibility that these cases may have reached advanced stages of litigation, in clear violation of the law.⁵ It has practically led to the prolongation of litigation in some cases.

3- Expansion of Judicial Enforcement Authority

Legal and procedural provisions related to human rights, especially those concerning arrest procedures, detention periods, and places of detention, as well as the right to access case files, are often disregarded. When incidents involve political aspects or public security, the disregard for the law increases significantly, making violations a common practice among a broad spectrum of entities and individuals operating under the loosely defined term of Judicial enforcement authority. Most participants in a focus group discussion conducted for this study agreed that a fundamental flaw in Yemen's justice system starts with judicial enforcement officers.⁶

All conflict parties, without exception, have granted Judicial enforcement authority to unlawful entities under their control, expanding Judicial enforcement powers without regard to legal provisions that restrict such authority to entities designated by law.⁷ In practice,

5 Field report by the Legal Support team in Marib.

6 Second Focus Group Discussion, "Criminal Accountability of Public Officials for Serious Human Rights Violations and Guarantees of Non-Impunity in Yemeni Legislation," Mwatana for Human Rights, Sana'a, February 1, 2024.

7 Criminal Procedure Law, article 84.

this concept now includes military units, unofficial security agencies, socially influential individuals, and political loyalists. In some governorates, such as Al-Bayda, authorities have granted Judicial enforcement powers to entities not specified by law, such as the State Land and Property Office and the Tax Office. Judicial enforcement officers there intervene “in all types of cases and disputes, whether security-related, civil, or even personal family matters, exceeding their defined role of maintaining security, preventing crime, handling criminal security cases, and conducting investigations”.⁸

In Taiz, military committees and nonofficial security checkpoints handle citizen complaints, summon the accused, and resolve criminal disputes through customary methods.⁹ In Aden, the STC has empowered certain sectors of the security belt to conduct raids, make arrests, detain, investigate, collect evidence, and refer cases to specialized criminal prosecution authorities without regard to the law. Frequently, Judicial enforcement authorities obstruct the enforcement of court and prosecution orders for the release of prisoners who have been acquitted or whose sentences have been served. In other cases, judicial enforcement officers issue orders to Judges to release detainees involved in certain cases, often pursuing their own interests. Additionally, they sometimes remove cases from the courts to resolve them in tribal councils using mechanisms that do not ensure justice.

4- Dominant Informal Structure

In May 2018, the Ansar Allah (Houthi) group issued a decision to reorganize the Complaints Handling Authority and establish its branches in the governorates under their control. This authority is responsible for receiving complaints from ordinary citizens against influential, wealthy, and prominent individuals, forwarding them to official bodies for resolution, and ensuring justice and redress. Originally established as part of the President’s Office by Republican Decree No. 9 of 2011, before the outbreak of armed conflict.

Due to its lack of independence and transparency, the Complaints Handling Authority fails to effectively address victim grievances or provide compensation. Influential figures have their own means of silencing victims, often resulting in cases being resolved through customary ways that do not adequately address victims’ needs.

One of the most controversial informal structures in the areas controlled by the Ansar Allah (Houthi) group is the “Supreme Judicial System,” which emerged in late 2020 without

8 Field report by the Legal Support Team in Al-Bayda.

9 Field report by the Legal Support Team in Taiz (Al-Hawban).

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an official founding decision. Chaired by Mohammad Ali al-Houthi, a member of the Supreme Political Council, this system includes sub-coordinating committees at the governorate level under Ansar Allah (Houthi) group control. Its composition includes judges, security leaders, social and tribal dignitaries, religious scholars, and local authority members. It encompasses all judicial and security institutions within its geographic scope.

The "Supreme Judicial System" performs controversial interventionist roles in judicial matters, undermining judicial independence as it lacks constitutional support. It effectively oversees the Supreme Judicial Council, carrying out inspections and monitoring of judges and prosecutors, investigating their activities, receiving citizen complaints, and reviewing court rulings. Its primary focus is on property and endowment cases, and it appoints and dismisses legal notaries responsible for drafting and recording land sale and purchase contracts, as well as financial and personal transactions.

Furthermore, the Ansar Allah (Houthi) group has expanded the role of judicial custody, using it as a tool to seize and appropriate the assets of political adversaries. Legally, judicial custody is intended to preserve private property and real estate under dispute for the purpose of preserving and managing it well, and returning it, along with its yield if any, to whomever the judiciary specifies, and a competent court must assign a judicial custodian, and the custodian may not act in the management operations except with the permission of the competent judge. However, in practice, disputing parties, particularly the Ansar Allah (Houthi) group, do not adhere to these legal requirements.

5- Expansion of Military Court Jurisdictions

The authority of military courts has expanded to include the prosecution of civilians on dubious charges. In Marib, Hafidh Mutair, a Yemeni writer and journalist, has been subjected to trial by a military court for several years on issues related to freedom of expression. In the case of Abdulmalik al-Sanabani, a young Yemeni man who was killed by armed men at a military checkpoint operated by the STC after returning from the United States, the military prosecutor's office took over the case. Despite the matter falling under the jurisdiction of the criminal prosecutor's office, as per a memorandum issued by the Attorney General in December 2021, the military court proceeded with the case and issued judgments.

6- Intermittent Inactivity of the Criminal Justice System

At the onset of the conflict, the operation of courts and prosecution offices effectively ceased in most parts of the country, with the irregular functioning of the judicial system persisting for years in many areas. The duration of complete or partial cessation varied from

region to region, influenced by the dynamics of military operations and security conditions. In Taiz, prosecution offices only resumed their activities at the beginning of 2018,¹⁰ while in Al-Bayda, operations remained halted until the beginning of the same year.¹¹ In the coastal districts of Al-Hudaydah (Al-Khokha, Hays, Al-Durayhimi, Al-Tuhayat), controlled by the Joint Forces, courts and prosecution offices remained closed until the end of 2020. The Hays Primary Court resumed operations with a single judge, covering a wide jurisdiction that included the districts of Hays and Al-Khokha, as well as areas belonging to the Maqbanah District in Taiz Governorate. By the end of 2023, the Hays Court had resumed full operations after a long hiatus.¹²

Furthermore, arbitrary transfers of some judges and prosecutors caused the judicial process to halt temporarily in governorates like Hajjah.¹³ Typically, these rotations were not followed by measures to properly accommodate the new positions, leaving the judges and prosecutors without adequate support or access to their new workplaces.

Strikes by judges demanding salary payments also led to the suspension of court and prosecution activities for various durations. In governorates where judges' salaries were not interrupted, some strikes for incentives and allowances partially disrupted court operations for varying periods. Meanwhile, in certain areas, arbitration councils were established to resolve disputes among citizens. Military committees and security checkpoints received complaints from citizens, summoned the accused, and intervened in resolving conflicts through customary methods.

7- Security Breakdown and Lack of Protection for the Judiciary

Security breakdowns have significantly hindered the operations of courts and prosecution offices in areas where military activity has subsided or gradually receded. In many regions, official security forces have failed to ensure the safe conduct of court sessions and provide physical protection for judges and prosecutors.

In late December 2023, a person murdered a defendant inside the defendant's cage during a court session in front of the judge, the prosecutor, and the accompanying guards, representing a blatant violation of judicial sanctity. Due to unreliable security conditions, several judges and prosecutors have chosen to leave their workplaces out of concern for

10 Field report by the Legal Support Team in Taiz.

11 Field report by the Legal Support Team in Al-Bayda.

12 Field report by the Legal Support Team in Al-Hudaydah.

13 Field report by the Legal Support Team in Hajjah.

their personal safety. For instance, in Abyan, a deputy prosecutor decided to relocate to another governorate after being ambushed, having his car stolen by unknown assailants, and being threatened with having his house bombed.¹⁴

Most courts and prosecution offices in Abyan's districts continue to operate from the provincial capital complex in Ataq, with the exception of the prosecution and courts in Mayfa'a and Bayhan districts, which remain in their original locations due to a relatively acceptable level of security. In the eastern parts under Ansar al-Sharia's control, all prosecution offices have closed due to fears of being targeted by the organization. Prosecution offices for around three districts (Al-Wade'a, Jaar, and Rasd) have consolidated in the central district of Zinjibar, with prosecutors operating from the governor's residence to avoid assassination risks.¹⁵

8- Shortage of Judges and Prosecutor

There are no precise statistics on the number of judges in Yemen, but in 2013, their number did not exceed 3,000, whereas the actual need is approximately 12,000 judges considering the total population.¹⁶ This gap is evidently widening due to the natural population increase compared to the consistent decline in the number of judges and new graduates from the High Judicial Institute. As for female judges, their numbers have always been very limited,¹⁷ and their current number is unknown but likely decreasing due to restrictions on accepting female applicants to the High Judicial Institute, which has limited admissions to males in recent years.

Qualitative field information has revealed a severe drop of the judicial workforce due to harsh living conditions. The suspension of salaries has forced an unknown number of judges to leave the judiciary and seek other sources of income. In Hajjah governorate, there is only one judge responsible for serious crimes and juvenile cases.¹⁸ In the Appeal Court of Amran governorate, there is only one criminal division with three judges, while the number of cases under consideration (during the field study period) exceeds 1,800, including various cases appealed from primary courts.¹⁹

14 Field report by the Legal Support Team in Abyan.

15 Field report by the Legal Support Team in Abyan.

16 First Focus Discussion Session: Crimes of Serious Human Rights Violations and Their Punishments in Yemeni Legislation, Mwatana for Human Rights, Sana'a, December 21, 2023.

17 The number of female judges and prosecutors in various courts and prosecution offices did not exceed 34 in 2009, Committee Against Torture, List of issues to be considered in connection with the consideration of the second periodic report of Yemen, January 2009.

18 Field report by the Legal Support Team in Hajjah.

19 Field report by the Legal Support Team in Amran.

The situation in the prosecution offices is no better. In addition to the acute shortage of prosecutors, many of them are poorly trained and lack the necessary legal expertise and skills, particularly in investigating violations of human rights and international humanitarian law.²⁰ For instance, some prosecutors were originally administrative staff in primary courts or prosecution offices and were promoted based on years of experience during the conflict to fill the gap in the number of prosecutors. Furthermore, courts and prosecution offices face a scarcity of administrative staff in supportive roles, such as clerks and those responsible for typing judicial rulings. Some judicial bodies in Hadhramaut have resorted to hiring collaborators to fill the staffing gap,²¹ often selecting these collaborators from the relatives of judges and clerks in courts and prosecution offices.²²

9- Deteriorating Infrastructure of Judicial Authorities

The judiciary in Yemen lacks adequately equipped and suitable buildings for the functioning of courts and prosecution offices. Many buildings in most governorates are old or in disrepair, with most courts and prosecution offices operating from rented spaces. In Hadhramaut, the Sayun Primary Court operates from a small rented building in the middle of the main market, with courtroom sizes not exceeding 3x6 meters, and some as small as 3.5x4 meters.²³ In Marib, judges hold court sessions in their offices due to the lack of proper courtrooms, making it extremely difficult for citizens to attend sessions and listen to proceedings due to the cramped space.²⁴

Generally, buildings lack basic amenities and equipment such as electricity, water, computers, printers, and copiers necessary for drafting memoranda and official correspondence. They also lack modern technology and electronic information systems. Frequent power outages often disrupt or postpone sessions due to the absence of backup power systems or solar panels. The suspension or reduction of operational expenses by authorities in most Yemeni regions during the conflict has made it difficult for courts to meet daily work needs or pay rent for their buildings.

Due to insufficient resources and the lack of adequate courtrooms, it is standard practice

20 Telephone interview with the National Commission to Investigate Allegations of Human Rights Violations (NCIAVHR), Marib, March 13, 2024.

21 Field report by the Legal Support Team in Hadhramaut.

22 Field report by the Legal Support Team in Taiz (Al-Hawban).

23 Field report by the Legal Support Team in Taiz (Al-Hawban).

24 Field report by the Legal Support Team in Marib.

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to divide the available days among judges and schedule sessions at long intervals. This results in hundreds of cases accumulating within courts and in the hands of judges, delaying resolution for many years. Judges often hold two sessions simultaneously to avoid returning on another day, and there has been an increasing trend of judges conducting private hearings outside court premises. The lack of suitable archiving tools in court buildings leads to the leakage of information, loss of evidence, and misplacement of official documents, causing significant issues for litigants.

The shortage or absence of basic equipment like copiers often results in the emergence of informal vendors selling official papers to litigants on sidewalks near court premises, undermining the dignity and authority of the judiciary.

Additionally, the conflict has directly destroyed numerous buildings designated for judicial authorities or rendered them non-functional. For instance, in 2015, the Saudi/UAE-led coalition's airstrikes targeted the Shabwa Appeal Court building after it had been turned into a military barracks by the Ansar Allah (Houthi) group. In 2017, coalition airstrikes completely destroyed the Asailan District Court and the Bayhan District Court buildings.²⁵ The judicial complex in Al-Bayda governorate's center was also bombed, disrupting its operations for a long period.²⁶

10- Expanding Territorial Jurisdiction of Criminal Courts

The presence of criminal courts and prosecution offices is limited to only a few Yemeni governorates (six governorates out of 22) which means these specialized courts cover extensive geographical areas. This expansion significantly increases the difficulties victims face in accessing justice and hampers the process of referring cases from judicial authorities to specialized criminal prosecution offices, including the transfer of case files and defendants in criminal cases.

In Yemen's largest governorate by area, Hadhramaut, the primary and appellate criminal court and prosecution office are located in Mukalla, Hadramout's coastal area. Their jurisdiction extends to Hadramout's interior (Sayun) and Shabwa governorate, both of which are hundreds of kilometers away from Mukalla, across vast open deserts. Similarly, in Al-Bayda, residents must travel hundreds of kilometers to pursue their cases at the criminal court in Sana'a, as there is no equivalent court in Al-Bayda.

25 Field report by the Legal Support Team in Shabwa.

26 Field report by the Legal Support Team in Al-Bayda.

11- Security Agencies' Overreach on Justice

Official law enforcement agencies have experienced significant administrative and functional breaches by various warring parties. For instance, the Ansar Allah (Houthi) group has appointed representatives in most police stations within their controlled areas, assigning them positions as supervisors (Moshrif) or deputy directors, even though they are not part of the Ministry of Interior's security institutions.²⁷ Other parties to the conflict have assigned numerous roles to individuals, some of whom are young or relatives of their deceased members, granting them authority to accept complaints and reports and decide whether to refer them to the prosecution for further action.

In general, official security agencies have largely failed to curb the security breakdowns affecting the functioning of courts, the pursuit of justice, and the safety of judges. This failure is likely due to the fragility of these agencies, which has been exacerbated by the continuous interventions of warring parties in their structures and mandates. The remaining organizational and human resources of these agencies have been squandered or drained to prioritize the internal security of the power structures of the warring parties. As a result, these agencies have become a formidable barrier to justice. Field data from various Yemeni governorates included in the study, almost unanimously, indicate that the expansive and inflated influence of security and military agencies (both official and unofficial) is the greatest practical obstacle to justice during the conflict.

Given that these agencies are the primary source of many severe human rights violations, it is evident that the influence of their leaders extends beyond committing violations. They actively work to obstruct victims from obtaining justice and to prevent the application of law to perpetrators. Some of the methods employed include:

- **Obstructing the Referral of Cases:** Delaying the referral of severe human rights violation cases to the prosecution even after directives from the prosecution to expedite the referral.
- **Non-compliance with Prosecution Orders:** Ignoring prosecution orders to appear for investigations or attend judicial hearings when it involves security or military personnel suspected of severe human rights violations. Additionally, refusing to follow judicial directives to bring in certain accused individuals or execute arrest warrants against suspects.

27 Field report by the Legal Support Team in Sana'a.

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- **Pressuring Criminal Prosecutions:** Pressuring criminal prosecutions to accept cases submitted by unofficial security agencies and accept investigative reports prepared by them, despite their illegality.
- **Manipulating Case Distribution:** Intervening in the distribution of cases to courts arbitrarily, directing violation cases to compliant judges to prolong litigation procedures or halt them, especially in cases involving adversaries affiliated with or close to a warring party.
- **Direct Interference Judicial Cases:** Directly interfering in cases before the judiciary, influencing the proceedings, limiting judges' freedom to manage sessions,²⁸ controlling the scheduling and postponing sessions under security pretexts, preventing judges from allowing lawyers access to case documents, and directing that detainee not be released without consulting a security or military agency.
- **Ignoring Judicial Verdicts:** Ignoring the execution of judicial verdicts that acquit prisoners, refusing court rulings or orders to release prisoners whose sentences have ended, or delaying their release for extended periods. In Dhamar Governorate, security agencies arbitrarily dismissed certain judges and prevented them from performing their duties due to a judicial ruling deemed unsatisfactory by the security apparatus.²⁹ Typically, security agencies condition the execution of court rulings on the approval of the Ministry of Interior, despite this conflicting with the principle of separation of powers and judicial independence, as well as constitutional and legal provisions obligating executive authorities to implement court orders without interference. In Amran Governorate, the Security Director of Khamir District prevented the Deputy Prosecutor of Khamir from visiting the central prison to assess the conditions of prisoners and suspended him for five days due to his orders to release some prisoners.³⁰ In many instances, the judiciary finds it challenging to directly communicate with officials or representatives of these agencies to discuss their transgressions or their non-compliance with prosecution or court decisions.³¹

Security and military agencies suspected of committing serious human rights violations often receive extensive political cover from authorities in various regions. This support is

28 A female lawyer, the first FGD,

29 Field report by the Legal Support Team in Dhamar.

30 Field report by the Legal Support Team in Amran.

31 Field report by the Legal Support Team in Sana'a.

typically driven by the need of unstable or politically unsuccessful politicians to continually support and protect these agencies. This mutual political support between politicians and security forces clearly complicates the quest for justice in Yemen and enables the persistence of violations and abuses.

This mutual support is not limited to the warring Yemeni parties alone but also extends to the Saudi/UAE-led Coalition supporting legitimate Yemeni government. The Coalition provides broad protection from accountability for security and military agencies suspected of committing serious violations of international humanitarian law by refusing to investigate allegations of serious human rights abuses committed by its own nationals and armed forces present in Yemen.³² Additionally, the Coalition offers various forms of immunity from accountability to its own military and security forces, as well as to local allies such as the Security Belt, Shabwa Defense Forces, National Security, Political Security, and a wide range of security and intelligence agencies in Hadhramaut, Aden, Shabwa, and Marib.

Reports indicate that the Appeals Prosecution and the Primary General Prosecutors in these governorates face significant challenges in transferring detainees held by these agencies to legal correctional facilities or in investigating officials and individuals within these agencies for allegations of severe violations.

12- Poor Living Conditions for Judges

In 2017, salaries for state employees, including judges, in areas controlled by the Ansar Allah (Houthi) group were suspended. This led to signs of court closures and disruptions in the functioning of the prosecution offices due to the salary stoppage. In response, judges organized a comprehensive strike demanding their salaries. The government affiliated with the Ansar Allah (Houthi) group began paying judges and prosecutors half of their monthly salary from 2019 until mid-2023. After a second wave of strikes, the government began paying judges and prosecutors in two installments per month, but this arrangement was short-lived. Currently, judges and prosecutors receive their salaries every three to four months and do not receive any of their entitlements such as health insurance, housing and transportation allowances.

13- Gross Violations Against Members of the Judiciary

Some judges advocating for their rights have faced punitive measures, such as denial

32 Human Rights Council, Situation of human rights in Yemen, including violations and abuses committed since September 2014, August 2018, p. 18.

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of promotions, disciplinary action, transfer to remote areas, and sometimes dismissal. Violations have included the abduction and assassination of judges due to their consideration in specific cases, restrictions on their freedom of movement through security checkpoints, and threats against them and their families.

In 2016, Judge Abdulhadi Al-Maflihi was brutally murdered by unknown assailants who ambushed him and stole his car. During the same period, Judge Khalid Al-Qabass, President of the Jaar Primary Court in Khanfer District, received public death threats, prompting him to relocate to Aden for safety.³³

In 2021, a supervisor (Moshrif) from the Ansar Allah (Houthi) group abducted Judge Abdulbari Al-Wazir, head of the Amran Prosecution, while he was en route to court. He was held for twenty-five days due to his refusal to issue a release order for an inmate involved in a murder case at the Central Prison in Amran. A judge from the Amran Primary Court was assaulted and threatened by armed groups after issuing a criminal verdict.³⁴ In Aden, armed members of the Security Belt Force affiliated with the Southern Transitional Council attacked Judge Awas Karama Qahman of the Bureika Court, detaining him and preventing him from leaving the courthouse for several hours. Judge Abdullah Bakhashn, head of the Commercial Court in Aden, was also assaulted by armed individuals.³⁵ In Taiz, a security leader from the Ansar Allah (Houthi) group stormed the Al-Taiziyah Court in Al-Houban, verbally abused several judges, and threatened them with death.³⁶

Prosecutors are effectively barred from entering correctional facilities to investigate prisoners and review their records for illegal practices. Lawyers face threats from security and military forces or arrest while pursuing political and human rights cases for their clients. They are often denied access to police investigation rooms, barred from attending prosecution interrogations with their clients and prohibited from photographing or reviewing case files. Some lawyers have been expelled from courtrooms and denied the opportunity to represent clients in certain cases. Additionally, some lawyers have been detained while seeking release orders for prisoners. Armed groups or security agencies affiliated with conflicting parties have raided lawyers' offices across various Yemeni governorates without

33 Field report by the Legal Support Team in Abyan.

34 Field report by the Legal Support Team in Amran.

35 Field report by the Legal Support Team in Aden.

36 Field report by the Legal Support Team in Taiz.

legal justification.³⁷ Female lawyers, in particular, face severe obstacles in their work on human rights cases. For example, in Dhammar Governorate, security forces often prohibit female lawyers from entering the Criminal Investigation Department (CID) or confiscate their phones if they are allowed entry.³⁸

14- Fragmented Judicial and Rights Movement

The movement of judges advocating for their rights has extended beyond demands for salary payments to include organizing strikes in protest against violations of judges' rights and freedoms. This movement is led by the Yemeni Judges' Club, composed of judges from various courts and members of the prosecution from different Yemeni governorates. The Yemeni Judges' Club works to monitor judges' rights, restore confidence in the judiciary, bring justice closer to citizens, safeguard human rights and dignity, contribute to judicial reform, and support the independence of the judiciary, among other objectives. In July 2018, the formation of the Yemeni Women Judges' Club was announced in Sana'a. This union seeks to promote judicial independence and combat policies that exclude women from the judiciary.

However, the judicial movement is predominantly characterized by division and fragmentation due to political affiliations. In 2018, a Southern Judges' Club, closely linked to the STC, was established in Aden, Hadhramaut, and Shabwa. Additionally, the Southern Judicial Council, which is often attributed with numerous interventions in judicial matters in Aden and some southern governorates, has influenced the appointment and promotion of judges and prosecutors, as well as orders for release issued by specialized criminal prosecution authorities. The club has succeeded in replacing the Supreme Judicial Council formed by the IRG and imposing a new Attorney General from among its members.³⁹

37 Field report by the Legal Support Team in Sana'a.

38 Field report by the Legal Support Team in Dhamar.

39 Field report by the Legal Support Team in Aden.

Section Two:
Institutional Reform-A
Conceptual and Legal
Framework

First: Institutional Reform within the Framework of Transitional Justice: A Conceptual Framework

The UN has adopted a broad definition of transitional justice in countries emerging from conflict or repressive rule, encompassing "the full range of processes and mechanisms associated with a society's efforts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation."⁴⁰ Institutional reform is one of the crucial elements of transitional justice, primarily aimed at prevention to ensure that the violations experienced by victims in the past are not repeated.⁴¹ To achieve this, it is necessary to "transform public institutions that have perpetuated conflict or repressive rule into institutions that preserve peace, protect human rights, and foster a culture of respect for the rule of law."⁴² The urgency of institutional reform post-conflict is underscored by the prevalent culture and practice of impunity during conflicts or under authoritarian and repressive regimes. Impunity refers to:

The impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative, or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried, and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.⁴³

Institutional reform as a component of transitional justice is a comprehensive and long-term process aimed at subjecting government institutions to the rule of law and standards of human rights. This includes repealing or amending laws and regulations that contribute to human rights violations and international humanitarian law abuses, establishing accountability mechanisms within state institutions, restoring public trust in these institutions, enhancing their role in combating impunity, and "eliminating structures and doctrines that enabled past abuses and contributed to the wrongs of the past."⁴⁴

40 Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, March 2010.

41 Economic and Social Council Commission on Human Rights. Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, February 2005, p. 18.

42 Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice, Ibid.

43 Economic and Social Council Commission on Human Rights. Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, February 2005, p. 6.

44 International Center for Transitional Justice. Institutional Reform, at: <https://www.ictj.org/en/institutional-reform>

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Institutional reform involves a variety of measures, including:⁴⁵

- Removing government officials responsible for gross human rights violations from continuing their service in government institutions, based on a thorough vetting process, especially those in the military, security, police, intelligence, and judiciary sectors.
- Ensuring that national courts operate independently, impartially, and effectively in accordance with international standards related to due process.
- Implementing civilian oversight of military forces, security services, and intelligence agencies.
- Establishing and effectively enforcing procedures for civil complaints.
- Providing comprehensive and ongoing human rights training for personnel in the military, security, police, intelligence, and judiciary sectors.

45 Economic and Social Council Commission on Human Rights. Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, February 2005, p. 19.

Second: International Legal Framework for Accountability, Justice and Guarantees of Non-Repetition

International covenants and instruments obligate states to respect and protect fundamental human rights, as well as to prosecute and punish those responsible for violations through judicial decisions issued by competent legal courts. States' responsibilities extend beyond providing necessary legal protections for human rights and prosecuting violators among public authorities, officials, or law enforcement officers. They also include ensuring this protection through effective, prompt, and impartial procedures. This necessitates that national legislation, both substantive and procedural, incorporates general principles of justice and avoids excessive exceptions that undermine the rule of law or facilitate impunity. It requires establishing the rule of criminalization with explicit and decisive texts for all human rights crimes, and imposing applicable penalties that are proportionate to the serious and dangerous nature of these violations.

Institutionally, achieving justice for human rights violations committed by law enforcement officers is challenging when judicial and legal entities, as well as law enforcement agencies, do not respect the rule of law and human rights. These bodies must also be independent, trusted by the public, shielded from external interference, transparent, accountable internally, and adequately empowered and resourced to perform their duties effectively. Their jurisdiction should cover all human rights violations.

For decades, international covenants and instruments have placed special emphasis on the legal and institutional conditions necessary to create an environment conducive to justice and redress for victims of human rights violations. These documents not only establish fundamental principles of justice and accountability but also address related procedural aspects. They set forth codes of conduct, ethical guidelines, and disciplinary standards for judicial and legal institutions and law enforcement agencies, urging all countries to adopt or be guided by these standards and incorporate them into their national legislation. This approach aims to help countries achieve the noble goal of reforming their laws and institutional structures to effectively combat impunity and provide effective means of justice and redress for victims of human rights violations.

The Universal Declaration of Human Rights enshrines the right of every individual whose fundamental rights are violated to seek redress from national courts. It guarantees the right to "a fair and public hearing by an independent and impartial tribunal in the determination

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of their rights and obligations and any criminal charges against them."⁴⁶ The Declaration upholds the principle of the "presumption of innocence" until proven guilty in a public trial and secures the right to defense.

The International Covenant on Civil and Political Rights (ICCPR) urges Signatory States to "ensure that any person whose rights or freedoms recognized in this Covenant are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."⁴⁷ It emphasizes the need for the adjudication of rights alleged to have been violated by state authorities, including judicial and administrative bodies, and the enhancement of judicial remedies. The ICCPR enshrines the principle of equality before the law and the right of any individual charged with a criminal offense or involved in a civil suit to "a fair and public hearing by a competent, independent, and impartial tribunal established by law."⁴⁸

Among the mandatory procedures outlined in the Covenant for law enforcement and judicial bodies are: providing reasons for arrest at the time it occurs, promptly informing the accused of the charges against them, expeditiously conducting judicial functions including investigation of the accused in criminal cases, and ensuring a trial within a reasonable time or releasing the accused. It also advocates for minimal use of pre-trial detention, favoring alternatives such as bail. It states that "anyone deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful," and "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."⁴⁹

The Declaration on the Protection of All Persons from Enforced Disappearance obligates Signatory States to take legislative, administrative, judicial, and other effective measures to prevent and terminate acts of enforced disappearance in any territory under their jurisdiction. It regards "the right to prompt and effective judicial remedy as a means to determine the whereabouts or state of health of persons deprived of their liberty or to identify the authority ordering or carrying out the deprivation of liberty" as essential to preventing enforced disappearances in all circumstances, including war, internal political instability, or any other public emergency.⁵⁰ The declaration mandates strict oversight of those responsible

46 The Universal Declaration of Human Rights, article 10.

47 The International Covenant on Civil and Political Rights [ICCPR], article 3.

48 Ibid, article 14, pa. 1.

49 Ibid, article 9, pa. 4.

50 Declaration on the Protection of All Persons from Enforced Disappearance, article 9, pa. 1.

for arresting, detaining, or imprisoning individuals.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) requires states to conduct impartial investigations upon receiving complaints about arbitrary detention, illegal imprisonment, or the torture of detainees. It also demands that no form of detention or imprisonment be carried out except under the order of a judicial authority or another competent authority, or subject to their effective control. Principle 32 of the Body of Principles states that "a detained person or their legal representative shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of their detention and obtain release without delay if the detention is unlawful."⁵¹

To rectify the practices of law enforcement agencies, which are a primary source of numerous human rights violations, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) calls on states to ensure that:

Education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, whether civilian or military, medical personnel, public officials, and other persons who may be involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment.⁵²

It also mandates that a prompt and impartial investigation be conducted whenever there are reasonable grounds to believe that an act of torture has been committed in any territory under the state's jurisdiction.⁵³ Furthermore, it guarantees the right of any individual who alleges they have been subjected to torture to file a complaint with the competent authorities, which are then obliged to examine the complaint promptly and impartially.⁵⁴ The Convention also requires states to prevent acts of cruel, inhuman, or degrading treatment or punishment that do not amount to torture by their officials or by persons acting in an official capacity.

The Basic Principles on the Independence of the Judiciary call for enabling the judiciary to perform its functions in accordance with the law, preventing undue or unwarranted interference in the judicial process, providing adequate resources to the judiciary, and

51 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, December 1988, principle 32.

52 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 10, pa. 1.

53 Ibid, art. 12.

54 Ibid, art. 13.

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ensuring that judicial appointments are not influenced by improper motives. Judges should not be subject to removal without proper cause.⁵⁵

Given the critical role that members of the Public Prosecution play in upholding justice, the Guidelines on the Role of Prosecutors urge states to provide adequate safeguards to prevent the appointment of prosecutors based on bias or favoritism. These guidelines also emphasize the need to ensure proper training and education for prosecutors, guaranteeing that they are able to "perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liabilities." Prosecutors must also give due attention to avoiding the use of evidence obtained through unlawful methods and to pursuing "prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences." ⁵⁶

Furthermore, international instruments require law enforcement officials to respect and protect human rights in the course of their duties, to use force only when strictly necessary and to the extent required for the performance of their duty, and not to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. They also stipulate that law enforcement officials must not invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment⁵⁷.

The Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity obligates states to:

Conduct prompt, thorough, independent, and impartial investigations into human rights and international humanitarian law violations, and to take appropriate measures against the perpetrators, particularly in the realm of criminal justice, by ensuring the prosecution, trial, and appropriate punishment of those responsible for serious crimes under international law.⁵⁸

According to the Basic Principles and Guidelines on the Right to a Remedy and Reparation

55 Basic Principles on the Independence of the Judiciary.

56 Guidelines on the Role of Prosecutors, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

57 Code of Conduct for Law Enforcement officials, UN General Assembly December 1979.

58 Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Ibid, p. 13.

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for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (December 2005), states have a duty to investigate gross human rights and international humanitarian law violations "and to prosecute alleged perpetrators if there is sufficient evidence, and to impose appropriate penalties on those convicted."⁵⁹

International treaties and instruments have enshrined the principle of civil liability of State or State authorities for violations committed by law enforcement officials. The Declaration on the Protection of All Persons from Enforced Disappearance affirms the responsibility of those who perpetrate enforced disappearance, as well as the civil liability of the State or State authorities which organize, acquiesce in or tolerate such disappearances.⁶⁰ The declaration also stipulates that "The declaration also stipulates that "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation."⁶¹

In the context of non-international armed conflicts, international instruments have established rules for the humane treatment of individuals deprived of their liberty for reasons related to the armed conflict, without them being directly involved in hostilities. Among these rules are prohibitions on detention in facilities near combat zones, the right to medical examinations, protection of their physical and mental well-being, and the requirement that "No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality." Additionally, at the end of hostilities, the authorities in power must should to "grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."⁶²

59 UN Office of the High Commissioner for Human Rights. 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, p. 8.

60 Declaration on the Protection of all Persons from Enforced Disappearance, art. 5.

61 Declaration on the Protection of all Persons from Enforced Disappearance, art. 19.

62 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

Third: National Legal Framework

General Principles of for Achieving Justice in Yemeni Legislation

Yemen is a party to numerous international human rights treaties, including the Geneva Conventions of August 12, 1949, and the First and Second Additional Protocols (The Additional Protocol to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts), the International Convention on the Elimination of All Forms of Racial Discrimination (1969), and the Convention on the Elimination of All Forms of Discrimination against Women (1979). , the International Covenant on Civil and Political Rights (1987), the International Covenant on Economic, Social and Cultural Rights (1987), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1991), and the Convention on the Rights of the Child (1991). In 2013, the IRG agreed to join the International Convention for the Protection of All Persons from Enforced Disappearance, the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and the Optional Protocol to the Convention Against Torture. However, it has not completed the ratification procedures for these agreements. Additionally, Yemen has not ratified the First and Second Optional Protocols to the ICCPR (the Second Protocol aims to abolish the death penalty) or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Despite this, Yemen's international obligations do not encompass all international rules of transitional justice included in treaties and instruments related to the protection of fundamental human rights, ensuring effective remedies, and preventing impunity, especially for violations committed by state officials, law enforcement agents, and other actors. Furthermore, Yemen's international human rights treaty obligations present serious challenges in implementation, despite Article 6 of the Yemeni Constitution affirming adherence to "the Charter of the United Nations, the Universal Declaration of Human Rights, the Charter of the Arab League, and generally recognized principles of international law." For instance, several treaties independently agreed upon by the former North and South Yemen prior to unification have not been re-presented to the Yemeni parliament (the new state established by the unification of the two former entities in May 1990) for ratification. Consequently, there is a prevailing view within the Yemeni judiciary that these treaties do not hold binding authority over judicial rulings.⁶³

63 Dr. Abdul-Mumin Al-Shuja'a, First Focus Group Discussion.

The Principle of Judicial Independence

Yemeni legislation guarantees the independence of the judiciary as the authority exclusively responsible for resolving disputes and conflicts among citizens. This independence aligns with the principle of the separation of powers, which assigns each of the three branches of government (executive, legislative, and judicial) distinct powers and boundaries to prevent one from dominating or interfering with the others. The Yemeni Constitution grants the judiciary an institutionally and functionally independent status, particularly from executive branch institutions, although it does not prohibit the inclusion of executive entities and individuals in the judiciary as they contribute to the broader sense of justice. The Constitution ensures the judiciary's independence from other authorities as a fundamental guarantee of its autonomy.

The Yemeni Constitution states that:

Judges are independent, and in their judicial decisions, they are subject to no authority other than the law. No entity may interfere in judicial matters or any aspect of justice, and such interference is considered a crime punishable by law, with no statute of limitations.⁶⁴

Article 1 of the Judicial Authority Law similarly affirms the personal independence of judges in their judicial duties and criminalizes interference in judicial matters or any aspect of justice. Yemeni law punishes with imprisonment for up to three years "any official or influential person who interferes with a judge or court in favor of or against a party through orders, requests, entreaties, or recommendations."⁶⁵

The scope of judicial independence theoretically extends, as per Article 149 of the Constitution, to include judicial, financial, and administrative independence. Judicial independence refers to the courts' autonomy and their constitutional right to apply the law and issue rulings without executive branch intervention, with an obligation on the latter to enforce judicial rulings without judicial review rights. Financial independence centers on the judiciary's right to draft its annual budget, with a constitutional obligation on the legislative authority to approve it as a single item within the state's general budget, and the executive branch must enable the judiciary to manage its budget according to specified allocations, ensuring judges a decent standard of living and personal independence. The financial independence also allows the judiciary to provide the necessary resources and requirements

64 Constitution of the Republic of Yemen, article 149.

65 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 187.

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for its functions without relying on executive authorities. The Constitution stipulates that the Supreme Judicial Council drafts and approves the judiciary's budget for its inclusion as a single item in the state's general budget, thereby reinforcing the financial independence of the judiciary.

The judiciary, under the Yemeni Constitution, manages its administrative affairs independently, including the appointment, transfer, secondment, and disciplining of judges, with these responsibilities carried out by the Supreme Judicial Council as per the Judicial Authority Law. The Yemeni legislator intended to safeguard judges from arbitrary administrative decisions that the executive branch could potentially use to undermine judicial independence. The Yemeni Constitution protects the judiciary and public prosecutors from administrative or political dismissal by stipulating that:

Judges and public prosecutors cannot be dismissed except in cases and under conditions specified by law, and they cannot be transferred from the judiciary to non-judicial positions without their consent and the approval of the council responsible for their affairs, unless it is a disciplinary action.⁶⁶

Yemeni legislation, particularly the Constitution, theoretically provides fundamental bases for judicial independence that align with many international standards established in relevant treaties and codes. The Yemeni Constitution grounds judicial independence in the principle of the rule of law, stating that courts are subject only to the law. It clearly articulates the judiciary's judicial, financial, and administrative independence, empowering judges to perform their duties independently according to the law, free from influence or intervention by any entity or individual. To reinforce judicial independence, the Cabinet issued Decision No. 161 of 2001, outlining necessary measures against interference in judicial matters.

Yemeni legislation adheres to the principle of judicial authority over all judicial matters, as specified in Article 149 of the Constitution, which grants courts the power to adjudicate all disputes and crimes.

Nonetheless, evaluating the adequacy of constitutional and legal guarantees to achieve judicial independence often sparks a dual-faceted debate, both theoretically and practically. Constitutional and legal provisions related to the principle of judicial independence are typically broad and abstract. This generality allows for legal loopholes and weakens judicial independence in practice, as legal texts can be interpreted and adapted in ways that

66 Constitution of the Republic of Yemen, article 151.

contradict the independence guarantees outlined in the Constitution.⁶⁷

Judicial independence fundamentally relies on the selection of judges and ensuring the integrity of this process according to objective and impartial criteria. The principle of judicial independence fundamentally requires that members of the judiciary be selected by the judiciary itself, with judicial positions being filled through the nomination and selection of highly qualified individuals.⁶⁸ However, Yemeni law, as evident from its provisions, does not clearly define the criteria for assessing competence in the selection and appointment of judges.⁶⁹ It also fails to grant the judiciary its rightful authority to freely choose its administrative and executive bodies from among its judges based on merit, integrity, and independence. At the apex of the judiciary is the Supreme Judicial Council, which holds the powers to appoint judges and manage all related matters, including secondments, transfers, promotions, and disciplinary actions. Despite its extensive authority, this council is neither an elected nor an independent body, as it is chaired by a judge appointed by the president of the state, along with three other council members also appointed by the President. These four members constitute half of the eight-member council. It is noteworthy that the President's decisions to appoint judges to the Supreme Judicial Council and the Supreme Court are substantive appointments, not merely formal approvals.

Given the extensive powers granted to the Supreme Judicial Council regarding judicial affairs and judges alike, the council's composition ensures its subordination to the executive authority, disregarding the principle of judicial independence. This structure cripples its ability to fulfill its duties in ensuring job security for judges, protecting them from arbitrary administrative decisions by the executive branch, and providing them with legal protection under Article 152 of the Constitution. Some argue that the politically driven formation of the Supreme Judicial Council is one of the main flaws in the independence of the judiciary in Yemeni law.⁷⁰ Therefore, it is unsurprising that this institution was the first to become divided during the armed conflict,⁷¹ transforming into a pliable tool in the hands of the executive

67 Dr. Abdul-Mumin Al-Shuja'a, Op. cit.

68 Dr. Abdul-Mumin Abdul-Qader Ali Shuja'uddin, First Focus Group Discussion, Ibid.

69 Article 57 of the Judicial Authority Law outlines eight conditions for judicial appointments, none of which are related to competence. These conditions include nationality, age, mental and physical fitness, a certificate from the High Judicial Institute, criminal record, good conduct, and the completion of a two-year training period. Judge Abdul Malik Abdullah Al-Jendari, Studies in Judicial and Legislative Affairs, Sana'a, 2019, p. 79.

70 Judge Radwan Al-Omais, First Focus Group Discussion.

71 Lawyer Al-Hajj, First Focus Group Discussion.

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authority to punish honest judges and negatively influence their independence in adjudicating cases and administering justice according to the law.

According to the law, the judicial promotion system should be subject to an impartial evaluation conducted by the Judicial Inspection Authority, a body composed of administrative staff tasked with conducting unannounced field inspections of judges. However, many believe that the competency reports issued by this body are often based on favoritism and cronyism, reinforcing the logic of political promotions. Furthermore, its operations are not free from attempts to extort and malign judges.⁷²

legislation contains provisions that are contradictory and inconsistent with the principle of judicial independence. According to the law, the Minister of Justice oversees all courts and judges in financial, organizational, and administrative matters. Additionally, the Minister of Justice heads the High Judicial Institute, which is the exclusive institution responsible for graduating judges, assigning them to courts, and providing in-service training. Consequently, the Minister of Justice, by virtue of this position, influences the policies for admitting candidates and shaping the overall policies of the institute. The minister is supported in this role by the Supreme Judicial Council and the institute's dean, who is appointed by the President of the Republic based on a nomination from the institute's academic council and the approval of the Supreme Judicial Council.

Regarding the criminalization of interference as stipulated by the constitutional provision (Article 149), Article 187 of Law No. 12 of 1994 concerning Crimes and Penalties states, "Any public official or person of influence who interferes with a judge or court in favor of or against a party, whether by command, request, appeal, or recommendation, shall be punished by imprisonment for a period not exceeding three years." Additionally, Article 185 of the same law stipulates, "Anyone who, through writing, speech, action, or any other means, undermines the dignity, authority, or respect of a judge or attempts to influence them during the course of any trial shall be punished by imprisonment for a period not exceeding one year or by a fine. The same penalty applies if the offense is committed against investigative authorities in the context of a criminal investigation they are conducting." However, some believe that criminalizing and punishing interference in judicial affairs does not, in itself, provide sufficient guarantees for the independence of the judiciary. This is due to difficulties in proving such interference with reliable and sufficient evidence,⁷³ and the Yemeni law's

72 Dr. Fouad Al-Odaini, First Focus Group Discussion.

73 Judge Hekmat..., First Focus Group Discussion.

failure to criminalize intercession, which is an ideal means of intervention in judicial matters and is often perceived in practice as commendable intervention.⁷⁴ Furthermore, the penalties for judicial interference are not deterrents; they include fines of up to seventy thousand Yemeni Riyal or imprisonment for no more than 24 hours.⁷⁵ In general, the provisions related to criminalizing interference in judicial matters have never been enforced in practice, even once.⁷⁶ As for the financial independence of the judiciary, there is consensus that it has been completely undermined due to the suspension of operational budgets for courts and judicial bodies, as well as the discontinuation of salaries for judges and members of the judiciary. These conditions substantially affect judicial independence.⁷⁷

Specifically, specialized criminal courts and prosecution offices occupy a significant place in discussions among experts on Yemeni law and various practitioners concerning judicial independence. The core of the debate revolves around doubts regarding the legitimacy of establishing these courts, their legal classification, and the authority of their rulings. Generally, some view criminal courts (both prosecution and trial courts) as illegal exceptional courts because they contravene the clear constitutional text (Article 151) which prohibits the establishment of exceptional courts under any circumstances.⁷⁸ Conversely, others regard them as legally specialized courts not subject to the constitutional prohibition in the mentioned article, especially since they operate under the Criminal Procedure Law, which is also applied by regular courts.⁷⁹ Regardless of the nature of this debate and its complex legal aspects, legal experts participating in focus group discussions for the study have agreed that criminal justice systems are a major factor in undermining judicial independence and shaking litigants' confidence in its integrity and fairness. The various arguments supporting this view relate more to the practical operations of criminal courts than to their legal legitimacy. Court proceedings in these criminal courts are severely flawed and lack the minimum standards of fair trials. In addition to the heavy presence of military and security personnel in criminal court bodies, these courts and their judgments are used to suppress dissent and settle political scores among local conflict parties, further undermining the judiciary's credibility.

74 Dr. Abdul-Mumin Al-Shuja'a, Op. cit.

75 Judge Rawda Al-Ariqi, First Focus Group Discussion.

76 Lawyer Al-Hajj, First Focus Group Discussion.

77 Judge Rawda Al-Ariqi, Op. cit.

78 Lawyer..., First Focus Group Discussion.

79 Judge Radwan Al-Omais, Op. cit.

Criminal Liability

Criminal liability is personal, and the law requires intent or negligence for its imposition: "A person shall not be held liable for a crime unless it was committed intentionally (deliberately) or through negligence."⁸⁰ The law excludes from criminal liability those who were under the age of seven at the time of the offense, those who had not reached eighteen years old at the time of the offense from full criminal responsibility, the mentally ill, and those who were under the influence of intoxicants or drugs against their will, without their knowledge, or out of necessity. It also excludes those who commit an offense under physical coercion that they cannot resist or due to force majeure, with the exception of the crimes of murder and torture, where coercion does not absolve the perpetrator of responsibility.⁸¹ The law refers to all these cases as "grounds for exemption from liability."

Yemeni law adheres to the principle of criminal liability for accomplices in the commission of crimes. According to Article 48, Paragraph (e) of the Yemeni Constitution, "Physical or psychological torture during arrest, detention, or imprisonment is a crime that is not subject to statute of limitations, and anyone who commits, orders, or participates in it shall be punished." Yemeni law imposes the same penalty on anyone who contributes to a crime, not just the principal perpetrator, unless otherwise specified. An accomplice in a crime is defined as anyone who provides auxiliary assistance to the principal with the intent to commit the crime, whether this assistance occurs before, during, or after the commission of the offense.

Criminal accountability of public officials

A public official, or anyone in a similar position, is defined as anyone who undertakes the duties of a public office for compensation or without it, regardless of the validity of their appointment decision.⁸² The concept of a public official under Yemeni criminal law is much broader than under administrative law, encompassing a wide range of categories, including those in high-ranking positions.⁸³ Yemeni law adheres to the principle of holding public officials accountable for actions taken within the scope of their duties. The law tends to impose harsher penalties for human rights violations when committed by a public official.

80 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 8.

81 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 35.

82 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 1.

83 Yemeni legislation has a special law for this category, which includes the President of the Republic and their deputies, the Prime Minister and their deputies, and ministers and their deputies. This is Law No. 6 of 1995 regarding the procedures for accusing and trying those occupying positions of the highest executive authority in the state.

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For example, the penalty for deprivation of liberty is increased from a maximum of three years to a maximum of five years if committed by a public official.⁸⁴ Similarly, the penalty for kidnapping is doubled (not less than twelve years) if committed by members of the armed forces, security personnel, or a public official.⁸⁵

In some cases, the punishment for a public official is coupled with an additional penalty, such as dismissal from office. This is exemplified by the following provisions:

Any public official who orders or inflicts a punishment on a person beyond what is legally mandated or refuses to execute an order for the person's release, while being responsible for it, or who deliberately keeps the person in the penal facility beyond the specified term of imprisonment, shall be punished with imprisonment for up to three years or a fine, and shall also be dismissed from their office.⁸⁶

Any public official who uses undue cruelty against people based on their official authority, thereby violating their honor or causing them physical pain, without affecting the victim's right to retribution, blood money, or compensation, shall be punished with imprisonment for up to one year or a fine, and shall also be dismissed from their office.⁸⁷

Yemeni law avoids categorizing public officials' actions that warrant punishment as crimes, which has a negative impact on the pursuit of justice, as judges cannot criminalize acts not explicitly defined as crimes by law. Another issue is the exclusion of criminal liability for actions committed by public officials under what are termed "justifications." These justifications remove the criminal classification of the act and preclude both criminal and civil liability. Such justifications include performing one's duty, exercising a right, and legitimate defense. The law stipulates: "No crime is committed if the act is performed in the exercise of a right granted by law, or in fulfillment of a legal duty, or in the exercise of authority conferred by law."⁸⁸ In case, the crime committed by a public servant or a law enforcement officer is associated with "justification grounds", the criminal nature of that act is negated, and both

84 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 246.

85 Republican Decree Law No. (24) of 1998 regarding combating kidnapping and robbery crimes, article 8.

86 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 167.

87 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 168.

88 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 26.

criminal and civil liability are averted. This matter has a negative effect on the achievement of criminal justice and the victims' rights to proper compensation. Some of the justifications that justify an action and make it lawful are the performance of a duty, the exercise by a public official of a right established by law, and legitimate defense. The law stipulates that "there is no crime if the act is done in the exercise of a right established by law, or in the performance of a duty imposed by law, or in the exercise of an authority conferred by law."⁸⁹

Some of these justifications are vague, hindering the enforcement of the law against public officials in practice. While the intent is to provide necessary rights and guarantees for the performance of public officials' duties, their ambiguous nature can impede accountability and legal action.⁹⁰

Regarding the accountability of superiors for the actions of their subordinates, the responsibility for executing an illegal order issued by superiors in the armed forces falls solely on the superior. "Unless it is clear that the order violates a provision in the Crimes and Penalties Law or international law, in which case both the superior and the subordinate are responsible for the outcome."⁹¹ This aligns, to some extent, with Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance, which states that no justification based on orders or instructions from a public authority can be used to excuse acts of enforced disappearance, and Article 3 of the Convention Against Torture, which addresses "using orders from higher-ranking officials or public authorities as a justification for torture." However, Yemeni law lacks restrictions on the duty of obedience or provisions specifying that subordinates should refuse to follow written or unwritten orders from superiors that could lead to severe human rights violations.

Disciplinary Accountability of Public Officials

The law prohibits police officers from abusing their rank or military status for personal gain, for the benefit of others, or to harm others. It also forbids them from engaging in any form of corruption, such as "accepting gifts, gratuities, or favors from interested parties, whether directly or through intermediaries."⁹² The Police Authority Law requires police officers and personnel to avoid any disciplinary violations or breaches of the applicable laws and regulations, to respect citizens and their rights, and to exert maximum effort to facilitate

89 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 26.

90 Dr. Fouad Al-Odaini, Op. cit.

91 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, article 225.

92 Law No. (15) of 2000 regarding the Police Authority, art. 90.

and efficiently complete their transactions, providing them with all possible assistance.

In the event of a violation, the offending officer is referred to a written investigation where their statements are heard, and their defense is considered. The Minister of Interior or their deputy issues the referral to disciplinary trial before a disciplinary council, as outlined by law, detailing the charges against the officer. The disciplinary council issues a reasoned decision on the appropriate penalty, which can range from a salary deduction to dismissal from service. The law allows the dismissal of police officers from service in the event of a violation, based on a final judicial ruling and a subsequent decision by the Minister of Interior, or if they are convicted of a crime involving dishonor or breach of trust.⁹³ The same penalties apply to other police personnel (non-commissioned officers and soldiers) in case of violations, while civilian employees in the police force are subject to the Civil Service Law, which includes a similar system of disciplinary penalties.

Judicial enforcement officers are subject to the supervision of the Attorney General within the scope of their judicial enforcement powers. The Attorney General may request the officer's overseeing authority to impose a penalty for any violation or negligence. The Attorney General may also request that a disciplinary case be brought against the officer. If the authority fails to comply with the Attorney General's request, imposes an insufficient penalty, or if the officer's misconduct is severe, the matter can be escalated to the judiciary through the Court of Appeal, which may, at the request of the Attorney General or on its own initiative, revoke the officer's judicial authority.⁹⁴

Regarding the accountability of judges and public prosecutors, the Judicial Inspection Authority, as granted by the Judicial Authority Law, has the power to receive complaints against judges and prosecutors, conduct preliminary investigations, and initiate disciplinary proceedings, which the Supreme Judicial Council handles and could lead to dismissal. Violations of duty include "committing a crime of dishonor, bribery, showing bias towards one of the parties in a case, repeatedly failing to attend court sessions without a valid excuse, delaying case resolutions, failing to set specific dates for delivering judgments after concluding discussions, and disclosing deliberation secrets."⁹⁵

The Supreme Judicial Council may suspend a judge from performing their duties during investigation, accountability, or trial proceedings. Disciplinary sanctions that can be imposed

93 Law No. (15) of 2000 regarding the Police Authority, art. 127.

94 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 16, art. 85 and 86.

95 Law No. (1) of 1991 regarding the Judicial Authority, art. 111/1.

on judges include reprimand, censure, warning, denial of periodic bonuses, suspension from work or forced leave not exceeding three months, delayed promotion, transfer to a non-judicial position, and dismissal with pension or severance pay rights.⁹⁶

In general, the disciplinary sanctions imposed on police officers, prosecutors, and judges do not preclude more severe penalties provided by existing laws. This means that a disciplinary penalty does not prevent the initiation of criminal proceedings and the imposition of criminal punishment on the perpetrator if convicted by the judiciary.

Principle of Non-Statutory Limitations

In Yemeni legislation, serious crimes are not subject to statutes of limitations. Specifically, the Yemeni Constitution designates certain serious crimes, such as torture, as not subject to statutes of limitations. It explicitly states that the crime of physical, psychological, or moral torture does not fall under statutes of limitations. Additionally, statutes of limitations do not apply to crimes affecting individual freedoms,⁹⁷ and cases of interference with the judiciary are also not subject to statutes of limitations.⁹⁸ But, the Article 38 of the Criminal Procedure Law is completely contradictory to the constitutional and legal texts that prohibit the statute of limitations for serious crimes, except for crimes punishable by retribution, blood money, or indemnity⁹⁹.

Principle of Legality

The principle of legality requires that accountability for crimes is not solely based on the occurrence of a criminal act and its attribution to individuals, but also on the application of legal provisions that were in effect at the time of the crime. A crime must be defined as such at the moment it is committed, and consequently, the penalty imposed must be the one applicable at that time, not any subsequent penalty. This principle is articulated in Article 11 of the Universal Declaration of Human Rights and is enshrined in Article 47 of the Yemeni Constitution, which states: "Criminal responsibility is personal, and no crime or punishment shall exist except based on a legal or statutory provision. Every accused person is presumed innocent until proven guilty by a final judicial ruling, and no law may be enacted to punish acts

96 Law No. (1) of 1991 regarding the Judicial Authority, art. 115/1.

97 Republican Decree Law No. (13) of 1994 regarding crimes and penalties, article 16.

98 Law No. (1) of 1991 regarding the Judicial Authority, article 1.

99 The article stipulates that the right to hear the criminal case shall lapse in serious crimes after the passage of ten years from the date of the commission of the crime, except for crimes punishable by retribution, or where blood money or physical injury compensation is one of the prescribed penalties.

with retroactive effect."

This principle raises concerns about the future prosecution of perpetrators of human rights violations for actions that were not criminalized at the time they were committed or are not currently classified under Yemeni law as crimes warranting specific penalties.

Principle of Adequate Compensation for Damages

The principle of adequate compensation for damages that an individual may suffer due to unlawful arrest, detention, search, or surveillance is recognized by the Yemeni Constitution in Article 48, Paragraph (e). The article left the determination of appropriate compensation to the law in cases of violations. However, Yemeni laws have either overlooked this principle or stipulated procedures that do not effectively ensure its implementation in accordance with the constitutional text. For instance, the Criminal Procedures Law ignores the right of a person who was held in pretrial detention and later acquitted by the court to receive appropriate compensation for the material and moral damages suffered due to the period of arbitrary detention. Instead, the law provides general provisions allowing a person acquitted in a criminal case to file a civil lawsuit for damages resulting from the crime.¹⁰⁰ Article 48 of the Civil Code merely states that "anyone who has been subjected to an unlawful assault on one of their personal rights may request that the assault be stopped and compensation for the damage incurred." Similarly, the Code of Civil Procedure permits the plaintiff with personal rights to file a civil action against judges or public prosecutors, seeking compensation in cases of judicial fraud or gross negligence.

In any case, Yemeni legislation does not adequately uphold the principle of appropriate compensation for damages suffered by victims in criminal cases or violations committed by authorities, whether as individual officials or public institutions, in a manner that ensures the achievement of this principle's objectives. This principle is intended to provide compensation for the material and moral damages inflicted on victims as a remedy guaranteed by law and supported by acquittal judgments, rather than as a new legal path requiring the victim to file a civil lawsuit and endure the burden and difficulty of pursuing it. Furthermore, with regard to the principle of State responsibility for rehabilitating victims of human rights violations committed by public officials, Yemeni legislation unjustifiably neglects this obligation.

Legal Protection for Victims and Witnesses

Yemeni law acknowledges a number of rights for victims (the injured party or the civil

100 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 44.

plaintiff in a criminal case, or their legal representative) concerning access to remedies and the administration of justice. Among these rights are the right to file a complaint, seek compensation for damage caused by the crime, attend investigations, present their defenses and requests to the investigating authority, and assert their case. Victims also have the right to initiate a criminal case as a party joined with the public prosecution and to appeal the prosecution's decisions to dismiss charges or close the case. The victim or their legal representative has the right to attend court hearings, present evidence and defenses, cross-examine witnesses, review case documents, and request the court to employ an expert.

The Yemeni law does not respect the voluntariness in summoning witnesses, but rather allows for their forcible appearance in certain cases. However, its texts lack explicit criminalization of attacks on witnesses, and measures for protection during and after testifying. This weakens the prosecution procedures for punishing perpetrators of crimes, due to the reluctance of witnesses to testify out of fear of retaliation, particularly in cases of human rights violations committed by individuals and official entities. The protection of witnesses in Yemeni law does not go beyond the scope of moral protection for their testimony in the courtroom, where the court "must protect them from expressions, instructions, and guidance, and from any other attempt that may intimidate or confuse them, and it must also prevent the asking of any question of an obscene or offensive nature unless the said questions directly concern the essential facts that help in the proper assessment of the facts of the case or on which the judgment depends."¹⁰¹ In the stage of filing the complaint and conducting the investigations, the Yemeni law is satisfied with a general provision calling for the establishment of "special provisions to ensure punishment with appropriate penalties for any ill-treatment, threat, retaliatory act, or any form of interference that occurs during the filing of the complaint or during the investigation."

101 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 356

Fourth: Crimes of Serious Human Rights Violations and Their Penalties in Yemeni Law

Crimes and Penalties in Yemeni Law

A crime is an unlawful act or omission that causes harm and is punishable by law. This encompasses any deprivation of constitutional and natural rights, such as life and liberty, or any infringement on an individual's physical (bodily integrity) or moral well-being. Although Yemeni law lacks a specific definition of a human rights violation crime, such crimes are either explicitly mentioned therein, as in the cases of extrajudicial killings and torture, or implicitly included under different names. For example, crimes related to cruel treatment, forced detention, and arbitrary pretrial detention are implicitly categorized under offenses that harm individual freedoms, dignity, and physical and moral safety. Similarly, crimes such as kidnapping and banditry, as defined by Yemeni law, are equivalent to enforced disappearance in terms of their criminal nature.

Nevertheless, there is a prevailing view in Yemeni legal doctrine that serious human rights violations fall under the general definition of a crime in Yemeni law and are covered by its penal provisions, adhering to the principle that abstract legal texts apply to multiple situations and individuals, even if not explicitly stated.¹⁰²

The noteworthy issue in Yemeni law is not the lack of criminalization of human rights violations but rather the absence of specific definitions for each of these crimes. The law relies on a general and indirect definition of crime and imposes penalties that are often disproportionate to the severity and gravity of the violation. For example, the penalty for illegal detention is limited to imprisonment for no more than three years. Additionally, the law seldom considers aggravating circumstances when determining appropriate penalties, except in rare instances.

The Yemeni Crimes and Penalties Law classifies crimes based on their severity into two categories: serious crimes and minor crimes. Serious crimes are defined as those punishable by a fixed penalty, such as retribution (qisas) involving death or the amputation of a limb, as well as any crime that warrants discretionary punishment (tazir) by death or imprisonment for more than three years. Minor crimes, on the other hand, are those punishable by blood money (diyya), compensation (orsh), imprisonment for no more than three years, or a fine.¹⁰³

102 Dr. Abdul-Mumin Al-Shuja'a, Op. cit.

103 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, Articles 15-17.

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According to this classification, some human rights violations, which are considered "serious" under international human rights law, are categorized as minor crimes in Yemeni law based on the original penalties prescribed in Article 16 of the Crimes and Penalties Law. For instance, crimes such as illegal detention and arbitrary pretrial detention, which involve deprivation of liberty without legal grounds, are considered minor crimes under Yemeni law, with a maximum penalty of three-year imprisonment. In contrast, crimes such as torture, punishable by up to ten years in prison; enforced disappearance, punishable by up to twelve years; and extrajudicial killing, punishable by death as retribution or tazir, are classified as serious crimes.

However, the arbitrary preventive detention is not considered a criminal offense, but rather a precautionary or exceptional measure from the investigation procedures that allows the competent authority (the Public Prosecution) to temporarily restrict the freedom of citizens. Violating this legal procedure, as understood from the text of Article 48 of the Yemeni Constitution, whereby the preventive detention is arbitrary, entitles the aggrieved person to obtain appropriate compensation for the damages that may be caused by the violation, but it does not require a criminal penalty.

The classification of certain human rights violations as minor crimes in Yemeni law negatively impacts the enforcement of the law and the pursuit of justice and redress for victims of these "minor" crimes. Yemeni law provides distinct procedural paths for serious crimes, which, in theory, are more aligned with achieving justice and redress for victims compared to minor crimes. For Example, preventing the Public Prosecution from handling serious cases by means of direct referral to the court without prior investigation, or by temporarily filing the papers based on the investigation records referred to them by the judicial police officers if the perpetrator is unknown or the evidence against him is insufficient, as well as limiting the authority to handle the investigation in serious cases to the member of the Public Prosecution to whom the Attorney General has granted such authority pursuant to Article 217 of the Code of Criminal Procedure.

Types of Human Rights Violations in Yemeni Law

Illegal Arrest and Arbitrary Detention

Article 48 of the Yemeni Constitution explicitly prohibits the restriction of an individual's freedom without a ruling from a competent court: "No person may be arrested, searched, or detained except in cases of flagrante delicto, or by an order necessitated by the requirements of investigation and security, issued by a judge or the public prosecutor in accordance with the law." Similarly, Article 7(1) of the Code of Criminal Procedure prohibits unlawful

detention, stating, "Arrests are only permissible in connection with acts punishable by law and must be based on legal grounds." Article 11 of the same code further reinforces this principle by declaring that "personal freedom is guaranteed, and no citizen may be accused of committing a crime or have their freedom restricted except by order of the competent authorities as outlined in this law."

The unlawful detention of civilians is classified as a war crime under the Military Crimes and Penalties Law, with no statute of limitations on prosecuting such crimes. Commanders and their subordinates bear responsibility for these crimes, and none are exempt from the prescribed punishment unless the acts were committed without their choice, knowledge, or they were unable to prevent them.¹⁰⁴

Article 48 of the Constitution also prohibits the imprisonment or detention of any person in locations not subject to prison regulations. This is reiterated in Article 187 of the Code of Criminal Procedure, which states, "No person may be deprived of their freedom or imprisoned except in places designated by law." Furthermore, the law stipulates that "anyone who prepares a place for detention or imprisonment without legal authority, or facilitates such acts, shall be punished with imprisonment for up to three years or a fine."¹⁰⁵

Arbitrary Pretrial Detention

Article 184 of the Yemeni Code of Criminal Procedure regulates pretrial detention, establishing conditions for its application. These conditions include the presence of sufficient evidence to support the accusation and that the alleged offense is punishable by imprisonment for more than six months. Additionally, detention is permissible if the accused has no known residence, provided the crime is punishable by imprisonment. The law mandates that:

Any detention order issued by the Public Prosecution must be in writing, signed by the relevant prosecutor, and stamped with the official seal of the Republic. The order must include the following details:

1. The detainee's full name.
2. Their place of residence.
3. The case number in which they are detained.

104 Law No. (21) of 1998 regarding military crimes and penalties, Article 23.

105 Republican Decree Law No. (12) of 1994 regarding crimes and penalties, Article 247.

4. The crime they are accused of and the relevant legal provision.
5. The duration of the pretrial detention and the date on which the detainee is to be presented to the detaining authority for a decision on their case.¹⁰⁶

By law, minors under the age of fifteen cannot be subjected to pretrial detention. Furthermore, women can only be detained pretrial under exceptional circumstances, and pretrial detention for offenses committed through the press is prohibited unless the crime involves defamation or incitement to moral corruption. If “the investigation requires the arrest or pretrial detention of a government employee, the Public Prosecution must immediately notify the relevant authority of the arrest or detention order.”¹⁰⁷

The maximum period for pretrial detention is seven days, which can be extended by judicial order if necessary for the investigation, with consecutive extensions not exceeding forty-five days each, and a total duration of no more than six months. The accused has the right to appeal detention orders. Additionally, Article 7 of the Code of Criminal Procedure obligates the Public Prosecution to immediately release any person whose freedom has been unlawfully restricted or who has been held in pretrial detention longer than legally permitted by law, court ruling, or judicial order.

Pretrial detention often strays from its intended purpose as a temporary investigative measure and, in many cases, becomes a de facto prison sentence that deprives individuals of their personal freedom without a judicial ruling. In Yemeni law, the continuation of pretrial detention is not necessarily linked to the emergence of strong, growing evidence against the suspect. This approach conflicts with the principle of presumed innocence, which is upheld by Yemeni legislation.

Moreover, Yemeni law lacks a clear provision that obligates the Public Prosecution to conclude the preliminary investigation once the pretrial detention period has expired or exceeded its maximum limit of six months. Instead of establishing a principle of accountability and punishment for pretrial detention that exceeds legally prescribed timeframes, Yemeni law merely provides for the deduction of the pretrial detention period from the total sentence once a judicial ruling is enforced. This approach effectively legitimizes extended pretrial detention, turning it into a quasi-sentencing practice.

106 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 186.

107 Attorney General Decision No. (20) of 1998 on issuing general instructions for the Public Prosecution, Article 84.

Enforced Disappearance

Yemeni law criminalizes enforced disappearance through explicit provisions found in Republican Decree Law No. (24) of 1998, concerning crimes of kidnapping and highway robbery. The law stipulates imprisonment for a period not less than twelve years and not more than fifteen years for anyone who kidnaps a person, which states:

If the kidnapping involves a female or a minor, the punishment is increased to twenty years of imprisonment. If the kidnapping is accompanied by or followed by harm or assault, the punishment is imprisonment for up to twenty-five years, without prejudice to the application of qisas (retribution), diyah (blood money), or orsh (compensation) where applicable. If the kidnapping is accompanied by or followed by murder, rape, or sodomy, the punishment is death.

Article 8 of the referenced law further doubles the penalties if the perpetrator is a member of the armed forces, security personnel, or a public official.

However, Yemeni law lacks provisions that prohibit law enforcement officers from denying or concealing information about individuals deprived of their liberty and subjected to enforced disappearance. Additionally, it does not address the civil liability of perpetrators of kidnapping crimes or the civil liability of the state or its authorities that organized, approved, or overlooked such disappearances, as stipulated in the Declaration on the Protection of All Persons from Enforced Disappearances.

Torture and Other Forms of Cruel Treatment

The Yemeni Constitution prohibits torture and inhumane treatment during arrest, detention, or imprisonment.¹⁰⁸ It explicitly states that crimes involving physical and psychological torture do not fall under the statute of limitations. Yemeni law forbids the torture of an accused person or their subjection to inhumane treatment or physical or psychological harm to coerce a confession. According to Article 53 of the Constitution:

Anyone who, during the performance of their duties, tortures, uses force, or threatens an accused or witness to coerce a confession or compel them to provide statements or information about a crime shall be punished with imprisonment for a period not exceeding ten years, without prejudice to the victim's right to qisas (retribution), diyah (blood money), or orsh (compensation).

108 Constitution of the Republic of Yemen, Article 48, Paragraph B.

However, significant gaps exist in Yemeni law regarding the criminalization of torture, as noted in the 2009 Concluding Observations of the Committee Against Torture. The law lacks a comprehensive definition of torture that includes all the elements outlined in Article 1 of the Convention Against Torture. Although the prohibition of torture is generally recognized in Yemeni law, it does not contain explicit provisions that ban the justification of torture under the pretext of war, exceptional circumstances, or imminent national security threats.

Extrajudicial Killing

Human life is inviolable under Yemeni law, and taking a life without just cause is strictly prohibited. The Yemeni legal system criminalizes all forms of extrajudicial killing. However, the law prescribes a disproportionately lenient punishment for acts of assault that result in death if the perpetrator's actions were due to negligence in the performance of their official duties, profession, or craft, or if the crime occurred while under the influence of alcohol or drugs. In such cases, the punishment is limited to discretionary imprisonment for a period not exceeding five years. The Yemeni law allows for the appointment of an expert to determine the cause of death and the nature of bodily injuries sustained by the accused as part of the investigative or trial process. In extreme circumstances, it also permits the exhumation of a body for examination and autopsy by the public prosecutor during investigations or by the court during trial.¹⁰⁹

109 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 213.

Section Three:
Law Enforcement
Agencies and Judicial
Enforcement Officers

Requirements for Institutional Reform in the Justice and Security Sector

Law enforcement agencies and judicial enforcement officers are responsible for combating crimes, detecting them, and pursuing criminals during the pre-trial phase. Among these, the police are a key judicial enforcement body in Yemeni law, vested with the authority to investigate, gather evidence, record complaints, and refer suspects to the public prosecution within 24 hours. The police also have the authority to conduct investigations into minor crimes if assigned by the public prosecution, which holds the primary jurisdiction over such investigations.

The Police Force and Security Agencies

The police and security forces are civil, organized bodies defined by Yemeni law and operate under the Ministry of Interior. The police force is specifically tasked with maintaining public order, safety, public decency, and tranquility. Their duties include crime prevention, combating criminal activities, tracking down perpetrators, apprehending them in accordance with the law, managing prisons, guarding inmates, executing judicial orders, and fulfilling any other responsibilities imposed by laws, regulations, and decrees.¹¹⁰

The law grants the police powers commensurate with their responsibilities, especially concerning crime detection and the apprehension of suspects. These powers include summoning individuals as per legal procedures, stopping and detaining individuals for no more than twenty-four hours, searching people and property, securing evidence, entering homes and public places in emergencies or disasters, or for the purpose of protecting individuals and maintaining public order, and pursuing and arresting prison escapees and fugitives from justice.

Police officers are legally required to obey and execute lawful orders from their superiors, avoid disciplinary violations, and adhere to applicable laws and regulations. They must respect citizens' rights, strive to facilitate their dealings, and provide necessary assistance. Police officers are prohibited from using their rank or military status for personal gain, causing harm to others, or obtaining benefits for themselves or others.

The police are subject to a monitoring, inspection, and performance evaluation system established by the Minister of Interior, with input from the Higher Police Council. This system includes disciplinary measures ranging from reprimands to dismissal, depending on the severity of the violation, without prejudice to any harsher penalties prescribed by other applicable laws. Non-commissioned officers and soldiers in the police force are subject to the

110 Law No. (15) of 2000 regarding the Police Force, Article 8.

Requirements for Institutional Reform in the Justice and Security Sector

same disciplinary measures. Civilian employees in the police force are governed by the Civil Service Law, which includes its own disciplinary system.

The law permits the dismissal of police officers from service based on a final judicial ruling and a subsequent decision by the Minister of Interior, particularly in cases of conviction for crimes involving moral turpitude or dishonesty.

The police force includes semi-military police units whose identities are not explicitly defined by law but, in practice, encompass all security agencies under the General Security Sector of the Ministry of Interior. The most prominent of these agencies, which exercise policing powers and perform tasks directly related to the administration of justice, include:

Criminal Investigation Department (CID): This department is responsible for combating crime, tracking down and apprehending criminals, investigating and gathering evidence, verifying complaints, and arresting offenders. The CID oversees a detention facility known as the Criminal Investigation Prison, which is under the supervisory authority of the Public Prosecutor. Additionally, the CID's prosecution office manages the records of pre-trial detention, documenting all orders and extensions of such detentions issued by the Public Prosecution.

- **Central Security Forces:** Their duties include securing the entrances to major cities through checkpoints at the capital's entry points, executing judicial orders when necessary, apprehending armed gangs, protecting demonstrations, and safeguarding prison facilities.
- **Rescue Police:** This unit's tasks involve detecting crimes as they occur, seizing suspects and evidence, and handing them over to the relevant security agencies.
- **Security Departments:** These departments are tasked with receiving reports and complaints, taking statements, and conducting investigations. The General Security Sector also includes other organized bodies such as the General Directorate of Drug Control, the Counterterrorism Unit, and the Prisons Authority.

There are also unofficial security agencies that actively engage in arrests, searches, and detentions of individuals. These agencies collect intelligence and conduct investigations under the pretext of maintaining internal security and state security. They report directly to the Presidency and include bodies like the Preventive Security Agency and the Security and Intelligence Agency (formerly Political Security and National Security). Additionally, unofficial and quasi-military security forces affiliated with various conflict parties often operate outside the official framework. These entities are typically more prone to committing systematic human rights violations than others.

Judicial enforcement officers

In addition to police and security officers, the term "judicial enforcement officers" includes members of the Public Prosecution, governorate governors, directors of districts, village chiefs, captains of sea and air vessels, and all employees designated with Judicial enforcement authority under the law, as well as any other entity entrusted with Judicial enforcement duties by law.

All judicial enforcement officers are mandated by Article 91 of the Criminal Procedure Law "to investigate crimes, pursue offenders, examine reports and complaints, collect and record evidence and information related to the case, and document this in their reports for submission to the Public Prosecution." Judicial enforcement officers are subject to the oversight of the Public Prosecution, which exercises full supervisory authority over them, including the imposition of penalties for any violations, misconduct, or negligence. Such penalties can extend to the revocation of their Judicial enforcement status as a personal sanction.

Roles and Procedures of Law Enforcement Agencies in the Pursuit of Justice: Law and Practice

Most human rights violations that are systemic or institutional in nature, if not all, are attributed to the police and security agencies. However, these agencies play a crucial legal role in determining the course of justice through the function of pursuing criminals and fugitives from justice, apprehending them, and carrying out Judicial enforcement actions, which are essential for proving a crime. Additionally, all steps and procedures related to initiating and progressing legal actions during the investigation phase, conducted by the Public Prosecution, are influenced by the actions of the police and security agencies in the investigation and evidence collection phase. The manner in which these agencies perform their judicial duties in the pre-investigation and pre-trial stages also impacts the justice process. Therefore, "the strict application of justice by the judiciary is contingent upon the quality, accuracy, and legality of Judicial enforcement actions."¹¹¹

111 Saeed Al-Barak Al-Sakuni, Judicial Enforcement Bodies and Their Relationship to the Public Prosecution: Function and Problems, Arab Journal of Security Studies, Naif Arab University for Security Sciences, Vol. 23, No. 46, April 2008, p. 107.

Receiving Complaints and Reports, Collecting Evidence, and Investigating Crimes: Procedural Legal Framework

Police stations and public security agencies are among the entities responsible for receiving reports and complaints about crimes. Given that the law mandates these agencies to investigate and uncover crimes, they are required to initiate the process of collecting evidence and investigating immediately upon learning of an incident. This awareness may come from receiving a report from an individual, a formal complaint from the victim or their representative, or from an observation or report by one of their officers.

The procedures for judicial enforcement officers begin with examining and recording the complaint in the complaint register upon receipt. They then proceed to gather information related to the incident, including collecting evidence, inspecting the scene, and seizing any tools suspected of being used in the crime as necessary and according to the nature of the crime. If the reported incident is classified as a serious crime or one of the crimes defined by the Public Prosecutor (quasi-serious crimes), the Judicial enforcement officer must "notify the Public Prosecutor and immediately proceed to the scene of the incident to secure it, seize all relevant materials, and conduct the necessary inspection. In general, they must take all actions to preserve crime evidence and facilitate the investigation. They may question individuals with knowledge about the criminal facts and perpetrators, and interrogate the accused. This information must be documented in the investigation and evidence collection report, which must be signed by the officer, witnesses, and any experts consulted." Subsequently, the signed evidence collection reports are sent to the Public Prosecutor for further action.

Assessment and Practice

There are varying patterns of unlawful handling by the police and judicial authorities regarding citizens' complaints about human rights violations committed by public officials or law enforcement personnel. One of the most common patterns is the disregard for complaints by these authorities, where the complaints are neither recorded nor processed officially, and no evidence collection is initiated. Specifically, reports and complaints related to cases of enforced disappearance frequently encounter this outcome.

In Hadhramaut, during the 2021/2022 year, the Judicial enforcement authorities received 18 complaints from the families of the disappeared and detainees. These complaints were referred to the Specialized Criminal Prosecution in Hadhramaut and subsequently to the Specialized Criminal Court in Hadhramaut.

Requirements for Institutional Reform in the Justice and Security Sector

In contrast, complaints regarding enforced disappearances often remain under the purview of the security department, where they are recorded merely as reports without any official acknowledgment or action. The security department frequently denies the existence of such cases, making it impossible to refer them to the Specialized Criminal Prosecution or any other prosecutorial body.¹¹²

Generally, individuals who report serious human rights violations face threats, verbal abuse, and coercion to withdraw their complaints. Security agencies may use the victims themselves to deliver warning messages to their families, urging them to refrain from filing complaints or pursuing the matter further.

An example of a case of a victim using to warn his family from filing a complaint

On April 17, 2022, armed masked individuals affiliated with a security entity in the city of Damt, within areas controlled by the Ansar Allah (Houthi) group, abducted M.S.A.H., a 55-year-old man. He was forcibly placed into a civilian vehicle without a license plate. The victim's family later discovered that these individuals were affiliated with the Ansar Allah (Houthi) group, (but they were uncertain whether they were part of political security, intelligence, or another agency), based on what the victim informed his family when he contacted them two days after his disappearance. The victim told his family that he was accused of espionage and transferring information to the adversary. He also informed them that he did not know his location and was in solitary confinement. He requested them not to search for him or file a complaint, out of concern for their safety and his own. He also mentioned that his captors had instructed him to warn his family and tell them not to pursue the matter.

In cases where the police have initiated investigations into enforced disappearances suspected to be committed by security or military personnel from various parties, they often face institutional denial and are hesitant to issue arrest warrants for suspects, with substantial evidence of serious human rights violations against them. As a result, the inevitable outcome is typically either halting the investigation into the complaint or treating the suspect as a fugitive from justice, leading to the referral of incomplete and inadequate investigation reports to the prosecution.

Usually, deficiencies in the investigative reports arise from several issues, including the failure to take prompt and immediate action on the complaint, delays by the investigating

112 Field report by the Legal Support Team in Hadhramaut.

authority in collecting or completing evidence, inadequate and weak investigative processes, refusal to interview witnesses or lack of attention to their statements, and failure to document the findings of the investigation in an official report that can be legally recognized. It is not uncommon for authorities to destroy or tamper with evidence before referring it to the public prosecution, especially in complaints involving police or security personnel who received the reports.

An example of a case of police station refusing to filing the complaint and hiding the perpetrator and tampering with crime evidence

On July 13, 2022, at approximately 10:00 p.m., a group of armed guards from the security team of the Director of Sheikh Othman District arrived at Sheikh Othman Market and opened fire on the victim, M.A.Q., from behind without warning, resulting in his immediate death. The victim's family filed a complaint with the Sheikh Othman Police, where one of the armed suspects was a shift officer. The police department refused to accept the complaint and hid the perpetrator. On Monday, July 25, 2022, the victim's family lodged a complaint with the Criminal Investigation Prosecution, which directed further investigation and submission of the case file to it. The Sheikh Othman Police conducted a superficial investigation, concealed the forensic report and footage captured by street cameras at the crime scene, and failed to apprehend the suspects, claiming they were fugitives from justice. The victim's family received numerous threats of elimination if they did not withdraw the case, and the Sheikh Othman Police continued to manipulate the case.

Complaints lodged with law enforcement agencies against their own personnel pose extreme risks to the complainant and may lead to severe consequences for both the individual and their family, including the potential for false accusations against the complainant.

An example of a case of fabricating a malicious charge against the complainant

On April 15, 2022, F.A.A.S. filed a complaint with the Criminal Investigation Department in Marib regarding the theft of his mobile phone by an individual affiliated with the department. The on-duty officer refused to open an investigation into the complaint and instead ordered the detention of the victim. Subsequently, the Criminal Investigation Department fabricated charges against him, including allegations of homosexuality and posting obscene videos on social media. The case is still under review by the Appellate Division in Marib.

Order for Summons and Detention

Procedural Legal Framework

Under Yemeni criminal procedure law, judicial enforcement officers are authorized to issue summonses to individuals, whether they are suspects, complainants, or witnesses. The summons must be written and include the following details: "the name of the person summoned, their address, occupation, the purpose of their attendance, the date of the order, the required attendance time, the signature of the issuing authority, and the official seal."

The summons is executed by process servers, police officers, or public officials who do not possess judicial authority. However, compulsory detention orders are issued by the investigator if a summoned individual fails to appear and it serves the interests of the investigation and clarifying the truth.

When it comes to stop-and-frisk procedures, the law exclusively empowers police officers, who hold judicial authority, to carry out such actions. A police officer may stop any individual to inquire about their name and identity if it is deemed necessary for the investigation. This stop can be escalated to a temporary preventive detention if there is reasonable suspicion of a crime. The law also specifies certain situations in which both police officers and judicial enforcement officers are permitted to conduct stops, including:¹¹³

When the individual refuses to provide the required information, provides false information, or gives an unconvincing explanation, or refuses to accompany the officer to the police station without valid justification.

- When there is strong evidence suggesting that the individual has committed a serious crime.
- If the individual has no known place of residence.
- If the individual appears to be visibly intoxicated.
- If the individual is found in a gathering, altercation, or dispute that suggests the potential for a crime that can only be prevented by such action.
- If the individual is openly carrying a firearm in violation of the law.

113 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 107.

Assessment and Practice

Granting the police the authority to convert a stop-and-frisk into a temporary preventive detention based solely on suspicion, and without clear guidelines, provides officers with broad discretionary powers that are often subject to abuse. The decision is left to the officer to determine whether the stopped individual's statement regarding their name and identity is convincing or not, and subsequently whether to detain them at the police station. Furthermore, the powers related to stop-and-frisk appear insufficiently regulated, and their application as outlined in the Yemeni procedural system undermines legal safeguards for public rights and freedoms. Individuals can be stopped in situations that do not meet the legal definition of a crime, merely for violating the directives and policies of parties involved in the conflict and the structures of authority associated with them.

An example of a case of Unlawful mass arrest

on November 30, 2021, at midnight, security personnel at the Yasilah checkpoint (south of Sana'a) stopped a vehicle carrying several female employees of a private company returning from Aden to Sana'a. The officers detained the women for six hours, preventing them from continuing their journey on the grounds that they were not accompanied by a male guardian (mahram). The detainees were only released after they pledged not to travel without a mahram and were threatened with arrest if they repeated that.

Judicial enforcement agencies often misuse summons orders as a tool to lure and entrap victims, turning a legal process into a means of arbitrary detention.

An example of a case of a summons that turned into arbitrary detention

on November 23, 2022, the Tawahi Police Department in Aden summoned a victim, A.Y., an engineering student, to respond to a complaint accusing him of stealing a bag containing cash and jewelry from a female relative's home. The victim denied the charges, and the police had no evidence to implicate him. However, due to the female complainant's kinship with a member of the police department—according to the victim's father—the victim was threatened by the police and was arbitrarily detained for three months without any investigation. After the victim's father filed a complaint with the public prosecutor, the police department referred the case to the Criminal Investigation Department, which conducted an investigation into the charges against the victim. Despite this, the authorities ignored the father's complaint against the police chief regarding the unlawful detention of his son.

The Arrest Procedure

Procedural Legal Framework

Police officers and judicial enforcement officers are authorized to perform two types of legal arrests: arrest by warrant and arrest without a warrant. In the first type, the law mandates that judicial enforcement officers arrest individuals in two specific situations: when they have received an arrest order from a legally authorized official, typically a public prosecutor conducting an investigation, in which case the arrest warrant must be in writing; or when the official who issued the arrest order is present and overseeing the arrest, in which case the order can be given verbally.

The second type is arrest without a warrant. The law authorizes police officers and judicial enforcement officers to arrest individuals without a warrant under specific, limited circumstances, which include: being caught in the act (*flagrante delicto*), being a fugitive wanted for arrest, committing a serious crime with strong evidence indicating guilt and a risk of flight, or committing a minor offense punishable by imprisonment with strong evidence and credible information against them, under one of the following conditions:¹¹⁴

1. The individual has no known residence in the country.
2. There is strong evidence that the individual is attempting to hide or flee.
3. The individual refuses to provide their name and identity, lies about it, gives an unconvincing statement, or refuses to go to the police station without justification.

The individual is visibly intoxicated.

There is serious suspicion that the individual is fleeing from an impending arrest.

Judicial enforcement officers may request the public prosecution office, without requiring a written request, to issue an arrest warrant for individuals with sufficient evidence of involvement in hiding stolen goods or items used in a crime. This also applies to those accused of fraud, serious offenses, incitement to immorality or vice, or drug-related crimes. The arrest period should not exceed twenty-four hours. Judicial enforcement officers must immediately question the suspect and forward the case file, including the arrest report, to the public prosecution office. The prosecution must act on the case within twenty-four hours of its submission; otherwise, the detainee must be released immediately. "The detainee has the

114 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 103.

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right to review the arrest warrant, contact someone to inform them of the situation, and seek legal representation. They must also be promptly informed of the charges against them."

Detainees should be held in a separate location from convicted prisoners and treated as innocent until proven guilty. Physical or psychological abuse to extract confessions or for any other purpose is prohibited. As a general procedure:

The officer in charge of the police station must record all instances of arrest and detention in a special register, noting the name and position of the arresting or detaining officer, the method, date, time, reason, and duration of the arrest. A daily copy of this register, detailing all arrests and detentions and related information, must be submitted to the public prosecution officer regularly.¹¹⁵

Assessment and Practice

In the Yemeni procedural system, arrests without a warrant are not subject to a hierarchical framework that clearly defines the scope of responsibility for unlawful arrests carried out by judicial enforcement officers. While Yemeni law does not penalize officials who withhold information about detainees, Article 12 of the Declaration on the Protection of All Persons from Enforced Disappearance mandates that signatory states, including Yemen, establish "rules defining the officials authorized to issue orders for deprivation of liberty, the conditions under which such orders may be issued, and the penalties for officials who refuse, without legal justification, to provide information about the deprivation of someone's liberty."

The Yemeni procedural system does not restrict arrests based on the complainant's complaint, particularly in cases of complaint-based crimes, leaving it to be executed without clear constraints. Moreover, there is no explicit provision invalidating evidence or seized items resulting from unlawful arrests, meaning such evidence may not have legal validity or binding effect in all subsequent stages of investigation and litigation.

In practice, the police and public security forces have extensively engaged in unlawful arrests and arbitrary detention without warrants, often under the pretext of unusual security conditions nationwide. This frequently occurs without charging detainees, informing them of the reasons for their detention, or allowing them to notify their families of their conditions and locations. Detention periods have often extended to weeks or months without referral to the public prosecution office, and in some cases, unlawful arrests by public security forces and unofficial security agencies aligned with conflicting parties have evolved into cases of

115 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 106.

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enforced disappearance lasting years. In most instances, "families are unable to contact their detained relatives and only receive calls from them when allowed by the detention authorities."¹¹⁶

Common practices associated with armed conflict include detaining people from roads, public places, markets, or at security checkpoints during travel within cities or between governorates without notifying the victims' relatives, taking relatives as hostages including children, and conducting mass arrests through raids and security operations.

An example of a case of security raid and illegal mass arrest

On the first day of Eid al-Fitr, June 25, 2017, residents of the Al-Gharib village in the Shahara district of Amran were performing Eid prayers in their village mosque. The Moshrif (supervisor) of neighboring village, affiliated with the Ansar Allah (Houthi) group, arrived at the mosque with nine armed men. The Moshrif and his group began chanting the Houthi slogans, and a child objected, suggesting they go to their own village mosque for the chant. The Moshrif immediately responded by opening fire on the child, killing him. The child's father, unable to bear the incident, seized a rifle from a nearby individual and shot the Moshrif, killing him. Following the incident, approximately four hundred personnel from various security formations arrived at the village in around sixty military vehicles. They took the child's father and ten other individuals from the village. The victims were subjected to enforced disappearance and torture, with fabricated charges being levied against them. In 2021, five victims were released through local mediation, but six victims remain in detention without legal justification.

An example of a case of a minor's arrest to pressure his father

On Wednesday, August 17, 2022, soldiers following the police chief of Khor Makser and the Aden Security Administration affiliated with the internationally recognized government, arrested the minor child Fadhel Milhim Musa'id Abdullah (male/14 years old), when he left his home while the forces were present in the neighborhood searching for his father, the accused. The victim was detained at the Khor Makser police station without any charge other than pressuring his father to turn himself in.

In certain instances, security agencies engaged in arbitrary detention may later correct their arrest procedures to avoid disciplinary action after the detainee has spent a prolonged period in custody. However, such corrections are relatively rare due to the pervasive culture

116 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons, Sana'a, March 13, 2024.

of impunity and the lack of effective accountability.

Yemeni law and its procedural system lack specific rules concerning the arrest of juveniles and women, or legal guarantees aimed at protecting these groups from arbitrary and unlawful detention through special measures.

An example of a case of arrest a minor

On November 19, 2021, security forces affiliated with the internationally recognized government (IRG) arrested the child M. A. on charges of espionage for the enemy (the Ansar Allah (Houthi) group). The child lived in an area near Al-Hawban, which is controlled by the Ansar Allah (Houthi) group. He was accustomed to receiving two friends who lived in Al-Hawban, which the security forces deemed sufficient grounds for his arrest, along with his friends. They were placed in military intelligence detention, interrogated, and their case was referred to the Juvenile Prosecution Office.

An example of a case of arrest an elderly woman without notifying her relatives

The victim K.N.A.Sh. is from Taiz Governorate, Bani Shiba area, and is 60 years old. She lives with her sister in a tent in the Bir Basha area and practices begging after her husband divorced her. On 25/10/2022, a military team of five people, some wearing military uniforms and some in civilian clothes, came and took the victim to the Taiz police station and then to the central prison. The victim was accused of collaborating with the Houthi Ansar Allah group, and none of her relatives or children were notified. The victim is still being held in the central prison in Taiz.

Judicial enforcement authorities have misused their legal powers of arrest and detention for unlawful gains or have succumbed to the pressures of influential individuals, utilizing their official positions for dubious purposes.

An example of the abuse of detention authority

On Sunday morning, November 11, 2022, the victim B. A. A. from AFalh Al-Sham district in Hajja Governorate went to the security department to pursue a case of harassment involving his 14-year-old daughter by a local dignitary. The security department requested that he withdraw his complaint and settle the matter through traditional arbitration. The victim refused, leading the security director to order his imprisonment. As a result, the victim remains in custody to this day without legal justification.

Another example of detention for purpose of extortion

On Monday, March 9, 2023, at 10 AM, four soldiers belonging to the Al-Bayda Directorate's administration, wearing civilian clothes, intercepted the victim M.A.M.S (male, 75 years old) from the Mukairas Directorate, Al-Bayda Governorate, who works in trade, while he was in the market of the city of Al-Bayda, on Alfred Street, and took him to the building of the Al-Bayda Directorate. The victim was detained in a room inside the building on the instructions of the Director-General of the Al-Bayda Directorate, without any legal justification or charges, and was asked to pay four thousand Saudi riyals to be released.

Use of Force During Arrest

Procedural Legal Framework

The law permits those executing an arrest warrant to use necessary force, but only in limited and exceptional circumstances, such as to counteract resistance from the arrestee or others, or to prevent escape. The determination of such necessity is left to the court.¹¹⁷ Additionally, the Police Authority Law restricts the use of weapons or the firing of guns by stating that it must be "the only means to achieve the objective and used only to the extent necessary, provided that the officer makes every effort to avoid causing fatal injury." This law also imposes several additional restrictions that are somewhat broadly defined. The law establishes "rules of engagement" for situations where the police are compelled to use firearms as the only means of dealing with the situation. These rules include issuing warnings, firing a warning shot into the air, and aiming as much as possible at non-lethal areas.

Assessment and Practice

According to the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly on December 17, 1979, "firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities."¹¹⁸

While Yemen does not have official obligations concerning this Code, it is noted that the Yemeni procedural system uses the term "resistance" rather than "armed resistance" as a justification for using force during arrests or while pursuing fleeing criminals. Although

117 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 79.

118 Code of Conduct for Law Enforcement Officials, Article 3 with commentary.

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Article 79 of the Criminal Procedure Law suggests that the assessment of the necessity of using force proportionately is for the court, the broad and imprecise use of the term "resistance" makes it difficult for justice bodies to hold the police and general security forces accountable for using firearms in cases of non-armed resistance, such as refusing to surrender without displaying a weapon.

Furthermore, the principle of exhausting all attempts to arrest before resorting to force, as stipulated in previous police legislation, has been completely disregarded in the current procedural system.¹¹⁹ This implies that the legislator has deliberately allowed the police to use lethal force against the suspects from the outset of an arrest, provided it is necessary to achieve the arrest objective. The use of force as an exceptional measure is not distinguished between cases of arrest with a warrant issued by the competent authority and arrest without a warrant, which may be arbitrary and based on subjective assessments. There is no requirement in the Yemeni procedural system for police officers and judicial enforcement officers to report the reasons for using force and the extraordinary circumstances involved.

In practice, the police and public security agencies do not hesitate to use deadly force and firearms from the outset, without prior warning, when arresting wanted individuals. They have engaged in extrajudicial killings under the pretext of executing arrest warrants or pursuing fugitives who have failed to comply with arrest instructions without showing any resistance. Additionally, they have carried out violent arrests accompanied by degrading and humiliating treatment, even when those arrested have complied with orders and instructions.

An example of unjustified use of deadly force during arrest

on January 8, 2023, the victim, W.A.L.H., was subjected to a manhunt by soldiers from the Al-Hasha Security Administration in Al-Dhale' Governorate and was killed extrajudicially. A military vehicle, carrying about eight armed soldiers—half in military uniform and the other half in civilian clothes—pursued the victim based on a court order to bring him and two others to answer for an inheritance case. When the victim was apprehended by a group of soldiers, they beat him severely before taking him to the military vehicle. They surrounded him, and one of the soldiers struck him on the head and neck with a rifle. They then threw him onto the vehicle to transport him to the security office. The victim pleaded for medical assistance, but he died shortly after arriving at the security office. The victim's family filed a complaint with the public prosecutor and demanded an investigation into the perpetrators.

119 Republican Decree Law No. (24) of 1991 regarding the duties and powers of the police, Article 14, Paragraph 1. This Republican Decree Law was cancelled by Law No. (15) of 2000 regarding the Police Authority.

However, the suspects were detained in a room in the prosecutor's office building. After a few days, an autopsy was performed, and the forensic report stated that the death occurred due to a heart attack from running. The prosecutor ordered the burial, which took place on January 28, 2023.

Search of Residences

Procedural Legal Framework

The law does not permit those executing an arrest warrant to enter or raid residences to search for the wanted individuals except in the following cases:¹²⁰

1. If authorized by the public prosecutor or court.
2. If the person to be arrested is caught in the act of committing a crime.
3. If the person sought is accused of a serious crime for which they have not previously been arrested, and there is a risk of escape, or if the person is a fugitive from justice.
4. If the person sought refuses to surrender to the authorities executing the arrest warrant or resists them.
5. If the law or the arrest warrant specifies that the person should be arrested wherever they may be found.

Individuals executing an arrest warrant are authorized to enter the residence of the person being arrested to search for them. They are also allowed to enter any residence where there is strong evidence of the suspect's presence, forcibly if necessary, if the occupant does not provide reasonable assistance or fails to facilitate the search. While searching, customs and practices regarding the treatment of women in the residence should be observed, but their presence does not prevent the search from proceeding forcibly if required.

Searching residences is considered part of the investigative process and must be conducted based on an order from the Public Prosecution, related to an accusation against a person residing in the residence to be searched for committing a crime punishable under the prevailing Crimes and Penalties Law. According to Yemeni procedural law, the person conducting the search must present the search and seizure order to the accused before commencing the search. Searches should be conducted between sunrise and sunset, except in cases of a flagrant offense or when pursuing a fugitive from justice.

120 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 79.

Assessment and Practice

Although the general rule established by the Code of Criminal Procedure in Article (12) mandates that a search warrant for residences must always be justified, the law specifically requires that the reasons for conducting a nighttime search be documented in the search record. This implies that a search warrant must be generally justified, with an additional specific justification for nighttime searches. It also suggests that issuing warrants for nighttime searches of residences should not be done initially, whether for locating wanted individuals or seizing items suspected of being used in the commission of a crime. Instead, such actions are contingent upon the circumstances and developments during the arrest and must be documented in the incident report.

An example of an illegal search

On the evening of Friday, April 17, 2020, a force affiliated with the Ansar Allah (Houthi) group, consisting of five vehicles with armed personnel in both military and civilian attire, surrounded the residence of the victim, T. S., a 33-year-old. The house was breached after an individual called out to and lured the victim out of his home. The residence was searched, personal belongings of the victim were seized, and he was arrested. The victim's whereabouts remained unknown for five months.

Care for Prisoners in Penal Facilities

Procedural Legal Framework

Under Yemeni law, imprisonment or any form of detention can only be imposed based on a final, enforceable court judgment issued by a competent court. This must be accompanied by an executive order from the Public Prosecutor, detailing the judgment, the date and duration of imprisonment, and deducting any time served in pre-trial detention if applicable. The order must be in writing, signed by the authorized prosecutor, and bear the official seal of the Republic. Additionally, "a copy of the detention order must be delivered to the facility manager upon deposit of the detainee, with the manager signing the original as receipt."¹²¹

Officials in penal facilities must not accept any individual as a prisoner or detainee without a valid order from the competent authority, which must meet both substantive and procedural legal requirements as previously outlined. The prison administration is required to notify the inmate's family of their location and inform them if the prisoner is transferred

121 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 188.

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to another facility.¹²² Article 193 of the Code of Criminal Procedure grants every detained individual the right to file a written or verbal complaint to the facility manager at any time, who must promptly forward it to the Public Prosecutor after recording it in the logs.

The Yemeni law strictly prohibits prison authorities from torturing sentenced prisoners and detainees held in pretrial detention during ongoing investigations or trials. Article 9, paragraph (b) of the Police Authority Law, explicitly forbids the use of physical torture or psychological coercion against any individual during the investigation, detention, or imprisonment stages.

Upon the arrival of prisoners, prison management is required to establish a reception center for their classification. The Prison Regulation Law outlines the criteria for classifying prisoners as follows:¹²³

1. Separate first-time prisoners from repeat offenders.
2. Isolate prisoners convicted of crimes with significant social impact.
3. Separate foreign prisoners from Yemeni prisoners.
4. Separate juvenile offenders from adult prisoners.
5. Separate female prisoners from male prisoners.

These separation measures in Yemeni law align with the provisions of Article 10 (a and b) of the ICCPR. However, concerning juveniles, the law overlooks the specific requirement in the ICCPR—an obligation for all Signatory States, including Yemen—that "accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."

Under the Yemeni Prison Regulation Law, prison authorities are also responsible for maintaining public health within the prison and providing comprehensive care to prisoners. This includes ensuring proper medical treatment, preventive healthcare, and the appointment of specialized doctors in coordination with the Ministry of Public Health. Pregnant female prisoners must receive appropriate medical care before, during, and after childbirth according to the doctor's instructions. Additionally, prisoners or pretrial detainees are entitled to visitations from their relatives and friends, to receive and respond to correspondence, and to receive and send financial transfers. Solitary confinement is

122 Republican Decree No. (48) of 1991 regarding Prison Regulation Law, Article 9, Paragraph 3.

123 Republican Decree No. (48) of 1991 regarding Prison Regulation Law, Article 32.

permitted only as a disciplinary measure for a violation committed by a prisoner and must not exceed two weeks in duration.

Assessment and Practice

In light of international standards for the treatment of prisoners, it can be said that the Yemeni procedural system overlooks the importance of defining what constitutes behavior warranting disciplinary punishment against prisoners. This should be based on behavioral standards that the prisoner must receive from the prison administration as part of their rights and as a logical basis for disciplinary action. Additionally, the prohibition of other unlawful disciplinary measures under international law, such as physical punishment, confinement in a dark cell, and any form of cruel, inhuman, or degrading treatment, or any punishment causing physical or mental harm to the prisoner, is not reflected in the Yemeni procedural system. This also applies to the lack of prohibition on the use of chains and handcuffs as means of punishment or restriction of freedom within detention facilities, as the Yemeni procedural system does not address this issue. Furthermore, there is no provision in Yemeni procedural law requiring the prison administration to inform the family of a prisoner about their location or to provide effective and immediate mechanisms for notifying them of any death or illness occurring within the prison. The Yemeni prison regulations also fail to consider the religious and cultural characteristics of prisoners or to ensure their freedom to practice their beliefs within the prison. There is a complete absence of procedural provisions obligating judicial authorities to conduct immediate investigations, either upon complaint or on their own initiative, into the causes of a detainee's death within the prison.

In practice, security forces have used penal facilities to detain and restrict the freedom of individuals without legal justification. Prisoners have been placed in legal prisons without the knowledge of prison officials, based on direct orders and instructions from influential security or military personnel. Some prisoners have been held as hostages for varying periods without legal orders from the prosecution, for purposes of "discipline," extortion, or bargaining.¹²⁴

Physical and psychological torture, as well as cruel and degrading treatment, appear to be common in official prisons and detention centers. Prisoners may die under torture with no effective procedures in place to hold the perpetrators or accomplices accountable.

124 Field report by the Legal Support Team in Marib.

An example of a detainee's death under torture at a police station

The victim A. M. S. D. died under torture on September 13, 2022, in Sheikh Othman Police Station. When the victim's brother arrived at the police station after being informed of the death, the station manager did not provide an explanation and directed him to collect the body from the Republic Hospital. At the hospital, the brother observed visible signs of torture on the body, including swelling from iron shackles, electrical burns, and cigarette burns. Upon seeing these signs, he refused to accept the body and requested a forensic examination, but unfortunately, there was a deliberate delay in appointing a forensic doctor.

According to an interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons in Sana'a:

It is common for the body to be handed over to the family without allowing them to present it to a forensic examiner to determine the cause of death. In some cases, they are not even permitted to view the body. For example, the body of the abductee Mohsen Al-Qadi from Dhamar was delivered to his family several months after his death, and the family was not allowed to examine the body. They were kept under watch until the burial was completed.

If the death occurred due to medical negligence, the body is usually handed over to the family with a demand for payment or on the condition that it be exchanged for another body held by the opposing party. When Khaled Al-Haith, who was detained in the Central Prison in Sana'a, passed away, the Houthi group asked his family to arrange for an exchange with a body held by the recognized government. When the family refused, they were forced to pay a fine, which the group claimed was for the cost of his treatment, despite the fact that the family had been covering his medical expenses. The Abductees' Mothers Association documented the case of Suleiman Al-Barai in Al-Hodeidah, where the Ansar Allah (Houthi) group buried him without informing his family.¹²⁵

Legal prisons are generally unsuitable for detention, lacking in cleanliness, proper ventilation, adherence to public health standards, and personal hygiene facilities. Prisoners suffer from a lack of sanitation facilities, medical services, regular medical check-ups, shortages of medications and drinkable water, and inadequate nutritional meals. Many prisons are overcrowded, ignoring legal separation standards, and there are rarely any juvenile detention facilities. When solitary confinement is used as a disciplinary measure, it often occurs for extended periods, and many prisoners are placed in solitary confinement

125 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons, Sana'a, March 13, 2024.

immediately upon arrest.

The case of a victim imprisoned in a basement underground

On July 30, 2022, members of a military checkpoint in the Al-Nasab area, which is under the control of the Ansar Allah (Houthis) group in Taiz Governorate, arrested the victim S. Q. A. M. K. (30 years old, from the Hashaa district, Yaraah village, Al-Haiqy land). They took him to the Maawiyah Security Administration, then transferred him to the Al-Saleh prison, where he remained for about two and a half months. He was not interrogated until after forty days, and the victim received harsh treatment; he was not provided with sufficient food, was prevented from bathing for nearly a month, and was imprisoned in a dark underground cell with no light.

Execution of Release Orders

Procedural and Legal Framework

A prisoner's detention should not exceed the duration specified in the legal order or judgment issued by the competent authority. The head of the penal facility is required to release the prisoner on the morning of the day when the specified sentence ends and to release a detainee held in pretrial detention after the expiration of the specified period, based on a written order from the authority that issued the detention order. The only legal restriction on executing the release order is if the prisoner or detainee is being held under another order.

Assessment and Practice

There are several legal loopholes that hinder the implementation of release orders. Yemeni law allows for conditional release, requiring the provision of a financial guarantee or a signed commitment by the prisoner. The law links the execution of release orders to the submission of the guarantee or the signing of the commitment,¹²⁶ but it does not limit conditional release to specific cases, leaving the reasons and guidelines undefined. Additionally, the execution of a release order in criminal cases involving both private and public rights is suspended until the public right is satisfied or its duration has ended.

As a result, dozens of prisoners who have been issued release orders remain in detention due to their families' inability to provide the financial guarantee and the Public Prosecution requires all those acquitted to sign a pledge with the judicial authorities that initially detained them¹²⁷.

126 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 203.

127 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 203

An example of staying the execution of a release order issued by the court due to the prisoner's failure to provide a commercial guarantee

In 2019, the Specialized Criminal Court in Mukalla, Hadhramaut, acquitted the defendant H... of charges of sabotage and theft but sentenced him to a year and a half in prison for sympathizing with Al-Qaeda. After the appellate court upheld the initial verdict, the prosecution demanded that the defendant provide a commercial guarantor from Mukalla. However, since the defendant was from Shabwa, his family was unable to secure a commercial guarantor from Mukalla and instead provided a guarantee from a merchant in Shabwa. The Specialized Criminal Prosecution refused to accept the guarantee, and the defendant remains in detention to this day (2024).

In Hadhramaut, officials at the central prison also refused to execute the release orders issued by the Specialized Criminal Prosecution for 75 prisoners detained on security-related for more than three years. After multiple protests by families in front of the Specialized Criminal Prosecution in Hadhramaut to enforce the orders, numerous complaints, and documentation of these violations by several organizations, the central prison began releasing small batches of prisoners—approximately five to ten individuals per year—until early January 2024. It became evident that the execution of release orders, which were issued by the prosecution based on final acquittal rulings or completion of sentences, required the approval of the UAE forces stationed at Al-Rayyan International Airport. In some cases, security officials resort to fabricating new cases against defendants who have been acquitted, in order to prevent the execution of release orders issued by the prosecution.¹²⁸

128 Khaled Omar Ahmed Said, a member of the specialized criminal prosecution, the first focus group discussion session / previous source.

**Section Four: Public
Prosecution and
the Establishment
of Criminal Justice
in Human Rights
Violations Crimes**

Requirements for Institutional Reform in the Justice and Security Sector

The Public Prosecution is a judicial body responsible for investigating and prosecuting crimes under Yemeni law. It holds the authority to initiate and conduct criminal proceedings, investigate crimes, collect evidence, oversee the enforcement of criminal judgments and decisions, and provide opinions on appeals against such judgments and decisions. It also supervises and inspects detention centers, prisons, and juvenile correctional institutions to ensure the legality of detentions and imprisonments. The Attorney General, or a designated member of the prosecution, directly handles criminal cases in accordance with legal provisions. The Public Prosecution represents the state in criminal proceedings on behalf of society, embodying the state's role in protecting the community and prosecuting offenders. At its core, the role of the Public Prosecution is to demand the application of the law by exercising its functions of accusation and criminal prosecution.

The Public Prosecutor and Attorney General are appointed by the President of the State upon the recommendation of the Chief Justice of the Supreme Judicial Council. Members of the Public Prosecution are appointed by presidential decree based on the nomination of the Minister of Justice, after consultation with the Attorney General and approval by the Supreme Judicial Council. However, Assistant Prosecutors are appointed by the Minister of Justice based on the Attorney General's nomination. Like judges, members of the Public Prosecution cannot be removed by the executive branch.

The independence of the Public Prosecution is a matter clouded by ambiguity in legal texts. Yemeni law does not explicitly affirm the independence of prosecutors in their duties, as it does for judges, who are described as independent and subject only to the law in their rulings. The Attorney General and the First Attorney General are appointed by a decision of the Head of State based on a proposal from the President of the Supreme Judicial Council after the Council's approval¹²⁹. As for the members of the Public Prosecution, they are appointed by a decision of the President of the Republic based on a presentation by the President of the Supreme Judicial Council and after the Council's approval. The appointment of Assistant Public Prosecutors is by a decision of the President of the Supreme Judicial Council after the Council's approval.

129 Law No. (27) of 2013 amending some articles of Law No. (1) of 1991 regarding the Judicial Authority, Articles 59-60.

Roles and Procedures of the Public Prosecution in Pursuing Perpetrators of Violations and Ensuring Legal Accountability: Law and Practice

The Public Prosecution plays a crucial role in delivering justice to victims and paving the way for effective redress within the scope of its legally mandated powers. For example, decisions made by the Public Prosecution, such as the decision not to proceed with criminal prosecution or to dismiss a case without trial, are elevated to the level of judicial rulings and decisively influence the course of litigation and the administration of criminal justice. As part of its role in handling charges, the Prosecution is responsible for describing the charge or legally qualifying the criminal act, which then becomes the legal basis for subsequent procedures, including during the trial phase, upon which the courts base their judgments.

Additionally, the burden of proving the charge and requesting the imposition of legal penalties on the defendant falls on the Public Prosecution. The validity of the court's formation and its sessions require the presence and representation of the Public Prosecution at all times. The investigation phase conducted by the Public Prosecution is one of the most critical stages concerning the rights of suspects, as the freedoms, rights, and human dignity of the accused are often at risk of being violated during this period. Investigative authorities frequently commit offenses that infringe on personal freedoms, such as arbitrary pretrial detention.

Receiving Complaints and Reports

Procedural Legal Framework

Complaints and reports regarding crimes suspected to have been committed by public officials, regardless of their position, must be submitted to the Public Prosecution. According to Article 64 of the Attorney General's decision on instructions, the Public Prosecution is required to promptly hear the statements of the complainant and their witnesses if a report is received against a government official or employee for an act committed during or because of their duties. The initiation of an investigation does not require a formal complaint from the victim¹³⁰; a mere report of facts that constitute a crime, regardless of the source, is sufficient

130 The complaint does not restrict the public prosecution's authority to initiate and investigate the criminal case, except in relation to "complaint crimes". These are crimes where the harm is more concentrated on the victim rather than the general public and its interests. Complaint crimes under Yemeni law include slander, defamation, assault, minor physical harm, check-related crimes, and trespassing on others' property. This is according to Republican Law No. (13) of 1994 regarding Criminal Procedures, Article 27.

to proceed. Additionally, the Public Prosecution has the authority to open an investigation on its own initiative, acting on behalf of society in criminal cases. The Yemeni law does not prohibit filing complaints against legal entities; however, if such a complaint is accepted, the resulting case is civil, not criminal, and the penalty involves compensation.

Assessment and Practice

The procedural rules within Yemen's criminal justice system require that the progression of a complaint be subject to the approval of the Chief Prosecutor before questioning the accused and proceeding with the investigation, depending on the perceived seriousness of the complaint.

If the Chief Prosecutor approves the questioning of the accused employee, the authority to which the employee is affiliated must be notified of the charges against them, the scheduled date for questioning, and the results of the investigation. Additionally, the concerned authority should be informed of any other charges directed at the employee that are unrelated to their official duties, along with the actions taken regarding those charges.¹³¹

While examining the basis of a complaint and ensuring its seriousness is a logical and legal right of the Public Prosecution, making the continuation of the investigation dependent on the Chief Prosecutor's approval—without obligating them to pursue and continue the investigation when the complaint has a valid legal foundation—grants the Chief Prosecutor unilateral authority over the fate of the complaint. This does not, at the very least, ensure a prompt investigation of the complaint. Both the law and international human rights standards concerning the right to lodge a complaint about human rights violations, such as torture and enforced disappearance, require the state to provide any individual claiming to have been subjected to torture with "the right to complain to competent authorities and to have their case promptly and impartially examined by these authorities."¹³² Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance states that:

Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable

131 Attorney General Decision No. (20) of 1998 on issuing general instructions for the Public Prosecution, Article 64.

132 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 13.

grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

It is unclear how the prosecution's procedures should be applied when it comes to inspecting the scene upon receiving a report in crimes that cannot be investigated without such an inspection, or appointing an expert to determine the cause of death in crimes that cannot be investigated without the assistance of a forensic medical expert, in cases where the suspected perpetrators are public officials or those in similar positions.

In practice, it is rare for the Public Prosecution to initiate legal action against official or unofficial entities involved in severe human rights violations unless the victims' families file formal complaints. Victims or their families often find it difficult to approach the Prosecution to seek justice through the complaint mechanism for human rights violations committed by public officials due to fear of retaliation. Additionally, "victims are unable to file complaints or lawsuits without the assistance of human rights organizations that provide legal support and appoint lawyers for them, as the cost of legal representation in such cases is prohibitively high."¹³³

Generally, the ability of victims and their families to file complaints with the Public Prosecution is influenced by various factors, including the geographic location of the Prosecution office, the distance and terrain separating it from the victim's residence, the financial circumstances of the victim's family and their ability to bear the costs of filing and following up on the complaint, their extent knowledge of the Prosecution's jurisdiction and the legal procedures for submitting complaints, the routine and official working hours of the prosecution members, the accused's title, influence, and status, the severity of the psychological impact and terror caused by the violation to the victim and their relatives, in addition to the factor of fear of the security consequences on the victims and their relatives when filing a complaint with the public authority personnel and judicial police officers. In all cases, filing a complaint against a public employee, judicial police officers, and public authority personnel is an extremely complex matter in practical reality.¹³⁴

133 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons, Sana'a, March 13, 2024.

134 The lawyers Nobile Muhammad Ismail Al-Mufti, Yahya Ali Ahmed Al-Sakkhi, Muhammad Ahmad Salih Shu'lan, Muhammad Ahmad Humud Al-Shaqqi, and Alaa Khaled Muhammad Awwn, the third focus group discussion session titled "The Right to Redress and Access to Justice in Yemeni Laws and Legislation and in Reality", Mawatana for Human Rights, Sana'a, 21/12/2023.

Requirements for Institutional Reform in the Justice and Security Sector

In Sana'a and other areas under the control of Ansar Allah (Houthi) group, criminal prosecutions often ignore complaints submitted by the families of victims of arbitrary detention and enforced disappearance. They frequently do not address these complaints and sometimes merely direct the accused security agencies to review and respond without ensuring follow-up or initiating a serious investigation. In some cases, they even resort to reprimanding those who pursue complaints and threatening to imprison them.

In other Yemeni governorates, such as Hadramaut, the families of victims have relatively better access to the Public Prosecution to file complaints regarding human rights violations, including enforced disappearances. The specialized criminal prosecution often initiates an investigation into the complaint, hears the requests, and proceeds with the legal process. During the investigation, families of the victims may obtain information about the forcibly disappeared, particularly in cases where the perpetrators are official security and military agencies affiliated with the IRG. However, the information provided to the victims' families is often limited to informing them of the victim's place of detention without granting them visitation rights or disclosing the circumstances of the disappearance and the nature of the charges against the victim.¹³⁵

In Aden, the National Commission to Investigate Alleged Violations to Human Rights—a body closely aligned with the IRG and established by a presidential decree in 2012 with limited support from the Office of the High Commissioner for Human Rights—reported that it had conducted preliminary investigations into 1,300 human rights and international humanitarian law violation cases and submitted them to the Attorney General's Office. However, these cases have yet to be decided.¹³⁶

In Ma'rib, due to the overwhelming influence of the Political Security Organization, the Public Prosecution refrains from handling any complaints or reports related to human rights violations allegedly committed by this agency or its members. According to the field report by the team of lawyers involved in the study from Ma'rib Governorate:

All individuals arrested by the Criminal Investigation Department, police stations, or at security checkpoints are transferred to the Political Security Prison, where they remain for years without their files being referred to any official investigative body. Many have died as a result of torture, disease (tuberculosis), or due to malnutrition and lack of sunlight, such as

135 Field report by the Legal Support Team in Hadramaut.

136 Interview with the official spokesman of the National Commission to Investigate Alleged Violations to Human Rights, Aden, March 21, 2024.

Sadiq Al-Qassimi and Mohammed Mahdi Al-Toumi.¹³⁷

In very limited circumstances and under special conditions, such as media pressure or when a victim's case becomes a public issue, the Political Security Organization may yield to the Public Prosecution's authority regarding the release of victims. However, the Criminal Prosecution in Marib often prefers to remain neutral rather than pursue complaints from victims or their families regarding human rights violations committed by the Political Security Organization.

An example: case of an arbitrary detained prisoner by prosecution without an investigation

In the incident of arrest and prosecution of perpetrators

the victim's father M.A.Q.A was able to organize media advocacy campaigns for his son's case after the Political Security Organization arbitrarily detained him in Marib in August 2020. This was after the Criminal Prosecution refused to address the complaint he filed and failed to open an investigation into the incident. Following directives from the Public Prosecutor's Office in Aden, the victim was eventually released after it was revealed that he was detained merely on suspicion and that no charges had been brought against him. The role of the Criminal Prosecution ended with the victim's release, and it did not take any action regarding the arbitrary detention that the victim had suffered for two years, as alleged in the complaint filed by his father.

Prosecutorial Action on Charges

Procedural Legal Framework

The Public Prosecution initiates its action on charges based on the investigation records sent by judicial enforcement officers. These records include a detailed account of the procedures undertaken and information related to the incident. Upon receiving these investigation and evidence-gathering reports, the member of the Public Prosecution must ensure they contain all necessary information before proceeding with the case. If the prosecutor identifies a serious crime, they are obligated to investigate the charge (initiate an investigation). It is important to note that the prosecutor conducting the investigation is also responsible for legally defining the charge or providing its legal description.

137 Field report by the Legal Support Team in Marib.

Assessment and Practice

While the action of closing a case file does not prevent the Public Prosecution from continuing investigations if the perpetrator is unknown or if the evidence against them is insufficient, it opens a wide door for escaping accountability and obstructing the course of justice. This is especially concerning since Yemeni law does not require the Public Prosecution to pursue investigations and gather evidence directly or through judicial enforcement officers until the perpetrator is identified. This practice is inconsistent with international conventions related to certain human rights violations, such as enforced disappearance. According to the Declaration on the Protection of All Persons from Enforced Disappearance, this crime is "a continuing offense as long as the perpetrators continue to conceal the fate of the disappeared person and the location of their disappearance, as long as these facts remain unclarified." Therefore, the investigation should remain open as long as the victim's fate is unclear.¹³⁸

Another manifestation of impunity in the Yemeni procedural system becomes evident when a public official is accused of a crime that is associated with one or more legal justifications for the act. In such cases, the matter is permanently closed, preventing the case from moving forward as this decision is judicial, not an administrative one that could be reversed by the Public Prosecution. Although the Yemeni penal system grants the victim the right to file a grievance against the decision and challenge it¹³⁹. If the final decision is to dismiss the charge due to one of the justification reasons, this opens wide avenues for the abuse of this right by the public prosecution, it also provides the Public Prosecution with wide avenues to exempt public officials and law enforcement officers from accountability, despite the questionable independence of the prosecution.

In practice, the Public Prosecution in the provinces covered by the study faces significant challenges in obtaining investigation records and evidence-gathering reports from judicial enforcement officers, including police departments, within the timeframes stipulated by law. In most cases, the judicial police officer and police officers refuse to follow the directives of the Public Prosecution regarding the immediate submission of investigation reports without delay¹⁴⁰. A primary reason for this is the lack of a clear legal framework in Yemeni law that

138 Declaration on the Protection of all Persons from Enforced Disappearance, Article 17, para. 1.

139 Article (113) of the Criminal Procedure Law states that: If the Public Prosecution issues an order to dismiss the case, it must notify the victim and the plaintiff in the civil rights. If one of them dies, the notification shall be made to their heirs collectively at their place of residence. Everyone mentioned has the right to appeal the dismissal decision before the competent court within ten days from the date of notification.

140 lawyer Najib Abdulwali Ahmed Al-Wahishi, the third focus group discussion session, previous source.

defines the relationship between the Public Prosecution and judicial enforcement officers. The relevant legal provisions establish, in principle, a non-administrative relationship of subordination between judicial enforcement officers and the Attorney General, subjecting them to his supervision within the scope of the judicial powers they exercise. This means that judicial enforcement officers receive their orders from their administrative superiors, even concerning judicial duties. When they fail to fulfill their responsibilities or are negligent, the Attorney General must request the administrative authority overseeing the judicial officer to impose appropriate disciplinary action. Additionally:

If the Attorney General believes that the error committed by the judicial enforcement officer is serious or that the imposed penalty is insufficient, or if the administrative authority does not respond to the request to review the officer's actions, the matter may be referred to the Court of Appeal to consider stripping the judicial enforcement officer of their judicial authority.¹⁴¹

The Yemeni law does not provide for specific penalties for judicial police officers in cases where they refrain from referring complaints to the Public Prosecution in serious crimes. There is also no explicit provision on the right of the Public Prosecution to supervise the legality of the preliminary investigations conducted by the police and the various judicial control agencies. In addition, there is a shortage of qualified investigating judges (investigators from the members of the Public Prosecution) who can play an effective supervisory role over the judicial control agencies at the stage of gathering evidence¹⁴².

However, some argue that the powers granted to the Attorney General by Yemeni law, regarding supervising and disciplining judicial enforcement officers through the administrative authorities to which they report, could be sufficient to hold these officers accountable and curb the violations and abuses they commit—if these powers were effectively enforced in practice. From their perspective, the core issue lies not in the legal text itself but in the lack of its practical implementation.¹⁴³

In many cases, judicial enforcement bodies fail to submit investigation reports to the relevant prosecution offices, along with the seized items and suspects, unless prompted by repeated official communications following a complaint filed by the victim against

141 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Articles 85 and 86.

142 Dr. Fuad Muhammad Al-Adaini, Second Virtual Discussion Session, Previous Source

143 Dr. Fouad Al-Odaini, Judge Radwan Al-Omaisi, and Judge Rawda Al-Ariqi, Second Focus Group Discussion, February 1, 2024.

the detaining judicial enforcement authority holding the case file. Sometimes, it requires the intervention of high-ranking security and political figures to persuade the judicial enforcement authority to transfer the case file to the criminal prosecution.

An example of a judicial control authority refusing to refer case file to the public prosecution

the victim M.A.A.Q., who owned a small shop in the village of Sar'a Al-Mallat, Al-Mahwit Governorate, was arrested by the Security Department of Al-Mahwit District on January 26, 2021, after he refused to pay an extortion fee to one of the supervisors affiliated with the Ansar Allah (Houthi) group. The victim was subjected to an unlawful interrogation by the CID in the governorate and was accused of human trafficking and child smuggling. The Security Department initially refused to transfer the suspect and the case file to the Public Prosecution. However, after a series of official communications and memos, the Security Department finally transferred the file to the Criminal Prosecution, which then conducted an investigation into the charges against the victim and ordered his release on bail.

As a common and widespread practice, cases referred to the Criminal Prosecution by judicial enforcement bodies that involve allegations of human rights violations committed by public officials are not handled with the aim of achieving justice, pursuing legal procedures, or preparing to punish the perpetrators. Instead, the Criminal Prosecution often merely releases the victims and neglects the criminal aspect related to holding the perpetrators accountable or investigating them. A local organization in Sana'a, concerned with the cases of abductees, reports that "the prosecution does not initiate any investigation into enforced disappearance or torture despite the victim or their family's complaint."¹⁴⁴ Another local organization in Aden, focused on the same issue, states:

When a complaint is filed, there is no referral for investigation, but rather a request for a response to the complaint. The response from the accused authority typically states that the abducted victim is not in their custody, and the complaint and investigation quickly end there without revealing any further outcome.¹⁴⁵

144 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons, Sana'a, March 13, 2024.

145 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared Persons, Sana'a, March 13, 2024.

Investigation and Related Procedures

Procedural Legal Framework

A public prosecutor has the authority to conduct an investigation personally or delegate certain investigative tasks to a judicial enforcement officer, except for the interrogation of the accused (confronting the accused with evidence). This delegation is allowed only when there is no concern about time constraints and when it is necessary to uncover the truth. However, exceptions exist where delegation is not permitted. For instance, "allegations against members of the armed forces and police, whether they involve serious or minor crimes, and whether these crimes were committed in the course of their duties or not", as well as complaints filed against judicial enforcement officers, must be directly handled by the public prosecutor and cannot be delegated to others. In such cases, it is mandatory to notify the relevant authorities to which the accused belongs, ensuring that the notification reaches them before the investigation begins, so they have the opportunity to appoint a representative to attend the investigation proceedings.

Prosecutors are required to personally investigate incidents that occur in correctional facilities, except for minor issues, which may be delegated to the prison director for investigation. However, if the complaint is against a member of the prison staff, the prosecutor must conduct the investigation themselves on the scheduled day without delay. In such cases, it is advisable for the prosecutor to visit the facility to carry out the investigation, especially if it involves questioning multiple staff members or inmates.

The public prosecutor has the authority to request any documents or papers from government agencies that may assist in uncovering the truth or, if necessary, to visit these agencies to review the documents on-site if they cannot be transported. Additionally, "if the investigation requires the arrest or pretrial detention of a government employee, the prosecutor must immediately notify the relevant department as soon as the arrest or detention order is issued."

The investigator is required to expedite the investigation procedures in cases involving individuals held in pre-trial detention. They must complete the investigation within two months from the start date, and any extension beyond this period requires the approval of the relevant chief prosecutor. If the investigation extends to three months, the approval of the Attorney General is required. "The Attorney General may extend the investigation period by an additional six months in cases where there are no detainees in pre-trial custody." Article 65 of the Attorney General's decree mandates that prosecutors "expedite the investigation of cases involving public employees and resolve them promptly to prevent prolonged

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suspension from work or prolonged uncertainty about their status, in the interest of public welfare and to avoid disrupting the operations of various government departments."

Prosecutors are also obligated to:

Submit to the Attorney General any cases where the accused has been detained for three months, along with a memorandum detailing the stage of the investigation, what remains to be completed, the reasons for the delay, and the expected time frame for completing the investigation and taking action.¹⁴⁶

The victim, their heirs, or any person harmed by the crime has the right to attend all investigative procedures. However, in urgent situations, the investigator may carry out certain procedures in the absence of the parties involved, who still retain the right to review the documents related to these procedures. The prosecutor conducting the investigation is also required to hear the testimonies of witnesses for the prosecution, read back their statements for confirmation, and have the witness sign the official record.

The investigator has the right to request an expert report to determine the cause of death and the nature of any bodily injuries inflicted on the accused. This includes "examining the accused's body, including taking blood samples when such examination is relevant to the case," as well as conducting an autopsy or post-mortem examination by a certified forensic pathologist with the knowledge of the prosecution. In cases of extreme necessity, the public prosecution has the authority to exhume the body to inspect and perform an autopsy during the investigation.

Assessment and Practice

There is no dedicated procedure for investigating severe human rights violations allegedly committed by public officials, authorities, or law enforcement agencies. Although Yemeni procedural law does not permit delegating the investigation of these categories to ensure the integrity of the investigation and the correctness of its procedures, it presents legal gaps with significant implications for practice. For instance, suspects are not suspended from performing their official duties during the investigation. Additionally, expediting investigations into public officials under the pretext of avoiding disruption to their duties can become a constraint on the investigation process or facilitate the concealment of perpetrators by assigning them to remote locations during the investigation period.

¹⁴⁶ Attorney General Decision No. (20) of 1998 on issuing general instructions for the Public Prosecution, Article 82.

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On the other hand, while procedures require investigations to be concluded within a maximum of three months for cases involving individuals in pretrial detention and six months for other cases, they overlook the issue of initiating prompt investigations.

In practice, there are no fixed timelines for investigations conducted by the prosecution in human rights violation cases, as there are for other cases. This process may extend far beyond the legal maximum timeframes for concluding investigations. For example, in Marib, referring a case file to a prosecuting member can take several weeks, with investigations continuing for months without any supervisory role from the Public Prosecutor's Office. One reason for this is the inadequate capacity of public prosecutors, their insufficient training, and administrative laxity.

Investigations can be hampered by the lack of experts and resources necessary for uncovering the truth. The field report from the legal support team involved in the study from Hadramaut indicates that most cases related to torture and extrajudicial killings are either stalled or closed due to the unavailability of forensic experts for the prosecution. Whether this is due to resource limitations or intentional practices, the victims' and their families' right to know the truth, as well as to seek redress and hold perpetrators accountable through thorough and complete investigations, is compromised.

One case that partially escaped this fate, as mentioned in the report, involves the victim ..., a young man from Hadramaut, who died under torture in the Military Intelligence Directorate in Mukalla. His death was shrouded in secrecy and might have been forgotten if not for information leaked from within the security sector itself. With the case turning into a local public issue, the prosecution acceded to the demands for an investigation and brought in a forensic doctor from Aden. The forensic report confirmed that the young man died as a result of torture.

Prosecutions generally do not initiate investigations into violations committed against protesters or journalists.¹⁴⁷ Prosecuting authorities often refrain from issuing arrest warrants or prosecution orders during investigations involving law enforcement officers accused of human rights violations. In the few cases where such orders are issued, they are frequently neglected and not enforced by the relevant authorities. In areas controlled by the IRG, the National Commission to Investigate Alleged Violations to Human Rights has observed "the presence of several individuals wanted for security reasons within the security

147 Field report by the Legal Support Team in Hadramaut.

institutions affiliated with the Ministry of Interior."¹⁴⁸

As for detainees among public officials and law enforcement officers who have had arrest warrants executed, a local organization concerned with detainee issues in Aden reports that "they are released while under investigation and are classified as fugitives from justice." In reality, this status provides those holding it—public officials, law enforcement officers, and security leaders affiliated with effective unofficial entities—with a form of "immunity" from prosecution, as understood from the aforementioned general circular issued by the Public Prosecutor.

Pretrial Detention as an Investigative Measure

Article 184 of the Criminal Procedures Law regulates pretrial detention and establishes specific conditions for its application. These conditions include: sufficient evidence indicating the accusation, the alleged offense being punishable by more than six months of imprisonment, and detention in cases where the accused has no known place of residence and the crime is punishable by imprisonment. The law mandates that "any order for detention issued by the Public Prosecution must be in writing, signed by the competent prosecutor, and stamped with the official seal of the Republic. The order must include the following details:

1. The full name of the detainee.
2. Their place of residence.
3. The case number under which they are detained.
4. The charge against them and the relevant legal provision.
5. The duration of the pretrial detention and the date on which the accused will be presented before the authority that issued the detention order for review."¹⁴⁹

The law explicitly prohibits the pretrial detention of children under the age of fifteen. Additionally, it restricts the detention of women unless absolutely necessary and prohibits pretrial detention for crimes committed through the press unless the crime involves defamation or incitement to corrupt morals. If "an investigation necessitates the arrest or pretrial detention of a government official or employee, the prosecution is required to

148 Interview with the official spokesman of the National Commission to Investigate Alleged Violation to Human Rights, Aden, March 21, 2024.

149 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 186.

immediately notify the relevant authority upon issuing the arrest or detention order.”¹⁵⁰

The maximum duration for pretrial detention is seven days, starting from the day following the prosecution's arrest of the accused or the day after the accused is handed over to the Public Prosecution by judicial enforcement officers. This period can be extended by judicial order if the necessities of the investigation require it, with each extension not exceeding forty-five days and the total period not exceeding six months. The accused has the right to appeal the pretrial detention orders at the Public Prosecution's registry or before the competent Court of Appeal, which must expedite the appeal process.¹⁵¹ Article 7 of the Criminal Procedures Law obligates the Public Prosecution to immediately release any person whose liberty has been unlawfully restricted or who has been held in pretrial detention for a longer period than permitted by law, a judicial ruling, or a court order.

The Yemeni procedural system does not require that the continuation of pretrial detention be contingent upon the emergence of strong and increasing evidence of the accused's involvement in the crime for which they are detained. This approach contradicts the principle of the presumption of innocence, which is enshrined in Yemeni legislation, and causes significant psychological harm to the detainee, especially considering that Yemeni law allows for a maximum pretrial detention period of up to six months. Notably, the Criminal Procedures Law does not provide for alternatives to pretrial detention that would avoid the stigma of pre-detention while still achieving the objectives of detention, such as requiring the accused to report to the police station at regular intervals. The absence of such alternatives turns pretrial detention in the Yemeni procedural system from a preventive measure into a de facto prison sentence not based on a court judgment. Furthermore, Yemeni law stipulates that the period of pretrial detention should be deducted from the total sentence if the accused is convicted, effectively legitimizing prolonged pretrial detention.

Prosecution's Actions in Investigations and Criminal Cases

Procedural Legal Framework

The Public Prosecution's actions in an investigation are only valid once the investigation is complete. The authority of Public Prosecution members to take action in serious crimes is

150 Attorney General Decision No. (20) of 1998 regarding the issuance of general instructions for the Public Prosecution, art. 84.

151 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 225.

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granted by the Attorney General through a decision issued for this purpose, applicable to all levels of the prosecution.

If, after conducting the investigation, the Public Prosecution determines that the incident is either not punishable by law or lacks credibility, it issues a reasoned decision to permanently dismiss the criminal case. Additionally, if the perpetrator of the crime remains unidentified or if the evidence against the accused is insufficient, the Public Prosecution issues a reasoned decision to temporarily dismiss the criminal case.

For both serious and non-serious crimes, the case or report may be closed or dismissed for lack of grounds for prosecution by a decision from the Public Prosecutor, despite the presence of all legal elements of the crime attributed to the accused. This may occur due to the trivial nature of the case or a disproportionate punishment relative to the act or the severity of the consequences resulting from prosecution and punishment. In such cases, the accused may be warned not to repeat similar offenses in the future.

If the accused is a public employee, the Public Prosecution has the authority to either dismiss the case or issue an order of no grounds for criminal prosecution, relying instead on disciplinary, military, or administrative measures. The relevant authority to which the accused is affiliated must be informed of the final outcome of the investigation, with a report delivered to the head of that authority. An order of no grounds for criminal prosecution prohibits reopening the investigation unless new evidence emerges before the statute of limitations expires. New evidence may include witness testimonies, reports, documents, or other materials that were not previously presented to the Public Prosecution and that could strengthen insufficient evidence or clarify facts leading to the truth. The Attorney General has the right to overturn the decision of no grounds for prosecution within two months. Additionally, the victim has the right to appeal the Public Prosecution's orders of no grounds for criminal prosecution before the Court of Appeal.

Assessment and Practice

Yemeni law does not clarify which crimes are considered insignificant, and the Public Prosecution has the right to issue an order to permanently dismiss them. Although it is required that the issuance of a non-importance preservation decision be issued by the Public Prosecutor or his authorized representative, this restriction relates to the procedure and not to the subject matter. On the other hand, the decision by the prosecution not to pursue a case involving crimes committed by public officials or law enforcement officers often stems from illogical justifications that can allow for impunity, such as administrative penalties. This issue

is exacerbated by practical gaps in the phases of evidence collection and investigations upon which the prosecution bases its decisions.

In cases where the investigation involves officers or employees in senior positions accused of committing crimes during or because of their duties, the case files should be sent directly to the Office of the Public Prosecutor or through the Attorney General. If the Public Prosecutor is satisfied with the procedural integrity, they will initiate criminal proceedings and refer the accused to the competent court with an indictment that includes the accused's name, title, age, place of birth, residence, occupation, a summary of the alleged incident and its legal status, and all aggravating or mitigating factors, along with the applicable legal provisions.

Cases against fugitives whose identities are unknown are not referred to the courts "because issuing judgments that cannot be enforced is deemed futile. Prosecutors should either temporarily close the file of such cases or decide that there are no grounds for criminal prosecution due to the unknown identity of the perpetrator."¹⁵² For known fugitives who cannot be apprehended, their case files are sent to the courts with the note "for trial as a fugitive from justice," implying a trial in absentia. Any accused who escapes after being imprisoned or arrested, or who does not have a known place of residence or finds evidence indicating that he has concealed himself, shall be deemed to have escaped from justice¹⁵³.

It is observed that Yemeni procedural rules restrict the Public Prosecution's right to directly prosecute crimes committed by judicial enforcement officers or public employees during or because of their duties, requiring authorization from the Public Prosecutor or their delegated Attorney Generals or Chief Prosecutors. However, it should be noted that the Attorney General's permission is a procedural requirement for filing a case against a public official and judicial officers before the court, and is not considered a restriction on filing a complaint or initiating a lawsuit and initiating investigation procedures by the Public Prosecution¹⁵⁴. The nature of such authorization and its procedures remain unclear. In cases involving retaliation, blood money, compensation, or defamation, the Public Prosecutor's authorization is contingent upon the victim's complaint and their insistence on pursuing it. Again, the law does not clarify how such insistence is to be demonstrated. Additionally, authorization from the Supreme Judiciary Council is required to initiate criminal proceedings if the accused is a judge or a member of the public prosecution.

152 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 237.

153 Presidential Decree Law No. 13 of 1994 on Criminal Procedures, Article 288.

154 Attorney General Ahmed Mohamed Yahya al-Jandabi, third focus session, previous source.

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In Taiz, for instance, many cases of torture, arbitrary detention, and extrajudicial killings investigated by the Public Prosecution ended with decisions not to pursue criminal charges due to insufficient evidence. This was particularly evident in torture cases where the signs of torture had faded from the victims' bodies, and no medical reports were available to confirm the torture.¹⁵⁵

The case of the conduct of the person in charge of the investigation in a case of torture leading to death by a decision not to institute a case

On September 13, 2022, a photograph of the victim, A. M. S. D, appeared on social media, showing him shackled in iron restraints with visible signs of physical torture. The victim's family recognized the images and began a strenuous and exhausting pursuit of justice. They later discovered that the victim had been subjected to brutal torture at the Sheikh Othman Police Station (Aden) and had died as a result. The family reported the incident to the Public Prosecution. However, the investigating prosecutor procrastinated and did not open a serious legal investigation into the case, including failing to request a forensic report for the autopsy, claiming that the case was not severe and there were no grounds for pursuing criminal charges.

Release of Detainees and Activation of Alternatives to Detention

Procedural Legal Framework

Article 7 of the Criminal Procedure Law mandates that when the Public Prosecutor's Office becomes aware of individuals being detained without legal grounds, it must take immediate action to release the detainees or transfer them to a correctional facility if their detention is lawful and record the proceedings in both cases. A member of the Public Prosecution has the authority to inspect correctional facilities within their jurisdiction, verify that no one is being unlawfully detained, review their records, arrest and detention orders, take copies of these documents, and listen to the complaints of the detainees.

The Yemeni procedural system includes what is known as "mandatory release" for detainees who have been held for more than seven days from the date of their interrogation, provided they have a known residence in the country, the maximum statutory penalty does

155 Field report by the Legal Support Team in Taiz.

not exceed one year, and they have not been previously imprisoned for more than a year without suspension of the sentence.

Assessment and Practice

The Yemeni procedural system exempts the public prosecutor's office from independently searching for illegal detention sites to take the necessary legal actions, limiting its involvement to cases where it becomes aware of such locations. Additionally, the system does not obligate the prosecutor's office to initiate investigations to hold perpetrators accountable or to prosecute them for detaining individuals in illegal facilities. Instead, it merely requires the public prosecutor to release the detainees or transfer them to legal detention centers, effectively ending its role at that point.

In practice, various branches of the Public Prosecution exercise only very limited authority over prisons and legal detention facilities. In many instances, it is difficult for prosecutors to conduct inspections of prisons to identify inmates who have completed their sentences or detainees who have not been referred to the prosecutor's office. Even when some prosecutors do visit prisons, these inspections are typically neither unexpected nor thorough; they often involve merely reviewing records and meeting with a limited number of inmates or detainees, resulting in superficial reports.

Detention centers frequently reject court and prosecutorial requests to disclose information about prisoners and detainees. Orders from the prosecution for the release of prisoners, including those whose sentences have ended, often do not receive legal compliance from detention facility officials unless approved by higher security authorities. This is especially true for prisoners involved in "terrorism, protest, or high-profile cases," where their release is contingent upon a decision from the security authorities in Haddramaut, following stringent and unlawful guarantees, and approval from the decision-making authority at Al-Riyan International Airport.¹⁵⁶ In some cases, prosecutors refuse to release prisoners who have acquittals.

Case of refusal of the prosecution to implement a release decision issued by a competent court

On Wednesday, December 1, 2021, a member of the Criminal Investigation Department in Al-Bayda Governorate arrested the victim Z. G. H (forty-five years old female belonging to Taiz governorate) in an exchange shop in the city of Al-Bayda, and the victim was transferred to

¹⁵⁶ Field report by the Legal Support Team in Hadhramaut.

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the Criminal Investigation Department, and then placed in Rada'a women's prison without investigation for more than four months, due to a money transfer she received from outside Yemen. After transferring her file to the prosecution of Al-Bayda referred the case file to the Al-Bayda Court of First Instance and the litigation procedures took place in the presence of the victim, and the court issued a decision to release her, but the prosecution rejected the release decision and appealed to the Al-Bayda Court of Appeal, and the Court of Appeal ruled to reject the prosecution's appeal and upheld the decision of the Court of First Instance to release the victim, but the prosecution has so far refused to implement the release decision.

Regarding illegal detention centers operated by unofficial groups and factions scattered across the country, Public Prosecution members are unable to take any action towards these facilities, including visiting or inspecting them. A field report from Aden indicates the inability of the Criminal Prosecution to investigate cases of enforced disappearances at the Counter-Terrorism Prison in Aden, which has effectively escaped its oversight. Similarly, in Al-Bayda, the Public Prosecution has refrained from instructing Security and Intelligence agencies to release detainees due to its lack of authority over the Security and Intelligence Prison. In Wadi Hadhramaut, despite the limited presence of unofficial security forces in the governorate, the Appeals Prosecution and primary Public Prosecutor's Offices face significant difficulties in transferring detainees from prisons under the control of the Saudi-led coalition, the First Military District, the National Security Service, or the Political Security Service to the civil public prison for investigation. This often requires multiple official letters and memoranda, which are rarely heeded, leaving detainees at the mercy of those in charge of these entities.¹⁵⁷

In practice, "prosecutorial bodies do not perform even the minimum legal oversight role on unlawful detention centers, and the authority of military and armed entities exceeds that of the prosecution and judiciary. Even the prosecution offices themselves have become unlawful detention centers."¹⁵⁸

Although the Public Prosecution is supposed to have offices in central prisons across various governorates to facilitate monitoring and inspection, this is not effectively implemented. Furthermore, while Yemeni law includes several alternatives to detention that the Public Prosecution could utilize instead of pretrial detention, these alternatives are rarely used in practice.

157 Field report by the Legal Support Team in Hadhramaut.

158 An interview with the Forcibly Disappeared Committee in Taiz, April 16, 2024.

Section Five: Courts and Criminal Justice in Human Rights Violations

Requirements for Institutional Reform in the Justice and Security Sector

The Yemeni judicial system is comprised of three levels of courts:

Primary Courts: Located in districts, these courts handle all types of cases which falls within its local jurisdiction.

Appeals Courts: Each governorate has its own Appeals Court that reviews appeal against judgments issued by primary courts.

Supreme Court: Headquartered in Sana'a (with an additional Supreme Court in Aden), this is the highest judicial authority responsible for overseeing the rulings of lower courts and to decide on appeals in cassation.

Additionally, there are specialized criminal courts and other specialized courts concentrated in a few governorates.

The Yemeni judicial system does not recognize the practice of direct prosecution in criminal cases. As a result, a plaintiff seeking personal redress cannot directly submit their complaint to the court. Instead, they must file it with the Public Prosecution, which then brings the case before the appropriate court. In this context, the plaintiff (the victim) is considered a party joined to the prosecution rather than an original party to the case. Consequently, the victim does not have a strong legal standing against the prosecution's procedures. One of the manifestations of this is that the prosecution alone has the power to initiate or not to initiate criminal proceedings without effective intervention from the victim, and the ambiguity of the victim's right to respond to judicial officers and the prosecutor (request his replacement) during the investigation and sessions, and therefore Yemeni law leaves a loophole related to the absence of guarantees that the prosecutor performs his role objectively and impartially in the investigation and during the trial¹⁵⁹.

Court Procedures in Ensuring Justice and Penalizing Offenders: Law and Practice

Court Actions on Cases

Procedural Legal Framework

159 There is no confusion regarding the victim's right to dismiss the judge, but the confusion occurs in his right to dismiss judicial officers and members of the Public Prosecution as a result of the conflict between the articles of the Code of Criminal Procedure, specifically Articles 270/b, which explicitly state "... Neither members of the Public Prosecution nor judicial officers may be dismissed," and 277 of the same law, "The previous rules regarding resignation or restitution shall also apply to members of the Public Prosecution and the secretary of the session in accordance with the provisions of the law."

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The Public Prosecution shall deliver the completed case file to the competent Court of First Instance and attach to it all papers, evidence and reports that help the court to dispose of the case.¹⁶⁰

Once the Public Prosecution submits a complete case file to the court of first instance, following the indictment and in accordance with the correct procedures and timelines stipulated by law, the court may issue orders to rectify any deficiencies or irregularities within specified deadlines if it identifies any. If such rectifications are not made, the court may decide to dismiss the case on procedural grounds.¹⁶¹ The notice of the indictment must be served to litigants within thirty days. If the notice is not served within this period, it is considered null and void.¹⁶² After the issuance of the decision to refer the criminal case to the court, the Public Prosecution may conduct supplementary investigations if it finds it necessary and submit the minutes to the court¹⁶³.

After hearing the indictment, the defendant or their legal representative has the right to request a modification of the legal characterization of the charge "if the request is based on valid grounds," and the court must decide on this request after hearing the Public Prosecution's response.

The Yemeni procedural system significantly restricts the court's authority to alter the legal description of the charge on its own initiative, permitting such changes only within very narrow limits. The court is not authorized to adjudicate a crime that was not included in the indictment filed by the Public Prosecution. It cannot modify the basis of the case by introducing new facts not mentioned in the indictment or attributing facts to individuals not named in the indictment.

What is permissible for the trial court, if it finds that "there are defendants other than those against whom the case was filed, or if there are additional facts not attributed to the defendants, or if there is a crime related to the charge before it," is to refer the case back to the Public Prosecution for further investigation and action.¹⁶⁴ The court also has the authority to correct material errors in the indictment that reflect the court's understanding of the case

160 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 346.

161 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Articles 71 and 72.

162 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Articles 104 and 7.

163 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 223.

164 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 32.

facts, or to add an aggravating circumstance to the charge without altering the charge itself. Additionally, the court can request the examination of new witnesses, appoint experts, review documents, and consider other evidence during the trial process.¹⁶⁵

Assessment and Practice

The Yemeni judicial system adheres to the principle of separating the prosecutorial and adjudicative functions. This separation can undermine the procedural sensitivity needed to achieve justice and uncover the full truth in its entirety. The Public Prosecution, within the boundaries it sets for the case in terms of facts and individuals, holds the decisive authority in determining the course of justice, rather than the court. The court's authority concerning the indictment is limited to modifying the legal description assigned by the Public Prosecution without introducing new facts or defendants, even if their names appear in evidence collection records or investigation reports conducted by the Public Prosecution.

The only recourse for the court to correct the course of justice is to refer the criminal case back to the Public Prosecution for further action. However, this rarely occurs in practice, as courts typically accept the indictment as presented by the Public Prosecution, including evidence collected and investigative statements, without modification.¹⁶⁶ This includes relying on statements recorded by judicial enforcement officers in evidence collection reports if they are made more than twenty-four hours after the arrest of the accused, which is an invalid procedure.¹⁶⁷

In cases of unlawful arrest and detention lasting for years, committed by law enforcement officers, and for which the Public Prosecution has brought criminal cases before the competent courts, the courts have frequently maintained the legal characterization provided in the indictment without alteration. This is despite the fact that the accurate legal characterization of these crimes is kidnapping (enforced disappearance). Additionally, the courts have often refrained from addressing torture crimes experienced by victims during their years of detention.

165 Republican Decree Law No. (13) of 1994 regarding criminal procedures, art. 326.

166 Lawyer Nadia Saeed Abdullah Al-Khalifi, Second Focus Group Discussion, Ibid.

167 Khaled Omar Ahmed Saeed, Member of the Specialized Criminal Prosecution, First Focus Group Discussion, Ibid.

Case of failure of a judge of a competent court to address an incident of torture related to the crime of unlawful detention

The victim A. Y. H. H. experienced arbitrary detention the Security and Intelligence building in Sana'a. After his release, signs of torture remained on his back and parts of his body. The Public Prosecution filed a criminal case with the specialized criminal court based on the victim's complaint, after classifying the charge as unlawful detention. During the trial, the victim raised the issue of the torture he endured and requested that the court president order a forensic examination to confirm the torture marks on his body. The prosecution claimed that the torture marks on the victim's body were self-inflicted after his release and threatened to return him to prison during the session. The judge ordered two soldiers to forcibly remove him from the courtroom and return him to detention. At that moment, the victim was sweating heavily, and his mother was screaming. He remained with the soldiers in the courtroom for about half an hour before the judge ordered them to release him. From that day on, the victim and his mother decided not to pursue the case further.

Hearing of the Case:

Procedural Legal Framework

Public officials, law enforcement officers, and those tasked with enforcing the law are required to attend trial sessions once notified of their scheduled dates through their respective unit administrations. If the defendant fails to attend the scheduled session after being duly notified, the court will order a new notice for another session. Should the defendant again fail to appear, the session will be postponed to a later date, and the court may order a public announcement of the defendant's flight by any available means if their forced appearance cannot be ensured.¹⁶⁸ If the defendant does not appear within a month from the date of announcement, they are deemed a fugitive from justice. The court, then, will appoint a representative for the defendant and proceed with the trial as if it were in their presence. In cases where the defendant is considered a fugitive, the court may also order the seizure of their assets, restricting their disposal.¹⁶⁹ But there is actually no evidence that this is happening. The case shall be heard in a session held within one week from the day of its referral to the competent court¹⁷⁰, and the court shall hold its sessions in the presence of the representative of the Public Prosecution, otherwise any action taken in his absence

168 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 285.

169 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 290.

170 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 299.

shall be considered null and void¹⁷¹. Witnesses shall appear "twenty-four hours before the hearing other than the distance dates", ¹⁷²and may not be prevented from appearing before the court for any reason. The court must hear the statements and defenses of the parties in one or more public sessions, listen to evidence, testimonies, and expert reports, and examine physical evidence, documents, and files. It must also rule on all requests submitted by the parties. All parties, including the victims, have the right to present evidence, discuss it, and request expert examination with the court's approval. They and their representatives also have the right to review the entire case file and obtain copies. Court sessions should be conducted in a manner that fosters public confidence in the judges' fairness, with the presiding judge ensuring that the dignity of citizens and the court is upheld. The judge must ensure equality between parties in litigation, uphold the principle of confrontation during proceedings, and maintain impartiality.¹⁷³

One fundamental procedural requirement for a fair and public trial is the oral and public nature of the proceedings, which allows for the discussion of evidence and witness testimony. This enables the judge to assess the seriousness, legality, and credibility of the evidence through oral examination.

The court may defer or suspend the original case to address defenses raised by the defendant if related to public order (such as challenges to the court's jurisdiction or the validity of the complaint). The court may also, on its own initiative, order the inclusion of any parties deemed necessary for the pursuit of justice or to uncover the truth. Additionally, the court must suspend the original case whenever it deems necessary to resolve another matter that affects the judgment in the dispute. Proceedings will resume from the point at which they were halted once the reason for the suspension is resolved.¹⁷⁴

Assessment and Practice

One of the obstacles resulting from the absence of a procedural provision specifying a reasonable period of time for the court to decide on its jurisdiction (personal, qualitative and spatial place) to hear a criminal case or not is that the court may not reach its decision of lack of jurisdiction until after a long number of hearings, sometimes lasting years¹⁷⁵. Although the

171 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 316.

172 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 327.

173 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Articles 16-23.

174 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Article 206.

175 Judge Yahya Abdullah Hassan Al-Ansi, third focus discussion session, previous source.

Yemeni procedural system has recognized that it is not permissible to postpone sentencing sessions for more than one session, and took into account the principle of continuity of trial through "sessions. This situation has allowed litigants to influence the course of trials and prolong proceedings with ill intent, without a clear and enforceable legal framework.

On the other hand, a significant factor contributing to the delay in litigation procedures is the poor management of case files by court staff, including bailiffs, court clerks, and record keepers, due to inadequate professional training. Additionally, the absence of a comprehensive electronic system for case files—from their receipt at the court to the issuance of judgments—exacerbates the issue.

Key tasks that court personnel are expected to perform to facilitate litigation and ensure smooth proceedings include assigning sequential numbers to case files, preparing court schedules, summarizing case files for judges before hearings, and recording daily court minutes. In practice, however, court staff rarely carry out these tasks professionally or adhere to legal deadlines. For instance, drafting a court judgment may take several months, which can have significant repercussions for litigants, such as missing deadlines for appeals.¹⁷⁶

Case of Ongoing Criminal Trial for Over Five Years

The suspect, A. J. H. M. (31 years old, male), was arrested by the Police of Amanat Al-Asimah Sana'a on Wednesday, December 26, 2018, at a language institute building on Airport Street in Sana'a. He was interrogated and subsequently transferred to the Criminal Investigation Department for further questioning. He was then detained in the Central Prison Rehabilitation Facility, and his case file was referred to the Specialized Criminal Court on charges of treason and espionage with the enemy. The Specialized Criminal Court issued a preliminary conviction against the defendant, who appealed the initial ruling. The case file was forwarded to the appellate division of the Specialized Criminal Court. As of now, the case remains unresolved.

successive and continuous sessions until the trial is concluded, unless circumstances of the case necessitate a justified suspension or adjournment, or if required by legal provisions."¹⁷⁷ However, the procedural system has expanded the grounds for postponing, suspending, and interrupting proceedings, which impacts the principle of timely trials. It also broadens the scope of ancillary issues that the court must address first before proceeding with the main case.

176 Lawyer Nabila Mohamed Ismail Al-Mufti, Third Focus Group Discussion, Ibid.

177 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Article 268.

Decision on the Case

Procedural Legal Framework

The court shall reserve the case for judgment during the same session if it deems the evidence sufficient to render a verdict. If the trial has concluded or the case is ready for resolution, the court must issue its judgment without undue delay.¹⁷⁸ The court may only postpone delivering the judgment for compelling reasons, which must be documented in the session's minutes. A judge cannot refuse to deliver a judgment without legal justification, as this would be considered a denial of justice.¹⁷⁹

Judgments must be reasoned and should not be inconsistent with each other or with the verdict itself; otherwise, they are deemed invalid. Once the original judgment has been sealed by the court, a certified copy must be provided to each party upon their signature of receipt in the court's record. If the convicted party does not appear to collect their copy after it has been prepared, they must be duly notified along with a copy of the judgment in accordance with the legal notification procedures. The judge is required to inform the defendant of their right to appeal if the judgment is appealable and must specify the time frame within which an appeal can be filed.¹⁸⁰ To ensure the fairness of judicial decisions, Article 188 of the Penal Code stipulates that any judge who intentionally renders an unjust judgment due to favor, recommendation, intercession, or bias towards any party shall be punished with imprisonment for a term not exceeding seven years.

As an extension of the court's inadmissibility of changing the legal description of the charge by adding facts or defendants that are not stipulated in the indictment submitted to it by the Public Prosecution, the court is not entitled to "punish the accused for an incident other than that mentioned in the indictment sheet or the summons to appear, nor may it be sentenced to anyone other than the accused against whom the case is filed."¹⁸¹

Assessment and Practice

The Yemeni procedural system lacks clear timelines for trial procedures and stages, rendering the provisions related to the prompt resolution of cases somewhat vague and impractical. Moreover, Article 377 of the Criminal Procedure Code allows the judiciary to

178 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Article 218.

179 Law No. 40 of 2002 pertaining to Procedure & Civil Enforcement, Article 24.

180 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 383.

181 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 365.

terminate trials without judgment, irrespective of the gravity of the crimes, if "it becomes evident to the court that the accused, at the time of committing the alleged act, was in a state of irresponsibility or under legal impediments to punishment." Among the impediments to punishment are grounds for permissibility, which are associated with certain acts of public officials and decriminalize them, thus causing law enforcement officials to escape punishment for acts committed in the course of their duties. In addition, court convictions in criminal cases do not include a provision on the offender to compensate the injured victim¹⁸².

Although Yemeni law prohibits reliance on any confession or statement made by defendants or witnesses under torture, inhumane treatment, or physical or psychological abuse,¹⁸³ the phrase "is rendered void and not relied upon" remains ambiguous and lacks the clarity needed. It is not sufficient to recognize the invalidity of any confession or statement obtained by force if it is invoked before the court, especially since the Code of Criminal Procedure stipulates that for the validity of the invalidity of one of the procedures provided for in the law, it is expressly stipulated that it is invalid or that the procedure in violation is substantial¹⁸⁴.

In practice, judges condone all violations against defendants before they are brought to court, and most criminal courts do not hesitate to take evidence extracted under torture." The charges are fabricated, the confession is fabricated under duress and torture, and the victim has the evidence, but the court delays the adjudication of the case, postpones it, or waits for the prosecution's evidence for months."¹⁸⁵ Some of the chained defendants are taken to trial sessions bearing signs of torture without most criminal courts paying the slightest attention. Forcibly disappeared persons are also brought to trial months or years after their disappearance and during hearings they argue that proceedings are invalid and their arguments are ignored by the courts¹⁸⁶. Some defendants are returned after the hearings to illegal places of detention in full view of some judges¹⁸⁷.

On the other hand, victims of human rights violations face difficulties in following up on

182 Dr. Hikmat Ahmed Abdel Hamid Al-Amrani, the first focus discussion session, previous source.

183 Republican Decree Law No. (13) of 1994 regarding criminal procedures, Article 6.

184 Presidential Decree Law No. 13 of 1994 on Criminal Procedure, Article 396.

185 Interview with the Committee of Mothers of Abductees and Forcibly Disappeared in Aden March 13, 2024.

186 Judge Radwan Ali Saleh Al-Omeisy, first focus discussion session, previous source.

187 Khaled Omar Ahmed Saeed, member of the Specialized Criminal Prosecution, the first focus discussion session, previous source.

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litigation procedures due to the spacing of dates between hearings, the difficulty of reaching the courts, the large number of cases before the courts, the small number of judges, the lack of specialized criminal courts in most governorates, in addition to the lack of sufficient halls to hold hearings. In Marib, for example, "the adjudication of causes related to state security in the Specialized Criminal Court of First Instance takes years, and in some cases the ruling is made without notifying the concerned parties." True, and without attending the trial sessions, the convicts may not be able to request a cassation appeal due to the refusal of the Chief Prosecutor of Appeal in the Specialized Criminal Court to give them a negative certificate or a copy of the judgment in order to appeal the cassation, and the Specialized Criminal Appeals Prosecution may ratify some judgments and may appeal the appeal in relation to the common right, and the adjudication of some cases in the appeal of the Specialized Criminal Court continues for years without specifying sessions.¹⁸⁸.

188 Field report of the Legal Support Team – Marib.

Study Findings

First: Legislative Shortcomings

- Domestic implementation of Yemen's international obligations under agreements and instruments related to the protection of fundamental human rights remains limited. Yemeni law does not encompass all international legal standards, including the provision of effective remedies, the prevention of impunity, and guarantees of non-repetition. Additionally, Yemeni legislation lacks any explicit provision requiring courts to apply the international treaties ratified by the Republic of Yemen. This has created a significant gap between Yemeni laws and the rules governing court operations and practices on the one hand, and international human rights law on the other.
- Despite constitutional and legal provisions that establish the principle of judicial independence—judicially, financially, and administratively—and prohibit any interference in judicial affairs and the course of justice in general, Yemeni legislation, from the Constitution to the Judicial Authority Law, contains profound legislative flaws that have weakened this principle. Responsibility for implementation of guarantees of judicial independence is placed in the hands of a Supreme Judicial Council, the majority of whose members are appointed by the head of the executive branch (the President of the Republic) and whose formation is subject to political and non-objective criteria. Furthermore, Yemeni legislation does not specify the qualifications required for appointment to the Supreme Judicial Council. Legally, the council is responsible for ensuring administrative independence by appointing, promoting, transferring, seconding, and dismissing judges. Financially, it is tasked with setting the judiciary's budget and overseeing its financial affairs. Judicially, the council has the authority to hold judges and members of the Public Prosecution accountable and to discipline them, thereby influencing the independence of both the courts (in their case deliberations) and judges themselves, despite the constitutional provision that judges are "independent and subject to no authority other than the law" (Article 149 of the Constitution). The council also has the authority to establish specialized courts and determine their jurisdiction without any legal basis, despite the constitutional prohibition against establishing exceptional courts under any circumstances.
- Moreover, Yemeni legislation contains conflicting provisions that are inconsistent with the principle of judicial independence. For example, the Minister of Justice presides over the Higher Judicial Institute, which is responsible for the training and qualification of judges. This allows the Minister to control admission policies to the institute, which is the sole authority for educating judges. After approval by the Supreme Judicial Council, the institute's graduates are appointed to work in the courts. The Minister of Justice is also

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legally responsible for overseeing the financial and organizational affairs of all courts and judges. In practice, the courts are financially dependent on the Ministry of Justice, and court employees who are not judges are also under the authority of the Ministry. Although the Constitution establishes the Public Prosecution as a judicial authority, Yemeni legislation does not contain any guarantees of its independence.

- Yemeni legislation does not guarantee victims of human rights violations the right to seek justice or to litigate before a natural court. The system of specialized criminal courts and public prosecution offices that handle these cases and issue rulings are not part of the natural judiciary, as they were established by a decision of the Supreme Judicial Council rather than by law, as required by the Constitution. Whether or not Yemeni legal scholars classify these specialized criminal courts as exceptional courts, which the Constitution categorically prohibits from being established, the fact remains that they are not part of the natural judiciary. Therefore, extending the jurisdiction and legal authority of these courts to cover human rights violations is a severe breach of the legal and logical foundation of victims' rights to redress and the judicial prosecution of perpetrators. This is irrespective of the procedural issues and flaws in the administration of justice within these courts, which, as the study has shown, are numerous.
- Most severe human rights violations fall within the general definition of crimes under Yemeni law and are covered by its penal provisions. However, the serious crimes described in Yemeni law cover some but not all violations of human rights and international humanitarian law. For instance, torture, enforced disappearance (kidnapping), and extrajudicial killing are considered serious crimes under Yemeni law based on the primary punishment prescribed for them, according to Article 16 of the Penal Code (imprisonment for more than three years). On the other hand, crimes such as unlawful detention and deprivation of liberty without legal justification, including illegal and arbitrary detention, are classified as non-serious crimes since their punishment under Yemeni law is three years or less, or a monetary fine. Additionally, arbitrary pretrial detention is not explicitly criminalized under Yemeni law.
- Yemeni law lacks precise definitions of serious human rights violations based on the nature of the act, which would be consistent with the international legal obligations of the Republic of Yemen. Some penalties are either disproportionate to the severity of the violation, such as the punishment for illegal and arbitrary detention, or do not extend to all aspects of the violation. For instance, the punishment for the crime of torture applies only to the act of physical torture and does not extend to other forms of cruel and

degrading treatment that do not reach the level of torture.

- Yemeni law acknowledges the criminal responsibility of the direct perpetrator of a crime alongside the responsibility of accomplices.
- A public official or anyone acting in an official capacity is criminally and civilly liable for intentional or negligent acts committed during the performance of their duties or in fulfillment of their duties. Yemeni law tends to impose harsher penalties for crimes against freedoms when the perpetrator is a public official, a member of a public authority, a member of the security or armed forces, or someone entrusted with law enforcement, often accompanied by supplementary penalties such as dismissal from public office. However, Yemeni law does not establish a clear balance between the justifications that negate the criminal nature of an act committed by a public official or someone in a similar capacity and the principle of criminal responsibility for public officials, leaving this determination to the discretion of the competent court. Although justifications may initially prevent the filing of a case against a public official before the trial stage, this often results in public officials escaping punishment. On the other hand, Yemeni law recognizes the responsibility of superiors for the actions of their subordinates and adheres to the principle that orders from superiors may not be invoked if those orders are unlawful.
- In principle, serious crimes are not subject to a statute of limitations under Yemeni law, but this principle is significantly undermined by another conflicting provision. This provision specifies that the right to hear a criminal case for a serious crime expires ten years after the crime was committed. Yemeni law upholds the principle of non bis in idem (no double jeopardy), meaning a person cannot be tried twice for the same offense. However, while the law broadly acknowledges the principle of appropriate compensation for damages, it does not facilitate its application. Furthermore, Yemeni legislation neglects the state's civil liability and responsibility for orchestrating enforced disappearances, as well as its obligation to rehabilitate victims of human rights violations such as torture. Additionally, Yemeni law lacks clear provisions criminalizing the intimidation of witnesses at all stages of investigation and trial, which weakens the public's role in holding perpetrators accountable and achieving justice.
- Yemeni legislation does not respond to the principle of adequate compensation for damages caused to the victim in criminal cases and violations committed by public servants and the like, but rather grants him the right to file an independent civil action for compensation subordinate to the criminal judgment convicting the accused, i.e.

through a new litigation process.

- Yemeni law does not provide the Public Prosecution with a strong legal standing in its relationship with judicial enforcement officers, and there is no explicit provision granting the Public Prosecution the authority to ensure the legality of initial investigations conducted by judicial enforcement bodies. The law also lacks specific penalties for judicial enforcement officers who fail to refer serious crimes to the Public Prosecution for action and investigation, or for detention facility officials who refuse to execute release orders issued by the Public Prosecution or who hinder the access of prosecutors to prisons and detention centers in fulfillment of their duties.
- Yemeni legislation lacks provisions obligating judicial authorities, particularly the Public Prosecution, to address the legacy of past violations or empowering them to initiate prosecutions and investigations into such violations, whether on their own initiative or based on an official complaint.
- Some provisions within Yemeni legislation do not promote the combating of impunity. For instance, when the Public Prosecution investigates cases of unlawful detention, it merely releases the detainees without being required to initiate proceedings against the offending party or to investigate any torture that may have occurred during the unlawful detention.

Second: Institutional Flaws:

- The conflict has led to the disruption or complete suspension of the criminal justice system in most areas of Yemen, making it increasingly difficult for the population to access even the most basic forms of justice. This disruption has compounded the challenges faced by those seeking legal remedies, particularly victims of human rights violations perpetrated by law enforcement officers, public officials, and their equivalents. The situation has been further exacerbated by the fact that human rights violations fall under the jurisdiction of specialized criminal courts and their associated prosecutors' offices. Under normal conditions, before the conflict and as per the founding decision, these courts were located in four out of Yemen's twenty-two governorates, giving them an exceptionally broad territorial jurisdiction. In the context of conflict, however, the ability of victims to access these specialized courts and prosecutors to seek justice has become extremely limited, fraught with countless challenges.
- The control of judicial courts and prosecutors' offices by parties to the conflict in certain regions has created a judicial vacuum in other areas that has persisted for

years, resulting in severe breaches of the principles of equal access to justice and non-discrimination. The dominance of one party over court complexes and prosecutors' offices in some regions has confined their jurisdictional authority to specific areas, depriving residents in opposing regions of access to justice. This deprivation is due to physical barriers to travel, fears of security repercussions, or damage to the victims' legal standing and their ability to litigate in those courts. This situation has allowed for discrimination between litigants along political lines, and has further entrenched impunity by enabling human rights violators to flee to other areas of influence, using them as safe havens to avoid prosecution.

- As the intensity of the conflict has subsided unevenly across most areas, courts and prosecutors' offices have regained only a limited portion of their already weak capacity to administer justice with minimal physical, financial, institutional, and human resources. This has occurred amid a backlog of cases and grievances, within the context of a divided judiciary that has allowed for unregulated and inconsistent judicial practices. Although the political division within the higher judicial authorities has not yet resulted in the formation of entirely separate legal systems, it has nonetheless caused long-term harm to the legislative unity of the country. It has also led to obstructed access to justice, the loss of litigants' rights in many cases, and the politicization of the judiciary, allowing it to become a tool for political revenge and persecution of opponents. Overall, the primary institutional weaknesses of the judicial and security bodies during the conflict include:
 1. Severe lack of physical infrastructure and essential resources: Court and prosecutor's office buildings are dilapidated, rented, or partially or completely damaged by the conflict. They lack even the most basic services and technical equipment necessary for the administration of justice.
 2. Absence of budgetary allocations for judicial bodies and deteriorating living conditions for judges and prosecutors.
 3. Widespread judicial appointments based on criteria other than merit and integrity, along with a lack of job security for judges due to arbitrary transfers and disruptions in the standards for promotions and appointments within the higher judicial authorities.
 4. Lack of specialized services that facilitate access to justice, such as forensic medicine.
 5. A shortage of judges and prosecutors, with a significant exodus of judicial staff due

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to harsh living conditions, and a lack of personnel in non-judicial positions within the justice sector and the absence of a matrix of sequential procedures to organize administrative work within the courts.

6. Dominance of informal structures in some conflict areas over judicial matters, undermining the independence of the courts and influencing the course of criminal justice.
 7. Politicization of the judiciary, as well as conflicting judicial instructions and administrative decisions related to the functioning of courts and prosecutors.
 8. Widespread, repeated violations against judges, prosecutors, and lawyers, alongside breakdowns in security that compromise the sanctity of the judiciary.
 9. Imbalance in recruitment standards and poor qualification, training and Low specialized investigative capabilities among prosecutors at all levels and in various types of cases, particularly investigations into human rights violations. Investigators often adhere to routine practices without developing the skills needed to investigate cases of violations effectively.
 10. Weak institutional capabilities of security agencies and prison staff, alongside inadequate professional knowledge and legal training.
 11. Diminished legal awareness among security forces regarding fundamental human rights, and a lack of training programs enabling them to correctly apply the law and uphold human rights standards while performing their duties.
- The influence of security and military agencies is growing, as is their impact on judicial matters through systematic, unlawful interventions in all stages of legal proceedings.
 - The criminal courts and prosecutors' offices responsible for handling serious cases and overseeing proceedings are concentrated in the capitals of a very limited number of governorates, creating significant challenges for residents in accessing justice.
 - There has been a notable expansion in the authority of military courts, with their jurisdiction now effectively extending to civilians.
 - The presence of multiple judicial enforcement authorities, including unofficial bodies operating without legal basis, has led to overlapping jurisdictions. Additionally, judicial enforcement officers are exercising considerable and often unchecked powers in arresting, detaining, and searching individuals during the investigation and evidence-

gathering phases.

- The effectiveness of the Public Prosecution in supervising the actions of judicial enforcement bodies has weakened, resulting in conflicts between the authority of the Public Prosecution and that of the judicial enforcement bodies, including police departments. In particular, this has affected the referral of investigation reports and criminal inquiries to the Public Prosecution as mandated by law.
- The Public Prosecution and courts lack effective authority over many formal and informal places and detention facilities.

Third: Procedural Deficiencies

Despite the comprehensiveness of Yemen's procedural system and its rules covering the various stages of justice for victims, there is a lack of procedures that specifically address the handling of serious human rights violations, particularly those committed by public officials or law enforcement agents. This includes the absence of swift and effective mechanisms for accepting complaints of such violations and initiating investigations, as well as clear guidelines regarding the qualifications of investigators and the special rules they must follow. The key procedural deficiencies impacting access to remedies, judicial prosecution, and the administration of criminal justice are as follows:

- The Yemeni procedural system restricts the process of filing complaints against government officials or employees by requiring the approval of the Chief Prosecutor before the accused can be questioned. The continuation of the investigation is dependent on the Chief Prosecutor's assessment of the seriousness of the complaint, giving the Chief Prosecutor sole discretion in determining whether the complaint should proceed.
- The procedural rules governing how prosecutors handle complaints received from prisoners during inspection visits to prisons are vague. There is no binding provision requiring the prosecutor who receives the complaint to initiate legal proceedings according to set procedures.
- The Yemeni procedural system does not specify how to conduct site inspections, nor does it mandate the appointment of experts or forensic doctors to determine the cause of death or examine the body, particularly in cases where the suspects are public officials or their equivalents who acted during the performance of their duties or in fulfillment of their duties.
- Police officers' powers to stop and search individuals are not adequately constrained,

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and the manner in which these powers are exercised under the Yemeni procedural system undermines legal guarantees of individual rights and freedoms.

- The procedural rules governing arrests are general and overly broad in many respects. Arrests without a warrant in the Yemeni procedural system are not carried out under a clear chain of command, making it difficult to assign responsibility for unlawful arrests carried out by judicial enforcement officers.
- The Yemeni procedural system has disregarded the principle of exhausting all efforts to carry out an arrest before resorting to force, which was stipulated in the Republican Decree by Law No. 24 of 1991 regarding the duties and powers of the police.
- Procedural rules require prosecutors to personally investigate allegations against armed forces officers, police officers, and judicial enforcement officers, as well as incidents occurring in detention facilities, with minimal delegation allowed to ensure the integrity and accuracy of the investigation. However, these rules overlook the evidence-gathering phase conducted by unqualified judicial enforcement officers, whose investigations form the foundation for the prosecution's inquiries. Generally, Yemeni law does not address the challenges of proving crimes due to deficiencies or omissions in the evidence-gathering process, nor does it require judicial enforcement officers to promptly refer evidence reports.
- There is no explicit provision declaring that any evidence or seizures resulting from an unlawful arrest are invalid and should have no legal weight or binding effect at any stage of the investigation or subsequent proceedings.
- The Yemeni procedural system fails to specify the types of behavior that constitute a violation warranting disciplinary action against prisoners. Moreover, it does not provide effective and prompt mechanisms for reporting cases of death or illness occurring within prisons to the families of the affected inmates.
- The law does not obligate the prosecution to proactively search for illegal detention centers to take necessary legal actions; instead, it limits the prosecution's response to instances where such knowledge is already available.
- Procedural rules allow the investigating prosecutor to temporarily suspend a case if the perpetrator is unknown or if the evidence against them is insufficient, while continuing to gather information and evidence. The prosecutor also retains the right to reverse the decision to suspend the case. This approach opens the door to obstruction of the course of legal proceedings and enables offenders to evade accountability, especially since Yemeni procedural law does not require prosecutors to follow up on investigations and

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evidence collection until the perpetrator is identified and sought, and before the statute of limitations expires.

- If a public official is accused of a crime that occurred under circumstances that could justify its commission, the prosecution is permitted to close the case permanently. This decision acts as a judicial ruling that prevents the case from moving forward, effectively denying justice to the victims from the outset.
- Victims' rights to challenge or appeal prosecutorial actions do not extend to all decisions made by the prosecution that affect them. Some of these rights are subject to time constraints that render them practically unattainable, such as the ten-day limit on the victim's right to appeal a prosecutor's decision to close a case due to insufficient evidence or the inability to identify the perpetrator. This timeframe is often insufficient for the victim to exercise this right.
- The procedural system lacks a specific framework for investigating serious human rights violations suspected to have been committed by public officials, responsible authorities, or law enforcement bodies in a manner that ensures justice for the victims. For instance, the requirement that the prosecution notify the relevant authorities before initiating an investigation against military or police officers and appoint a representative to attend the investigation conflicts with the need for prompt investigations into human rights violations.
- There is no specific procedure for suspending public officials suspected of committing human rights violations such as torture from their official duties while under investigation.
- The decision by the prosecution not to pursue criminal charges in cases involving public officials and law enforcement agents is often based on illogical justifications, which can act as a pretext for evading punishment. In such cases, the prosecution often opts for administrative penalties instead of referring the case to the competent criminal court, undermining accountability.
- Yemeni procedural rules restrict the prosecution's right to directly file charges against judicial enforcement officers or public officials for crimes committed during the performance of their duties or in fulfillment of their duties, requiring the permission of the Attorney General or their delegates. The rules do not clearly define the nature of this permission or the procedure for obtaining it. Furthermore, the requirement to obtain the Supreme Judicial Council's approval acts as a barrier to prosecuting judges and prosecutors.
- The Yemeni procedural system imposes limitations on the competent court's authority

to change the legal classification of the charges presented by the prosecution. The court is not permitted to independently adjudicate a crime not included in the indictment filed by the prosecution, nor can it alter the foundation of the case by adding new facts not mentioned in the indictment or attributing actions to individuals whose names were not listed, even if their names appeared in the evidence collection records or the prosecution's investigations. This restriction on the court's authority negatively impacts the pursuit of justice and the complete revelation of the truth. It places the prosecution, through the boundaries it sets in the indictment and the legal classification of the crime, in a position to decisively determine the course of justice instead of the competent court.

- The Yemeni judiciary does not adopt the system of direct prosecution in criminal cases, and the plaintiff is considered a member of the lawsuit filed by the Public Prosecution and not an original party to it, and therefore the victim does not have a strong legal status in the face of the prosecution's procedures if it decides not to proceed with the complaint.
- The procedural rules account for the principle of continuity in criminal trials, ensuring that cases proceed in consecutive and uninterrupted sessions. However, the rules allow overly broad justifications for delaying, suspending, or interrupting legal proceedings, which has undermined the principle of timely trials.
- The Yemeni procedural system has neglected to set specific timeframes for the various stages of trial proceedings, resulting in a lack of clarity in the legal provisions regarding the prompt resolution of cases, hindering practical implementation.
- The procedural system concerning trials of human rights violators does not adhere to the principle that any confession or statement obtained under duress should be considered null and void if presented as evidence in court.
- The procedural rules include special provisions for the prosecution of fugitives, defining any public official who refuses to comply with a court summons within the legal timeframe (one month from the date of notification) as a fugitive from justice. The court is authorized to order the seizure of the fugitive's assets, although these cannot be disposed of. However, the system fails to establish effective mechanisms for enforcing such orders.
- Article 377 of the Code of Criminal Procedure allows the judiciary to terminate trials without issuing judgments, without distinguishing between serious and minor offenses.

Recommendations

Legislative Reforms

1. Ensure that post-conflict constitution-building includes the main principles and foundations of criminal justice based on the rule of law, the protection of human rights, and the separation of powers. This process must ensure the establishment of a genuinely independent national judiciary, which includes prohibiting any interference by the executive branch in the affairs of judicial bodies. It should also involve revoking the Minister of Justice's authority in the financial and administrative supervision of courts and public prosecutions. Additionally, the admission policy for the High Judicial Institute must be scrutinized to align with legal standards and promote national inclusivity without resorting to sectarian quotas. Judges and prosecutors should be appointed based on merit and integrity, and the Supreme Judicial Council should be formed through elections by a general assembly comprising judges, prosecutors, lawyers, and law professors from Yemeni universities. Furthermore, sufficient legal guarantees must be provided to ensure the independence of the Public Prosecution from the executive branch and to minimize the influence of the latter.
2. Add an article to the constitution that explicitly prohibits all human rights violations in all circumstances, including exceptional situations and situations of political instability.
3. Reorganize the criminal court system by law and limit its jurisdiction to state security cases, while establishing adequate legal guarantees for the proper administration of justice in the procedures they undertake and the sentences issued by them, and guaranteeing the rights of victims, witnesses, and experts.
4. Establish specialized public prosecutions and courts dedicated to investigating and adjudicating human rights violations. These bodies should have jurisdiction over all violations committed by public officials, law enforcement personnel, and individuals affiliated with non-state actors.
5. Ratify the international human rights treaties and conventions approved by former governments and integrate international human rights and humanitarian law principles into the national judiciary's purview. The judiciary should be required to comply with these standards and be guided by best practices in facilitating access to justice and prosecuting perpetrators.
6. Develop precise definitions of serious human rights violations based on the nature of the criminal act. These definitions should encompass, without exception, all acts classified as crimes under international treaties and conventions, including crimes related to

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detention and deprivation of liberty in all forms.

7. Differentiate between serious violations of fundamental human rights and other criminal acts. Rules concerning statutes of limitations, the right to file lawsuits, the principle of non bis in idem (no double jeopardy), and the prohibition of retroactive application should not apply to serious violations of fundamental human rights.
8. Add an article to the Code of Criminal Procedure obliging courts to include in their conviction judgments in criminal proceedings compensation paid by the offender to the victim in an appropriate amount comparable to the material and moral damage caused by the crime.
9. Delete Article 270/b of the Code of Criminal Procedure, which explicitly stipulates that members of the Public Prosecution and judicial officers may not be refused, to end the conflict between it and Article 277 of the same law, which gives the victim and all litigants the right to dismiss judges, members of the Public Prosecution and judicial officers during investigation and trial.
10. Establish clear legal definitions of the jurisdiction and powers of judicial enforcement officers to ensure accountability. The supervisory and oversight role of the Public Prosecution—beyond just the Attorney General—over the actions and potential abuses of these officers should be strengthened. Additionally, judicial enforcement officers should be administratively subordinate to the Public Prosecution in relation to their investigative and evidence-gathering activities in criminal cases.
11. Address legislative gaps in the area of witness protection to encourage safe public participation in the prosecution of perpetrators of serious human rights violations and to enhance community cooperation with authorities in the pursuit of justice.
12. Explicitly state that any statements obtained through torture are inadmissible as evidence, and extend this invalidity to all subsequent procedures.
13. Mandate adequate compensation for victims of human rights violations that were proven to have been committed by public officials, public servants, or state entities classified as legal persons and this shall be included in the final judgments of the judiciary in criminal proceedings.
14. Grant the competent courts the authority to amend the legal classification of crimes in the indictments submitted by the Public Prosecution. This would enhance the course of justice by allowing for necessary adjustments to uncover the truth and achieve proper

justice.

15. Revise legal provisions that are inconsistent with the constitution or that conflict with fundamental legal principles. For example, amend Article 38 of the Code of Criminal Procedure, which contradicts the principle of non-prescription for serious crimes as established in the constitution and other articles of the Code of Criminal Procedure.
16. Amend the current Police Authority Law by incorporating certain provisions from Republican Decree Law No. (24) of 1991 regarding the duties and powers of the police, specifically the articles that were omitted when the current law was enacted, including:
 - The police shall perform their duties and carry out their activities based on the constitution, laws, regulations, and effective decisions.
 - Police officers must exhibit integrity, vigilance, courage, and self-sacrifice while performing their duties, serving as role models in their actions and conduct.
 - Providing social and security services to citizens in line with the slogan "The police serve the people" (Duties of the police).
 - Police officers must present their security identification cards when in civilian clothing, especially when intervention is necessary to prevent imminent dangers to others or breaches of security (Police powers).
 - The use of firearms against minors or in situations that endanger the lives of uninvolved individuals is strictly prohibited.
 - The police are responsible for compensating individuals who suffer harm as a result of their cooperation with the police, except for those who were asked to rectify disturbances to public order and security that they themselves caused.
 - Without prejudice to a citizen's right to seek judicial recourse, any individual has the right to submit complaints or petitions against police actions under this law within thirty days of the actions being taken and to request release if they were detained.
 - Police officers who receive written or oral complaints or petitions are obligated to resolve them within two weeks from the date of submission.
 - Citizens have the right to appeal the decisions of police officers to higher authorities within the police hierarchy, who are required to issue a decision within two months of receiving the appeal.

Institutional Measures and Strategies for Non-Recurrence

1. Following the end of the conflict, undertake a comprehensive review process to assess judicial and prosecutorial appointments made by all parties involved in the conflict across the country. The files of appointees should be examined to verify their credentials and qualifications according to standards set by an independent national body established for this purpose. This body should also be empowered to address grievances related to judicial transfers, promotions, and other related issues. Additionally, it should review the legality of judicial and administrative directives issued by the Public Prosecution, the Ministry of Justice, and the Judicial Inspection Authority during the conflict.
2. Establish an independent national preventive mechanism to protect individuals deprived of their liberty from torture and other forms of cruel and degrading treatment. This mechanism should have access to comprehensive databases on prisoners and be granted the right to direct communication with them. It should also take necessary protective measures, including undertaking regular prison visits, conducting interviews with prisoners, and addressing reports of torture or mistreatment.
3. Restructure security sector institutions known for their systematic human rights violations during the conflict or their repeated disregard for legal procedures, which have tarnished their reputations. This restructuring should include changing the names, leadership, operational rules, and governance of these institutions in a way that eliminates the organizational and institutional factors that enabled or contributed to these violations, thereby restoring public trust in them as reliable public institutions.
4. Create special personnel records within the police, security institutions, armed forces, and all justice and security sector institutions. These records should contain comprehensive data on employees, their professional conduct, and any disciplinary actions taken against them, to help in assessing their suitability for public service.
5. Undertake vetting of employee records after the conflict and exclude security and military officials from official positions if there are reasonable grounds to believe they were involved in human rights violations, issued orders leading to such violations, or neglected to act within their legal responsibilities to prevent such violations. This should also apply to security sector employees known for their unethical professional behavior and their tendency to disregard the law, particularly where there is a likelihood they were involved in acts of torture, killing, or enforced disappearance, even if legal proof is

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hard to establish.

6. Security sector governance, strengthening oversight and accountability mechanisms, and including the standard of respect for human rights in the rules for promotions for police officers and prosecutors based on competency reports.
7. Modernizing, digitizing and automating legal procedures, starting from arrest warrants, evidentiary collection, minutes, attachments, evidence and documents, up to release or referral, as well as the work of the Public Prosecution and the work of the courts, and the work of a complete electronic course for case documents, documents and data to facilitate the work of prosecutors and judges and speed up procedures and decide on cases.
8. Implement a gradual and secure disbanding of non-official security forces and demobilize or reintegrate their personnel into corresponding official structures in a manner consistent with the principles of justice and guarantees of non-recurrence of previous violations. This process should be part of a broader strategic vision for institutional reform and post-conflict transitional justice, which includes revising employment standards in public institutions.
9. Promote human rights awareness among police and security sector personnel, emphasizing procedures that ensure respect for the rights and needs of victims in the performance of their duties, particularly considering the needs of vulnerable groups such as women and children.
10. Strengthen internal oversight mechanisms, accountability measures, and disciplinary actions within the security and justice sector institutions.
11. Organize targeted awareness programs to educate victims about their rights to access justice mechanisms, including understanding the competencies of justice bodies and the scope of judicial and administrative procedures.
12. Establish national mechanisms for the systematic monitoring of all cases of torture, along with a national fund to provide legal and financial assistance to victims of human rights violations.
13. Allocate sufficient resources to ensure that justice-related agencies can effectively carry out their legal duties.
14. Immediately after the conflict, ensure the prompt payment of overdue salaries to judges,

their assistants, prosecutors, and all employees in the security and justice sectors. Their financial and employment conditions should be addressed, including issues related to incentives, bonuses, and promotions.

Procedural Rules

1. Putting an end to the chaos of detention, limiting summonses, arrests, and detention to police stations alone, reducing the scope of exceptions to this rule to a minimum, restricting the police's jurisdiction to detain and arrest by subsequent procedures such as submitting reports to the Public Prosecution immediately after arrest or detention, and subjecting detention procedures to periodic review and review by the Public Prosecution.
2. Facilitating the means of submitting complaints and grievances before the Public Prosecution and strengthening rapid response mechanisms to them.
3. Restrict the powers of judicial enforcement officers in matters of arrest, detention, and questioning by requiring them to take subsequent actions, such as promptly submitting reports to the legally authorized bodies after the arrest or detention occurs. Detention procedures should be subject to review by the Public Prosecution, with regular reassessments of the need for continued detention.
4. Ensure that complaints of violations, especially violations suspected to have been committed by public officials, public servants, or members of the police or armed forces, are addressed promptly and swiftly. Notification of the public authority where the suspect is employed should not hinder immediate and thorough investigation of the complaint.
5. Mandate that judicial enforcement officers forward investigation reports to the Public Prosecution without delay in cases involving human rights violations.
6. Enable the Public Prosecution to provide real, effective and independent supervision of all places and facilities of detention without exception.
7. Suspend public officials suspected of committing human rights violations from their official duties while they are under investigation.
8. Grant the Public Prosecution the authority to file direct charges in cases of human rights violations committed by judicial enforcement officers, public officials, judges, or prosecutors without the need for prior permission, with the obligation only to notify the

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- relevant entity of the charges and actions taken against their staff member/s.
9. The order to preserve the failure to know the perpetrator based on the minutes of evidence gathering should not include crimes of gross violations of human rights.
 10. Considering persons who refuse to present themselves before the Public Prosecution or the judiciary as outlaws, depriving them of exercising some of their civil rights, such as conducting financial transactions or obtaining official documents, in addition to putting into effect the provision related to the seizure of their funds.
 11. Ensure that justifications for exoneration associated with crimes allegedly committed by public officials or law enforcement personnel do not prevent prosecution or the issuance of rulings in such cases. The effect of such justifications should be limited to reducing the sentence and should not exempt the individual from accountability.

Recommendations to the international community

1. Reevaluate certain United Nations standards related to supporting transitional justice worldwide, particularly the standard that prohibits assistance to courts that allow the death penalty, especially in countries emerging from conflicts where there is an urgent need for help in rebuilding the justice sector for sustainable peace.
2. Fund specialized legal studies on criminal justice in Yemen, with a particular focus on the legal remedies provided by the Yemeni criminal procedure system for vulnerable groups (children, women, people with disabilities, and marginalized communities) and assess the gaps and effectiveness of these remedies in achieving justice for victims of human rights violations from these groups.
3. Conduct in-depth studies on the role of informal (customary) remedies in local Yemeni communities, analyzing their strengths and weaknesses and how they can contribute to achieving transitional justice on a national level in alignment with international standards.
4. Support civil society organizations that are dedicated to legal awareness and promoting judicial independence.

List of Abbreviations

Houthi.	Ansar Allah Group
IRG.	Internationally Recognized Government
UAE.	United Arab Emirates
UN.	United Nations
STC.	Southern Transitional Council
OHCHR.	United Nations High Commissioner for Human Rights
ICCPR.	International Covenant on Civil and Political Rights
CID.	Criminal Investigation Department
Convention Against Torture.	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Body of Principles.	The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Institutional Reform of the Security and Justice Sectors Towards Transitional Justice in Post-Conflict Yemen Requirements for Institutional Reform in the Justice and Security

Mwatana for Human Rights has prepared this field study to analyze the institutional and legal frameworks currently governing the security and justice sectors in Yemen. The study aims to identify the structural, legal, and procedural deficiencies that have contributed to human rights violations and perpetuated a culture of impunity since the onset of the armed conflict in September 2014.

The study examines the institutional environment along with the structural, legal, and operational deficiencies within the security and justice sectors across key regions, including Sana'a, Aden, Hadramawt, and Al-Hudaydah, as well as the governorates of Taiz, Marib, and others. It bases its conclusions on primary field data, specific cases, and patterns of severe human rights violations committed by personnel within these sectors during the conflict. The research further incorporates individual interviews with victims and their families who have suffered abuses by these institutions, in-depth interviews with relevant organizations, and an analysis of various descriptive and procedural field reports. Additionally, the study includes focus group discussions with specialists, academics, prosecutors, judges, former security officials, and representatives from civil society organizations, alongside a review of relevant records, literature, and the legal frameworks governing the operations of these institutions at various levels.

Mwatana for Human Rights calls upon the parties to the conflict, stakeholders, civil society organizations, the media, researchers, and specialists to consider the findings of this study when addressing the deficiencies within the security and justice sectors and when developing visions for their reform. This includes programs, plans, and policies related to overall institutional reform, with a particular focus on the security and justice sectors, as part of the broader transitional justice efforts in Yemen during the post-conflict period.



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