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## Human Rights Council

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Agenda items 2 and 10

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

### Technical assistance and capacity-building

## Situation of human rights in Yemen

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report, submitted pursuant to Human Rights Council resolutions 18/19 and 19/29, provides an updated assessment of the overall situation of human rights in Yemen, made between January and June 2012.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) notes that, while the security situation in some parts of the country, in particular in Sanaa, has improved, violence continues to affect other areas, affecting the lives of individuals and causing massive internal displacement and destruction of infrastructure. In addition, ongoing unrest has contributed to an increasingly dire humanitarian and economic situation affecting the population at large.

In the report, OHCHR takes note of some of the positive political and human rights developments reported during the reporting period, inter alia, the presidential elections and the ongoing preparations for the national dialogue that will form the basis for a Constitution; the presentation of a draft decree on the creation of a commission of inquiry to investigate human rights violations during the events of 2011; a draft law on transitional justice; the positive steps taken towards the establishment of an independent human rights institution; the Government's active cooperation with OHCHR; the increasing number of civil society organizations legally registered; the greater attention paid to women's issues and their participation in the national dialogue and other transitional processes; and the decline in the use of violence against peaceful protesters and journalists.

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\* Late submission.

OHCHR nonetheless noted concerns that investigations into past violations remained selective and lacked credibility. The Government has not reached a consensus over the draft law on transitional justice and the decree establishing a national commission of inquiry. An amnesty law was adopted by Parliament granting absolute immunity from prosecution to former President Saleh and all officials who worked under him.

OHCHR also notes the ongoing detention of individuals by Government security forces without due process, and the lack of a comprehensive list of those still detained, cases of illegal detention by armed opposition groups, and the continuing harassment of and threats to peaceful protesters and journalists.

Lastly, OHCHR notes that, despite the expressed commitment by Government forces and armed opposition groups, children under the age of 18 continue to be recruited by both.

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## I. Introduction

1. In its resolution 18/19, the Human Rights Council requested the United Nations High Commissioner for Human Rights to develop a framework with the Government of Yemen for continued dialogue and strengthened cooperation in the field of human rights, and invited the Office of the High Commissioner (OHCHR) to present a progress report on the situation of human rights in Yemen to the Council at its nineteenth session. At that session, following its discussion of the said report, the Council adopted resolution 19/29, in which it requested OHCHR to present, at its twenty-first session, a progress report on the situation of human rights in Yemen and on follow-up to Council resolutions 18/19 and 19/29.

2. In accordance with the requests made by the Human Rights Council, OHCHR undertook a mission from 22 to 30 June 2012. The mandate of the delegation, as agreed with the Government of Yemen, was (a) to make an assessment of the situation of human rights; and (b) to obtain information thereon from a wide range of actors, including the Government of Yemen, civil society organizations, victims and witnesses and the United Nations country team.

## II. Methodology

3. The mission was conducted in close coordination with the United Nations Resident Coordinator in Yemen, whose support throughout the mission was highly appreciated. The Government of Yemen facilitated the visit, allowing the members of the mission delegation to be in contact with and meet numerous officials, including the Minister for Foreign Affairs, the Minister for Legal Affairs, the Minister for the Interior, the Minister for Labour and Social Affairs, the Minister for Human Rights, the Prosecutor General, the Deputy Minister for Justice, the Deputy Minister for Public Health, the Chairpersons of the National Security and Political Security offices, the Deputy Governor of Aden and senior United Nations representatives. The delegation also met with representatives of non-governmental organizations, journalists, lawyers, judges, doctors, human rights defenders, and victims of human rights violations and their relatives, who all provided testimonies and documents. The delegation commends the Government of Yemen for its assistance and coordination and was appreciative of the support received from all interlocutors throughout the mission.

4. The present report follows up on the report of OHCHR on its assessment mission conducted from 28 June to 6 July 2011 (A/HRC/18/21), and its first progress report (A/HRC/19/51), which provided information from July until the end of 2011. The present report provides an updated assessment of the overall human rights situation in Yemen, particularly against the backdrop of the recommendations contained in the above-mentioned Assessment Mission report and Human Rights Council resolutions 18/19 and 19/29.

5. The delegation visited Sanaa and Aden.<sup>1</sup> Site visits included locations of demonstrations and sit-ins, places where violence had occurred, the prison at the Headquarters of Political Security and hospitals. Owing to time and security restrictions, the delegation was unable to visit other parts of the country. All documentation received by the delegation has been archived for appropriate future use.

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<sup>1</sup> OHCHR staff members also visited Ta'izz a week before the mission was conducted. The information gathered was also used in the preparation of the present report.

### III. Background

#### A. International legal framework

6. Yemen is party to eight of the nine core international human rights treaties, as well as to the Optional Protocol to the Convention on the Rights of the Child.<sup>2</sup> As a State party to the above-mentioned treaties, Yemen is legally bound to respect, protect and fulfil the human rights of those within its jurisdiction. In reviewing the implementation by Yemen of its treaty obligations, the relevant human rights treaty bodies have noted that violations of civil, political, economic, social and cultural rights persist on a considerable scale.

#### B. Political developments

7. Following the adoption by former President Ali Abdullah Saleh, his party and the opposition coalition of the Joint Meeting of Parties of the Gulf Cooperation Council initiative, which provided for a political settlement in Yemen, a Government of national accord was formed in December 2011 on the basis of a power-sharing (50/50) agreement between the General People's Congress and the Joint Meeting of Parties. According to the initiative and its implementation mechanism, the formation of the Government launched a two-stage transitional period for Yemen: the first commenced with the formation of a Government until the election of a new President; the second, a two-year stage, started when the new President took office. On 21 February, former Vice-President Abd Rabbo Mansour Hadi, running as the sole candidate, was elected President in a mostly peaceful election. Power was smoothly transferred to the new President.

8. The Gulf Cooperation Council initiative and its implementation mechanism effectively became the country's constitutional framework during the transition, and is not subject to any appeal or review by any existing judicial or legislative body. The implementation mechanism also provided that, during the transition, both the Government and Parliament were to make their decisions by consensus, and that failure to reach a consensual decision would entail submitting the matter to the President of the Republic, whose decision would be final.

9. The presidential elections were one of the key elements of the Gulf Cooperation Council initiative, together with a national dialogue process, that were intended to pave the way for the adoption of a new Constitution and the holding of parliamentary and presidential elections early in 2014. In May 2012, President Hadi formed a contact committee comprising seven members to carry out consultations with various political forces as well as with women's, youth and civil society organizations. The projected outcome of these efforts was the formation of a representative preparatory committee that would prepare the agenda of the national dialogue conference and oversee its organization. The Government also established a ministerial committee, chaired by the Minister for Human Rights, to establish contact with youth groups and to help to select their representatives.

10. With regard to political groups, the al-Houthi movement, which effectively controls parts of Northern Yemen, publicly announced its willingness to participate in the national dialogue. During the period under review, discussions were ongoing with and within the al-

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<sup>2</sup> Yemen is not party to the International Convention for the Protection of All Persons from Enforced Disappearance.

Hirak movement in Southern Yemen<sup>3</sup> and with other groups in the South to identify modalities of participation in the national dialogue.

### C. Security situation

11. Addressing the dire security situation in Yemen has been among the priorities of the Gulf Cooperation Council initiative and its implementation mechanism, which provided for the establishment of a military affairs committee for the realization of security and stability. The Military Affairs Committee is tasked with ending divisions within the armed forces, the settlement of all armed conflicts, ending all militarized structures, the withdrawal of all militia and other armed groups from the capital and other cities, the removal of all unlawful checkpoints and the reintegration of the armed forces into a unified, professional command structure.

12. On 6 April, President Hadi issued a series of decrees that involved new appointments and the transfer of senior civilian and military personnel to new positions. The transfers also concerned the commanders of the Air Force and the of 23rd Brigade of the Republican Guard, both relatives of former President Saleh, which triggered a crisis that lasted for several weeks, given that the commanders refused to transfer and relinquish their forces. The crisis was resolved following mediation by the Special Adviser to the Secretary-General on Yemen; by June, the new commanders were in their postings. The question of integrating and restructuring the armed and security forces remains. Divided loyalties, on both political and social grounds, were still rampant within the most powerful sectors of the army, and various security organs still had no clear institutional accountability and little judicial oversight.

13. The Military Affairs Committee, headed by the Minister for Defence, has in the meantime succeeded in removing most unauthorized checkpoints in the capital, as a means to unify security and restore law and order. Though visible checkpoints were mostly removed, forces loyal to the former President, the Republican Guard and Central Security Forces, and those loyal to the commander of the First Armoured Division, General Ali Mohsin al-Ahmar, vied for influence in the city.

14. Significant progress was reported in Sanaa and Ta'izz, where the armed confrontations have come to an end. Heavy military equipment was no longer conspicuous, and roads were reopened, with only a few exceptions. Aden, however, has witnessed months of insecurity. After the near collapse of the security sector in Aden, the decision by President Hadi to mobilize navy officers to police the streets contributed to the restoration of some public order.

15. Instability continued in parts of the country. In the north, Houthis appear to have expanded their influence over remote areas, leading to further clashes against alleged Salafist groups. In the south, large areas in the governorates of Abyan, Shabwa and al-Bayda, which have been under the control of Ansar al-Sharia, an affiliate of al-Qaida in the Arabian Peninsula, were driven out of their strongholds between April and June by the Government and allied tribal paramilitary groups. The delegation is gravely concerned about information it received from credible sources about the use of armed drones in the

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<sup>3</sup> Since 2007, the al-Hirak al-Janubi (or Southern) movement has emerged as a trade union movement demanding the rehabilitation of army officers who were forcibly retired after the civil war of 1994. Over the years, al-Hirak has grown into a political movement calling for self-determination for South Yemen. Currently, there are three factions of al-Hirak, with political demands ranging from federalism and self-determination through to outright secession.

south of the country<sup>4</sup> to target individuals described by Yemeni officials or international media as “militants”, “operatives” or “terrorists”. Repeat strikes, allegedly intended to kill persons who were trying to either rescue or bury victims, have also been reported. The delegation recalls the obligation of States under international law to conduct credible, prompt and effective investigations, and to ensure accountability in all such instances.

#### **D. Humanitarian situation**

16. Despite some positive political developments, the humanitarian situation has worsened in Yemen over the past six months. Violence, insecurity and civil unrest have resulted in internal displacement and refugee and migrant inflows, economic decline and increased cost of living. Violence in Abyan and Shabwa has severely disrupted the delivery of basic social services, exacerbating widespread and chronic vulnerabilities.<sup>5</sup> At the Friends of Yemen conference, held in Riyadh in May, donors pledged \$4 billion in aid to help the Government of Yemen to strengthen its fight against Islamist militants and to develop its economy.

17. The World Food Programme (WFP), through a survey conducted during the reporting period, came to some alarming conclusions with regard to the rising levels of poverty, food insecurity and malnutrition. It found that half of the population in Yemen was malnourished and that prices of essential commodities had increased by 60 per cent since 2011. Furthermore, WFP and other aid agencies recently stated that 1 million children would become acutely malnourished during the coming months. The collapse of public services has left millions of people without access to health services, clean water and basic sanitation, which has resulted in increased incidents of communicable diseases. The Rural Water Sector Survey for 2012 showed that 30 per cent of water supply systems in Yemen were not functional. As a result, the entire country faces a water, sanitation and hygiene emergency.

### **IV. Situation of human rights and implementation of recommendations**

#### **A. Accountability and transitional justice**

18. The events of 2011 brought the issue of accountability for past human rights violations to the forefront. Throughout the protests across Yemen, and the events that accompanied or were triggered by them, some 2,000 people are said to have been killed and approximately 22,000 injured across the country.<sup>6</sup> Various public facilities, as well as private and State buildings, were partially or completely damaged, mostly as a result of heavy shelling, crossfire or deliberate acts of vandalism. As such, there are persistent demands for accountability to bring perpetrators from all sides to justice and to provide redress for victims of these violations and their families.

<sup>4</sup> See for example “Yemen: reported US covert action 2012”, The Bureau of Investigative Journalism, 8 May 2012. Available from [www.thebureauinvestigates.com/2012/05/08/yemen-reported-us-covert-action-2012/](http://www.thebureauinvestigates.com/2012/05/08/yemen-reported-us-covert-action-2012/).

<sup>5</sup> For more information, see Humanitarian Response: Yemem, at <http://yemen.humanitarianresponse.info/>.

<sup>6</sup> These figures were released in 2011 by the Council of the Families of Martyrs of the Revolution, a non-governmental organization established after the events. They were repeated to the mission. The Government of Yemen has not published an official list of those killed or injured during the events.

19. Concerns have been expressed that judicial investigations into human rights violations committed in the wake of the unrest in 2011 remained selective and lacked credibility. As a result, most victims have refused to cooperate. The members of the delegation were briefed by the Prosecutor General about the progress of the few emblematic cases being prosecuted: the grenade attack on demonstrators in Ta'izz, on 17 February 2011; the sniper attack on Change Square in Sanaa, on 18 March; the forcible evacuation and burning of Freedom Square in Ta'izz, on 29 May; and, as a case clearly distinct from the violence against protesters, the bomb attack of 3 June on the Presidential mosque, which targeted former President Saleh and his associates. The Prosecutor General confirmed that investigations were progressing with regard to the events of 18 March and the Presidential mosque incidents; 14 people, mostly military personnel, were in detention in connection with the first incident, while 28 others (20 military personnel and eight civilians) were awaiting trial at the Political Security prison in connection with the attack on the Presidential mosque. The delegation met with some of the presidential mosque detainees and heard complaints of torture at the hands of those who arrested them, apparently members of the Presidential Guard National Security or of the Criminal Investigation Police. A verdict in absentia against the three suspected perpetrators of the Ta'izz grenade attack was reached at the end of June, with all three sentenced to death. The delegation expresses its concern as to whether all international human rights standards, including fair trial guarantees for those facing the death penalty, were respected.

20. Lawyers interviewed by the delegation expressed their dissatisfaction at the way investigations were conducted in both the cases of 18 March and the presidential mosque attack, claiming that the real perpetrators were not those in detention, and called for fresh investigations also in the other cases of use of excessive force against protesters or extrajudicial executions in Sanaa, Ta'izz, Aden and elsewhere. The necessity of carrying out independent and impartial investigations into all human rights violations committed during the events 2011 was highlighted by a wide range of people, including families of victims, human rights groups and various political leaders and activists.

21. In her report on the OHCHR assessment mission to Yemen, the High Commissioner recommended that the Government of Yemen launch transparent and independent investigations, compliant with international standards, into any credible allegations of serious human rights violations committed by Government security forces during the events of 2011 (A/HRC/18/21, para. 88). In her follow-up report, the High Commissioner reiterated that recommendation (A/HRC/19/51, para. 62 (b)).<sup>7</sup> The Government of Yemen has repeatedly expressed its commitment to the establishment of a national commission of inquiry. In January 2012, the Cabinet formed a ministerial committee to examine the modalities of forming such a commission. In May 2012, the Ministry of Human Rights prepared a draft presidential decree regulating the establishment of a national commission of inquiry. The draft decree was submitted to the Cabinet in June

22. A major setback with regard to accountability was the amnesty granted to former President Saleh and his associates as part of the Gulf Cooperation Council initiative. On 21 January, Parliament adopted Law No.1/2012, which granted absolute immunity from prosecution to President Saleh, and an amnesty from criminal prosecution to all officials who worked under the President during his 33-year rule. In this way, the President and the officials were also given immunity from criminal prosecution in "politically motivated" cases. The immunity law effectively denies accountability and has therefore been met with much resentment, if not outright rejection, particularly from victims' associations and representatives, human rights groups and activists, and various groups of protesters across

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<sup>7</sup> See also CCPR/C/YEM/CO/5, para. 15.



the country. Though major political forces have agreed to the immunity of the former President for the sake of a political settlement, the controversy over the amnesty law still rages in the various sectors of Yemeni society; indeed some important groups do not feel bound by either the Gulf Cooperation Council initiative or by the law.

23. In its concluding observations on Yemen, the Human Rights Committee expressed concern about the adoption of Law No.1/2012 granting a blanket amnesty to former President Saleh and immunity from prosecution for all political crimes apart from acts of terrorism to all those who served with him during his rule. The Committee requested Yemen to repeal the law and to comply with international human rights law prohibiting immunity for those responsible for serious human rights violations in respect of which States are required to bring in perpetrators to justice.<sup>8</sup>

24. The question of those killed or injured during the events of 2011, as well as redress for victims, remained a priority for various parties concerned in the context of a broad public debate on transitional justice. In March, President Hadi issued a decree granting a soldier's pension (approximately \$ 150 a month) to each family of persons killed during the protests. The Cabinet did not, however, clarify the criteria for eligibility, or whether the Organization of Martyrs of the Revolution or the Ministry of Labour and Social Affairs were in charge of these payments; no specific budget has been allocated by the Ministry of Finance. The issue of the injured, some now with permanent disabilities, has not yet been addressed. Many families complained that they had been left on their own to seek treatment for their relatives, while the Ministry of Health faced great difficulty in responding to desperate cases without any funds allocated.

25. Many have argued that uncovering the truth about violations and identifying perpetrators should precede compensation. In this context, one political leader argued that any money given by the State to victims or their families should be regarded as an act of sympathy or support, but certainly not as compensation or "blood money", which would extinguish their right to know and undertake legal proceedings.

26. In accordance with the Gulf Cooperation Council initiative, and to balance the negative perceptions around the immunity law, some Government officials have attempted to launch a process of transitional justice. In February, the Ministry of Legal Affairs drafted a law on transitional justice and national reconciliation, and presented it to the public. The Council of Ministers formed a ministerial committee to review the law, and a revised version was produced and submitted twice to the Cabinet in May. During the period under review, no agreement was reached on the draft law, and the matter was referred to the Prime Minister and the President pursuant to the implementation mechanism of the Gulf Cooperation Council initiative.

27. Article 3(1) of the above-mentioned draft transitional justice law affirms that "the political transition in Yemen is based on the right to know the truth, tolerance, victims' rights, individual and collective reconciliation, national reconciliation and the rejection of all forms of violence and reprisal". The draft law also envisions the establishment of an independent justice and reconciliation commission, which would work for the achievement of justice, pay compensation and reparation for victims, and work towards national reconciliation. According to article 7(a) of the draft law, the commission would also have the power to investigate all complaints and reports received of alleged human rights violations resulting from the political conflict during the period covered by the law.

28. One major challenge posed by the draft law is the fact that it was drafted in the context of the amnesty law, and therefore does not provide for judicial accountability.

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<sup>8</sup> Ibid.

Another issue raised by the draft law concern the time frame that it should cover. The current draft identifies 1990, the year of the reunification of Yemen, as the date from which violations are to be investigated and redressed. Various stakeholders argue, however, for other periods, depending on their specific grievances or connection with particular events in the history of Yemen.

## **B. Detention and enforced disappearances**

29. The release of hundreds of detainees kept in Government-controlled places of detention, police stations, military barracks or ad hoc prisons was one of the measures intended to restore calm and confidence after the signing of the Gulf Cooperation Council initiative. During their previous visit in December 2011, the delegation was able to confirm that orders had been given at the highest levels to implement the releases, but also concluded that none of those responsible had submitted any lists of persons released or detained to allow verification, nor was there any possibility to consolidate a comprehensive list, given that no Government institution was specifically assigned to keep track of the implementation of the measure.

30. During the most recent visit and despite numerous requests, the delegation did not receive an updated and comprehensive list from the Government. While acknowledging this problem, the Minister for the Interior described his intention to launch a public information campaign to encourage relatives of persons who were either detained or feared to have disappeared to register cases in each governorate to allow the Government to investigate. Following the OHCHR mission, the Government formed another ministerial committee, comprising the Ministers for Human Rights, Defence and the Interior, to examine the issue.

31. During the reporting period, several reports were received from local and international human rights groups documenting the persistence of detention and the occasional torture of persons, overwhelmingly male and mostly young, either because they had engaged in peaceful protest and other similar forms of activism or because they had taken part in armed clashes. The President, the Prime Minister and the Minister for Human Rights attempted to obtain the release of more individuals. The Prime Minister reportedly admitted that his orders had been ignored by security bodies, while the Minister for Human Rights has not been granted access to places of detention run by Political and National Security.

32. Though the Government has not yet attempted to verify and disclose the names of detainees, the total number appears to be in the hundreds rather than thousands, as was the case in late 2011. Efforts by the Government to take a resolute approach to compile, verify and publish all information available regarding cases of detention and disappearance could help to build a climate of mutual trust.

33. President Hadi declared the fight against terrorism and the restoration of State authority across the country his priority. This legitimate undertaking has, however, been marred by continuous reports that the two security organs in charge of counter-terrorism, National Security and Political Security, continued to operate on the margins of the law. Reports of arbitrary arrests, prolonged detention without trial, secret or incommunicado detention, as well as torture and ill-treatment, were received by the mission. Although the decree of 2002 establishing National Security gave it a mandate of counter-terrorism and foreign intelligence, the mission received reports that many of the persons arrested were non-violent activists and protesters. In response to these allegations, the Director of National Security affirmed that his organization operated in full compliance with Yemeni law and denied that it ran unofficial places of detention. He added that, once interrogated, suspects were transferred to the prisons operated by Political Security in Sanaa and other

governorate capitals. The delegation also noted that a draft counter-terrorism bill had not yet been passed and that there was still no parliamentary oversight of the two main security organs.

### C. Freedom of expression, peaceful assembly and association

34. During the reporting period, the sit-ins that characterized the protests in 2011 continued in a number of towns, in particular in Sanaa (albeit with smaller participation), while large demonstrations were held to protest against the immunity law or to call for the completion of the reorganization of the army. In the south, tensions among protesters heightened, especially where pro- and anti-separation activists clashed. Several squares in Aden and Mukalla were attacked or burned; there was no indication of intervention by the police to preserve the right to peaceful assembly. The Minister for the Interior stated that no new instructions had been issued with regard to the conduct of police forces during demonstrations. In Ta'izz, violence in the context of public demonstrations was reported, and the mission was informed that, in al-Bayda, at least three known peaceful activists had been abducted and found dead with signs of torture.

35. Journalists allegedly continued to be threatened and attacked, and targeted in assassination attempts. At least 25 such events were recorded during the reporting period, while 11 cases of illegal arrest and unlawful detention were reported. In addition, the premises of media organizations were attacked or looted, professional equipment stolen or damaged and, in at least eight instances, thousands of printed copies of newspapers were seized and destroyed. The perpetrators of these violations came from all parts of the political spectrum; worryingly, it appears that persons occupying official positions or wearing uniforms may have engaged in such acts with full impunity. Journalists were also brought before courts and sentenced, even though their cases should have been presided over by a specialized court in Sanaa.

36. The delegation paid a visit to the office of the newspaper *Al-Ayyam* in Aden, following its visit of July 2011. Since being forced to close in 2009, the newspaper has faced a number of attacks and court cases brought against it by the Prosecution.<sup>9</sup> The publisher stated that he had received encouraging information from the Government on the reopening of the newspaper; he had, however, also requested that he be given a number of assurances before resuming activities.

37. The members of the mission noted that the transition under way was marked by the multiplication of associations, mostly human rights non-governmental organizations, many of which were based outside the main cities and in parts of the country where, previously, few activities by human rights defenders had been reported. According to lists provided by the Ministry of Labour and Social Affairs, 106 human rights non-governmental organizations completed their registration process in the last quarter of 2011 and at the beginning of 2012. At the time of the mission, 80 human rights organizations were still undergoing the registration process.

38. Although the above developments are welcome, the delegation also received consistent information on interference by the licensing authority of the Ministry of Labour and Social Affairs, which reportedly viewed with suspicion the establishment of human rights groups, especially claiming to address issues of accountability and transitional justice

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<sup>9</sup> See for example, "Witnesses in Al-Ayyam case turn against prosecution", Committee to Protect Journalists, 10 January 2012. Available from <http://cpj.org/2012/01/witnesses-in-al-ayyam-case-turn-against-yemeni-pro.php>.

or intending to cooperate with international entities, including the United Nations. Ministry officials allegedly requested that the language in the constitutive documents of the above groups be modified. Most groups reluctantly complied with such demands or looked for ways to accelerate the registration process.

39. The creation of several new political parties and other political groups is also a welcome development, as it should generate a more diverse spectrum of political opinion, while also indicating that groups that previously not take part in the political process, including in the presidential elections, now intend to do so, including independent youth groups, liberals and groups described as representing the Salafists or the Houthis.

## **D. Judiciary**

40. In late January 2012, judges and prosecutors across the country went on a strike that lasted for over two months and led to the suspension of all court proceedings and related judicial functions. As a result, in March, the President issued two decrees concerning the judiciary: the first announcing the restructuring of the Supreme Judiciary Council through the appointment of new members; the second confirming a series of appointments and promotions that affected some 1,425 judges and prosecutors. The strike ended on 30 April, despite the mixed reactions to the decrees. Most judges interviewed stated that they had agreed to resume their work out of their social commitment rather than because they had been convinced by the measures taken.

41. The independence of the judiciary authority remained a major concern. According to the Judiciary Act of 1991, the Executive Authority retains the power to select members of the Judiciary Council, has budgetary control and maintains a level of influence within the Council itself through the membership of the Minister for Justice and other ex officio members (including the Prosecutor General and the Head of Judicial Inspection, who is also accountable to the Minister for Justice). Another issue is the need for proper vetting of judges and prosecutors, given the way that appointments and promotion of judges have been conducted over recent decades and the interference of the Executive.

42. During the period under review, various draft judiciary acts were before the Parliament for deliberation, including a draft bill providing for a limited amendment to the Judiciary Act that would allow for separation between the positions of the Head of the Judiciary Council and the President of the Supreme Court.<sup>10</sup>

## **E. Children's rights**

43. Information received by the delegation indicates that, despite the commitment made by Government forces and armed groups to release children that had been conscripted, no concrete action was taken to that end and enlistment continued during the period under review.<sup>11</sup> According to the information received, most of the children were lured into armed groups with the promise of a better life and financial incentives. Family reasons or poverty and mistreatment by relatives were also reported as causes to join armed groups. The

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<sup>10</sup> Currently, the Head of the Supreme Judiciary Council is also President of the Supreme Court and the Head of the Judges' Club.

<sup>11</sup> According to information received by the United Nations Children's Fund (UNICEF), from 1 January to 30 June 2012, 12 children from Abyan were recruited by Ansar al-Sharia, three by the al-Houthi armed group and two by the First Armoured Division.

attention of the delegation was also drawn to the fact that, in some cases, children were recruited by armed groups in mosques.

44. The fragile security situation and civil unrest kept schools under attack. Between January and June 2012, 247 incidents were recorded, affecting some 172 schools. In particular, schools in Aden came under attack as they were being used as polling stations during the presidential elections. Six schools in Hasaba, near Sanaa, continued to be occupied by armed forces or armed groups.

45. Violence and insecurity in the governorate of Abyan resulted in displacement to surrounding areas, including Aden, Lahij and inside the governorate itself. In the governorate of Aden, numerous schools were being used to house internally displaced persons. While local residents demanded that schools be vacated by the beginning of the new school year, local authorities did not agree on alternative hosting facilities for displaced persons. In addition, serious concerns were expressed over the security of the places of origin of such persons, where landmines and unexploded ammunition have already claimed the lives of many, among them 17 children, since the beginning of 2012.

## **F. Women's rights**

46. During the period under review, women activists were intimidated and harassed by both pro- and anti-regime groups, in some cases receiving death threats. Defamation campaigns and threats of slander were used to deter women activists from participating in demonstrations and sit-ins, or from expressing their opinions in newspapers or on the Internet.

47. Despite the above violations, the events of 2011 contributed to the empowerment of women, enhancing their presence in the public sphere and providing the opportunity to push the agenda of women's public participation further. A national conference for women, organized by the National Women's Committee and the Ministry of Human Rights, called for the protection of women in conflict, gender equity in transitional justice processes and greater political participation for women (a quota of at least 30 per cent quota) in all transitional political bodies and ensuing legislative and executive institutions.

48. During the current national dialogue discussions, however, many women activists remained concerned that the country's political fragmentation had had an impact on the women's rights agenda, leading to the definition of different priorities among various women's groups on the basis of political affiliation rather than of actual needs.

49. In addition, the fragile security situation has severely affected women's economic and social rights, particularly when male family members have been killed. Cases of harassment and sexual gender-based violence were being increasingly discussed, though rarely reported to the police or to hospitals. Many of the people interviewed pointed to the lack of trust in police stations and the uncertainty about the integrity and professionalism of police officers deterred women from filing complaints of harassment.

## **G. Vulnerable groups**

50. At the end of 2011, the Muhamasheen community<sup>12</sup> went on strike from their usual work as sanitation workers. In April, the Prime Minister and other officials in Sanaa and Ta'izz promised that they would finally receive permanent contracts and social benefits, but

<sup>12</sup> See A/HRC/19/51, para. 45.

implementation was slower than expected. The delegation received reports that few had been given contracts from the municipalities or local councils, and that some had been threatened in connection with the strikes and lost their employment. The Ministry of Labour and Social Affairs expressed surprise at the allegations and informed the delegation that it had not been alerted by union leaders of any threats or dismissals.<sup>13</sup>

51. The difficulties faced by adults of the marginalized community were compounded by the perception that the community was being excluded from the broader political transition and that none of its members was part of the committees set up to prepare the national dialogue. The delegation received information that various groups that could qualify as ethnic, linguistic or religious minorities were attempting to form a coalition to have their rights taken into account during the transition and recognized in the new Constitution.

52. According to data provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), Yemen currently hosts more than 215,000 refugees.<sup>14</sup> The delegation was informed that, while the Government of Yemen recognized Somalis as *prima facie* refugees, other nationalities, particularly Eritreans arriving at the Hudaydah harbour, were immediately arrested on arrival on the coasts and held in the custody of Political Security for investigation. At the end of the period under review, 280 Eritreans were being detained in Hudaydah Central Prison, reportedly in inhuman conditions and with no information regarding their release or relocation.

53. The delegation was also alerted to the fact that a network of smugglers, reportedly composed of Yemenis, including tribal leaders and Yemeni officials, and nationals of neighbouring countries, was holding migrants (including refugees), forcing them to make additional payments and subjecting them to such gross human rights violations as torture, sexual violence and slavery.

54. In Yemen, more than half a million people have been internally displaced owing to violence and insecurity.<sup>15</sup> In the north, insecurity is hindering the large-scale return of displaced persons, and continues to limit humanitarian access, while intermittent tribal clashes continue to cause new displacement. In the south, the conflict for control of the governorate of Abyan resulted in displacement to the surrounding areas, including Aden, Lahij and inside the governorate. Most internally displaced persons live with host families, in informal settlements or in schools.<sup>16</sup> The vast majority of the displaced persons expressed their intention to return, although the ongoing insecurity in their areas of origin and the presence of unexploded ammunition hinders any large-scale return.<sup>17</sup> The Yemen Executive Mine Action Centre is currently clearing areas at risk and, in cooperation with UNHCR and UNICEF, conducts awareness-raising sessions for displaced persons and refugees.

55. The displaced families of Muhamasheen communities, especially women, also face a greater risk of discrimination and harassment. Some families are said to marry off their daughters or sisters at an early age as a form of protection. According to humanitarian workers, when incidents occur between displaced members of a Muhamasheen community and locals, the police tend to side with the latter.

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<sup>13</sup> See CERD/C/YEM/CO/17-18, para. 15, and E/C.12/YEM/CO/2, paras. 7 – 8.

<sup>14</sup> As at 31 May 2012, UNHCR had recorded a total of 51,397 new arrivals along the coasts of Yemen: 41,210 from Ethiopia and 10,187 from Somalia.

<sup>15</sup> According to UNHCR, as at 31 May 2012, the total population of internally displaced persons in Yemen came to 527,876: 317,981 in the north and 209,895 in the south.

<sup>16</sup> As at June 2012, 20,000 internally displaced persons were living in 60 schools.

<sup>17</sup> See “Qaeda mines in Yemen kill more than 70”, AlterNet, 30 June 2012. Available from [www.alternet.org/rss/breaking\\_news/1002449/qaeda\\_mines\\_in\\_yemen\\_kill\\_more\\_than\\_70/](http://www.alternet.org/rss/breaking_news/1002449/qaeda_mines_in_yemen_kill_more_than_70/).

## H. Cooperation with the Office of the High Commissioner

56. In its report on its assessment mission, OHCHR recommended that the Government strengthen its cooperation with OHCHR and expedite the establishment of a national human rights institution in line with the Paris Principles (A/HRC/18/21, para. 88). The Government of Yemen has been proactive, working closely with OHCHR towards the establishment of an OHCHR office in Yemen. On its part, OHCHR initially deployed a staff member to the United Nations country team pending the establishment of the office.

57. OHCHR has also provided detailed comments on the draft laws on transitional justice and the national commission of inquiry, which were accepted by the Government. With regard to the establishment of a national human rights institution, the Government formally made a decision, in April 2012, to establish a national institution and mandated a ministerial committee led by the Minister for Human Rights to develop the modalities for its establishment. A draft law has been prepared and commented upon by OHCHR, and consultations with civil society organizations and other interlocutors are ongoing.

## V. Conclusions and recommendations

58. **The delegation noted the positive political developments, most notably the election of a President and the ongoing preparations for the national dialogue, which should form the basis for a democratic process leading to the establishment of the Constitution. The delegation also took note of the draft decree on the creation of a commission of inquiry to investigate human rights violations during the events of 2011, and the draft law on transitional justice. The delegation regrets that no agreement has yet been reached on either of the draft laws.**

59. **The delegation furthermore noted the active cooperation of the Government of Yemen with OHCHR and the positive steps taken towards the establishment of an independent human rights institution, and welcomes the fact that a number of senior officials expressed their willingness to anchor respect for human rights and accountability in the new institutional set-up.**

60. **The delegation nonetheless noted concerns that investigations into past violations remained selective and lacked credibility, and that the Government has not reached a consensus over the draft decree establishing a national commission of inquiry. In addition, an amnesty law was adopted by the Parliament granting former President Saleh and all officials who worked him absolute immunity from prosecution. The law has caused an outcry nationally and is violates the State's international obligations.**

61. **The delegation received information from a variety of sources suggesting that a number of individuals continued to be detained by Government security forces without due process, and that armed opposition groups continued to detain persons illegally. In addition, the Government has not issued or consolidated any list of persons released or still in detention, a factor that has contributed to uncertainty and mistrust in the justice system.**

62. **While noting the drop in the use of violence against peaceful protesters and journalists in Yemen, the delegation remains concerned that these categories continued to be subjected to harassment and threats or attacks by armed forces, in full impunity.**

63. **The delegation also recorded as a positive development the increasing number of civil society organizations legally registered, even though some reported the**

difficulties encountered by human rights organizations in registration when registering.

64. Children have continued to be recruited by Government forces and armed opposition groups. Despite the commitment expressed by both, the delegation witnessed and received credible reports of the continued presence of children under the age of 18 years among their ranks.

65. The delegation took note of the attention to women's issues and a growing commitment within civil society organizations and other interlocutors to enhancing the participation of women in the national dialogue and other transitional processes. Nonetheless, the fragile security situation has had an impact on the rights of women, in particular notably their freedom of expression and freedom of movement.

66. Lastly, the delegation noted that, while the security situation in some parts of the country, in particular in Sanaa, has improved, violence continued to affect some areas of the country, affecting the lives of individuals, causing massive internal displacement and the destruction of infrastructure. In addition, the ongoing unrest has contributed to an increasingly dire humanitarian and economic situation that affects the population at large.

67. The High Commissioner recommends that the Government of Yemen take the following measures, some of them reiterated from her previous reports:

(a) Launch a transparent and independent national investigation, in accordance with relevant international standards, into credible allegations of serious human rights violations committed by Government security forces and all other parties during the events of 2011, including, but not limited to, the killing of civilians, excessive use of force against civilians, arbitrary detention, torture and ill-treatment, and ensure that all perpetrators are held accountable;

(b) Repeal Amnesty Law No. 1/12 and comply with international human rights law prohibiting immunity for those responsible for serious human rights violations, including war crimes and crimes against humanity;

(c) Establish a national programme for reparations in accordance with relevant international standards, whereby all victims of gross violations of international human rights law and serious violations of international humanitarian law should be provided, as appropriate and proportional to the gravity of the violation and the circumstances of each case, with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

(d) Release all remaining detainees and publish the names of persons still detained and the justification for their continued detention; expedite the launch of a national campaign by the Ministries of the Interior and of Human Rights to collect, compile, verify and publish names of detained or missing persons, and inform the public of their whereabouts;

(e) Enhance cooperation with the United Nations, including by means of implementing recommendations made by United Nations treaty bodies, at universal periodic review sessions and by the special procedures, extending a standing invitation to all thematic special procedures mandate holders, and ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute;

(f) Clarify the reporting lines of national and political security forces, and establish oversight of their activities by the judiciary and Parliament;



(g) Ensure that women have the right to participate in public life, free of discrimination and intimidation, and ensure that they are represented at all levels of the political process.

68. The High Commissioner recommends that Government forces and armed opposition groups:

(a) Take immediate measures to end the use and recruitment of children, and demobilize those who have already been recruited, and cooperate with the United Nations and other qualified groups for their reintegration into their communities, implementing the recommendations made by the Secretary-General in his report on children and armed conflict;<sup>18</sup>

(b) Refrain from attacking targets that provide essential services to the civilian population, vacate all occupied public buildings and withdraw from public and private properties.

69. The High Commissioner recommends that the international community:

(a) Encourage independent and impartial investigations into incidents that have resulted in heavy loss of life and injuries, and once they have been conducted, to extend the necessary and appropriate support to the Government of Yemen;

(b) Heed the call for humanitarian assistance and provide financial support to the Yemen humanitarian response plan for 2012 and the urgent appeals for Abyan, as well as the joint United Nations stabilization plan;

(c) Provide all necessary financial and technical support for the Government's transitional plan, in particular with regard to those aspects concerning the restoration of the rule of law, the consolidation of human rights protection mechanisms and programmes, and the promotion of human rights.

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<sup>18</sup> A/65/820-S/2011/250.