

STATEMENT – UPR PRE-SESSION

International Center for Transitional Justice

This statement is delivered on behalf of the International Center for Transitional Justice (ICTJ). ICTJ is an international non-governmental organization that since 2001 has engaged in more than 50 countries side by side with victims to obtain acknowledgment and redress for massive human rights violations, hold those responsible to account, reform and build democratic institutions, and prevent the recurrence of violence or repression.

In the context of its Yemen Program, the ICTJ has supported the Yemeni Network for Victims' Association (YNV) to prepare a joint submission to the fourth cycle of Yemen's Universal Periodic Review. The YNV is a group of 12 affiliated organizations, federations and trade unions from the governorates of Hajjah, Aden, Abyan, Hadhramaut, Marib and Taiz. The Network was established following a workshop organized by ICTJ in Beirut in March 2023. The YNV is a first-time contributor to the UPR process.

This statement will address the following issues: (1) the role of Yemeni civil society organizations (CSO) in promoting transitional justice and redress for victims of human rights violations; (2) the contributions made by the National Commission to Investigate Alleged Violations to Human Rights (NCIAVHR) since its establishment in 2012 to the national human rights framework and to transitional justice in Yemen; (3) the cooperation between the internationally-recognized government of Yemen and the Special Procedures of the Human Rights Council.

1. The role of Yemeni civil society organizations in promoting transitional justice and redress for the victims of the armed conflict in Yemen

A. Follow-up to the last review

During the third cycle, Member States and other stakeholders, including international and Yemeni civil society actors and academic institutions, raised many concerns regarding the impact of the conflict in Yemen on freedom of expression and on the right to association. Journalists, activists, civil society organizations, and human rights defenders including organizations working on transitional justice had grown increasingly vulnerable to threats, smear campaigns, arbitrary and incommunicado detention, and in some instances extreme

physical violence. Television channels, news websites, social media and other media platforms were facing increasing obstacles to conducting their work in an unimpeded manner. In the submissions made by stakeholders, as well as in the report compiled by the Office of the High Commissioner for Human Rights, restrictions on freedom of expression and association were not limited to a specific area of Yemen. Instead, they occurred in areas that fell under the control of different existing authorities – including but not limited to the internationally recognized government and various de facto groups.

The recommendations made in the previous UPR cycle that were accepted by the government of Yemen included adopting additional measures – in line with the recommendations made in previous UPR cycles – to give journalists, civil society activists and human rights defenders the freedom needed for the exercise of their activities. There were no specific recommendations connecting freedom of expression and freedom of association to transitional justice. However, according to the 2013-2014 Outcomes Document of the National Dialogue Conference (NDC) – which was raised in the presentation made by the government of Yemen - civil society organizations in Yemen were expected to play an important role on transitional justice matters. The NDC included three working groups that connected civil society to freedom of expression, to public participation, and to transitional justice. The NDC recommendations also recognized civil society as pivotal for the realization of the principle of good governance, for raising public awareness of issues of national interest – which included transitional justice - and for promoting active citizenship and civic culture in Yemen.

B. New developments since the last review

Since the last review, more restrictions have been imposed on freedom of expression and association, as well as on participation in public and political life. These restrictions are the result of direct actions taken by different parties to the conflict *vis-à-vis* civil society organizations, journalists, and human rights defenders. In other instances, restrictions have also resulted from the failure of the relevant authorities to protect Yemen’s civic space. Moreover, since the beginning of the conflict in 2014, CSO in Yemen are facing an increasingly restrictive operational environment. In addition to the registration and licensing requirements that organizations need to meet – which differ between Sana’a and Aden and in some instances within the same city – parties to the conflict are also known to take additional measures that further restrict the political and operational space for Yemeni civil society. One of the latest measures taken concerns a directive issued on behalf of the Southern Transitional Council (STC) instructing hotels, halls, and similar facilities in Aden not to host conferences, training sessions or workshops without their prior approval. In the

case of journalists, between May 2021 and December 2022, the Office of the High Commissioner for Human Rights in Yemen has documented 56 cases of human rights violations against freedom of expression and the media. The violations included the killing and injury of journalists, arbitrary arrests and detention, raids on media outlets, amongst others.¹ Violations committed against other human rights defenders are not included amongst these figures.

This situation which shows no signs of abating is having negative repercussions for Yemeni civil society actors working and/or wishing to become engaged on transitional justice and reconciliation. Given the restrictions on CSO activity in Yemen that have been imposed since 2014, it is very challenging to determine the total number of registered CSO now active in Yemen (figures vary between 11,000 and 14,000 CSO registered with the Ministry of Social Affairs, depending on the source) and how many among these are working on transitional justice-related matters. ICTJ estimates that there are many unregistered civil society organizations working on transitional justice because of the onerous registration and licensing renewal systems in place for CSOs and the narrowing of the operational space for CSO engagement.

C. Recommendations

For ICTJ, a public space free of censorship, criticism, and threats is a precondition to frank and constructive dialogue and genuine engagement on transitional justice matters. Yemeni victims, their representatives, human rights defenders, and other Yemeni civil society actors are expected to play a crucial role in processes to advance reconciliation and transitional justice in Yemen. For this to happen, Yemeni civil society cannot operate when civic space is restricted. The ICTJ therefore recommends that the Government of Yemen:

- Protect freedom of expression and association in Yemen by creating a free, safe, and enabling environment for journalists that guarantees their human rights, namely through revising the laws regulating the professional activity of journalists in Yemen;
- Encourage and promote networks and partnerships between civil society organizations in Yemen that support initiatives in the realm of transitional justice, such as victims' unions, family associations, and other kinds of victims' groups;
- Facilitate and strengthen the participation of civil society organizations, including victim organizations, in government-led efforts to establish a compensation and reparation fund for human rights violations, as well as other governmental actions in the realm of transitional justice;

¹ <https://www.ohchr.org/sites/default/files/2023-03/2023-03-27-Freedom-of-Expression-in-Yemen-EN.pdf>

- Revise and adapt the legal and regulatory frameworks governing civil society organizations in Yemen, including those restraining their establishment and operations, to promote a more conducive environment for civil society across the country.

2. The contributions made by the National Commission to Investigate eAlleged Violations to Human Rights since its establishment to human rights and transitional justice in Yemen

A. Follow-up to the last review

In the national report submitted in the third UPR cycle, the National Commission to Investigate Alleged Human Rights Violations (NCIAHRV) was reported as one of the national bodies that the government had established in order to strengthen the national human rights framework in accordance with the Paris Principles. Other steps mentioned in the national report included measures in support of the independence, capacity, and competence of the judiciary. For the government, supporting the judicial role of the courts and of the Public Prosecution Service were considered of paramount importance for Yemen to fulfil its human rights obligations. Since the last UPR cycle in 2019, the NCIAVHR issued six additional periodic reports, bringing the total to 11 since its establishment in 2012. The Commission's investigative work into the violations committed by the different parties to the conflict in Yemen has given it an unprecedented body of knowledge and understanding across many important areas. These include: the current needs of conflict victims in Yemen; the functioning of the Yemeni judicial system including institutional constraints affecting decision-making; and directions for future transitional justice mechanisms in Yemen. Key proposals made by the Commission in its periodic reports include the referral of cases investigated by the Commission to the public prosecutor's office for purposes of court adjudication; judicial reforms to improve the protection of human rights in Yemen; and the harmonization of Yemen's legislation in conformity with its international obligations. In the last four reports issued since the UPR cycle in 2019, the NCIAVHR emphasized the importance of establishing a prosecution and a specialized court for processing and adjudicating human rights violations. Recommendations made to the government of Yemen in the Commission's latest report in September 2023 highlight *de novo* the importance of enhancing the justice sector's capacities, namely the establishment of specialized courts and prosecution offices to address human rights violations and ensure accountability.

B. New developments since the last review

In the government’s 2023 submission in the framework of its third periodic report to the Committee on Economic, Social and Cultural Rights,² the government updated some of the NCIAVHR’s recommendations. The update concerned the creation of a judicial committee headed by a senior member from the Office of the Public Prosecutor to review the files referred by the Commission. Despite this important development, it should be noted that the majority of case files referred by the NCIAVHR remain un-processed, which for victims represents a long wait for justice and for redress for the violations suffered during the conflict. As noted in many of the Commission’s reports, Yemen’s judiciary faces many challenges, such as incomplete judicial appointments and insufficient staff. Both hamper the courts’ ability to carry out their functions and process the backlog of cases. The Yemeni Victim Network Association’s UPR submission provides additional details concerning the difficulties currently faced by the judiciary. These include the lack of adequate living and working conditions, which have forced many Yemeni judges to suspend all judicial work. In addition to this, recurrent political interference in the functioning of the judiciary – especially in Houthi-controlled areas- has greatly compromised judicial independence and the judges’ ability to resolve cases in a fair and impartial manner and bring justice to the victims. In January 2023, ICTJ conducted a workshop for members of the NCIAVHR and the judiciary. The workshop drew from the comparative experiences of societies which have undertaken transitional justice processes with a view to supporting the NCIAVHR and members of the judiciary to define strategies for the prosecution of perpetrators of international law violations in Yemen. Even though the government of Yemen has taken some action to address and overcome these challenges, stronger efforts are needed to deliver on the recommendations made by the NCIAVHR.

C. Recommendations

Yemen’s National Commission to Investigate Alleged Violations to Human Rights is the only local accountability mechanism in the Middle East region that investigates and monitors human rights and other international law violations. Because of its mandate and of its more than 10 years of operational experience, the Commission is uniquely placed to support transitional justice goals in Yemen, for instance by offering specific advice about the role other Yemeni institutions such as the judiciary and national human rights institutions could play. In order to fulfil these goals, the Commission needs the financial, technical, and

²https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2573&Lang=en

political support of the Yemen government and of the international community to continue building the Commission's capacities to address the critical needs of Yemen's many victims in Yemen. This includes capacity building around access to the mechanisms of justice and prompt redress.³ In addition to the establishment of a court and of prosecution services specialized in addressing human rights violations, ICTJ - in line with the proposals made by the Yemeni Victims Network Associations - makes the following additional recommendations to the government of Yemen:

- Establish an independent national human rights institution in accordance with the Paris Principles;
- Provide the Commission with the necessary financial, technical, and advisory support so that it can reach all regions in the country;
- Activate the National Committee for International Humanitarian Law and facilitate the organization of awareness-raising activities and trainings to promote knowledge about international humanitarian law principles.

3. The cooperation between the government of Yemen and the Special Procedures of the Human Rights Council.

A. Follow-up to the last review

Among the other main points raised during the third UPR cycle related to Yemen's ratification of core international human rights treaties. Out of the nine core international human rights instruments, Yemen has yet to sign and ratify⁴ only two. In addition to this, although Yemen is expected to sign and ratify the eight optional protocols/individual complaints that were established under the core treaties,⁵ to date the only optional protocol ratified by Yemen is the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Certain member states also called on Yemen to implement and where necessary incorporate the relevant provisions from the treaties it has signed and ratified into its domestic law. In many instances, that requires legislation by parliament whose functions,

³ UN General Assembly resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (last accessed 01 February 2023).

⁴ These are the Convention for the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families

⁵ <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> and https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=EN.

as the government pointed out in response, have been seriously disrupted by the events that have unfolded in Yemen. Since September 2014, the House of Representatives has barely managed to meet, affecting many legislative functions, not only those related to Yemen's international obligations .

Regrettably, the government of Yemen noted but did not support the recommendations made during the UPR Working Group meeting in January 2019 concerning strengthening cooperation with special procedure mandate holders, in particular by responding to pending visit requests and by extending a standing invitation to all special procedure mandate holders. It should be noted that the last visit made to Yemen by a special procedure mandate holder was in October 2003.⁶

B. New developments since the last review

Since the last UPR cycle, there have been no significant improvement in the cooperation between the government of Yemen and the Thematic Special Procedures. In July 2019, the Special Rapporteur on extrajudicial, summary, or arbitrary executions sent a new reminder to the Government of Yemen concerning a visit request made in 2007. In December 2020, the Special Rapporteur on the rights to water and sanitation submitted a request to the government of Yemen to conduct a visit in the second half of 2021. According to publicly available information, the Government has not replied to either request. Other outstanding requests for country visits dating back years include the Special Rapporteur on Torture (2005), the Special Rapporteur on Food (2008), Special Rapporteur on Slavery (2014), the Special Rapporteur on Internally Displaced Persons (2017), the Special Rapporteur on Human Rights and Counter-Terrorism (2012), the Working Group on Disappearances (2017), the Special Rapporteur on Freedom of Assembly (2011), amongst others. Even though in some situations the government of Yemen tried to accommodate these requests, none of the requests resulted in a country visit. As a result, and despite the sharp deterioration of human rights in Yemen since 2014, the visits of Special Procedures mandate holders more than ever present important opportunities to help the government of Yemen strengthen its contributions and role in many different spheres, including the protection and promotion of human rights and transitional justice.

To complicate further these challenges, in October 2021 the mandate of the Group of Eminent Experts for Yemen was not renewed. Currently, the only active United Nations

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mechanism that covers Yemen is the Panel of Experts of the United Nations Sanctions Committee.⁷

C. Recommendations

Since 2014, the overall security situation in Yemen has grown increasingly perilous because of the ongoing hostilities in parts of the Yemeni territory. As such, the government appears unable to give the necessary degree of attention to the various country visit requests and would face significant security issues in the event of an actual visit. Despite these realities, ICTJ makes the following recommendations in line with the submission prepared by the Yemen Victim Network Association:

- Considering governmental precedent, namely the adoption after 2014 of operational measures, strategies and policies to promote human rights – *exempli gratia*, the decision announced in December 2022 to establish a compensation and reparation fund for human rights violations within the framework of the government’s 2023 plan – take all possible measures to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Take all necessary measures to align national legislation and regulations with the international treaties and conventions ratified by Yemen;
- Answer pending requests for special procedure visits and take steps to cooperate with all Special Procedure mandate holders;
- Provide during the upcoming UPR cycle an update about the communications received from the special rapporteurs since 2019 and of the responses provided by the Government of Yemen;
- Extend a standing invitation to the special rapporteur on extrajudicial, summary or arbitrary executions; to the working group against enforced and involuntary disappearances; to the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and to the special rapporteur on the rights of persons with disabilities.

⁷ The Panel of Experts was established in 2014 pursuant to the United Nations Security Council resolution 2140. According to the text of the resolution, the main tasks of the Panel include monitoring the implementation of embargoes and sanctions imposed on individual and entities designated by the Sanctions Committee. See Resolution 2140 (2014), adopted by the Security Council at its 7119th meeting on 26 February 2014, S/RES/2140 (2014) available at http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2140.pdf (last accessed 31 January 2024).