
amnesty international

Yemen

Submission to the UN Universal Periodic Review

Fifth session of the UPR Working Group of the
Human Rights Council

May 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International expresses concern about proposed new laws and amendments to existing laws which, if implemented, would represent a regression and reduce safeguards for human rights.
- Section C highlights Amnesty International's concerns about a continuing pattern of serious human rights violations, including the extensive use of the death penalty; restrictions on the peaceful exercise of the rights to freedom of expression, association and assembly; and discrimination and violence against women, which would be exacerbated if the proposed new laws and amendments to existing laws described in section B were to be given effect.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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Introduction

Through its executive, legislative and judicial branches the government is in the process of preparing new laws and revising current laws. This process will impact on the framework of protection of fundamental human rights. Some of the proposed new legislation fails to conform to the requirements of international human rights law and, if implemented, could seriously undermine the many positive features of the human rights framework in Yemen. These proposals also have to be seen in the context of existing laws and practices that are in violation of Yemen's obligations under international human rights law.

B. Normative and institutional framework of the State: Failure to bring laws into line with international standards

The government has initiated a review of the Constitution and a number of existing laws and has proposed new draft laws, including to counter terrorism. Laws put forward for review include the Penal Code (PC)² and the Press and Publication Law (PPL).³ The new draft laws include a Counter Terrorism Law (CTL) and a Money Laundering and Financing of Terrorism Law (MLFTL). Human rights defenders in Yemen perceive both threats and opportunities in these legislative proposals. The new laws could be used to undermine the many important human rights achievements in the country since the establishment of the Republic of Yemen in 1990 (following unification of the then People's Democratic Republic of Yemen and the Yemen Arab Republic) and Yemen's adherence to its obligations under international human rights law. Yet, Yemeni human rights defenders also see the proposed new laws as providing an opportunity to enhance the protection of human rights framework, which has seen the state's ratification of many key international human rights treaties;⁴ general respect for freedom of expression, association and assembly; criminalization of arbitrary arrest, detention and torture; and legal protection of the right to fair trial.

Concerns that the legislative proposals may impact negatively on the current human rights framework are based on the assessment that they would expand the scope of the death penalty, criminalize legitimate freedoms, extend executive powers and the use of special procedures, and further entrench discrimination against women.

The death penalty

In addition to proposing an expansion in the scope of application of the death penalty, the new draft legislation would decrease further the few safeguards provided in the PC. Currently, the PC prescribes the death penalty under *Shari'a* law (Islamic Law) for murder (*Qisas*) and *Hudud* (divinely prescribed fixed offences and punishments), including for apostasy and adultery (where the punishment is death by stoning) and *Hiraba* (rebellion, unlawful war, spreading disorder on land), in addition to numerous capital offences related to state security. All of these capital offences are

² Law 12 of 1994

³ Press and Publication Law of 23 December 1990

⁴ Among the international human rights conventions to which Yemen is state party are the ICCPR, ICESCR, CAT, CRC, CERD and CEDAW.

retained under the draft legislation and nine additional capital offences have been proposed; three as amendments to the PC⁵ and six in the new CTL.⁶

As to the weakened safeguards, there are at least three areas of concern: sentencing to death of children, the application of the death penalty for apostasy, and changes to the head of state's prerogative to commute death sentences. Under the current PC it is forbidden to impose the death penalty on children who are under the age of 18 at the time of the commission of the offence.⁷ However, a proposed amendment omits this safeguard and provides that children aged between 15 and 18 would be held fully liable for offences they commit, opening the possibility that children in this age group could be sentenced to death, in violation of Article 37 of the Convention on the Rights of the Child and Article 6 (5) of the International Covenant on Civil and Political Rights (ICCPR).

Under the current PC, persons convicted of apostasy are offered three opportunities to repent within 30 days; if they do so, they escape punishment.⁸ However, the proposed amendment omits reference to this 30 day period in which the offender is allowed the opportunity to repent; under Yemen's *Shari'a* rules, this change would mean that the period to repent is reduced to three days, thereby shortening significantly the delay between sentencing, confirmation of sentence and execution. The amendment also includes a *Ta'zir* (discretionary) punishment of up to three years' imprisonment which may be imposed even if the defendant repents.⁹ This proposed amendment, if it were to be implemented, would also potentially widen criminalization of freedom of expression, notably expression leading to conviction for apostasy, and increase the penalty (see below).

The head of state's prerogative to commute death sentences is contained in Article 48 of the current PC. It is now proposed to amend this so as to limit this power to commute to political offences, on the ground that *Hudud* are divine rights which cannot be changed. Both the expansion of the scope of the death penalty and the weakening of the guarantees by which it is imposed and carried out are contrary to international standards and a worrying development in Yemen.¹⁰

Freedom of expression, association and assembly

The negative impact that the proposed new legislation could have on exercise of the rights to freedom of expression, association and assembly is also worrying. The proposed new laws relating to terrorist activity, defamation and apostasy are so vaguely worded that they would appear to encompass many forms of legitimate activity and peaceful expression, association or assembly, in breach of Yemen's obligations under the ICCPR. Moreover, the penalties are such that it is conceivable that such peaceful activities could incur the ultimate punishment of death. The widely drawn definition contained in the draft CTL, for example, would make it difficult for those seeking to organize a peaceful protest¹¹ to be confident that such protest would not be considered an act of terrorism and that they, as the

⁵ One of these offences is contained in a new Article added after Article 248 making the offence of magic, hitherto not a criminal offence, into a capital offence of apostasy. One of the other two offences, hitherto punishable by up to five years' imprisonment relates to falsification of the Koran. The remaining offence relates to defamation of the prophets and has been added as a new Article after Article 248.

⁶ These relate to gang leaders, kidnapping and rape, targeting officials involved in combating terrorism or their relatives. See Articles 4,9,10,11,13

⁷ See Article 31

⁸ See Article 259

⁹ See Article 259

¹⁰ Safeguard 1 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by UN Economic and Social Council Resolution 1984/50, states: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." Safeguard 4 states that "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

¹¹ See Article 2 (2) of the CTL which defines terrorist action as "Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to disrupt public order or cause damage to the public interest or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize public health or the national economy or disrupting the work of the authorities or placing the security and safety of the society in danger or threatening peace and security of the republic or its political unity or its sovereignty or disrupting the application of the constitution or laws or seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger." This largely borrows from the definition of terrorism in the Arab Convention on the Suppression of Terrorism, which has been criticised by many UN mechanisms.

party or parties¹² that organised it, would not be categorised as “terrorists”. The definitions of “terrorism offences” and “terrorist” are vague and do not explicitly exclude peaceful protests. In addition, under the CTL, the state authorities are afforded special powers to seize belongings of suspects and to prosecute them; this too is a change, in that the Criminal Procedure Code does not permit the authorities to take such step without first receiving a private party complaint.

The MLFTL contains provisions which require lawyers to disclose information about their clients, in breach of the principle of lawyer-client confidentiality, and Principle 22 of the UN Basic Principles on the Role of Lawyers, which provides that “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”.

The margin of freedom of expression is further restricted by the criminalization of activities on grounds of apostasy and other religious grounds. For example, Article 196 of the current PC stipulates that publication of serious scientific works about religion or a religious doctrine or group of people cannot be considered to constitute “incitement”. However, the proposed amendment would exclude the reference to “religion”, indicating that the publication of works on religion is no longer to be protected in this way and such publication may be considered a criminal offence. Heavy prison sentences are prescribed for satire and other artistic activities if perceived to be offensive to religions and religious matters, in addition to those punishable by death under “apostasy”.

“Defamation” is another vaguely formulated restrictive measure against freedom of expression under the PPL and the PC. Defamation of the President, the council of ministers and visiting heads of states is prohibited under the PPL and punished by imprisonment under the PC.¹³

Distribution of power between the executive, the legislative and the judiciary

Concern about restriction of freedom of expression is increased by proposed amendments to the Constitution. Discussions have focused mainly on the distribution of powers between the top executive, legislative and judicial institutions as well as the re-organization of local government institutions. No amendments appear to have been suggested for the section relating to basic human rights standards.¹⁴ However, government critics and human rights defenders are concerned that any redistribution of constitutional powers in favour of the executive branch of the government will impact negatively on individual freedoms and rights, particularly the rights to freedom of expression, association and assembly. Such concern is also consistent with past negative amendments. For example, Article 40 of the Constitution, which states that “Citizens are all equal in rights and duties”, originally had an additional provision explicitly prohibiting all forms of discrimination; however, this was removed as a result of an earlier amendment.

Gender discrimination

Proposed amendments to the PC would continue and exacerbate discrimination and violence against women. In particular, a proposed amendment to Article 26 would heighten the risk of “honour killings” and other killings within the family by allowing for the application of non-coded rules of *Shari’a* in addition to written legal texts. Currently, Articles 232 and 233 of the PC allow for mitigating factors to be taken into account by the courts when imposing sentences for certain killings: Article 232 stipulates one year’s imprisonment and a fine for a husband who kills his wife if he finds her committing adultery with another man, while Article 233 prescribes a maximum three year prison

¹² Article 2 (3) of the CTL defines terrorist organization as “Any society or association or organisation or centre or group or gang or any anything similar whatever it is called or however it is structured, or any branches of it formed for a terrorist purpose”.

¹³ The UN Special Rapporteur on freedom of expression has stated that defamation laws should reflect the importance of open debate about matters of public interest and the principle that public figures are required to tolerate a greater degree of criticism than private citizens (Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2000/63, para. 52) and that defamation laws should not afford special protection to the president and other senior political figures (Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/1999/64, para. 28 (b).)

¹⁴ See Articles 40-57 of the Constitution. These provisions stipulate equality between all citizens, guarantee freedom of thought and expression; prohibit arbitrary arrest and detention, torture and forcible deportation of refugees; right to due process of law, security, health and dignity.

term for a parent who kills their son or daughter. The application of *Shari'a* law, however, may allow courts to decide that even such relatively lenient penalties should not be imposed. If so, this is likely to have a significant impact in reducing the protection available to women as they are generally more dependent on their parents within Yemeni society and their movement is effectively restricted.

Under Yemeni law, women are already subject to severe discrimination – for example, the *diya* (blood money) payable for the killing of a woman is half that of the *diya* payable for the killing of a man.¹⁵ Two proposed amendments, however, would increase such discrimination. A proposed amendment to Article 297 of the PC, which states that a woman's testimony is to be accorded half the value of that of a man, would change this to render a woman's testimony valueless on the ground that only male testimony is acceptable in *Hudud*.¹⁶

Another amendment proposes to criminalize *Khilwa* (meeting in private between a male and female who are not immediate relatives) and prescribe a punishment of up to one year's imprisonment. This punishment would be applicable to both men and women, but would likely impact most severely on women due to the many strict and severe forms of discrimination to which they are subject. For example, a man imprisoned for having committed a sexual offence may be released without delay after serving the sentence; a woman imprisoned for a similar offence, however, may not be released if her family refuses to accept her back for reasons of "honour", on account of the perception of shame that attaches to illicit sexual activity by women.

C. Promotion and protection of human rights on the ground

The death penalty

Fear about the legislative regression detailed above is exacerbated by the government's longstanding failure to live up to its international human right obligations and Yemen's own Constitution and laws with regard to the use of the death penalty, exercise of the right to freedom of expression and respect for women's rights.

The government continues to use the death penalty extensively and in defiance both of the international trend and its own laws. It continues to use the death penalty against children, the mentally disabled, and often after unfair trials. In November 2008, for example, Ismail Lutf Huraish and his cousin Ali Mussara'a Muhammad Huraish were put to death after their conviction for murder had exhausted all appeal stages and their death sentences had been ratified by the President. Yet, Ismail Lutf Huraish, who was deaf and illiterate, was not given access to sign-language interpretation during his interrogation and trial, with the result that he was not able to give his own account of events or to respond to the charges against him. According to his lawyer, he was convicted solely on the basis of statements which Ali Mussara'a Muhammad Huraish made during police interrogation and at trial, and which allegedly implicated both men in the murder. This is a violation not only of international standards, but also Yemen's own laws.¹⁷

The exact number of people on death row is not known to Amnesty International, but it is believed to run into hundreds. They include children such as Walid Haykal, who was convicted of a murder committed when he was reported to have been 16. According to Article 31 of the PC he should not have been sentenced to death while below the age of 18. His fate is now in the hands of President Ali Abdullh Saleh before whom the case is pending ratification. Other children have also been sentenced to death and executed in Yemen.

¹⁵ See Article 42 of the PC

¹⁶ See Article 297

¹⁷ The failure of the authorities to provide Ismail Lutf Huraish with interpretation facilities is in violation of Article 337 of the Yemeni criminal procedure law, which states that deaf defendants must have access to sign-language interpretation, as well as of Article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR), to which Yemen is a state party, which states that defendants have the right to be informed of the charges against them and to have proceedings conducted in a language which they understand. This includes finding the appropriate language or method to inform people with a hearing or speech disability of the charges and proceedings which they face.

Human rights defenders

Fears about expanding criminalization of political dissent and freedom of expression are exacerbated by the routine targeting of critics of the state for arrest, detention, or abduction and beatings. Such critics and human rights defenders include former prisoners of conscience Dr Mohamed al-Saqaf and Abdulkarim al-Khiwani. Dr Mohamed al-Saqaf, a lawyer and university lecturer, aged 60, was arrested on 11 August 2008 by security forces at Sana'a airport, while waiting with his family to go on holiday. He was held by the National Security forces (*al-Amn al-Qawmi*) at the criminal investigation prison in Sana'a for a few days and then released on bail. He was accused of "undermining national unity", a vaguely worded charge (which could be formulated under the PC, the PPL or the CTL once proposed amendments to these laws are approved, and could then incur any punishment, including death). On this occasion, the charge reportedly relates to both his criticism of the repressive measures taken by the government against protesters in the south and his role as defence lawyer of Hassan Ba'oom. The latter, a member of the opposition Socialist Party, and others have been subjected to repeated short-term arrest and detention without trial over the last two years. The protests in the south were led by retired army officers who allege that they are discriminated against in employment, salaries and pensions compared to retired soldiers from the north of Yemen.

Abdel Karim Al-Khaiwani is a journalist and one of many critics of the government who have been persecuted for their peaceful criticism of government policies during the past two years. In June 2008, he was sentenced to six years' imprisonment, but released in September 2008 along with other prisoners of conscience by order of the President. He was sentenced after a trial before the Specialized Criminal Court (SCC) on charges relating to his media reporting of armed clashes in the northern, Sa'da province, between government forces and armed supporters of the late Zaidi Shi'a cleric, Hussein Badr al-Din al-Huthi, which have continued intermittently since June 2004.¹⁸ The violence in Sa'da has included extrajudicial killings, enforced disappearances and reports of widespread arrests, detention and the use of torture, and has caused the internal displacement of thousands of people.

The SCC was first introduced in 1999 to try crimes of *Hiraba*, including occupation of public land, theft of means of public transport and aggression against officials.¹⁹ In 2004, its jurisdiction was expanded to include state security offences that previously had been tried by ordinary criminal courts.²⁰ It applies the Code of Criminal Procedures, but only those related to urgent matters. It has been criticised on the grounds that it is effectively a special court although Yemeni law prohibits the establishment of special courts. According to defence lawyers and former defendants, trials before the SCC fail to satisfy international fair trial standards and safeguards contained in Yemen's domestic law. For example, it denies defendants and their lawyers full access to their case files, so limiting their ability to mount an effective defence. An appeal brought by lawyers against the SCC's constitutionality was rejected. The criminalizing of certain forms of freedom of expression when combined with the use of special courts represents a serious step back for human rights in Yemen.

Violence against women

The government's failure to tackle the issue of violence and discrimination against women, particularly in the proposed amendment to the PC, is giving grave cause for concern to women in Yemen. For many years, women's organizations and human rights NGOs have urged the government to address discrimination and violence against women, including rape and other sexual violence, at the hands of both state and non-state actors. In doing so, they have identified at least 20 laws which need to be amended or repealed in order to address discrimination against women. However, as described above, the amendments to the PC, which the government now proposes, appear likely to further aggravate such discrimination and violence. This is especially disappointing following, for example, the case of Anissa al-Shu'aybi who, courageously and with the help of NGOs, successfully forced an all-male judiciary to look into her allegations of rape. She brought a court case against two officers of the Criminal Investigation

¹⁸ He was tried with others in a case know as Sana'a Cell 2, 15 defendants faced charges including murder, planning to poison Sana'a's drinking water and other violent crimes in connection with the events in Sa'da. One defendant was sentenced to death

¹⁹ See Law issued by Republican Decree no.391 of 1999.

²⁰ See Law issued by Republican Decree no. 8 of 2004.

Department in Sana'a whom she accused of subjecting her to rape and other torture while she was being detained in 2002 on suspicion of murder. In 2004, the case against her was dropped and she has since been seeking redress. According to her lawyer, in 2008 the court of first instance acquitted one of the officials she accused of raping and torturing her and imposed a suspended three month prison sentence on the other, while ordering that she receive compensation of one million Yemeni Riyals (approximately 5,000 US dollars). Subsequently, the appeal court is reported to have acquitted both officers, but to have upheld the compensation ruling.

Anissa al-Shu'aybi's allegations concerning torture and other ill-treatment of women in the prison where she was held have been widely publicised and underline the need for the government to take concerted measures to stamp out such abuses and to ensure, in both law and practice, that women are safeguarded against violence and discrimination.

D. Recommendations for action by the State under review

Amnesty International calls on the Government of Yemen to live up to its international human rights obligations and to:

- Ensure that all its laws, starting with those currently being discussed, are free from discrimination against women and unequivocally prohibit violence against women;
- Ensure that the CTL, the MLFTL, and the PC do not criminalize legitimate exercise of the rights to freedoms of expression, association and assembly or the legitimate exercise of other rights and that they and amendments to existing laws conform fully with Yemen's obligations under international human rights law;
- Immediately cease all executions of children or juvenile offenders and prohibit the imposition of the death penalty on anyone for a crime committed when under 18;
- Review existing and proposed laws so as to significantly reduce use of the death penalty, by progressively reducing the number of capital offences, with the eventual aim of abolition.
- In the meantime, ensure that the death penalty may be imposed only in response to the most serious crimes and following trial proceedings which fully conform to international fair trial standards, including right of appeal to a higher court and to petition for executive clemency.

Appendix: Amnesty International documents for further reference²¹

- Death sentences and executions in 2007 (AI Index: ACT 50/001/2008, 15 April 2008)
- 2007 Death Penalty statistics, notes and case studies (AI Index: ACT 50/014/2008, 15 April 2008)
- Yemen: Amnesty International deeply concerned by death in detention (AI Index: MDE 31/019/2007, 1 October 2007)
- Yemen: Amnesty International condemns killing of civilians (AI Index: MDE 31/007/2007, 3 July 2007)
- Yemen: Amnesty International urges Yemen to complete the ratification of the Rome Statute (AI Index: MDE 31/004/2007, 27 March 2007)
- Yemen: Amnesty International appeals to President to support ratification of the Rome Statute (AI Index: MDE 31/003/2007, 21 March 2007)
- Yemen: Amnesty International warns against risk of grave human rights violations in Sa'da (AI Index: MDE 31/002/2007, 16 February 2007)
- Amnesty International Report 2008, The State of the World's Human Rights (AI Index: POL 10/001/2008)
- Amnesty International Report 2007, The State of the World's Human Rights (AI Index: POL 10/001/2007)
- Amnesty International Report 2006, The State of the World's Human Rights (AI Index: POL 10/001/2006)
- Amnesty International Report 2005, The State of the World's Human Rights (AI Index: POL 10/001/2005)

²¹ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/americas/south-america/colombia>