



## International Covenant on Civil and Political Rights

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### Human Rights Committee

104<sup>th</sup> session

New York, 12 - 30 March 2012

## Consideration of reports submitted by States parties under article 40 of the Covenant

### Concluding observations of the Human Rights Committee

#### Yemen

1. The Committee considered the fifth periodic report submitted by Yemen (CCPR/C/YEM/5) at its 2868th and 2869th meetings (CCPR/C/SR.2868 and 2869), held on 14 and 15 March 2012. At its 2886th and 2887th meetings (CCPR/C/SR.2886 and 2887), held on 27 and 28 March 2012, it adopted the following concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the fifth periodic report of Yemen and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee regrets the absence of written replies to the Committee's list of issues but appreciates the availability of the delegation to respond to concerns and questions expressed by Committee members.

3. The Committee notes that Yemen is currently going through a period of political instability and insecurity which intensified in February 2011. The Committee therefore welcomes the conclusion of the Gulf Cooperation Council initiative aiming at restoring the rule of law and engaging in legal and political reforms.

#### B. Positive aspects

4. The Committee welcomes the announcement of the opening of a country office of the Office of the High Commissioner for Human Rights (OHCHR) in Yemen and hopes that the State party will allow OHCHR to fulfil the full range of its mandate, including human rights monitoring and investigations.

5. The Committee welcomes the continuing efforts of the State party to respond to the influx of migrants arriving mainly from the Horn of Africa and the protection and

assistance it pledges to afford to IDPs who have been displaced as a result of the sixth war in the Northern Governorates.

### **C. Principal matters of concern and recommendations**

6. While noting the State party's commitment to ending the cycle of violence and repression that has affected the country in the last few years, the Committee is concerned that some of the mechanisms, although part of a larger internationally brokered settlement, put in place to achieve this goal are inconsistent with the State party's obligations under the Covenant. The Committee is particularly concerned about the adoption on 21 January 2012 of the Amnesty Law 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 the former President's 33 year-rule (arts. 2, 6 and 7).

**The State party should repeal Amnesty Law No. 1 of 2012 and 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.**

7. While noting the State party's pledge, as expressed by the delegation during the dialogue, to establish a national human rights institution within the first year of the transition period, the Committee observes that such a pledge had already been made in the State party's last periodic report, to no effect (art. 2).

**The State party should establish a national human rights institution, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee encourages the State party to benefit from the assistance of the Office of the High Commissioner for Human Rights in establishing such a mechanism.**

8. While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets the impact, the full scope of which remains to assess, that the multiplication of those measures has had on the enjoyment of rights enshrined in the Covenant (art. 2).

**The State party should compile data on the implementation of anti-terrorism legislation, and how it affects the enjoyment of rights under the Covenant. The State party should ensure that national legislation not only defines terrorist crimes in terms of their purpose but also defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly and does not impose undue restrictions on the exercise of rights under the Covenant.**

9. The Committee regrets the State party's inertia in matters related to discriminatory practices affecting women and the persistence of domestic violence. It is particularly worried at the responses provided by the delegation which maintains that female genital mutilation is a traditional practice, is difficult to eradicate and is not yet prohibited. The Committee also regrets the delegation's statement that marital rape does not occur and that the response given to the phenomenon of domestic violence merely consists in providing victims with temporary shelters. No attention has been given to the criminalization of these phenomena, the prosecution of alleged perpetrators and their sentencing if found guilty (arts. 2, 3, 6, 7 and 26).

**In line with the Committee's previous concluding observations (CCPR/CO/84/YEM, paras. 11 and 12), the State party should expand its efforts to end traditions and customs that are discriminatory and contrary to article 7 such as female genital mutilation. The State party should step up its efforts to increase awareness about**

female genital mutilation, particularly in communities where it is still widespread. It should penalize the practice and ensure that those who perform female genital mutilation are brought to justice. The State party should criminalize marital rape and other forms of domestic violence, prosecute alleged perpetrators of such crimes and sentence them in a manner which is proportionate to the nature of the crime committed. The State party should promote a human rights culture within society along with greater awareness of the rights of women, especially the right to physical integrity. It must also take more effective action to prevent and punish domestic violence and provide assistance to the victims.

10. The Committee regrets the lack of progress in repealing all discriminatory provisions such as those contained in the Personal Status Law and the Criminal Code. The Committee is particularly concerned that a minimum age for marriage has still not been set and encounters great resistance in the Parliament. The Committee is also concerned about the discriminatory nature of article 23 of the Personal Status Law, which states that in matters of marriage, a “virgin’s silence” signifies consent. While acknowledging the State party’s announced efforts in eradicating the practice of temporary marriage, the Committee remains concerned about the persistence of this practice aimed at sexually exploiting young girls. The Committee notes that the State party has still not abolished the legislation providing for lower sentences for men accused of honour crimes. Finally, the Committee regrets that none of the recommendations, including the need to eradicate polygamy, previously formulated in 2002 and 2005 in relation to discrimination against women have been implemented by the State party (arts. 3, 7, 8, 17 and 26).

**In line with its previous concluding observations (CCPR/CO/84/YEM, para. 9; CCPR/CO/75/YEM, paras. 7-11), the Committee urges the State party to ensure equality between men and women in the enjoyment of all the rights enshrined in the Covenant, which necessitates abolishing all discriminatory provisions in matters of marriage, divorce, testimony and inheritance. In this regard, the State party should inter alia (a) set a minimum age for marriage that complies with international standards; (b) abolish article 23 of the Personal Status law; (c) eradicate the use of temporary marriage for the sexual exploitation of children, and (d) ensure that honour crimes are punished in accordance with their gravity. The State party should engage in official and systematic awareness-raising campaigns in order to eradicate polygamy, which is a form of discrimination against women.**

11. While welcoming the delegation’s pledge to adopt a Constitutional amendment introducing quotas for women in the conduct of public affairs, the Committee notes with concern that women remain underrepresented in both the public and private sectors, particularly in decision-making positions and that the current Parliament shows reluctance towards such a change. The Committee is also concerned about the worrying figures on women and girls’ illiteracy, which is an obstacle to their full enjoyment of human rights (arts. 2, 3 and 26).

**In line with its previous concluding observations (CCPR/CO/84/YEM, paras. 8 and 10), the Committee urges the State party to take measures to preserve the achievements made by women in the context of peaceful demonstrations in 2011, in terms of public participation, and translate them into lasting achievements by means such as adopting a Constitutional amendment introducing quotas for women in the conduct of public affairs. The State party should take urgent and concrete steps to ensure the literacy and education of girls and women.**

12. The Committee is concerned about reports of long-standing discrimination and marginalization of some minority groups such as the Al Akhdam community, 80 per cent of which is illiterate and which suffers from extreme poverty, and has inadequate access to health care, water and other basic services. The Committee is particularly concerned that in

the context of the 2011 unrest, the Al Akhdam community has suffered from acts of aggression and intimidation, which have allegedly not led to any investigation and prosecution so far (arts. 2, 7 and 26).

**The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection from discrimination and are able to enjoy their own culture and equally to access education, health and public services. Victims of discrimination should be provided with effective remedies, including compensation.**

13. The Committee is concerned that the Yemeni legislation continues to criminalize homosexuality, which incurs the death penalty (arts. 2, 6 and 26).

**The State party should repeal or amend all legislation which provides for or could result in prosecution and punishment of people because of their sexual orientation.**

14. The Committee remains concerned that the offences carrying the death penalty in national legislation are not consistent with the requirements of the Covenant. It is also concerned that the law de facto permits the imposition of the death penalty on persons below 18 years of age at the time of the alleged commission of the offence. The Committee is also gravely concerned about reports that a proposed amendment to the Penal Code could also allow the death penalty to be used against children. The Committee is concerned about some torturous methods of execution which remain legal in Yemen such as stoning (arts. 6 and 7).

**In line with the Committee's previous concluding observations (CCPR/CO/84/YEM, para. 15), the State party must revise its death penalty legislation to ensure that the death penalty is applied only within the strict requirements of article 6 of the Covenant, which limits the circumstances that may justify the death penalty, and guarantees the right of every person sentenced to death to seek a pardon. The State party should comply with the provisions of article 6, paragraph 5, which prohibits the sentence of death for crimes committed by persons below 18 years of age. The Committee also recalls that death sentences imposed as a result of an unfair trial in breach of article 14 of the Covenant violate article 6 of the Covenant. The State party should also officially abolish the sentence and execution of death by stoning. Finally, the State party should consider ratifying the Second Optional protocol to the Covenant aiming at the abolition of the death penalty.**

15. The Committee is concerned at reports of excessive and disproportionate use of lethal force and at reports of torture, arbitrary detention and threats against civilians involved in peaceful demonstrations for political and democratic change in 2011. The Committee notes that similar reports have also reached it in relation to unrest in the South and the North, as well as in the context of the fight against terrorism (arts. 2, 6 and 7).

**The State party should launch a transparent and independent investigation, in accordance with international standards, into all allegations of involvement of members of its law enforcement and security forces in the killings of civilians, excessive use of force, arbitrary detention, including enforced disappearance, torture and ill-treatment, whether this is related to the 2011 unrest, or to the unrest in the south, the conflict in the north and the fight against Al-Qaida's presence in the territory of the State party. Furthermore, the State party should initiate criminal proceedings against the alleged perpetrators of such acts, sentence those responsible and afford victims reparation, including adequate compensation.**

16. The Committee is aware of the current difficulties faced by the State party in restoring and ensuring law and order on its territory. The Committee notes the information that the Army is split into factions and that cohesion among security forces, and full control over them, is yet to be re-established. In this regard, the Committee is concerned about the

increasing number of security forces whose powers and hierarchy remain unclear. The Committee is also concerned about the existence of a large number of weapons in the possession of public and private actors throughout the country, and the lack of proper control over the stockpiling and distribution of such weapons (arts. 2 and 9).

**Acknowledging that the restoration of law and order is a prerequisite for the enjoyment of all rights enshrined in the Covenant, the Committee strongly encourages the State party to engage in taking full civilian control of and carrying out a complete reform of the security apparatus, including the armed forces. The Committee further urges that the mandate and functions of each security institution be clearly defined so as to outlaw illegal arrest and detention. The State party should invest in the training of security forces in human rights, in accordance with international standards. The State party should also work with the international community to develop and implement an effective disarmament, demobilization and reintegration programme for non-State actors, including the collection, control, storage and destruction of unnecessary weapons.**

17. The Committee is concerned about the state of the judiciary, which suffers from endemic corruption. The Committee is also concerned about the existence of ad hoc judicial bodies, such as the Specialized Criminal Court, which are inconsistent with the guarantees provided in article 14 of the Covenant (arts. 2 and 14 and 26).

**The State party should engage in a full and complete reform of its judiciary to ensure its independence and functioning. The State party should increase efforts to combat corruption by investigating promptly and thoroughly all incidents of suspected corruption. If corruption is established, the officials concerned should face criminal and not only disciplinary sanctions. The State party should also focus on the training of judges and prosecutors. Moreover, all ad hoc judicial bodies, such as the Specialized Criminal Court, should be abolished, so as to ensure that all accused, irrespective of their status, are afforded the guarantees enshrined in article 14 of the Covenant.**

18. The Committee is concerned that the absence of an independent and effective judiciary has an impact on the dysfunctions in the prison system. The Committee is particularly concerned about overcrowding of detention centres, the absence of oversight mechanisms to monitor places of detention and the absence of an overview on the number of persons deprived of their liberty. The Committee is also concerned about reports of women being detained after serving their sentence (arts. 2, 3, 9, 10 and 26).

**The State party should ensure that all persons deprived of their liberty have their detention reviewed by a judge in compliance with article 9 of the Covenant. Judges and prosecutors should monitor all places of deprivation of liberty and ensure that no one is illegally detained therein. The State party should release women who have served their sentence and provide them with adequate shelters when warranted.**

19. The Committee is concerned about the lack of a comprehensive definition of torture in the domestic law including all the acts prohibited in article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Committee is particularly concerned that the current definition in the Constitution prohibits torture only as a means of coercing a confession during arrest, investigation, detention and imprisonment; and that punishment does not apply to accomplices of such crimes. The Committee is also concerned about the existence, in domestic legislation, of statutes of limitation concerning crimes involving torture. The Committee is further concerned about reports of continuing use of forced confession as elements of evidence in court proceedings despite the illegality of such practice (arts. 2, 7 and 14).

**The State party should adopt a definition of torture that covers all of the elements contained in article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The State party should also ensure that the law adequately provides for the prosecution and conviction of perpetrators and accomplices of such acts in accordance with their gravity. The State party should take the steps necessary to ensure that confessions obtained under torture or duress are inadmissible in court in all cases, in line with its domestic legislation and article 14 of the Covenant.**

20. The Committee is concerned about the legality of corporal punishment as a form of criminal sanction, which includes flogging, amputation and stoning. The Committee is also concerned about reports of corporal punishments against children outside judicial spheres such as within the family and in schools (arts. 6, 7 and 24).

**The State party should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

21. While appreciating the efforts made by the State party to respond to the situation of mass influx of migrants, arriving especially from the Horn of Africa, the Committee is concerned that similar care is not extended to the treatment of non-Somalis seeking protection. While the former are granted prima facie refugee status, the latter are systematically considered illegal immigrants and placed in detention centres (arts. 2, 7 and 26).

**The State party should take concrete measures to ensure the adequacy of the refugee determination process and asylum procedures for migrants of all nationalities. Asylum seekers and refugees should not be held in penal conditions.**

22. The Committee is concerned about the fate of the estimated 400,000 internally displaced persons in the State party, more than half due to the pre-existing conflicts with the Huthis in the North. The Committee is particularly concerned about allegations of attacks against internally displaced persons, especially in the Southern part of the country, in the area of Abyan (arts. 2, 7 and 26).

**The State party should ensure the protection of all those affected by the pre-existing conflict as well as those who fled as a result of the 2011 unrest. In particular, the State party should enhance its capacities to respond to the multiple protection needs of the displaced for instance by adopting the 2010 Draft Strategy on internal displacement in Yemen, and work towards finding a durable solution to end displacement.**

23. The Committee is seriously concerned about reports revealing the use of children, i.e. those who are under 18 years of age, in the manning of military checkpoints and the protection of protesters during the 2011 unrest (arts. 6 and 24).

**The State party should take all necessary measures to prohibit the use of child soldiers in accordance with article 24 of the Covenant and the State party's obligations under the Optional Protocol to the Convention on the Rights of the Child. In this regard, the State party should establish a reliable mechanism, including systematic provision of birth certificate enabling an accurate determination of the age of all persons wishing to enrol in military forces. The use of children in manning checkpoints and protecting protesters should be strictly prohibited.**

24. The Committee has received disturbing reports about violent acts perpetrated by non-State actors during the long-standing conflict as well as during the recent 2011 unrest. The Committee is also concerned about concordant reports confirming the existence of

private detention centres, managed by tribal leaders or opposition groups, and the use of child soldiers by non-State actors (arts. 2, 6, 7, 9, 10 and 24).

**In its effort to restore law and order, the State party should identify all places where individuals might be deprived of their liberty or subject to treatment contrary to the provisions of the Covenant. The State party should conduct full and thorough investigations into cases of killings, arrest, detention, torture and ill-treatment perpetrated by non-State actors, initiate criminal proceedings and sentence those responsible. The State party should take all measures within its power to ensure that no child, i.e. anyone under the age of 18, is recruited, trained or armed as a combatant.**

25. The Committee is concerned about the serious infringements imposed on the freedom of expression of peaceful demonstrators in the context of the 2011 unrest. The Committee is particularly concerned about threats to journalists' freedom of press and expression, including massive arrests, illegal detention, threats to their physical integrity and extrajudicial killings. The Committee is concerned about the use of the Specialized Criminal Court to try journalists along with political detainees and those accused of terrorism. The Committee is also concerned about the creation of the Specialized Press and Publications Court to review all pending cases related to the implementation of the Press and Publication Law of 1990 which seriously infringes the freedom of press (arts. 2, 9, 6, 7, 14 and 19).

**The State party should release all journalists detained as a consequence of the 2011 unrest. Moreover, in the framework of the Gulf Cooperation Council initiative aiming, inter alia, at launching important legal and political reforms, the State party should guarantee the freedom of expression and freedom of press as set out in article 19 of the Covenant and further elaborated in the Committee's general comment No. 34 (2011) on freedom of opinion and expression. The State party should also conduct full and thorough investigations into the allegations of torture, ill-treatment, threats and extrajudicial killings affecting journalists and those who exercised their freedom of expression, initiate criminal proceedings against those responsible and provide the victims or their families with appropriate reparation, including compensation. The State party should also abolish the Specialized Press and Publications Court.**

26. The Committee is concerned about the continuous infringements on the right to freedom of assembly, especially during the 2011 unrest. The Committee is particularly concerned about the limitations provided in Law No. 29 (2003) which has been widely used by the State party's authorities in 2011 to use excessive force to disperse unauthorized protest rallies (arts. 9 and 21).

**In the framework of the Gulf Cooperation Council initiative, the State party should immediately repeal all laws which unreasonably restrict the freedom of assembly. All persons deprived of liberty as a consequence of the implementation of such laws should be immediately released.**

27. The Committee notes that the State party has not yet acknowledged the competence of the Committee to receive and consider communications from individuals under its jurisdiction relating to provisions of the Covenant.

**The Committee encourages the State party to accede to the Optional Protocol to the Covenant.**

28. The State party should widely disseminate the Covenant, the text of the fifth periodic report and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also

requests the State party, when preparing its next periodic report, to broadly consult with civil society and non-governmental organizations.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 10, 15 and 21 above.

30. The Committee requests the State party, in its next periodic report, due to be submitted by March 2015, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

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