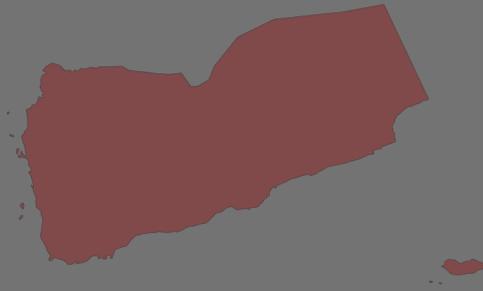


YEMEN ACCOUNTABILITY PROJECT



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# YEMEN'S YOUNGEST VICTIMS

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*The Yemen Civil War's Toll on Children*

JUNE 2023



YEMEN ACCOUNTABILITY PROJECT



GLOBAL  
ACCOUNTABILITY  
NETWORK



## **THE YEMEN CIVIL WAR'S TOLL ON CHILDREN**

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The Yemen Accountability Project (“YAP”) is a student led-initiative based at Case Western Reserve University School of Law and affiliated with the Global Accountability Network (“GAN”). The opinions, conclusions, and recommendations contained in this report do not necessarily reflect the views of Case Western Reserve University or its School of Law.

GAN is a collective of international criminal prosecutors and practitioners who supervise and work with law students on specific atrocity projects for Syria, Yemen, Venezuela, Ukraine, and the Pacific Rim. YAP’s student researchers and analysts gather open-source evidence of potential war crimes and crimes against humanity committed during the Yemen Civil War to assist with future prosecutions under the relevant international legal standards.

## TABLE OF CONTENTS

### EXECUTIVE SUMMARY

#### I. INTRODUCTION

##### A. Overview

##### B. The Yemen Civil War

#### II. EVIDENCE OF THE CONFLICT'S IMPACT ON CHILDREN

##### A. General Trends

##### B. Thematic Areas of Impact on Yemen's Children

1. Deaths and Injuries Directly Resulting from Armed Attacks
2. Physical Health: Impact of Attacks on Medical Centers and Food Insecurity
  - a) *Medical Centers and Hospitals*
  - b) *Malnutrition and Food Insecurity*
  - c) *Poverty and Health*
3. Mental Health
4. Education
5. Child Marriage
6. Child Soldiers

#### III. LEGAL ANALYSIS

##### A. Applicability of IHL and IHRL and Lex Specialis in Times of Armed Conflict

##### B. Analysis of the Conflict's Thematic Areas of Impact in Children

1. Direct Injury and Death During Armed Attacks
  - a) *Distinction*
  - b) *Proportionality*
  - c) *Military Necessity*
2. Physical Health
3. Mental Health
4. Education
5. Child Marriage
6. Child Soldiers

#### IV. ACCOUNTABILITY MECHANISMS

##### A. IHL Mechanisms

##### B. IHRL Mechanisms

1. International Courts
2. Yemeni Domestic Courts
3. Foreign Domestic Courts
4. Alternative Mechanisms

#### V. RECOMMENDATIONS

- A. Investigations
- B. Accountability Mechanisms
- C. Review Targeted Sanctions Regime
- D. Naming and Shaming
- E. Supporting and Engaging Civil Society Actors
- F. Transitional Justice

VI. CONCLUSION

## EXECUTIVE SUMMARY

This white paper examines the various areas in which the Yemen Civil War has impacted Yemen's children and the legal provisions under both international human rights law ("IHRL") and international humanitarian law ("IHL") potentially violated through these impacts. In addition to unlawful targeting or indiscriminate killing of children during armed attacks, this white paper examines the ways in which the parties to the Yemen conflict have caused a decline in children's physical and mental health, interfered with access to childhood education, worsened poverty levels, perpetuated the prevalence of forced child marriage, displaced children from their families, and forced children to serve as soldiers throughout the Yemen conflict.

Based on this evidence, the Yemen Accountability Project concludes that the Saudi-led Coalition, Houthis, and Yemeni government have violated their obligations to protect children under IHL and IHRL. The perpetrators of these violations must face justice, mitigate their violations' adverse effects, and provide relief to children in Yemen. The purpose of this white paper is to provide evidence of IHRL and IHL violations involving children and offer potential avenues for accountability.

### I. INTRODUCTION

#### A. Overview

This white paper assesses the various ways in which the Yemen Civil War has impacted children, from injuries and fatalities directly resulting from attacks to interference with health services, nutrition, education, and family life. This paper identifies the perpetrators of the crimes creating these impacts and identifies legal provisions through which interested parties can hold these perpetrators accountable. Part I summarizes the Yemen Civil War, the circumstances that created the conflict, and the main parties involved. Part II identifies yearly and thematic trends in attacks directed against or that indirectly impact children. Part III identifies legal provisions in both IHRL and IHL that create liability for these attacks and analyzes the previously established evidence under those provisions. Part IV assesses challenges with existing accountability mechanisms and makes recommendations for potentially viable avenues for accountability. Finally, Part V recommends how stakeholders may address the Yemen Civil War's impact on children and aid future prosecutions or lawsuits.

#### B. The Yemen Civil War

The Yemen Civil War stems from long-standing tensions between the Houthis, a Zaydi Shia group from northern Yemen,<sup>1</sup> and Yemen's former dictatorial president, Ali Abdulla Saleh.<sup>2</sup> After the 2011 Arab Spring protests, Saleh transferred power to his vice president at the time, Abd Rabbo Mansour Hadi, but widespread political instability persisted.<sup>3</sup> This instability escalated in September 2014, when the Houthi rebels captured Yemen's capital city of Sana'a in

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<sup>1</sup> *Q & A on the Conflict in Yemen and International Law*, HUMAN RIGHTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>. [hereinafter *Q & A on the Conflict in Yemen*].

<sup>2</sup> *Q & A on the Conflict in Yemen and International Law*, HUMAN RIGHTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>3</sup> Kali Robertson, *Yemen's Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

September 2014<sup>4</sup> and effectively ousted President Hadi in January 2015.<sup>5</sup> Despite this, President Hadi's government remains the internationally-recognized de jure government of Yemen.<sup>6</sup>

The Yemen Civil War officially began in March 2015, when a coalition of states led by Saudi Arabia and acting on behalf of President Hadi's government ("Saudi-led Coalition") initiated an airstrike campaign on the Houthis to restore the Hadi government's authority in the country.<sup>7</sup> Accordingly, the ongoing conflict has primarily involved the Iranian-supported Houthi rebels and the Saudi-led Coalition.<sup>8</sup> The Islamic State ("ISIS") and Al-Qaeda of the Arabian Peninsula ("AQAP") have also participated in the conflict to a lesser degree.<sup>9</sup> Since 2015, these parties have caused serious civilian casualties and harmed the civilian population through strategies including the de facto blockade on Yemen's seaports and the closure of Sana'a International Airport.<sup>10</sup> Together, these military activities have created what is arguably the worst humanitarian crisis in the world, with a death toll of at least 17,700 civilians and displacement of a further 3.3 million as of 2019.<sup>11</sup> In addition to Yemen's general civilian population, as this white paper will demonstrate, the war's toll has significantly impacted Yemen's child population.

To situate the Yemen Civil War within the proper legal framework, the Group of Eminent International and Regional Experts on Yemen ("Group of Experts") have designated the war as a non-international armed conflict ("NIAC").<sup>12</sup> NIACs involve conflicts between a state and a non-state armed group.<sup>13</sup> Over the years, multiple states have joined the conflict, with the Saudi-led Coalition supporting Hadi's government to combat the non-state actor, the Houthi rebels, supported by Iran—officially designating the conflict a NIAC.<sup>14</sup> In NIACs, legal obligations arise under both customary international law and treaty law.<sup>15</sup> All parties to the

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<sup>4</sup> *How Yemen's capital Sanaa was seized by Houthi rebels*, BBC (Sept. 27, 2014), <https://www.bbc.com/news/world-29380668>.

<sup>5</sup> *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>6</sup> See S.C. Res. 2216, (April 14, 2015); *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>; *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>7</sup> The Saudi-led Coalition includes support from the United States, France, Germany, and the United Kingdom. Kali Robertson, *Yemen's Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>; *Q & A on the Conflict in Yemen and International Law*, HUMAN RTS WATCH (Apr. 6, 2015), <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>.

<sup>8</sup> The Saudi-led Coalition includes support from the United States, France, Germany, and the United Kingdom. Kali Robertson, *Yemen's Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN RELATIONS (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

<sup>9</sup> The Saudi-led Coalition includes support from the United States, France, Germany, and the United Kingdom. Kali Robertson, *Yemen's Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

<sup>10</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 18, U.N. Doc. A/HRC/39/43 (2018).

<sup>11</sup> *Humanitarian crisis in Yemen remains the worst in the world, warns UN*, UN NEWS (Feb. 14, 2019), <https://news.un.org/en/story/2019/02/1032811>.

<sup>12</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

<sup>13</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43, (2018).

<sup>14</sup> See U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 33, U.N. Doc. A/HRC/45/CRP.7 (2020).

<sup>15</sup> *Sources of IHL: Treaties and customary law*, INT'L COMM. RED CROSS (last accessed Jun. 2021), <http://ir.icrc.org/en/international-humanitarian-law/sources-ihl-treaties-customary-law/>.

conflict, including Hadi's Yemeni government, the Saudi-led Coalition, and non-state actors, including the Houthi rebels,<sup>16</sup> are bound by customary international law.<sup>17</sup> This includes the customary IHL principles of distinction, necessity, and proportionality.<sup>18</sup> Even in areas where Hadi's government has lost control, positive obligations under customary international law still exist.<sup>19</sup> Additionally, Yemen is a party to and, therefore, bound by the Geneva Conventions of 1949 and Additional Protocol II.<sup>20</sup> Similarly, the Group of Experts has also considered ISIS and AQAP bound by IHL because each group has engaged in parallel NIACs with Yemen's government forces.<sup>21</sup> For these reasons, each of these parties may be held accountable for their violations of IHL. They may also be liable for IHRL violations, if jurisdictionally applicable.

For more information about the Yemen Conflict and its designation as an NIAC, please see the Yemen Accountability Project's previous publications.<sup>22</sup>

## II. EVIDENCE OF THE CONFLICT'S IMPACT ON CHILDREN

### A. General Trends

In 2015—the Yemen Civil War's first year—Yemen saw multiple attacks on hospitals, medical centers, food and water centers, and schools, all of which impact the wellbeing of Yemen's children. Throughout the year, Yemen witnessed multiple airstrikes on hospitals and medical centers.<sup>23</sup> As those hospitals' and medical centers' conditions worsened, civilians were denied medical aid,<sup>24</sup> and, in one case, a child was denied care at three different hospitals and died from a gunshot wound at the fourth.<sup>25</sup> During 2015, four Yemeni farms were targeted<sup>26</sup> alongside numerous food and water storage centers and other sources of humanitarian aid.<sup>27</sup>

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<sup>16</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 32, U.N. Doc. A/HRC/45/CRP.7 (2020).

<sup>17</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43 (2018).

<sup>18</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 15, U.N. Doc. A/HRC/39/43, ¶ 15 (2018).

<sup>19</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 13, U.N. Doc. A/HRC/39/43, (2018).

<sup>20</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

<sup>21</sup> U.N. High Comm'r for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014*, ¶ 34, U.N. Doc. A/HRC/45/CRP.7 (2020).

<sup>22</sup> See generally YEMEN ACCOUNTABILITY PROJECT, AIDING & ABETTING: HOLDING STATES, CORPORATIONS, AND INDIVIDUALS ACCOUNTABLE FOR WAR CRIMES IN YEMEN 8-9 (2020), <https://case.edu/law/sites/case.edu.law/files/2020-10/FINAL%20YAP%20AIDING%20ABETTING%20WHITE%20PAPER%20%20%282%29.pdf>; YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>; CULTURAL PROPERTY: BUILDING THE CASE FOR PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN YEMEN (2023), <https://case.edu/law/sites/case.edu.law/files/2023-02/YAP%20Cultural%20Property%20White%20Paper%20%28Final%29.pdf>.

<sup>23</sup> YSN150401; YHJ15072701; YTZ15110801.

<sup>24</sup> YTZ15103001.

<sup>25</sup> YAD15040704.

<sup>26</sup> YHJ15040501; YMA15062401; YJA15062701; YSD15102701.

<sup>27</sup> #YSD15041001; #YAD15041001; YSN15102501; #YAD15082402; #YSD15041801; #YAD15060101.

Throughout 2015, schools similarly endured airstrikes across several regions.<sup>28</sup> Additionally, there is at least one recorded incident of child abduction occurring at a school.<sup>29</sup> By July of 2015, schools regularly housed refugees but were still targeted; at least 12 child refugees have been killed in airstrikes on schools.<sup>30</sup>

In 2016 Yemen experienced a continuation of similar attacks. Medical centers and hospitals suffered from airstrikes,<sup>31</sup> and, near the end of 2016, Hadi forces used a hospital as a shield.<sup>32</sup> To make matters worse, farms experienced an increase in attacks, especially in March and April.<sup>33</sup> Most of these farms were civilian, rather than government-owned.<sup>34</sup> Schools also continued to endure airstrikes and artillery shellings,<sup>35</sup> which, at times, resulted in child casualties.<sup>36</sup>

As the war continued into 2017, the Yemeni population was blocked from accessing medical aid.<sup>37</sup> Clinics, including one closed by Houthis for three months, were likewise inaccessible.<sup>38</sup> Food shortages continued, and some airstrikes on markets and farms directly resulted in child casualties.<sup>39, 40</sup> There was also at least one recorded airstrike on a school.<sup>41</sup> In one particularly notable incident, 300 people were abducted from two villages which largely included children and the elderly.<sup>42</sup>

In June of 2018, a large attack occurred at Al Hudaydah Port, the main entrance for Yemen's humanitarian aid.<sup>43</sup> This event disrupted entry of medical and food aid; while humanitarian aid workers providing medical care were also being targeted by unknown actors.<sup>44</sup> An airstrike on a medical camp also resulted in the deaths of at least eight children.<sup>45</sup> Food supply routes, ports, markets, and farms were subject to attacks, as well.<sup>46</sup> Like in the conflict's previous years, some airstrikes on markets directly caused child casualties.<sup>47</sup> The international community also widely condemned an attack on a school bus that left 29 children dead.<sup>48</sup>

In 2019 attacks continued on targets that impacted Yemen's children. There were at least two recorded attacks on medical centers,<sup>49</sup> including an attack on Save the Children Hospital that killed seven children.<sup>50</sup> Humanitarian convoys delivering aid and oil for hospitals were detained

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<sup>28</sup> #YHJ15032601; #YSD15051101; #YSN15040701; #Y TZ15090201; #YBA15072901.

<sup>29</sup> #YHU15040905.

<sup>30</sup> #YAD15070401.

<sup>31</sup> YSD1601301; #Y TZ16112101.

<sup>32</sup> #Y TZ16112102.

<sup>33</sup> #YJA16030102; #YHJ16030201; #YSN16030402; #YMR16031801; #YBA16040701; #YLA16041103.

<sup>34</sup> *Id.*

<sup>35</sup> YSA16012701; Y TZ16032401; YHJ16040702; YSD16041803; #Y TZ16080801.

<sup>36</sup> #YSD16081402.

<sup>37</sup> #YNA17061902.

<sup>38</sup> YSD17070501.

<sup>39</sup> #Y TZ17071802; #YSD17072901.

<sup>40</sup> #YSD17022201.

<sup>41</sup> #SNA17101001.

<sup>42</sup> #YIB17021501.

<sup>43</sup> #YHU18060603.

<sup>44</sup> #YDH18100101.

<sup>45</sup> #YHU18100501.

<sup>46</sup> #YHU18051201; #YSD18052801; #YHU18092002; #YHU18100301.

<sup>47</sup> #YHU18102401.

<sup>48</sup> #YSD18080901.

<sup>49</sup> #YHU19031401; #Y TZ19110602.

<sup>50</sup> #YSD1903271.

by a Houthi militia.<sup>51</sup> An explosion near two schools left 14 children dead,<sup>52</sup> and artillery shelling on another school left it severely damaged.<sup>53</sup> In Taiz, injured children were recorded as a result of a school storming.<sup>54</sup> Markets were specifically targeted in 2019, as well,<sup>55</sup> and attacks on such residential or populated areas increased and caused many child casualties.<sup>56</sup>

In February of 2020, humanitarian aid organizations debated halting aid supply, including food and medical supplies, due to Houthi interference.<sup>57</sup> Additionally, a pharmacy was attacked and a mobile clinic was shot at while people were inside.<sup>58</sup> Houthi forces also reportedly burned a food supply in order to prevent people from accessing it.<sup>59</sup> Further, an attack on a graduation ceremony at a school left an unknown number of students dead.<sup>60</sup> A child was also killed by a sniper while at school.<sup>61</sup> 2020 also recorded far more attacks on girls than in previous years.<sup>62</sup> Such attacks included unprovoked shootings, kidnappings, and rapes.<sup>63</sup>

## **B. Thematic Areas of Impact on Yemen's Children**

The aforementioned attacks have impacted children in various areas of life. Children have been directly injured or killed during armed attacks, attacks and destruction of medical centers and hospitals.<sup>64</sup> Attacks on farms and food storage facilities have contributed to child malnutrition, food insecurity, and preventable diseases<sup>65</sup>, while the collective toll of war has significantly impacted children's mental health and illnesses.

However, the conflict's impact is not exclusive to health. Indeed, the war has also suppressed children's ability to access education and socioeconomically impacted them by forcing many children and their families further into destitution, poverty, and displacement. As a result of these desperate situations, young girls have also increasingly been forced into early marriages.<sup>66</sup> Even at centers intended to shelter and protect them, children face a risk of harm, as attacks have been recorded at these locations. Another unfortunate reality of this war is child soldier recruitment. The following sections in Part II will break down evidence of each of these thematic areas: (1) deaths and injuries directly resulting from armed attacks, (2) physical health, (3) mental health, (4) education, (5) child marriage, and (6) use of child soldiers. Part III will then analyze attacks falling within each thematic area under relevant legal standards.

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<sup>51</sup> #YIB19042201.

<sup>52</sup> YSN190409.

<sup>53</sup> #YSD19121102.

<sup>54</sup> #YTZ19110602.

<sup>55</sup> #YTZ19060101; #YAH19081301; #YAH19082302; #YHU19110801.

<sup>56</sup> #YHJ19031001; #YSN19040701; #YSN19040901; #YTZ19042403; #YTZ19042801; #YTZ19052501; #YAH19080102; #YAH19081301.

<sup>57</sup> #YNA20022501.

<sup>58</sup> #YTZ20060501; #YTZ20111703.

<sup>59</sup> #YHJ2002051.

<sup>60</sup> #YSN20121201.

<sup>61</sup> #YLA20122601.

<sup>62</sup> #YHU20052301; #YSH20061202; #YHU20072101; #YTZ20082704; YNA20091701; #YHU20100401; #YIB20120901.

<sup>63</sup> *Id.*

<sup>64</sup> See 2015 YAP Matrix.

<sup>65</sup> See 2016 YAP Matrix.

<sup>66</sup> Sarah Ferguson, *Helping Girls Escape Early Marriage in Yemen*, UNICEF (Jun, 26, 2020), <https://www.unicefusa.org/stories/helping-girls-escape-early-marriage-yemen>.

## 1. Deaths and Injuries Directly Resulting from Armed Attacks

Armed attacks perpetrated during the Yemen Civil War have resulted in significant child injuries and deaths. Overall, from 2015-2020, there have been at least 788 reported child deaths.<sup>67</sup> In addition, there have been at least 222 confirmed child injuries.<sup>68</sup> Many reports of attacks do not specifically differentiate between adult and child fatalities, so the aforementioned deaths and injuries are most likely underreported statistics.

## 2. Physical Health: Impact of Attacks on Medical Centers and Food Insecurity

The conflict has interfered with the physical health and wellbeing of Yemen's children. The impact of the violence on children's health extends beyond injuries or deaths during armed attacks. Yemen's children have endured a serious toll on their health since the war began, largely due to attacks on medical centers, hospitals, and objects indispensable to survival that exacerbated malnutrition and food insecurity.<sup>69</sup>

### *a) Medical Centers and Hospitals*

In the early years of the Yemen Civil War, medical centers and hospitals were commonly targeted by airstrikes. This caused hospitals to become overrun and complicated civilian access to medical care. As briefly mentioned above, in 2015, a child who was shot during an armed attack attempted and failed to receive care at three separate hospitals and succumbed to his injuries at the fourth.<sup>70</sup> The Houthis also denied access to hospitals or restricted access to certain individuals.<sup>71</sup> Houthis would, at times, indiscriminately close hospitals and medical centers without reason or in retaliation against the opposing side of the conflict, or civilians they suspected to support the opposition.<sup>72</sup>

Mobile clinics were also targeted.<sup>73</sup> As the war progressed, medical centers and hospitals were also used by Houthis as shields.<sup>74</sup> Further, the Houthis would prevent humanitarian aid from reaching governorates that needed the aid.<sup>75</sup> Médecins Sans Frontières (MSF) hospitals have been targeted by drone strikes, which further keeps children from receiving aid.<sup>76</sup> Unfortunately, aid hospitals specifically dedicated to helping children, like Save the Children, have been targeted for attacks; in a specific airstrike by the Saudi-led Coalition on a hospital, seven children were killed.<sup>77</sup>

Violence against humanitarian aid workers and Houthi interference with aid delivery has also prevented medical supplies from reaching children. For instance, by August 2018, UNICEF

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<sup>67</sup> See 2015-2020 YAP Matrices.

<sup>68</sup> See 2015-2020 YAP Matrices.

<sup>69</sup> See 2015-2020 YAP Matrices.

<sup>70</sup> #YAD15040704.

<sup>71</sup> #YTZ15103001; #YTZ16112101; #YSD17070501.

<sup>72</sup> *Id.*

<sup>73</sup> YTZ151202; #YTZ20111703.

<sup>74</sup> #YTZ16112102.

<sup>75</sup> #YNA17061902.

<sup>76</sup> #YTZ19110602.

<sup>77</sup> #YSD1903271.

had only reached half of their goal in providing primary healthcare for children under the age of five.<sup>78</sup> Situations like this have caused aid organizations to seriously consider halting delivery of medical supplies.<sup>79</sup> This could be potentially disastrous for the estimated 8.56 million children in need of health assistance in Yemen.<sup>80</sup>

### *b) Malnutrition and Food Insecurity*

UNICEF reports that around 2.2 million children in Yemen are suffering from acute malnutrition.<sup>81</sup> Over 540,000 children under the age of five are suffering from acute malnutrition, which is the equivalent of one infant or toddler dying every 10 minutes.<sup>82</sup> To prevent malnutrition and starvation-related diseases, 11 million children in Yemen are in need of humanitarian assistance.<sup>83</sup>

Child malnutrition and related diseases have been exacerbated by the Saudi-led Coalition and Houthis attacks on farms, food storage sites, and water centers, which prevent humanitarian aid from reaching children in need. For instance, Houthi forces have burned food provided by humanitarian aid organizations to prevent the civilian population from accessing it.<sup>84</sup> Attacks on farms and prevention of humanitarian aid create and worsen the existing danger of malnutrition and starvation. There have also been consistent attacks on markets, placing those seeking to purchase food at risk of injury and death.<sup>85</sup> Indeed, children have died during airstrikes on markets.<sup>86</sup> In one particular instance, a boy was shot and killed while waiting in line at a market with his mother.<sup>87</sup>

The Saudi-led Coalition has also executed airstrikes on water tanks and silos, destroying water storage centers.<sup>88</sup> Depletion of sources of safe drinking water had exacerbated a cholera outbreak in Yemen, which has been said to be “one of the worst cholera epidemics of modern times.”<sup>89</sup> It is estimated that children under the age of five make up 28.8% of the total suspected cases of cholera.<sup>90</sup> To make matters worse, vaccinations against cholera have become increasingly more difficult to administer due to aid blockages.<sup>91</sup> As this interference continues, the health crisis for Yemen’s children will likely only grow worse.

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<sup>78</sup> See UNICEF, *YEMEN HUMANITARIAN SITUATION REPORT* (2018), <https://perma.cc/P67L-PN8L>.

<sup>79</sup> #YNA20022501.

<sup>80</sup> See UNICEF, *YEMEN HUMANITARIAN SITUATION REPORT* (2018), <https://perma.cc/P67L-PN8L>.

<sup>81</sup> See UNICEF, *YEMEN HUMANITARIAN SITUATION REPORT* (2018), <https://perma.cc/P67L-PN8L>.

<sup>82</sup> *8 Years of Crushing Conflict in Yemen Leave More Than 11 Million Children in Need of Humanitarian Assistance*, UNICEF (Mar. 24, 2023), <https://www.unicef.org/press-releases/8-years-crushing-conflict-yemen-leave-more-11-million-children-need-humanitarian>.

<sup>83</sup> *8 Years of Crushing Conflict in Yemen Leave More Than 11 Million Children in Need of Humanitarian Assistance*, UNICEF (Mar. 24, 2023), <https://www.unicef.org/press-releases/8-years-crushing-conflict-yemen-leave-more-11-million-children-need-humanitarian>.

<sup>84</sup> #YHJ2002051.

<sup>85</sup> #YJA15062401.

<sup>86</sup> #YHU15051202.

<sup>87</sup> #YAD15061102.

<sup>88</sup> #YSD15041001; #YAD15041001.

<sup>89</sup> Qin Xiang Ng, et al., *Yemen’s Cholera Epidemic is a One Health Issue*, NATIONAL LIBRARY OF MEDICINE (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7411249/>.

<sup>90</sup> See UNICEF, *YEMEN HUMANITARIAN SITUATION REPORT* (2018), <https://perma.cc/P67L-PN8L>.

<sup>91</sup> Qin Xiang Ng, et al., *Yemen’s Cholera Epidemic is a One Health Issue*, NATIONAL LIBRARY OF MEDICINE (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7411249/>; #YAD15060101; #YNA15060101.

### c) Poverty and Health

It is difficult to truly understand the scope of the Yemen Civil War's harm to children's health without also discussing its impact on Yemen's poverty levels. It is estimated that 80% of Yemeni people live in poverty.<sup>92</sup> This has left approximately 11.7 million people impoverished and reduced economic growth by \$88.8 billion USD.<sup>93</sup> Yemen's reliance on food and imports for its economic activity has contributed to this, and the blockade of Yemen's ports has left many civilians in an inescapable cycle of poverty.<sup>94</sup> The conflict has also left much of the country's former public sector employment unavailable, so the economy cannot recover effectively.<sup>95</sup>

As poverty continues to strike families, conditions worsen for children. As a result of poverty, many parents cannot purchase enough food for their families. In fact, 40% of households in Yemen find it difficult to buy the minimum amount of food for everyone in their family.<sup>96</sup> This lack of access to food may worsen already existing threats of malnutrition and starvation-related diseases. Additionally, attacks on humanitarian aid organizations providing food aid to impoverished populations—like targeting Médecins Sans Frontières with explosives for providing aid to those in need<sup>97</sup> and the Saudi-led Coalition preventing locals from receiving medical aid by shutting down and restricting access to an airport in August 2016<sup>98</sup>—inflate this risk. Poverty even threatens children in areas with access to functioning medical centers because, before they can fully heal in hospitals, their parents need to discharge them because they cannot afford necessary treatment.<sup>99</sup> In this way, poverty exacerbates and creates an ongoing cycle of harm to children's physical health.

### 3. Mental Health

The Yemen Civil War's health impact is not exclusive to increased need for access to physical healthcare. Rather, an estimated 8 million people are also in need of mental health services.<sup>100</sup> According to UNICEF, the cycle of fear and hopelessness makes many families turn to negative alternatives in an attempt to give their children a hopeful future, even if those decisions are not in the child's best interest.<sup>101</sup> For this reason, not only are Yemeni children in need of increased access to medical centers for physical health services, but also mental health services to help them cope with and recover from the traumatic realities of the war.

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<sup>92</sup> *Child Poverty in Yemen*, BORDEN PROJECT (Oct. 12, 2021), <https://bordenproject.org/child-poverty-in-yemen/>.

<sup>93</sup> *Child Poverty in Yemen*, BORDEN PROJECT (Oct. 12, 2021), <https://bordenproject.org/child-poverty-in-yemen/>.

<sup>94</sup> *Child Poverty in Yemen*, BORDEN PROJECT (Oct. 12, 2021), <https://bordenproject.org/child-poverty-in-yemen/#YNA17061902>.

<sup>95</sup> *Child Poverty in Yemen*, BORDEN PROJECT (Oct. 12, 2021), <https://bordenproject.org/child-poverty-in-yemen/>.

<sup>96</sup> *The World Bank in Yemen*, WORLD BANK, <https://www.worldbank.org/en/country/yemen/overview> (last visited May 25, 2023).

<sup>97</sup> #YDH18100101.

<sup>98</sup> #YSN16080902.

<sup>99</sup> Rajat Madhok & Eman Al Sharafi, *In Yemen, Conflict and Poverty Exacerbate Child Malnutrition*, UNICEF (Jan. 30, 2017), <https://www.unicef.org/stories/yemen-conflict-and-poverty-exacerbate-child-malnutrition>.

<sup>100</sup> *8 Years of Crushing Conflict in Yemen Leave More Than 11 Million Children in Need of Humanitarian Assistance*, UNICEF (Mar. 24, 2023), <https://www.unicef.org/press-releases/8-years-crushing-conflict-yemen-leave-more-11-million-children-need-humanitarian>.

<sup>101</sup> *8 Years of Crushing Conflict in Yemen Leave More Than 11 Million Children in Need of Humanitarian Assistance*, UNICEF (Mar. 24, 2023), <https://www.unicef.org/press-releases/8-years-crushing-conflict-yemen-leave-more-11-million-children-need-humanitarian>.

#### 4. Education

As a result of the war, one in four school-age children do not have access to school, which increases the likelihood of exploitation from all sides of the conflict.<sup>102</sup> Airstrikes in particular have been utilized by both the Saudi-led Coalition and Houthis to target schools.<sup>103</sup> By 2018, over 2 million children could no longer regularly attend school, an increase of 500,000 since 2015.<sup>104</sup> In Hudaydah, one of Yemen's port cities, a third of the schools were shut down because of the violence.<sup>105</sup>

Throughout the conflict, schools have served as a regular target for attack. For instance, in April 2016, there were three recorded attacks on schools; one involved a bombing of a school for girls that left 10 children dead.<sup>106</sup> Additionally, even though schools have served as places of shelter for refugees, in 2015, a school was targeted, killing 12 refugee children.<sup>107</sup> Children have also been deprived of access to education when their schools have been attacked or repurposed for shelter.<sup>108</sup> In 2018 a school bus carrying children was attacked by the Saudi-led Coalition, killing at least 29 children.<sup>109</sup> And in 2020, Houthi forces attacked and killed an unknown number of students during a graduation celebration.<sup>110</sup> These attacks both harm children while actively pursuing education and deter children and educational providers from continuing to engage in education as the war persists.

#### 5. Child Marriage

Although child marriage for female children was common in Yemen before the conflict, it has since become more prevalent. One reason for this heightened frequency is poverty, as families are paid a bridal dowry when their daughters are married off.<sup>111</sup> Since more families have become impoverished since the start of the conflict, some marry their daughters in exchange for dowry money to buy basic necessities.<sup>112</sup> In 2019, UNICEF estimated that 4 million girls were child brides, and that 1.4 million of those girls were under the age of 15.<sup>113</sup> Child marriage is also higher amongst displaced girls with one out of every five girls between the ages

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<sup>102</sup> *Yemen: Human Suffering at Risk of Further Deterioration, Warns UN Aid Chief*, UN NEWS (May 24, 2018), <https://perma.cc/KAP5-QYH2>.

<sup>103</sup> #YSD15032603; #YHU15040905.

<sup>104</sup> *Conflict Shuts a Third of Schools in Yemen's Port City of Hudaydah*, UNICEF (Nov. 30, 2018), <https://www.unicef.org/press-releases/conflict-shuts-third-schools-yemens-port-city-hudaydah>.

<sup>105</sup> *Conflict Shuts a Third of Schools in Yemen's Port City of Hudaydah*, UNICEF (Nov. 30, 2018), <https://www.unicef.org/press-releases/conflict-shuts-third-schools-yemens-port-city-hudaydah>.

<sup>106</sup> #YSD16041803; #YJA16041603; #YHJ16040702.

<sup>107</sup> #YAD15070401.

<sup>108</sup> *Yemen: Human Suffering at Risk of Further Deterioration, Warns UN Aid Chief*, UN NEWS (May 24, 2018), <https://perma.cc/KAP5-QYH2>.

<sup>109</sup> #YSD18080901.

<sup>110</sup> #YSN20121201.

<sup>111</sup> *Yemen, GIRLS NOT BRIDES*, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/yemen/> (last visited May 25, 2023).

<sup>112</sup> *Yemen, GIRLS NOT BRIDES*, <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/yemen/> (last visited May 25, 2023).

<sup>113</sup> *Child Poverty in Yemen*, BORGEN PROJECT (Oct. 12, 2021), <https://borgenproject.org/child-poverty-in-yemen/>.

of 10-19 being married.<sup>114</sup> Girls are also more likely to be married off if they are not in school.<sup>115</sup> The risk of childhood marriage is 3.5 times higher for a girl with no education or minimal education than girls with secondary education.<sup>116</sup> Since their education is often restricted to remote educational materials in settlements or displacement camps,<sup>117</sup> many girls face a higher likelihood of child marriage in Yemen.

## 6. Child Soldiers

Lastly, it is estimated that one in four children are at risk of being recruited as child soldiers.<sup>118</sup> This is not exclusive to Yemeni children, as Sudanese child soldiers have also been recruited to fight in Yemen.<sup>119</sup> In total, an estimated 4,000 children have been recruited to fight in the Yemen Civil War.<sup>120</sup> Although the Houthis pledged to stop recruiting child soldiers in April 2018, they continued to recruit several hundred children to fight in the months following their pledge.<sup>121</sup> These soldiers include children as young as 10 years old.<sup>122</sup>

Children face a much higher risk of becoming child soldiers as schools continue to shut down. From January 2020 to May 2021, the United Nations estimated that roughly 2,000 Houthi-recruited child soldiers died in battle.<sup>123</sup> A senior Houthi military official disclosed to a reporter for the Associated Press that they had recruited an estimated 18,000 children since the beginning of the conflict.<sup>124</sup> The recruitment mainly takes place at “summer camps” which are held in schools and mosques<sup>125</sup> and allegedly provide food, shelter, and education,<sup>126</sup> resources and services that are increasingly scarce as parties to the conflict interrupt food delivery and attack schools.<sup>127</sup>

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<sup>114</sup> YEMEN: COUNTRY PROFILE, UNFPA-UNICEF GLOBAL PROGRAM TO END CHILD MARRIAGE (2020), <https://www.unicef.org/media/111411/file/Child-marriage-country-profile-Yemen-2021.pdf>.

<sup>115</sup> YEMEN: COUNTRY PROFILE, UNFPA-UNICEF GLOBAL PROGRAM TO END CHILD MARRIAGE (2020), <https://www.unicef.org/media/111411/file/Child-marriage-country-profile-Yemen-2021.pdf>.

<sup>116</sup> YEMEN: COUNTRY PROFILE, UNFPA-UNICEF GLOBAL PROGRAM TO END CHILD MARRIAGE (2020), <https://www.unicef.org/media/111411/file/Child-marriage-country-profile-Yemen-2021.pdf>.

<sup>117</sup> YEMEN: COUNTRY PROFILE, UNFPA-UNICEF GLOBAL PROGRAM TO END CHILD MARRIAGE (2020), <https://www.unicef.org/media/111411/file/Child-marriage-country-profile-Yemen-2021.pdf>.

<sup>118</sup> *Yemen: Human Suffering at Risk of Further Deterioration, Warns UN Aid Chief*, UN NEWS (May 24, 2018), <https://perma.cc/KAP5-QYH2>.

<sup>119</sup> #SNA18122801.

<sup>120</sup> *8 Years of Crushing Conflict in Yemen Leave More Than 11 Million Children in Need of Humanitarian Assistance*, UNICEF (Mar. 24, 2023), <https://www.unicef.org/press-releases/8-years-crushing-conflict-yemen-leave-more-11-million-children-need-humanitarian>.

<sup>121</sup> *In Yemen, Child Soldiering Continues Despite Houthi Promise*, VOA (Jun. 18, 2022), <https://www.voanews.com/a/in-yemen-child-soldiering-continues-despite-houthi-promise-/6619853.html>.

<sup>122</sup> *In Yemen, Child Soldiering Continues Despite Houthi Promise*, VOA (Jun. 18, 2022), <https://www.voanews.com/a/in-yemen-child-soldiering-continues-despite-houthi-promise-/6619853.html>.

<sup>123</sup> *In Yemen, Child Soldiering Continues Despite Houthi Promise*, VOA (Jun. 18, 2022), <https://www.voanews.com/a/in-yemen-child-soldiering-continues-despite-houthi-promise-/6619853.html>.

<sup>124</sup> *Children Fight, Kill and Die in Yemen's Civil War*, AP NEWS (Dec. 19, 2018), <https://apnews.com/article/0232eaa4f3fd4f4eaf3882e4160a747c>.

<sup>125</sup> *Children Fight, Kill and Die in Yemen's Civil War*, AP NEWS (Dec. 19, 2018), <https://apnews.com/article/0232eaa4f3fd4f4eaf3882e4160a747c>.

<sup>126</sup> *In Yemen, Child Soldiering Continues Despite Houthi Promise*, VOA (Jun. 18, 2022), <https://www.voanews.com/a/in-yemen-child-soldiering-continues-despite-houthi-promise-/6619853.html>.

<sup>127</sup> *See In Yemen, Child Soldiering Continues Despite Houthi Promise*, VOA (Jun. 18, 2022), <https://www.voanews.com/a/in-yemen-child-soldiering-continues-despite-houthi-promise-/6619853.html>.

### III. LEGAL ANALYSIS

#### A. Applicability of IHL and IHRL and Lex Specialis in Times of Armed Conflict

Both IHL and IHRL apply during situations of armed conflict.<sup>128</sup> However, under the maxim of *lex specialis*, when the *lex generalis*, or a general body of law, and the *lex specialis*, or more specialized law, are inconsistent, the *lex specialis* (specialized law) takes precedence.<sup>129</sup> In the context of armed conflict, IHRL is the *lex generalis*, while IHL is the *lex specialis* that ultimately takes precedence.<sup>130</sup>

The International Court of Justice (“ICJ”) has applied this maxim in several cases.<sup>131</sup> For instance, in the *Nuclear Weapons Advisory Opinion*,<sup>132</sup> the ICJ expressed that when determining whether a deprivation of life during armed conflict is “arbitrary” in violation of Article 6(1) of the International Covenant on Civil and Political Rights,<sup>133</sup> the Court must apply more the specialized IHL standard that recognizes certain circumstances during which a deprivation of life is permissible.<sup>134</sup> However, where even the more specialized IHL standard has been violated, the ICJ has indicated that the more general IHRL provision can be violated simultaneously.<sup>135</sup> For instance, in the *Armed Activities Case*, the ICJ held that the Uganda Peoples’ Defence Forces’ armed activities in occupied territory in the Democratic Republic of the Congo had violated both customary IHL norms and various human rights instruments.<sup>136</sup>

Accordingly, while both IHL and IHRL apply to armed activities committed during the Yemen Civil War, where the two bodies of law conflict, IHL takes precedence. However, when a military activity violates IHL, there may also be a simultaneous IHRL violation. Such may be the case for (1) attacks perpetrated against children, (2) harm to children’s physical health, (3) harm to children’s mental health, (4) interference with children’s access to education, (5) forced child marriage, and (6) the recruitment and use of child soldiers.

#### B. Analysis of the Conflict’s Thematic Areas of Impact on Children

##### 1. Direct Injury and Death During Armed Attacks

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<sup>128</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising From Diversification and Expansion of International Law*, A/CN.4/L.682, ¶ 104 (Apr. 13, 2006); *See also* Al-Jedda v. United Kingdom, App. No. 27021/08, ¶¶ 18–20 (July 7, 2011), <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-105612%22%5D%7D>}.

<sup>129</sup> Anja Lindroos, *Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of Lex Specialis*, 74 *NORDIC J. INT’L L.* 27, 35–6, 45 (2005).

<sup>130</sup> Michael N. Schmitt, *Investigating Violations of International Law in Armed Conflict*, 2 *HARV. NAT’L SEC. J.* 31, 53-54 (2011).

<sup>131</sup> *See, e.g.*, *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 139, ¶ 106 (July 9).

<sup>132</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8) [hereinafter “*Nuclear Weapons Advisory Opinion*”].

<sup>133</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>134</sup> *Nuclear Weapons Advisory Opinion*, *supra* note 105, ¶ 25.

<sup>135</sup> *See Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶¶ 216-220 (Dec. 19).

<sup>136</sup> *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶¶ 216-220 (Dec. 19).

Attacks on the civilian population that have resulted in child injuries and fatalities may violate customary IHL and the right to life under IHRL. Under customary IHL, all parties to an armed conflict must comply with the principles of (1) distinction,<sup>137</sup> (2) proportionality,<sup>138</sup> and (3) military necessity.<sup>139</sup>

a) *Distinction*

Under the principle of distinction, parties must distinguish between legitimate military objectives, including combatants, and civilians and only direct their attacks against the former.<sup>140</sup> Legitimate military objectives are “objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”<sup>141</sup> Combatants, or individuals who directly take part in hostilities, are not protected by distinction and thus serve as legitimate targets for military operations.<sup>142</sup>

Conversely, “intentionally directing attacks against the civilian population... or against individual civilians not taking direct part in hostilities” not only violates the customary principle of distinction, but also constitutes a war crime under Article 8(2)(e)(i) of the Rome Statute of the International Criminal Court (“Rome Statute”).<sup>143</sup> Though Yemen is a signatory to the Rome Statute, they have not ratified it and therefore no crimes within its jurisdiction can be helpful in contributing to a widely-recognized principle of customary law.<sup>144</sup> The ICC may also investigate situations referred by the Security Council, though this remains an unlikely scenario as all five permanent members have had some level of involvement in the conflict. In the event that an international criminal tribunal is established for Yemen, the Rome Statute could be an invaluable document in helping define crimes in accordance with IHL and customary law.

The principle of distinction also protects civilian objects, which includes schools, places of worship, hospitals, and more.<sup>145</sup> However, civilian infrastructure may be targeted if used for military purposes.<sup>146</sup> If it is unclear whether a civilian object is used in a way that would render it a legitimate military objective, then, under IHL it must be considered a civilian object and not

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<sup>137</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, June 8, 1977, 1125 U.N.T.S. 609, at art. 13(1)-(2).

<sup>138</sup> See Additional Protocol II, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict, June 8, 1977, 1125 U.N.T.S. 609, at art. 26(3)(b), art. 3(3)(c).

<sup>139</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3, at art. 90.

<sup>140</sup> *Customary IHL – Rule 1. The Principle of Distinction between Civilians and Combatants*, INT’L COMM. RED CROSS, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule1](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1) (last visited Nov. 29, 2021).

<sup>141</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art. 52(1), June 8, 1977, U.N. O.H.C.H.R., Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

<sup>142</sup> *What is International Humanitarian Law?*, ICRC (July 2004), [https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf).

<sup>143</sup> Rome Statute of the International Criminal Court art. 8(2)(e)(i), July 17, 1998, 2187 U.N.T.S. 38544.

<sup>144</sup> U.N. High Comm’r for Human Rights, Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, ¶ 35, U.N. Doc. A/HRC/45/CRP.7 (Sep. 29, 2020).

<sup>145</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

<sup>146</sup> Serge Brammertz et al., *Attacks against Cultural Heritage as a Weapon of War*, 14 J. INT’L CRIM. JUST. 1156, 1160 (2016).

targeted for attack.<sup>147</sup> Civilian children would be protected by the principle of distinction as non-combatants and non-military objectives. For that reason, attacks directed at civilian children would violate the principle of distinction and potentially qualify as war crimes under Article 8(2)(e)(i) of the Rome Statute.

#### *b) Proportionality*

However, even if an attack complies with the principle of distinction, it may violate customary IHL under the principle of proportionality or necessity. Under the principle of proportionality, any use of force must be commensurate with the anticipated military advantage.<sup>148</sup> Both Article 51(5)(b) of Additional Protocol I<sup>149</sup> and Article 8(2)(c) of the Rome Statute have codified this principle. Consistent with this principle, parties to a conflict may not launch attacks likely to cause disproportionate civilian casualties or damage to civilian infrastructure, even if incidental or indirect.<sup>150</sup> Thus, even if an attack is consistent with the principle of distinction, it may still be unlawful if it is expected to cause disproportionate harm to the civilians, including children, as compared to the anticipated military advantage.

#### *c) Military Necessity*

The principle of necessity permits parties to a conflict to use force only to the extent necessary to achieve a legitimate military objective.<sup>151</sup> Such force includes measures “indispensable for securing the complete submission of the enemy as soon as possible.”<sup>152</sup> In other words, the only legitimate military necessity is “to weaken the military capacity of the other parties to the conflict.”<sup>153</sup> In recognition of this principle, under Article 31(1)(c) of the Rome Statute, criminal liability is excused for attacks on “property... essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.”<sup>154</sup> Accordingly, if an attack caused harm to civilians, including children, but the targeted object was a legitimate military target, the attack was proportional to the anticipated military advantage, and the attack was necessary to accomplish a legitimate military objective, then the attack may be lawful. However, if the principle of distinction, proportionality, or military necessity is violated, then the attack would be unlawful and potentially open the perpetrator to liability. Further, if an attack has violated one of these principles and resulted in civilian fatalities, then it likewise may violate the right to life under IHRL.<sup>155</sup>

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<sup>147</sup> ICRC, *Treaties, States Parties and Commentaries, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. The Hague, 29 July 1899., Art. 52(3),

<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C50B4EE486305FF5C12563CD00515E60#:~:text=27.,same%20time%20for%20military%20purposes>, (last visited June 16, 2022).

<sup>148</sup> MICHAEL NEWTON & LARRY MAY, *PROPORTIONALITY IN INTERNATIONAL LAW* 15 (2014).

<sup>149</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) art. 51(5)b, 1125 U.N.T.S. 3.

<sup>150</sup> I. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I) art. 57(2)(a)(ii), 1125 U.N.T.S. 3.

<sup>151</sup> Rome Statute of the International Criminal Court art. 8(2)(b)(iv) (Jul. 17, 1998).

<sup>152</sup> LAURIE R. BLANK & GREGORY P. NOONE, *INTERNATIONAL LAW AND ARMED CONFLICT* 40 (2019).

<sup>153</sup> *Military Necessity*, ICRC, <https://casebook.icrc.org/glossary/military-necessity> (last visited June 16, 2022).

<sup>154</sup> Rome Statute of the International Criminal Court art. 31(1)(c), July 17, 1998, 2187 U.N.T.S. 38544.

<sup>155</sup> *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶¶ 216-220 (Dec. 19).

## 2. Physical Health

Attacks on medical facilities and interference with civilians' access to medical care likely violate both IHRL and IHL protections for physical health services and civilians seeking them.

Numerous IHRL agreements address the protection of and access to healthcare during wartime. Of particular relevance is the Convention on the Rights of the Child—to which Yemen is a party—which requires State parties to “recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health,” and to “strive to ensure that no child is deprived of his or her right of access to such health care services.”<sup>156</sup> Additionally, Yemen has ratified the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), which acknowledges the right of all individuals to the highest attainable standard of mental and physical health.<sup>157</sup> Although these standards may be largely aspirational in nature, efforts by the party with jurisdiction or control over the civilian population to intentionally or recklessly prevent civilians, including children, from accessing physical health providers, like hospitals, medical centers, clinics, and humanitarian aid sources, may violate these IHRL provisions, provided that there is no countervailing IHL justification for such operations.

However, the parties' destruction of health and medical resources and interference with civilian's access to healthcare likely violates IHL. During NIACs, Common Article 3 to the Geneva Conventions requires that parties to a conflict allow all wounded and sick people to be collected and treated.<sup>158</sup> This provision has also been recognized as CIL.<sup>159</sup> The Rome Statute also forbids attacking medical buildings and vehicles and characterizes this prohibition as CIL, signifying that parties to the Yemen conflict may be held accountable for violating this prohibition regardless of their treaty membership.<sup>160</sup> Accordingly, both parties and non-parties to the Geneva Conventions and the Rome Statute may not interfere with the access of sick and wounded civilians' access to or attack medical facilities and treatment centers. Airstrikes on medical centers and hospitals in the early years of the Yemen Civil War,<sup>161</sup> denial of civilians' access to hospitals,<sup>162</sup> shootings of children attempting to access medical care,<sup>163</sup> use of medical centers as shields,<sup>164</sup> prevention of the delivery of medical supplies,<sup>165</sup> and targeting humanitarian aid organizations attempting to deliver aid to civilians,<sup>166</sup> could constitute violations of Common Article 3 to the Geneva Conventions and the Rome Statute's customary protections for civilians in need of medical aid and medical facilities and providers.

For more information on the protection of medical facilities and providers and their connection to the crime of starvation in Yemen, please see Yemen Accountability Project, Starvation: Building the Case for Prosecuting Starvation Crimes in Yemen (2021).

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<sup>156</sup> Convention on the Rights of the Child, art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>157</sup> International Covenant on Economic, Social, and Cultural Rights, art. 12, Dec.19, 1966, 993 U.N.T.S. 171.

<sup>158</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) art. 3, 12 Aug. 1949, 75 U.N.T.S. 287.

<sup>159</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) art. 3, 12 Aug. 1949, 75 U.N.T.S. 287.

<sup>160</sup> Rome Statute of the International Criminal Court, art. 8, July 1, 2002, 2187 U.N.T.S. 90. §2(b)(x).

<sup>161</sup> See, e.g., #YTZ151202; #YTZ20111703.

<sup>162</sup> #YTZ15103001; #YTZ16112101; #YSD17070501.

<sup>163</sup> #YAD15040704.

<sup>164</sup> #YTZ16112102.

<sup>165</sup> #YNA17061902.

<sup>166</sup> #YTZ19110602; #YSD1903271.

### 3. Mental Health

Provided that no rules of IHL justify each relevant operation, efforts by parties to the conflict attacking medical facilities and providers and interfering with civilians' access to health services may also violate IHRL. IHRL appears to be the most relevant body of law concerning mental healthcare, as Common Article 3 to the Geneva Conventions does not refer specifically to mental healthcare services.<sup>167</sup> Only a later article in the Fourth Geneva Convention, inapplicable to NIACs, refers to the need for isolation areas for prisoners with mental diseases.<sup>168</sup> Although this may suggest that mental illness is viewed as falling under the umbrella of medical care, the commentary to the Convention does not appear to further contemplate mental healthcare beyond this. Accordingly, although interference with mental healthcare appears to violate IHRL, it does not appear to implicate specific provisions of IHL.

Within the relevant body of IHRL, the ICESCR acknowledges the right of all individuals to the highest attainable standard of physical *and mental* health.<sup>169</sup> This demonstrates that mental health is recognized as a human right and is enforceable in Yemen, a state party to the Convention. The Convention on the Rights of the Child also incorporates this right. Although it does not specifically refer to mental healthcare, Article 24 of the Convention protects children's right to "the highest attainable standard of health," and "access [to] such health services."<sup>170</sup> The commentary to this Article specifies that it applies to "[t]he normative content of 'the highest attainable standard of health,'" which considers biological conditions of biological preconditions, living conditions, and access to care for "both physical and mental health."<sup>171</sup> Accordingly, injury to not only physical health, but also mental health could give rise to accountability for perpetrators of attacks on medical facilities and interference with medical services.

### 4. Education

Because the right to access an education, crucial to any child's development, is protected under both IHRL and IHL, in both legal regimes, perpetrators may be held accountable for a number of violations in connection to the widespread dispossession of children's access to education in Yemen.

First, as all human rights are interdependent, the right to education often implicates other human rights, such as the right to work.<sup>172</sup> When schools are shut down, children also become increasingly vulnerable to malnutrition, poverty, and exploitation.<sup>173</sup> Thus, under IHRL—codified primarily within the Universal Declaration of Human Rights ("UDHR"),

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<sup>167</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) art. 3, 12 Aug. 1949, 75 U.N.T.S. 287.

<sup>168</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) art. 91, 12 Aug. 1949, 75 U.N.T.S. 287.

<sup>169</sup> International Covenant on Economic, Social, and Cultural Rights, art. 12, Dec. 19, 1966, 993 U.N.T.S. 171.

<sup>170</sup> Convention on the Rights of the Child, art. 24, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>171</sup> Asbjørn Eide, *The Scope of Article 24, 24 in A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 24: THE RIGHT TO HEALTH 9* (Wenche Barth Eide ed., 2006).

<sup>172</sup> British Institute of International and Comparative Law, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook, 2nd Edn.* at 74 (2019)

<sup>173</sup> United Nations Children's Fund [UNICEF], *Education Disrupted: Impact of the Conflict on Children's Education in Yemen* at 13 (July 2021), <https://www.unicef.org/yemen/reports/education-disrupted>.

ICESCR, and the International Covenant on Civil and Political Rights (“ICCPR”)—depriving a child of an education is prohibited.<sup>174</sup>

The UDHR provides for the universal right to education in Article 26, which states that “everyone has the right to education . . . education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”<sup>175</sup> This rule is also incorporated in the ICESCR, which mandates that state parties “recognize the right of everyone to education.”<sup>176</sup> The ICCPR further provides that, in order to achieve this goal, “primary education shall be compulsory and available free to all,” and secondary education “shall be made generally available and accessible to all by appropriate means.”<sup>177</sup> Further, the Convention on the Rights of the Child recognizes “the right of the child to education.”<sup>178</sup> The Convention provides additional measures, including a requirement that state parties encourage regular school attendance.<sup>179</sup> The Committee on the Rights of the Child (an oversight body of experts monitoring the Convention’s implementation) has indicated that, in addition to basic access, a child’s education must be of “sufficient quality” and, as such, should be “child-centered, child-friendly, and empowering.”<sup>180</sup> As Yemen is a state party to the ICESCR and Convention on the Rights of the Child, these provisions are binding on the Yemeni Government.<sup>181</sup>

Since 2015, the conflict in Yemen has stripped more than two million Yemeni children of their education<sup>182</sup> and left 8.1 million more in need of emergency educational support, a statistic which reflects a more than seven-fold increase as compared to pre-conflict numbers.<sup>183</sup> In light of these facts, UNICEF has expressed concern that, absent intervention and support, displaced students may never return to school.<sup>184</sup> This concern is bolstered by the fact that armed groups have occupied educational facilities in order to spread propaganda amongst students and recruit child soldiers, thereby inflicting severe damage on the ability of children in Yemen to safely access an education.<sup>185</sup>

Since, under the relevant IHRL instruments, the Yemeni government is obligated to preserve children’s right to an education and has failed to do so, the parties responsible may face liability. However, although a State’s IHRL obligation to ensure the right to education persists

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<sup>174</sup> British Institute of International and Comparative Law, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*, 2nd Edn. at 74 (2019).

<sup>175</sup> Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess. art. 26, U.N. Doc. A/810 (1948).

<sup>176</sup> International Covenant on Economic, Social and Cultural Rights, art. 13(1), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>177</sup> International Covenant on Economic, Social and Cultural Rights, art. 13(2), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>178</sup> Convention on the Rights of the Child, art. 28(1), September 2, 1990, 1577 U.N.T.S. 3.

<sup>179</sup> Convention on the Rights of the Child, art. 28-29, September 2, 1990, 1577 U.N.T.S. 3.

<sup>180</sup> Committee on the Rights of the Child, General Comment No. 1: The Aims of Education (article 29), CRC/GC/2001/1, ¶ 2 (2001).

<sup>181</sup> Ratification Status for Yemen, U.N. Human Rights Bodies, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en) (last visited April 7, 2004).

<sup>182</sup> United Nations Children’s Fund [UNICEF], *Yemen Humanitarian SitRep March 2022*, at 5 (Mar. 2022) <https://www.unicef.org/media/121926/file/Yemen-Humanitarian-SitRep-March-2022.pdf>.

<sup>183</sup> United Nations Children’s Fund [UNICEF], *Education Disrupted: Impact of the Conflict on Children’s Education in Yemen* at 6 (July 2021) <https://www.unicef.org/yemen/reports/education-disrupted>.

<sup>184</sup> United Nations Children’s Fund [UNICEF], *Education Disrupted: Impact of the Conflict on Children’s Education in Yemen* at 6 (July 2021) <https://www.unicef.org/yemen/reports/education-disrupted>.

<sup>185</sup> Euro-Mediterranean Human Rights Monitor, *Militarized Childhood: A Report on the Houthis’ Recruitment of Yemeni Children During War-February 2021*, at 7 (Feb. 15, 2021).

during times of armed conflict, the State may be unable to fulfill its human rights obligations due to its involvement in hostilities.<sup>186</sup> During armed conflict, it is common for schools and universities to be overtaken for use in military operations—converting them into barracks, operations bases, or detention facilities—often while school is still in session.<sup>187</sup> Not only do these practices disrupt access to education, but they also turn schools into military targets, legitimizing potential attacks against educational buildings. However, under IHL, the *lex specialis* governing the Yemen conflict, students, education staff, and educational facilities are still entitled to protection.<sup>188</sup>

Article 4(3)(a) of Additional Protocol II states that “children shall be provided with the care and aid they require,” and in particular, that “they shall receive an education, including religious and moral education, in keeping with the wishes of their parents” or guardians.<sup>189</sup> By protecting parents’ wishes with regards to their children’s education, this provision protects children from exposure to unwanted propaganda in educational contexts.<sup>190</sup> As previously indicated, millions of Yemeni children are either out of school entirely or have had their educational access destabilized through violence, aid disruption, and the recruitment of child soldiers.<sup>191</sup> These children have not received the care and aid they are guaranteed under Additional Protocol II.

In an attempt to solidify an international commitment to protecting schools from armed conflict, Norway and Argentina spearheaded the development of the Safe Schools Declaration in 2015. The document sets out a series of commitments related to safeguarding access to education which state parties agree to follow during armed conflict.<sup>192</sup> As of 2023, 117 States have endorsed the declaration, including Yemen.<sup>193</sup> The Global Coalition to Protect Education Under Attack, the declaration’s administrative body, has released non-legally-binding guidelines for implementation of the general principles.<sup>194</sup> The first guideline states “schools and universities should not be used by the fighting forces of parties to armed conflict in any way in support of the military effort.”<sup>195</sup> In Yemen, the Houthis have reportedly used the domestic education system to

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<sup>186</sup> British Institute of International and Comparative Law, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*, 2nd Edn. at 110 (2019).

<sup>187</sup> Ashley Ferrelli, *Military Use of Educational Facilities During Armed Conflict: An Evaluation of the Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict as an Effective Solution*, 44 GA. J. INT’L & COMP. L. 339, 344-345 (2016)

<sup>188</sup> British Institute of International and Comparative Law, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*, 2nd Edn. at 110-11 (2019).

<sup>189</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 4(3)(a), June 8, 1977, 1125 U.N.T.S. 609.

<sup>190</sup> British Institute of International and Comparative Law, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook*, 2nd Edn. at 117 (2019).

<sup>191</sup> United Nations Children’s Fund [UNICEF], *Yemen Humanitarian SitRep March 2022*, at 5-6 (Mar. 2022) <https://www.unicef.org/media/121926/file/Yemen-Humanitarian-SitRep-March-2022.pdf>.

<sup>192</sup> GCPEA, *The Safe Schools Declaration*, <https://ssd.protectingeducation.org/> (last visited on April 7, 2023)

<sup>193</sup> GCPEA, *Safe Schools Declaration Endorsements*, <https://ssd.protectingeducation.org/endorsement/> (last visited on April 7, 2023).

<sup>194</sup> GCPEA, *Commentary on the “Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, <https://protectingeducation.org/publication/guidelines-for-protecting-schools-and-universities-from-military-use-during-armed-conflict/>.

<sup>195</sup> GCPEA, *Commentary on the “Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*, <https://protectingeducation.org/publication/guidelines-for-protecting-schools-and-universities-from-military-use-during-armed-conflict/>.

recruit child soldiers and indoctrinate students with extremist ideology; this methodology of recruitment and indoctrination subsidizes their military and political goals by providing them access to soldiers ready to carry out their mission.<sup>196</sup> For instance, the Houthi movement was found to have propagated anti-Semitic rhetoric into elementary education curriculum and books.<sup>197</sup> Thus, the Safe Schools Declaration has been violated in Yemen.

Further, while the Rome Statute does not explicitly protect a child's right to education, it does protect educational buildings, with the exception of those recognized as military objectives, in both IACs and NIACs.<sup>198</sup> The destruction of those buildings is a war crime.<sup>199</sup> The Rome Statute also offers protections to children that indirectly encourage their education. For example, "conscripting or enlisting children under the age of fifteen" is considered a serious violation of the Rome Statute.<sup>200</sup>

At least one out of every four educational facilities in Yemen has been destroyed or damaged, or is no longer used for educational purposes.<sup>201</sup> More than 20 percent of all primary and secondary schools have closed.<sup>202</sup> Additionally, the U.S. State Department reported that approximately 170,000 teachers in Houthi-controlled provinces have not received regular pay since 2016.<sup>203</sup> In sum, the disruption of the Yemeni education system has resulted in the violation of the protections guaranteeing children a right to education under both IHRL and IHL.

## 5. Child Marriage

The practice of forced child marriage during the Yemen Civil War directly violates IHRL and implicitly violates relevant IHL provisions. As an initial matter, child marriage is defined as "a formal marriage or informal union before the age of 18."<sup>204</sup> Forced marriage involves "a marriage in which one and/or both parties have not personally expressed their full and free consent to the union."<sup>205</sup> Child marriage is a form of forced marriage, as one or both of the parties, which can include the child's family, has not expressed their full and free consent.<sup>206</sup> In 2018, it was reported that after years of a decline in child marriage in Yemen, that trend has reversed and now 1 in 3 married women in Yemen between the ages of 20-24 were married as

<sup>196</sup> U.S Dept. of State, *2022 Country Reports on Human Rights Practices: Yemen*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/yemen/> (2022).

<sup>197</sup> U.S Dept. of State, *2022 Country Reports on Human Rights Practices: Yemen*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/yemen/> (2022).

<sup>198</sup> Rome Statute of the International Criminal Court, art. 8(2)(b)(ix), 8(2)(e)(iv), July 17, 1998, 2187 U.N.T.S. 38544.

<sup>199</sup> Rome Statute of the International Criminal Court, art. 8(2)(b)(ix), July 17, 1998, 2187 U.N.T.S. 38544.

<sup>200</sup> Rome Statute of the International Criminal Court, art. 8(2)(b)(xxvi), July 17, 1998, 2187 U.N.T.S. 38544.

<sup>201</sup> International Committee of the Red Cross (ICRC), *Yemen: Conflict Leaves Millions of Children without Proper Education* (Oct. 13, 2022), <https://www.icrc.org/en/document/yemen-conflict-leaves-millions-children-without-proper-education>.

<sup>202</sup> International Committee of the Red Cross (ICRC), *Yemen: Conflict Leaves Millions of Children without Proper Education* (Oct. 13, 2022), <https://www.icrc.org/en/document/yemen-conflict-leaves-millions-children-without-proper-education>.

<sup>203</sup> U.S Dept. of State, *2022 Country Reports on Human Rights Practices: Yemen*, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/yemen/> (2022).

<sup>204</sup> United Nations Children's Fund [UNICEF], *Child marriage* (October 2022), <https://data.unicef.org/topic/gender/child-marriage/>.

<sup>205</sup> United Nations Human Rights Office of the High Commissioner [OHCHR], *Child and forced marriage, including in humanitarian settings* (April 2019), <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>.

<sup>206</sup> *Id.*

children.<sup>207</sup> Before the Conflict, 50% of girls were married before the age of 18; this number increased to two-thirds by 2017.<sup>208</sup> Child marriages have risen in Yemen due to increased conflict, displacement, poverty, food insecurity, and lack of health services created by the war.<sup>209</sup>

Under IHRL, forced marriage is explicitly prohibited by both the ICCPR and ICESCR,<sup>210</sup> and child marriage has been recognized in several other IHRL instruments as a violation of human rights. For instance, the UDHR recognizes the right to “free and full consent” to marriage.<sup>211</sup> The Convention on the Elimination of All Forms of Discrimination against Women also prohibits the betrothal and marriage of children.<sup>212</sup> Although child marriage is not addressed directly in the Convention on the Rights of the Child, child marriage is linked to other rights, including freedom of expression and protection against all forms of abuse and from harmful traditional practices, and is often addressed by the Committee on the Rights of the Child.<sup>213</sup> Lastly, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages requires State Parties to specify a minimum age for marriage.<sup>214</sup>

The Yemeni government is likely in violation of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages because it currently has no set minimum age for marriage, with its only protection arising under Article 15 of the Personal Status Law that prohibits sexual intercourse until girls reach puberty.<sup>215</sup> Accordingly, Yemen is likely in violation of the Consent to Marriage Convention by not setting a minimum age for marriage.<sup>216</sup> Additionally, because children cannot consent to marriage, Yemen’s failure to prohibit such practice violates the ICCPR and ICESCR, which require free and full consent of the parties to marry.<sup>217</sup>

The practice of forced child marriage also implicitly violates IHL. Instances of child and forced marriage increase in humanitarian settings<sup>218</sup> and, accordingly, are addressed by various IHL provisions. For instance, Common Article 3 to the Geneva Conventions implicitly prohibits sexual violence by requiring humane treatment of all individuals and prohibiting violence to life and person, including through mutilation, cruel treatment, torture and outrages upon personal

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<sup>207</sup> United Nations Children’s Fund [UNICEF], *A Profile of Child Marriage in the Middle East and North Africa* (July 2018) <https://www.unicef.org/mena/media/2641/file/MENA-ChildMarriageReport.pdf>.

<sup>208</sup> Sarah Ferguson, *After Years of Civil War, Child Marriage is on the Rise in Yemen* (Dec. 13, 2017), <https://www.unicefusa.org/stories/after-years-civil-war-child-marriage-rise-yemen/33762>.

<sup>209</sup> *Id.*

<sup>210</sup> International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, art. 10, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>211</sup> Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess. art. 16, U.N. Doc. A/810 (1948).

<sup>212</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(2), Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>213</sup> United Nations Children’s Fund [UNICEF], *A Profile of Child Marriage in the Middle East and North Africa* (July 2018) <https://www.unicef.org/mena/media/2641/file/MENA-ChildMarriageReport.pdf>.

<sup>214</sup> Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, art. 2, Nov. 7, 1962, 521 U.N.T.S. 231.

<sup>215</sup> Elizabeth Verner, *Child Marriage in Yemen: A Violation of International Law*, 43 GA. J. INT’L & COMP. L. 759, 763 (2015).

<sup>216</sup> Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, art. 2, Nov. 7, 1962, 521 U.N.T.S. 231.

<sup>217</sup> International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, art. 10, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>218</sup> *Id.*

dignity.<sup>219</sup> Further, the Rome Statute has labeled “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence” as a war crime in both IACs and NIACs.<sup>220</sup> This is consistent with the customary prohibition against sexual violence in both IACs and NIACs.<sup>221</sup>

With respect to forced marriage, specifically, the ICC recently affirmed its first conviction for the “crime of forced marriage and other inhumane acts” as a crime against humanity.<sup>222</sup> The ICC’s current case against *Al Hassan* also includes the charge of forced marriage—with an emphasis on the victimization of young girls—as a crime against humanity.<sup>223</sup> Similarly, the Special Court for Sierra Leone has held that keeping women and girls as “bush wives” is a form of forced marriage that rises to the level of a crime against humanity under “other inhumane acts.”<sup>224</sup> The International Criminal Tribunal for the former Yugoslavia (“ICTY”) also included forced marriage within its definition of sexual violence.<sup>225</sup> Additionally, the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) found forced marriage to be a crime against humanity and, especially given that State-enforced marriages create a coercive environment where genuine consent is impossible.<sup>226</sup> This is consistent with the characterization of sexual violence as “any act of a sexual nature which is committed on a person under circumstances which are coercive” by the International Criminal Tribunal for Rwanda (“ICTR”).<sup>227</sup> If the ICTY’s position that forced marriages, including child marriages, are a form of sexual violence is adopted, it could establish a foundation to prosecute child marriage as a war crime under the Rome Statute.<sup>228</sup>

One potential challenge to such prosecution may be that in many of the aforementioned cases, an element of violence or coercion in the forced marriage—whether through kidnapping, confinement, or State enforcement—was often contemplated. How the analysis may change when it is a girl’s family giving her into marriage as an economic or safety consideration is less clear, though the *Al Hassan* case raises similar questions that the ICC will have the opportunity to clarify. Since the marrying of daughters for a bridal dowry is often arranged by the parents or other family guardians, it would most likely be considered consensual without additional evidence of duress or threats against the family. Here, IHL would not apply. However, abductions, confinement, or state-enforced marriage lack the consent of the girl and her family, and therefore violate IHL and IHRL. Thus, consistent with the relevant IHRL instruments and

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<sup>219</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3(1)(c), Aug. 12, 1949, 75 U.N.T.S. 287.

<sup>220</sup> Rome Statute of the International Criminal Court, art. 8(2)(b)(xxii) and art. 8(2)(e)(vi), July 1998

<sup>221</sup> International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules, Rule 93, 323 available at: <https://www.refworld.org/docid/5305e3de4.html> [last accessed 3 April 2023].

<sup>222</sup> Prosecutor v. Ongwen, ICC-02/04-01/15 A, Public Redacted Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, ¶ 1040 (Dec. 15, 2022).

<sup>223</sup> OTP, *Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of the trial in the case against Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, 14 July 2020, available online at [https://www.icc-cpi.int/Pages/item.aspx?name/4\\_200714-otp-statement-al-hassan](https://www.icc-cpi.int/Pages/item.aspx?name/4_200714-otp-statement-al-hassan) (visited Mar. 30, 2023).

<sup>224</sup> Prosecutor v. Sesay, Case No. SCSL-04-15-A, Judgment, ¶ 726, 849 (Spec. Ct. Sierra Leone, App. Chamber, Oct. 26, 2009).

<sup>225</sup> Prosecutor v. Kvočka, Case No. IT-98-30/1-T, Trial Chamber Judgement, ¶ 180, fn 343 (Int’l Crim. Trib. For Former Yugoslavia Nov. 2, 2001).

<sup>226</sup> Prosecutor v. Chea, Case No. 002/19-09-2007/ECCC/TC, Judgement, ¶ 3688, 3694 (Nov. 16, 2018).

<sup>227</sup> The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4, Judgment, ¶ 688 (Sept. 2, 1998).

<sup>228</sup> Rome Statute of the International Criminal Court, art. 8(2)(e)(vi), July 1998.

IHL provisions and case law, the forced child marriage in Yemen always violated IHRL and may, depending on the case-specific circumstances, also violate IHL.

## 6. Child Soldiers

The use of child soldiers violates both IHRL and IHL. Under IHRL, Article 38 of the Convention on the Rights of the Child addresses the use of child soldiers.<sup>229</sup> It requires that (1) States Parties undertake to respect and to ensure respect for rules of IHL applicable to children in armed conflict situations, (2) ensure that children under the age of 15 do not take a direct part in hostilities, (3) refrain from recruiting children under the age of 15 into their armed forces and prioritize recruiting older individuals in the 15-18 age range, and (4) take all feasible measures to ensure the protection of children affected by armed conflict.<sup>230</sup> Additionally, the International Committee of the Red Cross has stated that the prohibition against recruiting children to join a party's armed forces is customary international law.<sup>231</sup>

The Houthis, Saudi-led Coalition, and Yemeni government have been identified as using child soldiers. The most frequent offender of this crime are the Houthi rebels.<sup>232</sup> After the Houthis seized power in Yemen at the beginning of the conflict, the group immediately began recruiting and exploiting child soldiers.<sup>233</sup> The Associated Press reported that the Houthis had recruited approximately 18,000 children by the end of 2018, the Human Rights Ministry of the Yemeni government estimated that the Houthis had recruited about 30,000 soldiers since 2014; and the Euro-Med Human Rights Monitor estimated that the Houthis had recruited around 10,333 Yemeni children since 2014.<sup>234</sup>

Recruitment of child soldiers has severely damaged and deprived children in Yemen of their right of access to education. The Houthis' activities have led to recruitment of children from over 150 schools in various Yemeni governorates and have deliberately used these schools to spread propaganda, incite violence, and indoctrinate students with the group's extremist ideologies.<sup>235</sup> The Houthis have also used school facilities for military purposes and have recruited children to propagate their classmates into the group's ideology.<sup>236</sup>

While the Houthis have conducted the majority of child soldier recruiting in Yemen, the Yemeni government and Saudi-led Coalition have also participated in child recruitment. Despite the Yemeni government signing an agreement with the United Nations in 2018 that includes a pathway to reduce the recruitment of child soldiers, both the government and the Saudi-led Coalition have taken advantage of families' desperate need for money and resorted to the use of child soldiers.<sup>237</sup> Thus, the Houthis, Saudi-led Coalition, and Yemeni government are in violation of IHRL for their child soldier recruitment practices during the Yemen Civil War.

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<sup>229</sup> Convention on the Rights of the Child, Article 38, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>230</sup> Convention on the Rights of the Child, Article 38, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>231</sup> International Committee of the Red Cross, Rule 136, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule136>.

<sup>232</sup> See 2015-2020 YAP Matrices.

<sup>233</sup> Euro-Mediterranean Human Rights Monitor, *Militarized Childhood: A Report on the Houthis' Recruitment of Yemeni Children During War- February 2021*, at 5 (Feb. 15, 2021).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 7.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

IHL, specifically the Rome Statute, also addresses the use of child soldiers. Article 8 of the Rome Statute establishes that the ICC shall have jurisdiction over war crimes, particularly “when committed as part of a plan or policy or as part of a large-scale commission of such crimes.”<sup>238</sup> Section 8(2)(e)(vii) defines “[c]onscripting or enlisting children under the age of fifteen years into the armed forces or groups or using them to actively participate in hostilities” as a crime applicable in NIACs.<sup>239</sup> “Enlistment” means to “enroll on the list of a military body,” whereas “conscription” refers to compulsory enlistment.<sup>240</sup> Whether conduct qualifies as “actively participat[ing] in hostilities” is considered on a case-by-case basis but can include tasks, such as cooking, serving as a porter, bodyguarding or spying.<sup>241</sup>

The ICC has applied this provision in numerous cases. First, on March 14, 2012, the ICC found Thomas Lubanga Dyilo, the former President of the Union des Patriotes Congolais/Forces Patriotiques pour la Libération du Congo (“UPC/FPLC”) guilty of violating Article 8(2)(e)(vii) of the Rome Statute and recruiting children under the age of 15 to serve as soldiers for the UPC/FPLC in an armed conflict.<sup>242</sup> The holding was supported by witness testimony and video evidence that the UPC/FPLC conscripted and deployed child soldiers.<sup>243</sup> Further, Dyilo, as president of UPC/FPLC, was involved in planning military operations and was closely involved in decisions involving the recruitment of child soldiers and used children as his bodyguards, as did other members of his staff.<sup>244</sup>

Second, on March 26, 2013, the ICC sentenced Bosco Ntaganda, the former Deputy Chief of Staff and Commander of Operations of the FPLC for enlisting and using child soldiers, among other crimes.<sup>245</sup> Similar to Dyilo, Ntaganda occupied an important position in the UPC/FPLC.<sup>246</sup> Third, on March 7, 2014 the ICC found Germain Katanga, the former commander of the Force de Résistance Patriotique d’Ituri (“FRPI”) guilty of a number of war crimes, but was acquitted of conscripting child soldiers.<sup>247</sup> Although the Court found that children were a part of the Nigiti militia and part of the force that attacked the village of Bogoro, this was not sufficient to support a finding beyond a reasonable doubt.<sup>248</sup>

Most recently, on February 4, 2021, the ICC found Dominic Ongwen, the former Brigade Commander of the Sinia Brigade of the Lord’s Resistance Army (“LRA”) guilty on 61 counts, including the enlistment and use of child soldiers.<sup>249</sup> Worth noting is that the LRA was located in Uganda, which signed and ratified the Rome Statute, allowing 4,095 victims to participate in the proceedings against Ongwen.<sup>250</sup>

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<sup>238</sup> Rome Statute of the International Criminal Court, art. 8, July 1998.

<sup>239</sup> Rome Statute of the International Criminal Court, art. 8(2)(e)(vii), July 1998.

<sup>240</sup> INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, POLICY ON CHILDREN (NOV. 2016), [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/20161115\\_OTP\\_ICC\\_Policy-on-Children\\_Eng.PDF](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/20161115_OTP_ICC_Policy-on-Children_Eng.PDF).

<sup>241</sup> *Id.* at 21.

<sup>242</sup> International Criminal Court, Lubanga Case: The Prosecutor v. Thomas Lubanga Dyilo (2020), <https://www.icc-cpi.int/drc/lubanga>.

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> International Criminal Court, Ntaganda Case: The Prosecutor v. Bosco Ntaganda Case Information Sheet, (July 2021), <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/NtagandaEng.pdf>.

<sup>246</sup> *Id.*

<sup>247</sup> International Criminal Court, Katanga Case: The Prosecutor v. Germain Katanga, (June 2017), <https://www.icc-cpi.int/drc/katanga>.

<sup>248</sup> *Id.*

<sup>249</sup> International Criminal Court, Ongwen Case: The Prosecutor v. Dominic Ongwen Case Information Sheet, (June 2022), [https://www.icc-cpi.int/sites/default/files/2022-06/OngwenEng\\_0.pdf](https://www.icc-cpi.int/sites/default/files/2022-06/OngwenEng_0.pdf).

<sup>250</sup> *Id.*

In the context of the Yemen Civil War, the Houthis, Saudi-led Coalition, and Yemeni government are likely in violation of Article 8(2)(e)(vii) of the Rome Statute. According to estimates, the Houthis have conscripted and recruited anywhere between 10,333 and 30,000 child soldiers since the beginning of the conflict in 2014 and the end of 2018.<sup>251</sup> Further, unlike Katanga and the FRPI, it is well documented that children have actively participated in the conflict and that the Houthis have actively recruited them.<sup>252</sup> The massive scale of this recruitment, similar to Ongwen and the LRA, suggests that the Houthis are in violation of the prohibition against using child soldiers. While the Houthis have committed the majority of the child recruitment, the Saudi-led Coalition's and Yemeni government's engagement in this practice likely designates them as similarly liable.

#### **IV. ACCOUNTABILITY MECHANISMS**

##### **A. IHL Mechanisms**

As pursuing accountability for IHL violations involving crimes against children present many of the same concerns as articulated in YAP's previous white papers, we refer those interested in such accountability mechanisms to YAP's previous publications.<sup>253</sup>

##### **A. IHRL Mechanisms**

###### **1. International Courts**

The path to addressing IHRL violations in Yemen faces many of the same challenges as addressing IHL violations. The issue of jurisdiction, paired with a lack of political will from the international community, creates significant barriers to those seeking justice for these violations. Further, parties to the conflict have not fully engaged with IHRL treaties, leaving more gaps in accountability.

As with IHL violations, accountability recommendations typically focus on the efforts to grant the ICC jurisdiction over the situation. In their report, the Group of Eminent Experts called upon the UNSC to refer the case to the ICC to investigate the HR violations occurring in Yemen.<sup>254</sup> The report also endorsed the creation of an international–Yemeni hybrid tribunal or a UN-created International, Impartial, and Investigative Mechanism (“IIIM), similar to ones

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<sup>251</sup> Euro-Mediterranean Human Rights Monitor, *Militarized Childhood: A Report on the Houthis' Recruitment of Yemeni Children During War- February 2021*, at 5 (Feb. 15, 2021).

<sup>252</sup> *Id.*

<sup>253</sup> See YEMEN ACCOUNTABILITY PROJECT, AIDING & ABETTING: HOLDING STATES, CORPORATIONS, AND INDIVIDUALS ACCOUNTABLE FOR WAR CRIMES IN YEMEN 37-53 (2020), <https://case.edu/law/sites/case.edu.law/files/2020-10/FINAL%20YAP%20AIDING%20ABETTING%20WHITE%20PAPER%20%20%282%29.pdf>; YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN 33-37 (2021), <https://case.edu/law/sites/case.edu.law/files/2021-04/Starvation%20White%20Paper%20Final%20Draft%20%282%29.pdf>; CULTURAL PROPERTY: BUILDING THE CASE FOR PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN YEMEN 31-40 (2023), <https://case.edu/law/sites/case.edu.law/files/2023-02/YAP%20Cultural%20Property%20White%20Paper%20%28Final%29.pdf>.

<sup>254</sup> Int'l & Reg'l Experts on Yemen, U.N. Doc. A/HRC/45/6, ¶ 99 (2020), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

created in response to the conflicts in Syria and Myanmar.<sup>255</sup> However, previous investigative mechanisms have been limited to evidence collection, analysis, and preservation, and do not create a basis for prosecution.<sup>256</sup> Due to political deadlocks, the UNSC has been unwilling to effectively address the conflict in Yemen.<sup>257</sup> Further, in 2021, the UN Human Rights Council rejected the resolution to renew the mandate of the Group of Eminent Experts on Yemen, creating another major setback to seeking accountability for HR violations.<sup>258</sup>

Within the international judicial system, one possible avenue for accountability may be through the International Court of Justice (“ICJ”). As Yemen and the Saudi-led Coalition’s members have not accepted the ICJ’s compulsory jurisdiction and are unlikely to consent to the ICJ’s jurisdiction on an ad hoc basis, the pathway to jurisdiction would need to stem from a treaty’s compromissory clause.<sup>259</sup> Yemen is a party to a number of IHRL treaties, including the Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Elimination of All Forms of Racial Discrimination; Covenant on Civil and Political Rights; Covenant on Economic, Social, and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child, as well as its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography; and Convention on the Rights of Persons with Disabilities and its Optional Protocol.<sup>260</sup>

A recent case filed by the Gambia against Myanmar for violations of the Genocide Convention may present a blueprint for possible avenues for Yemen at the ICJ. Article IX of the Genocide Convention grants the ICJ jurisdiction over disputes “relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III.”<sup>261</sup> The Gambia contends that Myanmar’s actions against the Rohingya amount to genocide and gives parties standing to bring them before the ICJ.<sup>262</sup> While this does represent a possible avenue to address HR violations, the case in Yemen is not fully analogous. Yemen has submitted reservations to

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<sup>255</sup> Int’l & Reg’l Experts on Yemen, U.N. Doc. A/HRC/45/6, ¶ 99 (2020),

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

<sup>256</sup> Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, U.N. Doc. A/HRC/RES/39/2 (Sept. 27, 2018)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/293/69/PDF/G1829369.pdf?OpenElement>; Human Rights Council, *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, U.N. Doc. A/RES/71/248 (Dec. 21, 2016)

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/462/01/PDF/N1646201.pdf?OpenElement>.

<sup>257</sup> Laura Graham, *Pathways to Accountability for Starvation Crimes in Yemen*, 53 Case W. Res. J. INT’L L. 401, 434 (2021).

<sup>258</sup> United Nations Human Rights Office of the High Commissioner [OHCHR], *Statement by Group of Experts on Yemen on HRC rejection of resolution to renew their mandate* (Oct. 8, 2019)

<https://www.ohchr.org/en/press-releases/2021/10/statement-group-experts-yemen-hrc-rejection-resolution-renew-the-ir-mandate?LangID=E&NewsID=27636>.

<sup>259</sup> Declarations Recognizing the Jurisdiction of the Court as Compulsory, INT’L CT. OF JUST., <https://www.icj-cij.org/en/declarations> (last visited Apr. 21, 2023).

<sup>260</sup> Status of Ratification, UN OHCHR, <https://indicators.ohchr.org/> (last visited Apr. 20, 2023).

<sup>261</sup> Convention on the Prevention and Punishment of the Crime of Genocide, art.9, Dec. 9, 1948, 78 U.N.T.S. 277.

<sup>262</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Provisional Measures, 2020, I.C.J. ¶¶ 1 2 (Jan. 23).

many IHRL treaties, including the Genocide Convention, rejecting the ICJ's jurisdiction.<sup>263</sup> Additionally, there is no obvious treaty which could provide a basis for ICJ jurisdiction, not only in light of Yemen's reservations, but also considering the IHRL treaties that Coalition members are party to and their respective reservations. For instance, Saudi Arabia and the United Arab Emirates ("UAE") are not parties to the ICCPR nor the ICESCR.<sup>264</sup> While Yemen, Saudi Arabia, and the UAE are parties to the Torture Convention, both Saudi Arabia and the UAE have submitted reservations rejecting ICJ jurisdiction under Article 30.<sup>265</sup> All three are also parties to the Convention on the Rights of the Child, but there is no enforcement provision within that treaty giving the ICJ jurisdiction to adjudicate disputes concerning violations.<sup>266</sup>

The ICJ as an accountability mechanism for Yemen is also problematic because it would not provide a basis for individual criminal responsibility, as the ICJ adjudicates disputes between States.<sup>267</sup> Accordingly, an additional mechanism would need to be pursued to bridge this accountability gap.

Aside from the ICJ, certain IHRL treaties provide for an individual complaints procedure. Yemen has accepted the individual complaint provision for the Torture Convention, giving the UN Committee on Torture the ability to inquire into credible reports of systemic torture.<sup>268</sup> While the Convention on the Rights of the Child also contains individual complaint procedures, Yemen has failed to accept this provision, so that option would not be available.<sup>269</sup>

Regional human rights mechanisms provide another potential avenue to pursue accountability for IHRL violations. For instance, the Arab Human Rights Committee oversees the implementation of the Arab Charter on Human Rights, which Yemen, Saudi Arabia, and UAE are parties to.<sup>270</sup> The Charter prohibits, among other things, the arbitrary deprivation of life, torture, the exploitation of children in armed conflict, and requires parties to "take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity..."<sup>271</sup> While this Charter does provide a basis for identifying HR violations in Yemen, it does not provide for enforcement or adjudication mechanisms to address violations or disputes. The Charter only obliges parties to submit reports to the Committee and allows the Committee to discuss and offer

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<sup>263</sup> Status of Ratification, UN OHCHR, <https://indicators.ohchr.org/> (last visited Apr. 20, 2023); Convention on the Prevention and Punishment of the Crime of Genocide, UN Treaty Collection Depository, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en#EndDec) (last visited Apr. 21, 2023).

<sup>264</sup> Status of Ratification, UN OHCHR, <https://indicators.ohchr.org/> (last visited Apr. 20, 2023).

<sup>265</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Treaty Collection Depository, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en#EndDec) (last visited Apr. 21, 2023).

<sup>266</sup> Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>267</sup> Statute of the International Court of Justice, art. 36(2)(a) Oct. 24, 1945, U.S.T. 993, 33 U.N.T.S. 993.

<sup>268</sup> Louisa Ashley, *Human Rights Violations in Yemen and the Prospects for Justice*, in *Human Rights in War* 383-405, 386 (Damien Rogers. ed., 2022); Amulya Vadapalli, *Justice Without Power: Yemen and The Global Legal System*, 121 MICH. L. REV. 811, 825 (2023).

<sup>269</sup> Louisa Ashley, *Human Rights Violations in Yemen and the Prospects for Justice*, in *Human Rights in War* 383-405, 386 (Damien Rogers. ed., 2022).

<sup>270</sup> Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008.

<sup>271</sup> Arab Charter on Human Rights, art. 5, 8, 10, 33(3), May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008.

recommendations.<sup>272</sup> While other regional human rights courts exist, their jurisdiction is limited to alleged violations committed by state parties.<sup>273</sup>

## 2. Yemeni Domestic Courts

Complementarity—the principle that the ICC strives to work alongside domestic legal systems, providing service where there are domestic legal gaps—should be considered when addressing accountability in Yemen as a potential standard of conduct between international and domestic legal systems.<sup>274</sup> Yemen’s governmental structures and judicial system have been substantially destabilized during the years of civil war. In response to international pressure and UN Resolutions, the Yemeni National Commission to Investigate Alleged Violations to Human Rights was created in 2016 to monitor and investigate human rights violations in Yemen.<sup>275</sup> As of March 2023, the Commission has documented more than 23,000 human rights violations, referring over 2,000 cases to Yemen’s Public Prosecutor.<sup>276</sup> However, there has yet to be a single verdict for any of these cases.<sup>277</sup> Further, the Group of Eminent Experts noted in their 2020 report that the Yemeni judicial system was incapable of prosecuting crimes consistent with international human rights law prior to the conflict and years of war have exacerbated “issues with respect to, inter alia, corruption, inadequate protection of fair trial rights, discrimination against women and attacks and serious threats to judicial actors.”<sup>278</sup> As there has been little showing of progress with this respect in the country, it is likely that the Yemeni domestic courts will be unable to adequately address alleged HR violations.

## 3. Foreign Domestic Courts

Another potential option for prosecuting IHRL violations could be through foreign domestic courts. It is unlikely that Coalition members will prosecute violations related to Yemen and, even if they did, it is not likely that they would do so in accordance with international legal standards.<sup>279</sup> Yet, another avenue may be pursued through universal jurisdiction, as many

<sup>272</sup> Arab Charter on Human Rights, art. 48, May 22, 2004, reprinted in 12 Int’l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008.

<sup>273</sup> *A Rough Guide to the Regional Human Rights Systems*, UNIVERSAL RIGHTS GROUP, <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/> (last visited Apr. 20, 2023).

<sup>274</sup> ICC, Informal Expert Paper, *The principle of complementarity in practice*, 3 (2003), <https://www.iccpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf> (“The principle of complementarity governs the exercise of the Court’s jurisdiction [...] The Statute recognizes that States have the first responsibility and right to prosecute international crimes. The ICC may only exercise jurisdiction where national legal systems fail to do so, including where they purport to act but in reality are unwilling or unable to genuinely carry out proceedings.”).

<sup>275</sup> About Us, NATIONAL COMMISSION TO INVESTIGATE ALLEGED VIOLATIONS TO HUMAN RIGHTS [NCIAVHR], [https://www.nciye.org/en/?page\\_id=105](https://www.nciye.org/en/?page_id=105) (last visited Apr. 20, 2023).

<sup>276</sup> Nour El Bejjani Nouredine, *Accountability in Yemen Requires a Comprehensive Transitional Justice Process*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (Mar. 20, 2023), <https://www.ictj.org/latest-news/accountability-yemen-requires-comprehensive-transitional-justice-process>.

<sup>277</sup> Nour El Bejjani Nouredine, *Accountability in Yemen Requires a Comprehensive Transitional Justice Process*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (Mar. 20, 2023), <https://www.ictj.org/latest-news/accountability-yemen-requires-comprehensive-transitional-justice-process>.

<sup>278</sup> Int’l & Reg’l Experts on Yemen, U.N. Doc. A/HRC/45/6, ¶ 9 (2020), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>, ¶ 98.

<sup>279</sup> Amulya Vadapalli, *Justice Without Power: Yemen and The Global Legal System*, 121 MICH. L. REV. 811, 829 (2023).

countries have enacted legislation that allows them to prosecute certain international crimes within their domestic courts.<sup>280</sup> This method of accountability has been utilized by German courts who found a former Syrian government official guilty of crimes against humanity committed in Syria.<sup>281</sup> However, under similar facts, the highest court in France annulled an indictment against a former Syrian official based on the “dual criminality rule” as Syria does not explicitly criminalize crimes against humanity.<sup>282</sup>

While universal jurisdiction may be created by domestic legislation in foreign courts, the perpetrator generally must be present in the state, as trials *in absentia* create due process concerns.<sup>283</sup> This means that the responsible parties must be present in a state that has a basis for jurisdiction over HR violations. These domestic statutes often prescribe the most serious crimes under international law, such as genocide, torture, and war crimes, based on an underlying treaty.<sup>284</sup> As noted above, Yemen and Saudi-led Coalition members have not fully assented to many HR treaties and their provisions, so finding a treaty basis for universal jurisdiction over IHRL violations in Yemen may also face jurisdictional barriers.

To address these barriers, there has been an effort to bring cases against States who support the Saudi-led Coalition through arms sales.<sup>285</sup> NGOs have called on domestic governments to prohibit the sale of weapons to the Saudi-led Coalition and limit the licensing to manufacturing companies whose weapons support the conflict.<sup>286</sup> Similar efforts to hold Italian government officials and corporate actors criminally responsible for arms exports to Yemen were recently denied, with the Italian court dismissing the complaint.<sup>287</sup> As the main suppliers of arms to the Coalition are the US, the UK, France, and Italy, it is unlikely that accountability for their roles will overcome their political influence.<sup>288</sup>

#### 4. Alternative Mechanisms

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<sup>280</sup>Alexandra Lily Kather, “*Water Finds Its Way*”? *Universal Jurisdiction As An Avenue for Justice In Syria*, LIEBER INSTITUTE (Jul. 28, 2021), <https://lieber.westpoint.edu/water-finds-way-universal-jurisdiction-justice-syria/>.

<sup>281</sup>*Top German Court Rejects Syrian’s Appeal in Torture Case*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (May 5, 2022),

<https://www.ictj.org/latest-news/top-german-court-reject%E2%80%99s-syrian%E2%80%99s-appeal-torture-case>.

<sup>282</sup>Benedicte Jeannerod & Aisling Reidy, *Fighting Impunity for Crimes in Syria: Victory in Germany, Setback in France*, HUMAN RIGHTS WATCH (Jan. 27, 2022, 5:16AM EST),

<https://www.hrw.org/news/2022/01/27/fighting-impunity-crimes-syria-victory-germany-setback-france>.

<sup>283</sup>Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, 2002 I.C.J. 35, ¶ 16 (February 14) (separate opinion by Guillaume, G).

<sup>284</sup>See Universal Jurisdiction, INT’L JUST. RES. CTR.,

<https://ijrcenter.org/cases-before-national-courts/domesticexercise-of-universal-jurisdiction/>; see also *R v. Evans and Another and the Commissioner of Police for the Metropolis and Others; ex parte Pinochet* [1999] UKHL (March 24) (rejecting the argument that jus cogens violations allow for universal jurisdiction without an underlying treaty obligation).

<sup>285</sup>Amulya Vadapalli, *Justice Without Power: Yemen and The Global Legal System*, 121 MICH. L. REV. 811, 829 (2023).

<sup>286</sup>Amulya Vadapalli, *Justice Without Power: Yemen and The Global Legal System*, 121 MICH. L. REV. 811, 829, 838 (2023).

<sup>287</sup>*Italy fails victims of war crimes in Yemen despite prove of violation of Arms Trade*, EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS (Mar. 15, 2023),

<https://www.ecchr.eu/en/press-release/italy-fails-victims-of-war-crimes-in-yemen/>.

<sup>288</sup>Amulya Vadapalli, *Justice Without Power: Yemen and The Global Legal System*, 121 MICH. L. REV. 811, 815(2023).

At this time, formal mechanisms of accountability for HR violations in Yemen are not likely to materialize and the failure of the HRC to renew the mandate of the Group of Eminent Experts represents a harrowing indication of the political will to pursue accountability in Yemen. However, it is imperative that States continue to call attention to and condemn IHRL violations in Yemen. While the UNSC, UNHRC, and UN Secretary-General have released multiple resolutions regarding the situation in Yemen since the conflict began, the scope of these resolutions has been limited to general condemnations and largely failed to name responsible actors.<sup>289</sup> Increased naming and shaming from international organizations and powerful States would reaffirm the international community's commitment to seeking peace and accountability in the region.

Though sanctions can be an effective tool for holding international States and actors accountable, due to the extreme humanitarian crisis in Yemen, sanctions should be carefully applied so as to not worsen conditions for the civilian population. Though individual criminal responsibility for State and corporate actors supplying arms is unlikely to succeed, targeted sanctions against these individuals could undermine the supply of weapons and establish accountability for those who indirectly contribute to IHRL violations.

Finally, international organizations and States should support civil society actors and NGOs documenting HR violations in Yemen. This support should be paired with pressure on the Yemeni government to provide a legitimate and effective mechanism for these claims to be brought forth. States should also pass domestic legislation which would expand the ability to prosecute HR violations under universal jurisdiction.

## **V. RECOMMENDATIONS**

The Yemen Accountability Project recommends the following actions for bringing accountability to perpetrators of IHRL and IHL violations involving children in Yemen:

### **A. Investigations**

- Criminal investigators and groups, like the Yemen Accountability Project, Yemen Data Project, and ACLED, should continue to document and investigate evidence of attacks on and operations harming children in Yemen and make their open-source databases widely available to relevant stakeholders.
- These groups should continue to present their collected evidence and databases to stakeholders at the ICC, UN Security Council, UN Human Rights Council, US Department of State War Crimes Office, and others.
- Groups documenting evidence of war crimes, crimes against humanity, and human rights violations should share their investigative strategies and best practices with each other and develop working partnerships to build capacity for larger and more thorough investigations in Yemen.

### **B. Accountability Mechanisms**

- Diplomats at the UN should engage in advocacy with members of the Security Council to support an IHL accountability mechanism and build consensus among permanent members to prevent them from blocking an accountability measure through

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<sup>289</sup> Louisa Ashley, *Human Rights Violations in Yemen and the Prospects for Justice*, in *Human Rights in War* 383-405, 395 (Damien Rogers, ed., 2022).

veto. They should also advocate to the UN Security Council to create an ad hoc tribunal for Yemen, similar to the SCSL's model.

– Alternatively, stakeholders should file cases in the domestic courts of third-party states with applicable universal jurisdiction statutes. Stakeholders should also consider pursuing legal accountability for human rights violations in these forums or support the creation of a designated human rights court for violations committed during the Yemen conflict.

– If action in the Security Council is blocked by veto, then the General Assembly should establish an accountability mechanism, like the IIM and the Investigative Independent Mechanism for Myanmar (“IIMM”), to collect and archive evidence before it is lost and to share it with states pursuing national prosecutions using universal jurisdiction.

### **C. Review Targeted Sanctions Regime**

– Targeted sanctions are problematic because effectiveness is low, and they can worsen a humanitarian crisis. Therefore, the UN and countries should reexamine their targeted sanctions programs to ensure that measures are placing pressure on the Saudi and Iranian governments and not straining or worsening the humanitarian crisis in Yemen.

### **D. Naming and Shaming**

– More naming and shaming from powerful States and regional and international bodies would help build support for an end to the Yemen Civil War and an accountability mechanism or mechanism for investigating atrocities.

### **E. Supporting and Engaging Civil Society Actors**

– States and international groups need to assist in developing capacities for Yemen's local civil society to collect evidence of and document crimes against and involving children.

– Global civil society, including the International Committee of the Red Cross and other NGOs should assist in collecting evidence of and documenting attacks against and involving children. Humanitarian aid organizations should also continue providing humanitarian aid to Yemen's children and other civilians in need of such assistance.

### **F. Transitional Justice**

– Transitional justice and restorative justice processes such as truth commissions, memorialization initiatives, and community restoration projects should be explored.

## **VI. CONCLUSION**

The significant impact of the Yemen Civil War and the parties involved in the conflict on Yemen's children supports a need for accountability mechanisms to hold perpetrators accountable for their violations of IHRL and IHL, particularly concerning attacks on children, harm to children's physical and mental health, interference with children's access to education, the failure to prohibit and protect young girls from forced child marriage, and the use and

recruitment of child soldiers. Although the ICC lacks jurisdiction over the situation in Yemen,<sup>290</sup> and pursuing accountability through Yemeni domestic courts risks biased and unjust proceedings,<sup>291</sup> stakeholders could pursue accountability for IHL or IHRL violations after the creation of an ad hoc tribunal, similar to the SCSL's model,<sup>292</sup> or by filing cases in the domestic courts of third-party states with appropriate universal jurisdiction statutes.<sup>293</sup> In the meantime, the UN should create an Independent Investigative Mechanism to gather evidence of crimes committed in Yemen to assist with future prosecutions, NGOs should continue to make their open-source findings available to stakeholders interested in pursuing accountability, and humanitarian aid organizations should continue their efforts to provide aid to Yemen's children and other civilians in need of such assistance.

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<sup>290</sup> *How the Court Works*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (last visited Dec. 5, 2022); *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties> (last visited Dec. 5, 2022).

<sup>291</sup> See MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMEN'S SPECIALIZED CRIMINAL COURTS: 2015-2020 113-14 (2021), <https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf>.

<sup>292</sup> See Michael Scharf, *The Special Court for Sierra Leone*, INSIGHTS (2000), <https://www.asil.org/insights/volume/5/issue/14/special-court-sierra-leone>; *International Tribunals*, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/repertoire/international-tribunals> (last visited Dec. 5, 2022).

<sup>293</sup> See, e.g., *Universal Jurisdiction Annual Review (UJAR) 2020: Atrocities Must Be Prosecuted Soundly and Rigorously*, TRIAL INT'L (Nov. 5, 2022), at 20, <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously>.