

Yemen Accountability Project

**GENDER-
BASED
VIOLENCE**
**AND THE
YEMEN
CIVIL WAR**



2024



GENDER-BASED VIOLENCE AND THE YEMEN CIVIL WAR

EDITOR: Ellie Buerk

ASSISTANT EDITOR: Anne Ewart

ASSOCIATE EDITORS: Carolina Atlas, Ian Braddock, Annalie Buscarino, Jessica Chapman, Harper Fox, Loudon Kiehl, Liam Parsons, Nikita Joshi

ASSISTANT RESEARCHERS: Margaret Crookston, Fatimah Elghazawi, Andrew Gantt, Lucas Katz, Lauren Mallaber, Rida Sarwar, Amanda Schwaben, Alaina Seguin, Aziz Sidky, Lauren Ostrom, Holly Perzynski, Carsen Thompson.

COVER ART: Jessica Chapman

YEMEN ACCOUNTABILITY PROJECT

PROJECT ADVISOR: James C. Johnson, Adjunct Professor of Law and Director of the Henry King War Crimes Research Office

EXECUTIVE DIRECTOR: Jessica Chapman

DEPUTY EXECUTIVE DIRECTOR: Ian Braddock

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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 region. 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.....	4
I. INTRODUCTION.....	5
A. <u>Overview</u>	5
B. <u>The Yemen Civil War</u>	5
II. GENDER-BASED VIOLENCE IN INTERNATIONAL LAW.....	8
III. EVIDENCE OF GENDER-BASED VIOLENCE THROUGHOUT THE CONFLICT.....	11
A. <u>General Trends</u>	11
B. <u>Thematic Areas: Gender-Based Violence Throughout the Conflict</u>	13
1. <u>Sexual and Physical Violence</u>	14
2. <u>Psychological Violence</u>	15
3. <u>Physical, Mental, and Reproductive Health</u>	16
a) <i>Physical health</i>	16
b) <i>Mental health</i>	16
c) <i>Reproductive health</i>	17
4. <u>Gender-Based Violence and the Right to an Education</u>	18
5. <u>Arbitrary Imprisonment</u>	19
6. <u>Honor Killings</u>	20
7. <u>Female Genital Mutilation</u>	21
8. <u>Forced Marriage</u>	22
9. <u>Restrictions on Movement</u>	22
10. <u>Restrictions on Freedom of Expression</u>	23
a) <i>Targeting of Women Activists and Journalists</i>	24
b) <i>Restrictions on Clothing</i>	25
11. <u>Targeting of LGBTQIA+ Individuals</u>	26
12. <u>Targeting of Migrant Women</u>	28
IV. LEGAL ANALYSIS.....	30
A. <u>Applicability of IHL and IHRL and Lex Specialis in Times of Armed Conflict</u>	30
B. <u>Analysis of the Conflict’s Thematic Areas Concerning Gender-Based Violence</u>	31
1. <u>Sexual and Physical Violence</u>	31
2. <u>Psychological Violence</u>	32
3. <u>Physical, Mental, and Reproductive Health</u>	32
a) <i>Physical and reproductive health</i>	32
b) <i>Mental health</i>	34
4. <u>Gender-Based Violence and the Right to an Education</u>	34
5. <u>Arbitrary Imprisonment</u>	35

6. <u>Honor Killings</u>	36
7. <u>Female Genital Mutilation</u>	37
8. <u>Forced Marriage</u>	38
9. <u>Restrictions on Movement</u>	38
10. <u>Restrictions on Freedom of Expression</u>	39
a) <i>Targeting of Women Activists and Journalists</i>	39
b) <i>Restrictions on Clothing</i>	40
11. <u>Targeting of LGBTQIA+ Individuals</u>	40
12. <u>Targeting of Migrant Women</u>	44
V. ACCOUNTABILITY MECHANISMS	46
A. <u>IHL Mechanisms</u>	46
B. <u>IHRL Mechanisms</u>	46
1. <u>International Courts</u>	46
2. <u>Yemeni Domestic Courts</u>	48
3. <u>Foreign Domestic Courts</u>	49
4. <u>Alternative Mechanisms</u>	50
VI. RECOMMENDATIONS	51
A. <u>Ceasefire</u>	51
B. <u>Investigations</u>	51
C. <u>Accountability Mechanisms</u>	51
D. <u>Review Targeted Sanctions Regime</u>	52
E. <u>Naming and Shaming</u>	52
F. <u>Supporting and Engaging Civil Society Actors</u>	52
G. <u>Transitional Justice</u>	53
VII. CONCLUSION	55

EXECUTIVE SUMMARY: Summarizing the White Paper’s findings and recommendations.

This white paper examines the various means by which the Yemen Civil War has implicated gender-based violence (“GBV”) and the legal provisions under both international human rights law (“IHRL”) and international humanitarian law (“IHL”) the parties to the conflict have potentially violated as a result of perpetrating or failing to prevent such violence. GBV is the most egregious form of gender-based discrimination and is impermissible under international law. States have an obligation to prevent, punish, and refrain from engaging in gender-based violence.

Based on the evidence presented in this white paper, YAP concludes that the Saudi-led Coalition, Houthis, and Yemeni Government have violated their obligations regarding gender-based violence. The perpetrators of these violations must face justice, mitigate their violations’ adverse effects and provide relief to those affected by GBV. The purpose of this white

paper is to provide evidence of IHRL and IHL violations concerning gender-based violence and offer avenues for accountability.

I. INTRODUCTION

A. Overview

This white paper assesses the various ways in which the Yemen Civil War has implicated issues regarding GBV, from exacerbating the pre-existing prevalence of GBV to the utilization of GBV by the parties as a weapon of war. This paper identifies both the perpetrators of GBV and the entities that have failed to prevent it and identifies legal provisions through which interested parties can hold these perpetrators accountable.

Part I summarizes the Yemen Civil War, the circumstances that led to its inception, and the main parties involved in the conflict. Part II considers the definition of GBV in the context of international law and explores the international legal landscape concerning that topic. Part III analyzes yearly and thematic trends regarding GBV in Yemen. Part IV identifies legal provisions in both IHRL and IHL that create liability for perpetrators of GBV, including those that fail to prevent it, and examines the evidence of GBV presented in Part III under those provisions. Part V assesses challenges with existing accountability mechanisms and makes recommendations for potentially viable avenues for accountability. Finally, Part VI recommends how stakeholders may address the Yemen Civil War's connection to GBV 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,¹ and Yemen's former dictatorial president, Ali Abdulla Saleh.² 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.³ This instability escalated in September 2014, when the Houthi rebels captured Yemen's capital city of Sana'a in September 2014⁴ and effectively ousted President Hadi in January 2015.⁵ Despite this, President Hadi's government remains the internationally recognized de jure government of Yemen.⁶

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")

¹ *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>.

² *Id.*

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

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

⁵ *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>.

⁶ 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>.

initiated an airstrike campaign on the Houthis to restore the Hadi government's authority in the country.⁷ Accordingly, the ongoing conflict has primarily involved the Iranian-supported Houthi rebels and the Saudi-led Coalition.⁸ The Islamic State ("ISIS") and Al-Qaeda of the Arabian Peninsula ("AQAP") have also participated in the conflict to a lesser degree.⁹ 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 closure of Sana'a International Airport.¹⁰

The conflict, particularly on the part of the Houthis, has intensified in recent months. Beginning in November 2023, Houthi militants have engaged in dozens of attacks on international shipping vessels in the Red Sea,¹¹ claiming to be in response to the alleged Israeli genocide of the Palestinian people.¹² As the Houthis continue to engage in military action in the Red Sea against commercial shipping and US and UK warships, the US, the UK, and Operation Prosperity Guardian, a US-led multinational military coalition formed in response to Houthi actions in the Red Sea, have responded in what those entities describe as "self-defense" to protect their security interests in the region and to mitigate and deter future Houthi action, as well as to address the imminent threat to targeted military personnel and property.¹³ Following US and UK air strikes on Houthi positions, the Houthis targeted and continue to target ships owned and operated by UK or US owners.¹⁴ For further discussion, we would direct attention to the Yemen Accountability Project's upcoming white paper, *The Legal Defensibility of US, UK, and Operation Prosperity Guardian's Military Response to Houthi Attacks in the Red Sea*.

Altogether, these military activities have created what is arguably one of the worst humanitarian crises in the world, with a death toll of at least 19,200 people, including over 2,300 children, and the displacement of a further 4 million, as of February 2024.¹⁵ In addition to Yemen's general civilian population, as this white paper will demonstrate, the war's toll has significantly impacted women in Yemen, who have been, and continue to be subjected to GBV both as an act of war and as a result of the war's exacerbation of preexisting GBV in Yemen. LGBTQIA+ individuals have been similarly adversely impacted by the ongoing conflict.

⁷ The Saudi-led Coalition includes support from the United States, France, 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>; see also *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>.

⁸ Kali Robertson, *Yemen's Tragedy: War, Stalemate, and Suffering*, COUNCIL ON FOREIGN REL. (Feb. 5, 2021), <https://www.cfr.org/backgrounder/yemen-crisis>.

⁹ *Id.*

¹⁰ 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).

¹¹ *WHO ARE THE HOUTHIS AND WHY ARE THEY ATTACKING RED SEA SHIPS?*, BBC (MAR. 15, 2024), <https://www.bbc.com/news/world-middle-east-67614911>.

¹² *Id.*

¹³ Lieber Institute West Point, *The Law of Self-Defense and the U.S. and UK Strikes Against the Houthis*, (Jan 31, 2024), <https://lieber.westpoint.edu/law-self-defense-us-uk-strikes-against-houthis/>.

¹⁴ *Who are the houthis and why are they attacking Red Sea ships?*, BBC (Mar. 15, 2014), <https://www.bbc.com/news/world-middle-east-67614911>; for more information, see companion white paper on Red Sea activities. YEMEN ACCOUNTABILITY PROJECT, *THE LEGAL DEFENSIBILITY OF US, UK, AND OPERATION PROSPERITY GUARDIAN'S MILITARY RESPONSE TO HOUTHIS ATTACKS IN THE RED SEA* (forthcoming 2024).

¹⁵ YEMEN, GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, <https://www.globalr2p.org/countries/yemen/> (last updated Feb. 29, 2024).

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”).¹⁶ NIACs involve conflicts between a State and a non-State armed group.¹⁷ Although multiple States have participated in the conflict, those States each support Hadi’s government to combat a non-State actor, the Houthi rebels, and thus, the conflict is properly designated a NIAC.¹⁸ In NIACs, legal obligations arise under both customary international law and treaty law.¹⁹ All parties to the conflict, including Hadi’s Yemeni government, the Saudi-led Coalition, and non-state actors, including the Houthi rebels,²⁰ are bound by customary international law.²¹ This includes the customary IHL principles of distinction, necessity, and proportionality.²² Even in areas where Hadi’s government has lost control, it still retains positive obligations under customary international law.²³ Additionally, Yemen is a party to and, therefore, bound by the Geneva Conventions of 1949 and Additional Protocol II.²⁴ The Saudi-led Coalition is also bound by the Geneva Conventions because they reflect customary international law.²⁵ Similarly, The Group of Experts has also considered ISIS and AQAP to be bound by IHL because each group has engaged in parallel NIACs with Yemen’s government forces.²⁶ 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 YAP’s previous publications.²⁷

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

¹⁹ *Sources of IHL: Treaties and customary law*, INT’L COMM. RED CROSS, <http://ir.icrc.org/en/international-humanitarian-law/sources-ihl-treaties-customary-law/>, (last visited Jun. 15, 2021).

²⁰ 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).

²¹ 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).

²² *Id.* at ¶ 15.

²³ *Id.* at ¶ 13.

²⁴ 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).

²⁵ *Id.* at ¶ 31.

²⁶ *Id.* at ¶ 34.

²⁷ See generally, YEMEN ACCOUNTABILITY PROJECT, *AIDING & ABETTING: HOLDING STATES, CORPORATIONS, AND INDIVIDUALS ACCOUNTABLE FOR WAR CRIMES IN YEMEN 9-10* (2020); YEMEN ACCOUNTABILITY PROJECT, *STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN* (2021); YEMEN ACCOUNTABILITY PROJECT, *CULTURAL PROPERTY: BUILDING THE CASE FOR PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN YEMEN* (2023).

II. GENDER-BASED VIOLENCE IN INTERNATIONAL LAW

The term gender-based violence (“GBV”) broadly encompasses harmful acts directed against an individual or group of individuals based on their gender.²⁸ The term additionally covers harmful acts committed against individuals targeted because of their sexual orientation.²⁹ GBV includes “physical, sexual, and psychological violence occurring in the family or within the general community, and perpetrated or condoned by the State.”³⁰ The following acts constitute GBV: sexual violence, such as rape and sexual assault; domestic or intimate partner violence; femicide or honor killings; female genital mutilation; and forced marriage, among other acts.³¹ In addition to these physical forms of violence, GBV includes instances of psychological and other forms of non-physical violence, such as sexual harassment.³²

As stated by the International Criminal Court (“ICC”)’s Office of the Prosecutor, perpetrators of GBV crimes often intend to punish individuals they perceive to have transgressed socially, culturally, or otherwise entrenched forms of gender expression.³³ Accordingly, GBV proliferates as a result of systemic inequality between genders.³⁴ Systemic inequality results in a number of negative consequences, all of which are exacerbated by conflict.³⁵ For example, because women and girls have less representation in decision-making,³⁶ military operations are not proportionately influenced by women and girls’ gender perspectives.³⁷ This is one of the

²⁸ *Frequently Asked Questions: Types of Violence Against Women and Girls*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, (last visited Apr. 16, 2024); *UNHCR Policy on Prevention of, Risk Mitigation, and Response to Gender-Based Violence*, UNHCR, <https://www.unhcr.org/media/unhcr-policy-prevention-risk-mitigation-and-response-gender-based-violence-2020-pdf> (2020); *What is Gender-Based Violence?*, EUROPEAN COMMISSION, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en (last visited Apr. 16, 2024).

²⁹ *Frequently Asked Questions: Types of Violence Against Women and Girls*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, (last visited Apr. 16, 2024).

³⁰ *Id.*

³¹ *Frequently Asked Questions: Types of Violence Against Women and Girls*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, (last visited Apr. 16, 2024); *UNHCR Policy on Prevention of, Risk Mitigation, and Response to Gender-Based Violence*, UNHCR, <https://www.unhcr.org/media/unhcr-policy-prevention-risk-mitigation-and-response-gender-based-violence-2020-pdf> (2020).

³² *What is Gender-Based Violence?*, EUROPEAN COMMISSION, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en (last visited Apr. 16, 2024).

³³ INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, POLICY ON THE CRIME OF GENDER PERSECUTION (2022).

³⁴ *Frequently Asked Questions: Types of Violence Against Women and Girls*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, (last visited Apr. 16, 2024).

³⁵ Helen Durham, et al., *Gendered Impacts of Armed Conflict and Implications for the Application of IHL*, INT’L COMM. RED CROSS BLOG (June 30, 2022), <https://blogs.icrc.org/law-and-policy/2022/06/30/gendered-impacts-of-armed-conflict-and-implications-for-the-application-of-ihl/>.

³⁶ *Id.*

³⁷ *Id.*

reasons why women and girls are disproportionately harmed by such operations.³⁸ That harm is exacerbated by women and girls' restricted access to healthcare and other essential services, such as education.

While transgender and nonbinary persons are also disproportionately targeted as a result of their gender, international law—including international bodies, treaties, and States—generally considers GBV from a binary perspective.³⁹ The result is a wide gap in the GBV human rights framework.⁴⁰ Additionally, while cisgender women, girls, and trans and nonbinary individuals are most often the targets of GBV, cisgender men, particularly gay men, and boys are also victims of GBV.⁴¹ This white paper recognizes that the term GBV is applicable to acts committed against each of these populations when they are targeted as a result of their gender, even if certain sources exclude these populations from GBV discussions. The themes presented in this white paper consider the ways in which GBV impacts each of these populations.

GBV invokes the responsibility of both State and non-State actors under international law. IHL prohibits discriminatory treatment based on sex or “any other distinction founded on similar criteria.”⁴² This encompasses sexual orientation and gender identity.⁴³ The Rome Statute’s prohibition on persecution against identifiable groups covers gender, sexual orientation, and gender identity.⁴⁴ Moreover, customary IHL strictly prohibits sexual violence as an act of war.⁴⁵ Also under custom, women are not only afforded the same protection as their male counterparts,⁴⁶ but also specific protections for their health and assistance needs.⁴⁷ Common Article 3 of the Geneva Conventions and Additional Protocol II, both of which apply to NIACs, additionally secure aspects of the general customary rule which requires parties to respect specific women’s needs.⁴⁸ Those instruments particularly prohibit violence to life, as well as

³⁸ *Id.*

³⁹ Tatsiana Ziniakova, *Gender-Based Violence in International Human Rights Law: Evolution towards a Binary Post-Binary Framework*, 27 *Wm. & Mary J. Race Gender & Soc. Just.* 709, 716 (2021).

⁴⁰ *Id.* at 761-62.

⁴¹ *Frequently Asked Questions: Types of Violence Against Women and Girls*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, (last visited Apr. 16, 2024); *UNHCR Policy on Prevention of, Risk Mitigation, and Response to Gender-Based Violence*, UNHCR, <https://www.unhcr.org/media/unhcr-policy-prevention-risk-mitigation-and-response-gender-based-violence-2020-pdf> (2020); INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, *POLICY ON THE CRIME OF GENDER PERSECUTION* (2022).

⁴² UNITED NATIONS INDEPENDENT EXPERT ON PROTECTION AGAINST VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE: CONFLICT-RELATED VIOLENCE BASED ON SEXUAL ORIENTATION & GENDER IDENTITY* (2022) (hereinafter, “FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE”).

⁴³ *Id.* at 2.

⁴⁴ *Id.*; Rome Statute of the International Criminal Court, art. 7(h), July 1, 2002, 2187 U.N.T.S. 90 [“Rome Statute”].

⁴⁵ *Customary IHL: Rule 93. Rape and Other Forms of Sexual Violence*, INT’L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule93> (last visited April 16, 2024) [hereinafter, “ICRC Rule 93”]; FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE, *supra* note 24, at 2.

⁴⁶ *Customary IHL - RULE 134. WOMEN: NON-INTERNATIONAL ARMED CONFLICTS*, INT’L COMM. RED CROSS, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule134> (last visited Apr 13, 2024).

⁴⁷ *Id.*

⁴⁸ *Id.*

health and physical and mental well-being, and outrages upon personal dignity, including humiliating and degrading treatment, rape, and any form of indecent assault.⁴⁹

Under IHRL, States have an obligation to prevent, punish, and provide remedies for acts of GBV, when those acts are committed by either State or non-State actors⁵⁰ and include when those acts are committed against LGBTQIA+ individuals.⁵¹ Further, under IHRL, States must ensure that all GBV victims have effective access to legal remedies, as well as holistic health treatments which address both the mental and physical impact of surviving GBV.⁵²

There is “broad international consensus” that States must act with due diligence in order to fulfill their human rights obligations as it relates to GBV.⁵³ States satisfy the due diligence standard when they adopt progressive measures to modify social and cultural patterns of conduct that eliminate prejudices and practices which reinforce attitudes of gender inferiority.⁵⁴ Additionally, States must take measures to understand and identify the root causes of GBV in order to make such modifications.⁵⁵

As a final note, instances of GBV are heavily underreported,⁵⁶ particularly as it relates to violence committed against LGBTQIA+ individuals.⁵⁷ On average, international data suggests that one in two women who have experienced physical or sexual violence do not disclose that violence to anyone, and even fewer—roughly 16 percent—report that violence to official services.⁵⁸ There are even greater gaps in available data as it relates to sexual orientation and gender identity.⁵⁹ Without accurate data as it relates to the experience of GBV against LGBTQIA+ individuals, these populations are rendered invisible to policy makers, who are thus rendered incapable of meaningfully realizing key human rights protections.⁶⁰ As consistently established by international bodies, a State’s failure to fulfill these obligations, incurs its legal responsibility.⁶¹

⁴⁹ *Id.*

⁵⁰ *Jessica Lenahan (Gonzales) v. United States*, Inter-Am. Comm’n H.R., Case No. 12.626, Report No. 80/11, ¶¶ 122-24 (2011) [hereinafter, “Lenahan”].

⁵¹ FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE, *supra* note 24, at 4.

⁵² *Id.*

⁵³ Lenahan, *supra* note 50, ¶¶ 122-24.

⁵⁴ *Id.* at ¶¶ 121-26.

⁵⁵ FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE, *supra* note 24.

⁵⁶ WHY IS GENDER-BASED VIOLENCE A PROBLEM?, COUNCIL OF EUROPE, <https://www.coe.int/en/web/gender-matters/why-is-gender-based-violence-a-problem>, (last visited Apr. 16, 2024).

⁵⁷ *Levels of violence against trans people “offend the human conscience”*, says UN rights expert, UN Office of the High Commissioner of Human Rights Press Release (Oct. 25, 2018), <https://www.ohchr.org/en/press-releases/2018/10/levels-violence-against-trans-people-offend-human-conscience-says-un-rights>.

⁵⁸ *Escaping Gender-Based Violence*, WORLD BANK (Dec. 18, 2022), <https://genderdata.worldbank.org/data-stories/seeking-help-for-gender-based-violence/>.

⁵⁹ FROM WARS AGAINST DIVERSITY TO AN INCLUSIVE PEACE, *supra* note 24.

⁶⁰ *Id.*

⁶¹ Lenahan, *supra* note 50, ¶ 126.

III. EVIDENCE OF GENDER-BASED VIOLENCE THROUGHOUT THE CONFLICT

A. General Trends

When the Yemen Civil War broke out in 2015, Yemen witnessed attacks on journalists, women, migrants, and prisoners.⁶² Motorcyclists assassinated a leading journalist and Houthi activist in a drive-by shooting.⁶³ Al-Qaeda arbitrarily detained students at a co-educational university for either being female students or associating with female students.⁶⁴ Airstrikes killed migrants by purposefully targeting Internally Displaced Persons (“IDP”) camps.⁶⁵ Coalition militias placed prisoners on a boat and then blew it up, killing those on board.⁶⁶

Journalists and women suffered similar attacks in 2016. Houthis fired on journalists reporting on the frontlines of the war, killing one and injuring four.⁶⁷ Another journalist was killed by a Houthi sniper while covering clashes in Bayhan.⁶⁸ Additionally, ISIS stormed a hospital and forcibly separated medical staff by gender and maltreated those who refused to comply with the order.⁶⁹ Gender-based violence extended into property destruction when a woman was labeled as “deviant” and had her home blown up as a result.⁷⁰

As the Yemen Civil War extended into 2017, threats to journalists and women continued. Houthis kidnapped and arbitrarily detained over 300 civilians—mostly women and children—in revenge for the deaths of Houthi commanders.⁷¹ A Coalition attack on a refugee boat left 42 people dead.⁷² Of the 42 refugees, most were women and children, and most had UN Refugee Agency papers.⁷³ Yemeni Security Forces assaulted, beat, questioned, and detained women protesting the disappearances of their family members.⁷⁴ Houthi forces arbitrarily imprisoned journalist and activist Hisham al-Omeisy.⁷⁵ Further, the United Nations criticized the Coalition for restricting journalists’ ability to report on the war after a Coalition bombing.⁷⁶

In 2018, violence against journalists and women continued. Armed attacks broke into an Aden media foundation—home of the daily Akhbar al-youm news and the weekly al-Shomou

⁶² See, e.g., YAP 2015 Matrix #YSN15030501, #YTZ15032402, #YAD15040804, #YSN15072501, and #YAD15082401.

⁶³ See, e.g., YAP 2015 Matrix #YSN15031801.

⁶⁴ See, e.g., YAP 2015 Matrix #YHA15080801.

⁶⁵ See, e.g., YAP 2015 Matrix #YSN15072501.

⁶⁶ See, e.g., YAP 2015 Matrix #YAD15082301.

⁶⁷ See, e.g., YAP 2016 Matrix #YTZ16032101.

⁶⁸ See, e.g., YAP 2016 Matrix #YSH16052901.

⁶⁹ See, e.g., YAP 2016 Matrix #YTZ16072402.

⁷⁰ See, e.g., YAP 2016 Matrix #YLA16012501.

⁷¹ See, e.g., YAP 2017 Matrix #YIB17021501.

⁷² See, e.g., YAP 2017 Matrix #YHU17031601.

⁷³ See, e.g., YAP 2017 Matrix #YHU17031601.

⁷⁴ See, e.g., YAP 2017 Matrix #YAD17071201.

⁷⁵ See, e.g., YAP 2017 Matrix #YSN170811401.

⁷⁶ See, e.g., YAP 2017 Matrix #YTZ17071901.

news—and abducted at least seven people.⁷⁷ Additionally, a Houthi strike left one journalist dead.⁷⁸ In November of 2018, both Coalition and Houthi attacks resulted in the deaths of women.⁷⁹

2019 witnessed violent and brazen attacks. On 11 separate occasions, women were gunned down by Houthi forces, Hadi forces, and anti-Houthi National Resistance Forces.⁸⁰ Further, a female student was kidnapped and held hostage by Houthi supervisor Abduh al-Tawam for at least two months.⁸¹ An unknown number of girls working in a sewing shop were kidnapped by Houthi forces, then drugged, sent to a brothel, and then imprisoned in Sana'a.⁸² Houthi forces physically assaulted three female INGO staff after they refused one woman assistance due to documentation issues.⁸³ There were also multiple incidents of prisoner torture.⁸⁴ Methods included electric shocks, belt whippings, and sexual assault abuse; many of the incidents resulted in deaths of prisoners.⁸⁵

Violence against women and journalists continued through 2020. Houthi forces tortured and sexually assaulted female inmates at the Sana'a Central Prison.⁸⁶ A 38-year-old woman inmate was paralyzed as a result of the torture and many young girls were sexually assaulted.⁸⁷ Prison guards and the Warden himself tortured and assaulted three women.⁸⁸ Hadi forces in the Taizz district open-fired on two school girls, injuring them.⁸⁹ A member of the Taizz axis—also affiliated with the Islah party—attempted to rape a girl belonging to the Muhammashen ethnic group.⁹⁰ An activist and his family were beaten for speaking up about the attempted rape of the Muhammashen girl.⁹¹ Several female principals were abducted from their homes by Houthi forces.⁹² Additionally, Houthi forces abducted, kidnapped, and tortured female dissenters; they also forced the women to admit to prostitution charges on camera.⁹³ A National Resistance Fighter reportedly raped a 7-year-old girl in the Hays district of Al-Hudaydah.⁹⁴ Additional rape

⁷⁷ See, e.g., YAP 2018 Matrix #YAD18032301.

⁷⁸ See, e.g., YAP 2018 Matrix #YBA18041301.

⁷⁹ See, e.g., YAP 2018 Matrix #YSD18110901.

⁸⁰ See, e.g., YAP 2019 Matrix #YDH19072201, #YHU19072601, #YDH19073101, #YAH19081301, #YTZ19081601, #YTZ19081701, #YJA19081901, #YAH19082301, #YAH19082601, #YHU19111601, and #YAD19120802.

⁸¹ See, e.g., YAP 2019 Matrix #YHJ19110601.

⁸² See, e.g., YAP 2019 Matrix #YMA19120101.

⁸³ See, e.g., YAP 2019 Matrix #YHJ1911001.

⁸⁴ See, e.g., YAP 2019 Matrix #YSN19111501, #YSH19122303, #YMH19080104, #YNA19091201, #YMR19101903, #YSH19110901, and #YAB19111001.

⁸⁵ See, e.g., YAP 2019 Matrix #YSN19111501, #YSH19122303, #YMH19080104, #YNA19091201, #YMR19101903, #YSH19110901, and #YAB19111001.

⁸⁶ See, e.g., YAP 2020 Matrix #YSN20011001.

⁸⁷ See, e.g., YAP 2020 Matrix #YSN20011001.

⁸⁸ *Id.*

⁸⁹ See, e.g., YAP 2020 Matrix #YTZ20012801.

⁹⁰ See, e.g., YAP 2020 Matrix #YTZ20020101.

⁹¹ See, e.g., YAP 2020 Matrix #YTZ20102701.

⁹² See, e.g., YAP 2020 Matrix #YSN20031601.

⁹³ See, e.g., YAP 2020 Matrix #YSN20042906.

⁹⁴ See, e.g., YAP 2020 Matrix #YHU20072101.

reports include assaults against an 8-year-old boy,⁹⁵ a 12-year-old boy, and another 7-year-old girl.⁹⁶ The pro-STC Reinforcement and Security Brigade abducted and tortured a journalist after he had received threats for his media reporting.⁹⁷ Houthi forces arrested, tortured, and killed journalists who were reporting on the conflict.⁹⁸ Journalist-Activist Ayal Hadaf was abducted by pro-Islah forces for organizing an anti-Islah protest.⁹⁹

In 2021, Houthi forces assaulted and arrested a model and her two friends because the model's work allegedly violated Islamic dress codes since she did not wear a hijab.¹⁰⁰ Houthi supervisor, Abu Khalid, sexually assaulted and killed a 12-year-old girl in the Ash Shuur village.¹⁰¹ Houthi forces placed four journalists on death row for spreading "false information"; journalists have been executed by Houthis in the past for the same offense.¹⁰² Yemeni National Resistance forces assaulted three journalists reporting on the arrival of the Giants Brigade.¹⁰³

Kidnappings of girls and women continued in 2022. Houthi Leader, Salim al Jamai, abducted a 13-year-old girl and forced the girl's family to allow him to wed her.¹⁰⁴ By the end of July 2022, Houthi forces had reportedly abducted at least 100 girls on false prostitution charges.¹⁰⁵ After refusing to work with the Houthis, model Entisar al-Hammadi was abducted and charged on false prostitution and drug abuse charges.¹⁰⁶ She was sentenced to five years, brutally assaulted, and subjected to "virginity testing".¹⁰⁷ Houthi Zainabiyat – women units – assaulted dozens of female prisoners.¹⁰⁸ The assaults came as the Houthi Zainabiyat denounced that the deteriorating mental health of female prisoners led to the suicide of one of the women.¹⁰⁹

B. Thematic Areas Concerning Gender-Based Violence

The aforementioned events have impacted various aspects of the lives of women & LGBTQIA+ individuals. Discussed in Part 1, sexual violence and physical violence have been used as acts of war in Yemen. Part 1 also addresses the increase in non-conflict related instances of sexual and physical violence. Part 2 concerns GBV as psychological violence in Yemen. Such violence has had an adverse impact on the physical, mental, and reproductive health of affected individuals as well as on their ability to meaningfully access an education, as discussed in Parts 3 and 4 respectively.

⁹⁵ See, e.g., YAP 2020 Matrix #YLA20030401.

⁹⁶ See, e.g., YAP 2020 Matrix #YTZ20082704.

⁹⁷ See, e.g., YAP 2020 Matrix #YLA20050101, and #YLA20051502.

⁹⁸ See, e.g., YAP 2020 Matrix #YSN20052701.

⁹⁹ See, e.g., YAP 2020 Matrix #YSO20041501.

¹⁰⁰ See, e.g., YAP 2021 Matrix #YSN21022001.

¹⁰¹ See, e.g., YAP 2021 Matrix #YIB21042801.

¹⁰² See, e.g., YAP 2021 Matrix #YSN21120101.

¹⁰³ See, e.g., YAP 2021 Matrix #YSH21122801.

¹⁰⁴ See, e.g., YAP 2022 Matrix #YDM22060101.

¹⁰⁵ See, e.g., YAP 2022 Matrix #YHJ22072606.

¹⁰⁶ See, e.g., YAP 2022 Matrix #YSN22072707.

¹⁰⁷ See, e.g., YAP 2022 Matrix #YSN22072707.

¹⁰⁸ See, e.g., YAP 2022 Matrix #YSN22111201.

¹⁰⁹ See, e.g., YAP 2022 Matrix #YSN22111201.

Part 5 discusses the practice of arbitrary imprisonment throughout the Yemen Civil War and its disproportionate use against women. Honor killings, as discussed in Part 6, similarly disproportionately affect women. Parts 7 and 8 discuss the practices of female genital mutilation and forced marriage in Yemen. Parts 9 and 10 next outline tightening restrictions on women’s ability to move freely and to express themselves. Finally, Parts 11 and 12 consider the particular targeting of LGBTQIA+ individuals and migrant women in Yemen.

1. Sexual and Physical Violence

Throughout the Yemen Civil War, Yemeni women and girls have faced increasing rates of sexual and physical violence.¹¹⁰ While prior to the war such violence was a common occurrence¹¹¹—Yemen has consistently ranked last or second to last in the World Economic Forum’s Global Gender Gap Index¹¹²—following the war’s onset, instances of assaults and abuse targeting women have increased by at least 63 percent.¹¹³ Accordingly, demands for services for women victims of violence have also risen drastically.¹¹⁴ Yemeni-based NGOs estimate that roughly 800,000 women and girls between ages 15-49 across Sana’a, Aden, Hajjah are at risk of sexual violence and rape.¹¹⁵

The vast majority of the sexual and physical violence perpetrated against Yemeni women occurs in the home.¹¹⁶ Yemeni cultural norms contribute to this phenomenon.¹¹⁷ Seventy-one percent of respondents in a 2020 Oxfam study, conducted in four of Yemen’s major cities, said a husband’s punishment of his wife was justified if she disrespected certain social norms.¹¹⁸ Yet

¹¹⁰ *4 Ways the War in Yemen Has Impacted Women and Girls*, RESCUE.ORG (March 25, 2019), <https://www.rescue.org/article/4-ways-war-yemen-has-impacted-women-and-girls>; ACAPS ANALYSIS HUB, YEMEN: UNDERSTANDING THE CYCLE OF GENDER-BASED VIOLENCE (2023) [hereinafter, “ACAPS”].

¹¹¹ *Ways the War in Yemen Has Impacted Women and Girls*, RESCUE.ORG (March 25, 2019), <https://www.rescue.org/article/4-ways-war-yemen-has-impacted-women-and-girls>; WOMEN SOLIDARITY NETWORK, ET AL., WOMEN AND GIRLS PAYING THE HEAVIEST PRICE IN YEMEN: JOINT SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW(2018), https://www.upr-info.org/sites/default/files/documents/2019-01/js3_upr32_yem_e_main.pdf [hereinafter, “WOMEN SOLIDARITY NETWORK”].

¹¹² ACAPS, *supra* note 110.

¹¹³ *4 Ways the War in Yemen Has Impacted Women and Girls*, RESCUE.ORG (March 25, 2019), <https://www.rescue.org/article/4-ways-war-yemen-has-impacted-women-and-girls>; FAWZIAH AL-AMMAR, ET AL., A GENDERED CRISIS: UNDERSTANDING THE EXPERIENCES OF YEMEN’S WAR, SANA’A CTR. STRATEGIC STUDIES 57 (2019) [hereinafter, “A GENDERED CRISIS”]; CARE, OXFAM, & GENCAP, NO FUTURE FOR YEMEN WITHOUT WOMEN AND GIRLS 2 (2016)

(reporting GBV is up 70% since the onset of the conflict).

¹¹⁴ Nicolas Niarchos, ‘He Treated Me as a Slave:’ Women Face Rising Violence Amid War in Yemen, THE GUARDIAN (Feb. 22, 2021), <https://www.theguardian.com/global-development/2021/feb/22/he-treated-me-as-a-slave-women-face-rising-violence-amid-war-in-yemen>; UNITED NATIONS POPULATION FUND, UNFPA HUMANITARIAN RESPONSE IN YEMEN 2018 (2018).

¹¹⁵ WOMEN SOLIDARITY NETWORK, *supra* note 111.

¹¹⁶ ACAPS, *supra* note 110, at 5.

¹¹⁷ *Id.*

¹¹⁸ NASEEJ, NASEEJ PROJECT BASELINE REPORT, Report No. HUM/2018/400-606, at 5 (September 2020).

another study revealed that domestic violence was tolerated to such a degree that victims struggled to find a sense of safety in the home.¹¹⁹

Apart from the increased rates of sexual and physical violence that have followed the onset of the war in Yemen generally, both of the major parties to the conflict have engaged in such violence as a direct component of that conflict.

The Houthis have routinely engaged in sexual and physical violence against women. Much of this violence stems from the groups' ideology, which demonizes women,¹²⁰ envisions them as homemakers and mothers, and excludes them from public life.¹²¹ Amid the dissemination of this limiting ideology, violence against women has proliferated. From December 2017 to October 2022, Houthi forces accounted for more than 1,800 reports of kidnapping, torture, and rape of women and girls.¹²²

In addition to Houthi actions, Yemeni armed forces have routinely engaged in the kidnapping and rape of displaced people and minorities as a means of subjugating those communities.¹²³

Members of the Saudi-led Coalition and associated forces have also committed acts of sexual violence, particularly against children.¹²⁴ For example, in March, 2019, an investigation by Amnesty International documented two attacks on children—one a rape and the other an attempted assault—allegedly committed by Coalition-backed militiamen in Taizz.¹²⁵ According to that investigation and others, meaningful accountability from the Yemeni judicial system or other institutions remains largely elusive.¹²⁶

2. Psychological Violence

Psychological abuse occurs when mental or emotional harm is inflicted upon an individual.¹²⁷ Such harm constitutes GBV when threats of violence, humiliation, harassment, stalking, intimidation, or other such similar acts are directed against an individual on the basis of their gender.¹²⁸ According to a 2019 United Nations Report, almost a quarter of reported GBV

¹¹⁹ *Id.*

¹²⁰ Moammar Al-Eryani, *Preventing the Next Kabul: Confronting the Houthi's Violent Suppression of Women in Yemen*, WILSON CENTER (Mar. 24, 2023), <https://www.wilsoncenter.org/article/preventing-next-kabul-confronting-houthis-violent-suppression-women-yemen>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ A GENDERED CRISIS, *supra* note 113, at 60.

¹²⁴ Niarchos, *supra* note 114; *Yemen: Ta'iz Authorities Must Tackle Child Rape and Abuse Under Militia Rule*, Amnesty Int'l Press Release (Mar. 8, 2019), <https://www.amnesty.org/en/latest/press-release/2019/03/yemen-taiz-authorities-must-tackle-child-rape-and-abuse-under-militia-rule/>; *Yemen: Sudanese Forces of the Coalition Commit Sexual Violence in Hajjah*, Mwatana News Release (Oct. 24, 2022), <https://reliefweb.int/report/yemen/yemen-sudanese-forces-coalition-commit-sexual-violence-hajjah>.

¹²⁵ *Yemen: Sudanese Forces of the Coalition Commit Sexual Violence in Hajjah*, Mwatana News Release (Oct. 24, 2022), <https://reliefweb.int/report/yemen/yemen-sudanese-forces-coalition-commit-sexual-violence-hajjah>.

¹²⁶ *Id.*; A GENDERED CRISIS, *supra* note 113, at 66-67.

¹²⁷ ACAPS, *supra* note 110, at 6.

¹²⁸ *Id.*

incidents in Yemen involve psychological abuse.¹²⁹ That same report recounted testimony by Yemeni girls who have adopted a policy of traveling in groups and traveling further distances to collect water to avoid sexual harassment, as well as the threat of physical or sexual violence.¹³⁰ Women in multiple Yemeni cities report experiencing verbal abuse and threats while in public and indicated that the conflict has exacerbated such instances.¹³¹ Such actions are almost always committed with impunity.¹³²

3. Physical, Mental, and Reproductive Health

GBV has an adverse impact on victims' physical, mental, and reproductive health. Despite this, access to resources designed to alleviate this impact are significantly restricted in Yemen.

a) *Physical health*

GBV often results in physical harm to victims for which they need access to healthcare.¹³³ Yemeni women suffer from a lack of access to such healthcare generally.¹³⁴ Yet even where they do have some access, women report forgoing treatment for serious ailments for numerous reasons. First, medical centers are often located far away from their homes.¹³⁵ Second, undertaking the journey to a functioning medical center exposes women to the risk of experiencing GBV along the way.¹³⁶ Finally, men are assigned the predominant authority for determining medical care and expenditures.¹³⁷ Thus, women's ability to receive meaningful care is restricted, even when they do manage to reach a medical facility.

b) *Mental health*

GBV negatively impacts survivors' mental health. Despite this, GBV survivors in Yemen have little to no access to mental health resources.¹³⁸ The need for mental health services is all the more necessary given that a recent study showed an increase in mental health issues such as

¹²⁹ A GENDERED CRISIS, *supra* note 113, at 57.

¹³⁰ *Id.* at 60.

¹³¹ *Id.* at 66-67.

¹³² *Id.*

¹³³ *Gender-based Violence Is a Public Health Issue: Using a Health Systems Approach*, WORLD HEALTH ORGANIZATION (December 2021), <https://www.who.int/news/item/25-11-2021-gender-based-violence-is-a-public-health-issue-using-a-health-systems-approach>.

¹³⁴ *Yemen: Women and Girls Struggle to Access Essential Healthcare*, Int'l Comm. Red Cross News Release (July 7, 2022), <https://www.icrc.org/en/document/yemen-women-and-girls-struggle-access-essential-healthcare>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ ACAPS, *supra* note 110.

¹³⁸ *Tackling the Hidden Mental Health Burden in Yemen*, UNFPA (Nov. 10, 2023), <https://arabstates.unfpa.org/en/news/tackling-hidden-mental-health-burden-yemen>.

anxiety, depression, post-traumatic stress disorder, and sleep disorders, particularly in women and children.¹³⁹ In fact, a support clinic north of Taizz reported that roughly 80 percent of women have suffered trauma in recent years, at least in part, due to the ongoing conflict.¹⁴⁰ This mental health crisis was exacerbated by the COVID-19 pandemic.¹⁴¹ In addition to the accompanying stigma GBV survivors face, mental illnesses are also highly stigmatized in Yemen; consequently, survivors struggle to access help from the few psychiatrists in the country.¹⁴²

c) Reproductive health

Access to reproductive healthcare is limited in Yemen. Prior to the civil war, Yemeni maternal death rates in 2013 already hovered around 5 maternal deaths a day; by 2018, such death rates had risen to approximately 12 maternal deaths per day.¹⁴³ A 2023 publication suggests that the high maternal mortality rate continues to grow.¹⁴⁴ This same publication suggests that most of these maternal deaths are *completely preventable* with proper medical care.¹⁴⁵ Less than half of the childbirths in Yemen are attended by medical specialists, and difficulties accessing healthcare—including distance, military activity, cost barriers, and the fact that only one in five healthcare facilities provide maternal and child healthcare—leave expectant and new mothers without vital healthcare.¹⁴⁶ Furthermore, about 1.5 million pregnant and breastfeeding women suffer from acute malnourishment.¹⁴⁷

Contraception, including contraceptive pills, condoms, and contraceptive injections, have been heavily restricted by Houthi-led rebels, with intrauterine devices (“IUDs”) fully banned in the Sa'ada governorate as of late 2020.¹⁴⁸ Accessing issues for contraceptives increase the risk of an unwanted or unhealthy pregnancy, which may in turn result in higher maternal mortality

¹³⁹ Sumaia Mohammed Zaid et al., *Psychologists' Perspective of Mental Health in Yemen during the Civil War and Covid-19: A qualitative inquiry*, CURRENT PSYCHOLOGY (2022), <https://link.springer.com/article/10.1007/s12144-022-03617-7>.

¹⁴⁰ Niarchos, *supra* note 114

¹⁴¹ Zaid, *supra* note 139.

¹⁴² *Tackling the Hidden Mental Health Burden in Yemen*, UNFPA (Nov. 10, 2023), <https://arabstates.unfpa.org/en/news/tackling-hidden-mental-health-burden-yemen>.

¹⁴³ Nour Olwan, *For Women in Yemen, Reproductive Health is a Luxury*, EURO-MED HUMAN RTS. MONITOR (Sept. 27, 2022), <https://euromedmonitor.org/en/article/5349/For-women-in-Yemen,-reproductive-health-is-a-luxury>.

¹⁴⁴ *12.6 Million Women and Girls in Yemen Need Life-Saving Support*, UNFPA Press Release (Feb. 24, 2023), <https://www.unfpa.org/press/126-million-women-and-girls-yemen-need-life-saving-support>.

¹⁴⁵ *Id.*

¹⁴⁶ Olwan, *supra* note 143; *12.6 Million Women and Girls in Yemen Need Life-Saving Support*, UNFPA Press Release (Feb. 24, 2023), <https://www.unfpa.org/press/126-million-women-and-girls-yemen-need-life-saving-support>.

¹⁴⁷ *12.6 Million Women and Girls in Yemen Need Life-Saving Support*, UNFPA Press Release (Feb. 24, 2023), <https://www.unfpa.org/press/126-million-women-and-girls-yemen-need-life-saving-support>.

¹⁴⁸ Mwatana for Human Rights, “Moments of Hell! Ansar Allah (Houthi) Group Practices Gravely Undermine Women’s Rights” (March 8, 2022), “*Moments of Hell!*” *Ansar Allah (Houthi) Group Practices Gravely Undermine Women’s Rights*, Mwatana Press Release (Mar. 8, 2022), <https://www.mwatana.org/posts-en/undermine-women>; Niku Jafarnia, *Houthis Violating Women’s and Girls’ Rights in Yemen*, HUMAN RTS. WATCH (Feb. 6, 2023), <https://www.hrw.org/news/2023/02/06/houthis-violating-womens-and-girls-rights-yemen>.

numbers.¹⁴⁹ Additionally, Yemeni law prohibits abortion unless a specialist doctor finds that an abortion is necessary to preserve the life of the mother.¹⁵⁰ There is no exception in cases of rape.¹⁵¹ Based on the above listed barriers to maternal healthcare, access to legal abortion is extremely limited, and such restrictions can increase maternal mortality rates.¹⁵²

4. Gender-Based Violence and the Right to an Education

Exposure to GBV meaningfully thwarts an individual's ability to access an education. Moreover, the cultural norms which give rise to GBV simultaneously make it more challenging for women and girls, in particular, to access an education. Accordingly, in Yemen, access to education for girls and women is greatly limited both by conservative cultural norms as well as functional issues such as displacement.¹⁵³

Yemeni women struggle to access schooling. Cultural phenomena have proliferated the conflict, such as the high rate of child marriage¹⁵⁴ and beliefs that women and girls do not have a right to education,¹⁵⁵ and existed even prior to the escalation of the war. One Yemeni woman reported an inability to help her children with their schooling since she was forced to drop out of school to marry at a young age.¹⁵⁶ The lack of access to education, and its corresponding impact on literacy rates, is problematic through most women's day-to-day life. For example, one woman reported an inability to read expiration dates on milk cartons and other such issues.¹⁵⁷

Approximately one in four educational facilities have been destroyed in the conflict and some students living in more contested regions, such as Taizz, run the risk of being caught in the

¹⁴⁹ Michael Boah et al., *Prevalence and Factors Associated with the Utilisation of Modern Contraceptive Methods Among Married Women of Childbearing Age in Yemen: A Secondary Analysis of National Survey Data*, 13 *BMJ OPEN* (2023).

¹⁵⁰ *YEMEN: GENDER JUSTICE & THE LAW*, UNITED NATIONS DEVELOPMENT PROGRAMME (2018).

¹⁵¹ *Id.*

¹⁵² Anna Kheyfets et al., *The Impact of Hostile Abortion Legislation on the United States Maternal Mortality Crisis: A Call for Increased Abortion Education*, 11 *FRONTIERS IN PUBLIC HEALTH* 1 (2023).

¹⁵³ *Learning When Displaced: Yemeni Women and Girls Find Empowerment in Education*, UN SUSTAINABLE DEVELOPMENT GROUP (Dec. 18, 2023),

<https://unsdg.un.org/latest/stories/learning-when-displaced-yemeni-women-and-girls-find-empowerment-education>.

¹⁵⁴ See *YEMEN ACCOUNTABILITY PROJECT, YEMEN'S YOUNGEST VICTIMS: THE YEMEN CIVIL WAR'S TOLL ON CHILDREN 13-14* (2023),

<https://case.edu/law/sites/case.edu.law/files/2023-06/YAP%20Effect%20on%20Children%20White%20Paper%20Final.docx.pdf>.

¹⁵⁵ *Learning When Displaced: Yemeni Women and Girls Find Empowerment in Education*, UN SUSTAINABLE DEVELOPMENT GROUP (Dec. 18, 2023),

<https://unsdg.un.org/latest/stories/learning-when-displaced-yemeni-women-and-girls-find-empowerment-education>.

¹⁵⁶ Fatima Al-Ajel, *Yemeni Women and Illiteracy: Fact, Fate and the Fight*, *THE YEMEN TIMES ARCHIVES* (Nov. 6, 2006), <https://yementimes.com/yemeni-women-and-illiteracy-fact-fate-and-the-fight-archives2006-996-reportage/>; see also *Learning When Displaced: Yemeni Women and Girls Find Empowerment in Education*, UN SUSTAINABLE DEVELOPMENT GROUP (Dec. 18, 2023),

<https://unsdg.un.org/latest/stories/learning-when-displaced-yemeni-women-and-girls-find-empowerment-education> (“Women want to teach their children how to read and write, but they are unable to.”).

¹⁵⁷ *Learning When Displaced: Yemeni Women and Girls Find Empowerment in Education*, UN SUSTAINABLE DEVELOPMENT GROUP (Dec. 18, 2023),

<https://unsdg.un.org/latest/stories/learning-when-displaced-yemeni-women-and-girls-find-empowerment-education>.

crossfire on their way to or from school.¹⁵⁸ The distance to educational facilities for any rural students can be immense, and the low rate of female school teachers contributes to lower rates of female enrollment and retention in schools as many families are unwilling to have their female family members taught by men.¹⁵⁹ The population of IDPs is impacted by access to education, with displacement sites largely dependent on volunteer teachers.¹⁶⁰ Additionally, due to the functional issues and other impacts of war, families may only be able to afford to send one child to school, in which case they are likely to choose to send a son over a daughter based on safety concerns and cultural practices.¹⁶¹

In addition to the aforementioned implications of limited education access, lack of education places women and girls at higher risk of other issues.¹⁶² Girls who drop out of school prematurely are at higher risk of forced marriage.¹⁶³ Furthermore, girls who drop out of school are at higher risk of exploitation, abuse, and sexual violence.¹⁶⁴ General research regarding girls' education suggests that lack of access to education increases the risk of intimate partner violence victimization.¹⁶⁵

5. Arbitrary Imprisonment

All of the major parties to the conflict have arbitrarily and illegally imprisoned women. One of the more blatant examples is the customary practice of refusing to release women who have completed their jail sentences without the accompaniment of a male guardian.¹⁶⁶ This practice is against Yemeni law and has no legal basis.¹⁶⁷ Women also face injustice through accusations of adultery being treated as a criminal offense.¹⁶⁸

¹⁵⁸ *Yemen: Conflict Leaves Millions of Children Without Proper Education*, Int'l Comm. Red Cross News Release (Oct. 13, 2022),

<https://www.icrc.org/en/document/yemen-conflict-leaves-millions-children-without-proper-education>.

¹⁵⁹ *In Yemen, Breaking Barriers to Girls' Education*, THE WORLD BANK (Apr. 15, 2013),

<https://www.worldbank.org/en/news/feature/2013/04/11/yemen-breaking-barriers-to-girls-education>.

¹⁶⁰ *Yemen: Conflict Leaves Millions of Children Without Proper Education*, Int'l Comm. Red Cross News Release (Oct. 13, 2022),

<https://www.icrc.org/en/document/yemen-conflict-leaves-millions-children-without-proper-education>.

¹⁶¹ *Human Rights Watch Submission to the Committee on the Elimination of Discrimination against Women on Yemen*, HUMAN RTS. WATCH (Feb. 7, 2020),

<https://www.hrw.org/news/2020/02/07/human-rights-watch-submission-committee-elimination-discrimination-against-women>.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Abigail Weitzman, *Does Increasing Women's Education Reduce Their Risk of Intimate Partner Violence? Evidence from an Education Policy Reform*, 56 HHS PUBLIC ACCESS 574 (2018).

¹⁶⁶ *Yemen: End the Male Guardianship Restriction for Releasing Women from Prisons*, AMNESTY INT'L (Jan. 25, 2023),

<https://www.amnesty.org/en/latest/news/2023/01/yemen-end-the-male-guardianship-restriction-for-releasing-women-from-prisons/>.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

Between 2014 and 2020, the U.N. found at least 30 verified cases of individuals “arbitrarily arrested and detained in violation of Yemeni and/or international law.”¹⁶⁹ Persons have been found to have been detained without charges for prolonged periods.¹⁷⁰ These detentions were for reasons such as “voicing opinions contrary to the interests of the ruling party,”¹⁷¹ and “discrimination of various forms, including discrimination on the basis of religious beliefs, race and/or gender.”¹⁷²

In addition to arbitrary imprisonment, women are discriminated against throughout the duration of their imprisonment and subject to disproportionate treatment. There have been numerous documented cases of women being physically and mentally tortured, raped, isolated, and forced to confess on camera to myriad criminal charges while in Houthi prisons.¹⁷³ The Human Rights Council has found that rape was “a widespread practice in the secret detention facilities where women and girls were kept.”¹⁷⁴ Fatima Al-Arouli, a human rights activist, was arrested and sentenced to death under charges of espionage and impersonating a woman.¹⁷⁵ She was isolated and deprived of her rights to meet her family and lawyer and her lawyers were denied from attending trial sessions.¹⁷⁶ Several U.N. organizations have called on the Houthi authorities detaining her to release her, stating that the “enforced disappearance and detention of human rights defender Fatima Saleh Al-Arouli is a clear retaliation against her efforts to promote and protect human rights.”¹⁷⁷

6. Honor Killings

The term “honor killings” or “honor crimes” generally refers to the practice of men killing female family members under the pretext, accusation, or suspicion that the female family member engaged in a sexual relationship outside of marriage.¹⁷⁸ It is estimated that more than 5,000 individuals are killed each year due to honor killings worldwide.¹⁷⁹ Yemeni law, exercised in areas controlled by the official government and the Houthi militias, fails to effectively outlaw “honor” crimes, and does not provide adequate legal recourse for victims. Article 59 of the

¹⁶⁹ Human Rights Council, “Situation of Human Rights in Yemen, including Violations of Abuses since September 2014: Detailed Findings of the Group of Eminent International and Regional Experts on Yemen,” U.N. Doc. A/HRC/45/CRP.7 at ¶ 155. (Sept. 29, 2020) [hereinafter, “Situation of Human Rights in Yemen”]

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at ¶ 156.

¹⁷² *Id.* at ¶ 157.

¹⁷³ *The Coalition of Women for Peace in Yemen Confirmed that It Monitored the Abduction of 504 Women in the Central Prison in Sana’a, and 204 Minor Girls Between the Ages of 12 and 18*, AL-SHARQ AL-AWSAT (Dec. 8, 2022), <https://nabd.com/s/112418824-ac2a8b/ب-المركز-ي-ب-السجن-المرکزي-ب-504-نساء-في-السجن-المرکزي-ب-12-وال-18-عاماً-أكد-تحالف-النساء-من-أجل-السلام-في-اليمن-أنه-رصد-اختطاف-504-نساء-في-السجن-المرکزي-ب-السجن-المرکزي-ب-12-وال-18-عاماً-صنعاء، و-204-فتيات-قاصرات-بين-سن-12-وال-18-عاماً>.

¹⁷⁴ Situation of Human Rights in Yemen, *supra* 169, at ¶ 174.

¹⁷⁵ *Statement from the Women’s Solidarity Network Regarding the Serious Violations of International Human Rights Law Targeting Human Rights Defender Fatima Saleh Al-Arouli*, WOMEN SOLIDARITY NETWORK (Feb. 2, 2024), <https://www.womensolidaritynetwork.org/news-statements-en/statement-from-the-women-s-solidarity-network-regarding-the-serious-violations-of-international-human-rights-law-targeting-human-rights-defender-fatima-saleh-al-arouli>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Katja Luopajarvi, *International Accountability for Honour Killings as Human Rights Violations*, 22 NORDISK TIDSSKRIFT FOR MENNESKERETTIGHETER 1, 1-2 (2004).

¹⁷⁹ *The Horror of ‘Honor Killings,’ Even in US*, AMNESTY INT’L, <https://www.amnestyusa.org/updates/the-horror-of-honor-killings-even-in-us/>.

Yemeni Penal Code permits fathers, uncles, and brothers to murder women and girls, facing only a moderate fine in punishment.¹⁸⁰ Article 42 of the Yemeni Penal Code indicates that such fines are half of that as would be required for a man's death.¹⁸¹ Further, Article 232 of the Yemeni Penal Code indicates that if a man kills his wife, one of his daughters or granddaughters, or sisters after being caught in the crime of adultery, his punishment will not be greater than one year of imprisonment or a fine.¹⁸² These laws collectively encourage a culture where the killing of women is permissive, even for suspicion of extramarital sex.

Several honor killings have received media attention, including that of a 12-year-old girl called Ma'ab, who was killed in a Yemeni government-controlled area.¹⁸³ After her father accused her of having extramarital sex and subsequently tortured her into confessing to such, he shot and killed her.¹⁸⁴ Yemeni authorities confirmed that "the child was 'brutally tortured.'"¹⁸⁵ While Ma'ab's father was arrested at the time, according to one Yemeni newspaper "it is unclear whether he was charged with killing her or had been released later."¹⁸⁶

Similarly, in 2020, 16-year-old Isbah Yahya Mahdi was killed by her brothers, who poisoned and tortured her at their father's behest in Houthi-controlled territory.¹⁸⁷ The following, in 2021, Shorouk Ahmed Mana, a 23-year-old woman, was strangled and killed in the Houthi-controlled Sanaa by her three brothers under the incitement of her uncle who suspected she had committed adultery.¹⁸⁸ Shorouk's murder was denounced by several activists on social media, who called for an end to all "honor" crimes.¹⁸⁹ Despite societal pressure, media reports note that the Houthi authorities did not prosecute her killers.¹⁹⁰

7. Female Genital Mutilation

A 2013 Yemen Demographic and Health Survey revealed that approximately 19 percent of women and girls in Yemen had undergone female genital mutilation.¹⁹¹ These statistics have declined slightly in recent years but remain particularly prevalent in the

¹⁸⁰ *A Horrific Crime Among the Brothers of Sana'a*, AL ARABIYA (Sept. 27, 2021),

<https://www.alarabiya.net/arab-and-world/yemen/2021/09/27/جريمة-مروعة-بين-اشقاء-تهز-صنعاء-خنفوا-أختهم-بأيديهم>.

¹⁸¹ Abeer Mohsen, "Honor" Killings in Yemen: Tribal Tradition and the Law, DARAJ (Dec. 19, 2019),

<https://daraj.media/en/36602/>.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Why Has a 2015 'Honor Crime' Video from Yemen Resurfaced?*, THE NODE (May 27, 2019),

<https://www.albawaba.net/node/why-has-2015-honor-crime-video-yemen-resurfaced-1288218>.

¹⁸⁶ *Id.*

¹⁸⁷ *Girl Killed in Yemen in Shocking Circumstances: Perpetrators Must Be Held Accountable*, EURO-MED HUMAN RTS. MONITOR (Mar. 19, 2020),

<https://euromedmonitor.org/en/article/3427/Girl-killed-in-Yemen-in-shocking-circumstances:-%20Perpetrators-must-be-held-accountable>.

¹⁸⁸ *What Is the Story of the New Victim in Sana'a #Shorooq_Ahmed*, AL WATAN TODAY (Sept. 30, 2021),

<https://alwatanoday.com/posts/9599>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ ENDING FGM IN YEMEN: DISTANCING FGM FROM RELIGIOUS DISCOURSE AND TERMINOLOGY, UNICEF 3, <https://www.unicef.org/mena/media/20686/file/Ending%20FGM%20in%20Yemen.pdf>, (last visited Apr. 16, 2024); *Female Genital Mutilation Dashboard (FGM) - Yemen*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/data/fgm/YE>, (last visited Apr. 16, 2024); ACAPS, *supra* note 110, at 5.

Yemeni-government-controlled coastal regions, where between 60 and 80 percent of women have experience female genital mutilation.¹⁹² Most of these women were targeted as infants.¹⁹³

8. Forced Marriage

The Yemen conflict has heightened the frequency of child marriage for female children. Although child marriage for female children was common in Yemen before the conflict, it has since become more prevalent.¹⁹⁴ For more information on the practice of child marriage and its particular impact on girls, review the YAP's previous white paper on the effect of the conflict on children.¹⁹⁵

9. Restrictions on Movement

All parties to the conflict in Yemen have engaged in the systematic restriction of women's freedom of movement.¹⁹⁶ These restrictions have impaired women's ability to access work, education, and healthcare.¹⁹⁷ Beginning in 2014, authorities in Yemen's capital of Sanaa have required women to travel with a *mahram*, a male guardian such as a husband, or with written permission from this person.¹⁹⁸

Houthi's Land Transport Regulatory Authority expanded the restrictions on women's movement in August 2022, "requiring that women no longer be permitted to travel anywhere within Houthi-controlled areas, to areas controlled by the Yemeni government, or outside the country without a *mahram*."¹⁹⁹ This is especially an issue for women who do not have many men in their families.²⁰⁰ This particularly affects women who work; many have lost their jobs as a consequence of not being able to travel without a *mahram*.²⁰¹ Moreover, women are threatened with insults if they are seen traveling outside of Sanaa without a male guardian.²⁰² They are also threatened with imprisonment, which comes with severe consequences for women.²⁰³

¹⁹² Mansour Adbu Al-Taj & Motahar Hassan Al-Hadari, *Prevalence and Drivers of Female Genital Mutilation/Cutting in Three Coastal Governments in Yemen*, 23 BMC Public Health 1 (2023).

¹⁹³ *Female Genital Mutilation Dashboard (FGM) - Yemen*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/data/fgm/YE>, (last visited Apr. 16, 2024).

¹⁹⁴ ACAPS, *supra* note 110, at 5.

¹⁹⁵ YEMEN ACCOUNTABILITY PROJECT, *YEMEN'S YOUNGEST VICTIMS: THE YEMEN CIVIL WAR'S TOLL ON CHILDREN 13-14* (2023), <https://case.edu/law/sites/case.edu.law/files/2023-06/YAP%20Effect%20on%20Children%20White%20Paper%20Final.docx.pdf>.

¹⁹⁶ *Yemen: Warring Parties Restrict Women's Movement*, HUMAN RTS. WATCH (Mar. 4, 2024), <https://www.hrw.org/news/2024/03/04/yemen-warring-parties-restrict-womens-movement>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Male guardianship rules in north Yemen restrict women's aid work*, REUTERS (Mar. 23, 2023), <https://www.reuters.com/world/middle-east/male-guardianship-rules-north-yemen-restrict-womens-aid-work-2023-03-23/>.

²⁰¹ *Id.*

²⁰² Letter from Dorothy Estrada-Tanck, Chair-Rapporteur of the Working Group on Discrimination Against Women and Girls, et al., to Hisham Sharaf at 2 (Dec. 2, 2022), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27718>.

²⁰³ *Id.*

Additionally, under Yemen’s Personal Status Law (1992), married women are required to obey their husbands in order to maintain their *nafaqa*, the Islamic term for financial support a husband provides to his wife.²⁰⁴ A wife cannot leave her marital home without her husband’s permission or unless she has a “legitimate excuse” and she cannot refuse to travel with her husband.²⁰⁵ A “legitimate excuse” could include taking care of frail parents, managing finances, or going to a mutually-agreed upon job.²⁰⁶ In practice, what this means is that women can be, and are, detained, imprisoned, and/or punished for leaving the home alone.²⁰⁷

In their seventh and eighth periodic reports of Yemen, the Committee on the Elimination of Discrimination Against Women raised concerns about the restrictions on the freedom of movement arising under the Personal Status Law.²⁰⁸ The report highlights the impact of the restriction on movement for married women. Married women are unable to move or leave conflict areas because they are unable to travel without their husband’s permission.²⁰⁹ Additionally, under the Personal Status Law, fathers are the legal guardians of children.²¹⁰ A mother cannot travel with her children as she needs consent of the children’s father or guardian.²¹¹ This proves extremely problematic if the husband is missing or has been killed in the civil war.²¹²

Yemeni government forces and the Southern Transitional Council have also restricted women’s movement, particularly in the south of Yemen.²¹³ For example, in Southern Transitional Council-controlled territory, women have been barred from hotels unless they show proof of *mahram*.²¹⁴ In March, 2024, Human Rights Watch reported that all parties to the conflict were escalating restrictions on women’s movement.²¹⁵

10. Restrictions on Freedom of Expression

Yemeni women and girls have their freedom of expression restricted in two major ways: a) through the targeting of women activists and journalists; and b) by the restrictions to their clothing by official state and Houthi regulators.

²⁰⁴ ROTHNA BEGUM, TRAPPED: HOW MALE GUARDIANSHIP POLICIES RESTRICT WOMEN’S TRAVEL AND MOBILITY IN THE MIDDLE EAST AND NORTH AFRICA, HUMAN RTS. WATCH 113 (2023) [hereinafter, “TRAPPED”].

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Yemen*, CEDAW, UN Doc. CEDAW/C/YEM/CO/7-8 at 5 (Nov. 24, 2021).

²⁰⁹ TRAPPED, *supra* note 204, at 113.

²¹⁰ *Id.* at 116.

²¹¹ *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Yemen*, CEDAW, UN Doc. CEDAW/C/YEM/CO/7-8 at 15 (Nov. 24, 2021).

²¹² *Id.*

²¹³ *Yemen: Warring Parties Restrict Women’s Movement*, HUMAN RTS. WATCH (Mar. 4, 2024), <https://www.hrw.org/news/2024/03/04/yemen-warring-parties-restrict-womens-movement>.

²¹⁴ TRAPPED, *supra* note 204, at 115.

²¹⁵ *Yemen: Warring Parties Restrict Women’s Movement*, HUMAN RTS. WATCH (Mar. 4, 2024), <https://www.hrw.org/news/2024/03/04/yemen-warring-parties-restrict-womens-movement>.

a) Targeting of Women Activists and Journalists

Yemeni women working in journalism and activism face substantial challenges that their male counterparts do not. Gender-based discrimination is pervasive and is expressed through various forms of harassment, threats to personal safety, and even arbitrary detention.²¹⁶ In 2021, Reporters Without Borders recorded a 20% surge in arbitrary arrests, totalling 488 journalists, including 60 women, marking a historic high for women detainees.²¹⁷ Women working in journalism and activism also receive harassment online via social media, which leads to blackmailing and the issuance of death threats, further emphasizing risks to personal safety.²¹⁸ Importantly, while numerically there are less women journalists in Yemen, due to many of the restrictions outlined later in this section, the rate at which they are arrested, prosecuted, and targeted is substantial.²¹⁹

Censorship further restricts women's capacity to report independently and access essential information.²²⁰ Yemeni journalists are often targeted by the parties to the conflict in an attempt to prevent journalists from reporting on events that could skew public opinion against them. This overarching threat to journalists leads to them practicing self-censorship in order to avoid harassment, assault, arbitrary detention, forced disappearances, prosecution in sham trials resulting in imprisonment and possibly the death penalty, and monetary fines.²²¹ Euro-Med Human Rights Monitor reports that all Yemeni journalists have been subjected to at least one form of human rights violation. Notably, Yemen is ranked third in the world for most journalists killed in the last decade with a rate of more than five killed per year.²²²

Women face unique obstacles if they can obtain employment as a journalist or activist. Most women journalists additionally face societal pressures, threats, limited occupational opportunities, and family rejection of their journalism.²²³ Women also face challenges when it comes to practical aspects of journalism, namely difficulty in conducting interviews and obtaining statements. Women journalists are not always recognized as journalists even if they are engaging in journalistic activities, further subjecting them to discrimination, pay cuts, expulsion from events, and limited access to journalist protections under IHL.²²⁴

Women journalists and activists are also required to have *mahram* accompany them when they leave the home, constraining their autonomy and their ability to conduct their work effectively.²²⁵ Consequently, the vast majority of media outlets in Yemen have refrained from

²¹⁶ 2022 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: YEMEN, U.S. DEP'T STATE (2022), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/yemen/>.

²¹⁷ "Not Your Profession:" Violations and Harassment Facing Female Journalists in Yemen, Tunisia, oPt, EURO-MED HUMAN RTS. MONITOR (Mar. 7, 2023), <https://euromedmonitor.org/en/article/5609/>"Not-your-profession":-Violations-and-harassment-facing-female-journalists-in-Yemen,-Tunisia,-oPt. [hereinafter, "Not Your Profession"].

²¹⁸ Mubarak Al-Yousifi, *The Cybercrime Epidemic Targeting Yemeni Women*, FAIR PLANET (Jan. 27, 2023), <https://www.fairplanet.org/story/the-cyber%20crime-epidemic-targeting-yemeni-women/>.

²¹⁹ *Not Your Profession*, *supra* note 217.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ FROM NIGHT TO DARKER NIGHT, EQUAL RIGHTS TRUST (2018), https://www.equalrightstrust.org/ertdocumentbank/Yemen_EN_online%20version.pdf.

engaging or collaborating with female journalists.²²⁶ This restriction on the freedom of movement and its relationship to the violations of women’s right to freedom of expression will be explored more in another section, but it is important to note that the requirement to dress a certain way and only travel with a male escort limits the ability of women journalists and activists to obtain employment and continue working.

Yemeni journalist Wedad al-Badawi has stated the restrictions on women journalists not only negatively affect women, it affects journalism as a whole. He highlights the example of conservative Yemeni women only being comfortable speaking and giving testimony to women journalists.²²⁷ Further, journalism as a whole benefits from the diversification of stories, perspectives, interviewees, and writers within the field. Journalism is inherently more accurate and representative when women are included throughout the reporting process and within the media industry generally.

Women journalists and other women professionals are particularly targeted by parties to the Yemen conflict via policies restricting women’s movement. The UN Humanitarian Coordinator has previously briefed the UN Security Council on issues concerning UN women employees and how these policies have negatively impacted their ability to work, stating that the maharam policies have adversely affected and completely halted many of their female staff’s work.²²⁸ Human Rights Watch also reports that checkpoint officials target women working with humanitarian agencies and nongovernmental organizations, usually preventing these women from traveling into Houthi-controlled territory.²²⁹ A Yemeni women’s rights activist reported to Human Rights Watch that when trying to pass through a government-controlled checkpoint without a male family member, she was detained for five hours and when a relative finally came to accompany her the checkpoint officer said, “But she’s working with NGOs and women who work with NGOs are [a derogatory expletive].” Another women’s rights activist notes, “psychologically we’ve been broken down...to speak about women’s empowerment feels ridiculous when we can’t even move around.”²³⁰

Human Rights Watch notes this restriction on women’s movement contradicts guarantees in the Yemeni constitution and that Yemen is in direct violation of its obligations under the International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Discrimination Against Women, and the Arab Charter on Human Rights.²³¹

b) *Restrictions on Clothing*

The Houthis strict dress code requires women to wear only loose-fitting abayas—black robe-like garments that usually cover the entire body except for the wearer’s hands, feet, and portions of their face—or burqas—black robe-like coverings that only allow for a narrow slit to show the eyes of the wearer.²³² The Houthis have convened with women’s clothing shops and

²²⁶ *Not Your Profession*, *supra* note 217.

²²⁷ *Id.*

²²⁸ Fatima Abo Alasarar, *Houthis Step Up Their Oppression of Yemen’s Women*, ARAB NEWS (Feb. 8, 2023), <https://www.arabnews.com/node/2247476>.

²²⁹ *Yemen: Warring Parties Restrict Women’s Movement*, HUMAN RTS. WATCH (Mar. 4, 2024), <https://www.hrw.org/news/2024/03/04/yemen-warring-parties-restrict-womens-movement>.

²³⁰ *Id.*

²³¹ *Id.*

²³² Armin Langer, *What is an Abaya—and Why Does it Cause Such Controversy in France? A Scholar of European Studies Explains*, UNIVERSITY OF FLORIDA (Sept. 27, 2023), <https://news.ufl.edu/2023/09/conversation-abaya/>;

mandated they sell only these specific items, requiring them to stop manufacturing any colorful, shortened, or highwaisted versions of abayas and burqas.²³³

Placing these restrictions on women is a tactic used by Yemeni authorities to visibly separate conformists from non-conformists, making it easier to identify and punish those in opposition of their policies. This tactic is also one used to exert control over women, creating a regressive society, limiting their options to leave or make positive political change in Yemen.²³⁴ These policies also aim to isolate Yemen, and Yemeni women, from the outside world; an attempt at reinvention of Yemeni society through the introduction of new traditional and cultural norms.²³⁵ This tactic is not strictly found in Yemen, the world has seen strict dress code enforcement as a mechanism to control women by the Taliban in Afghanistan and Daesh in Syria and Iraq as well.²³⁶

Yemeni model Entesar Al-Hammadi was arbitrarily arrested by Houthis and charged with ‘indecentcy’ because she wore colorful clothing in photos shared to her social media.²³⁷ Her arrest and subsequent charging were accompanied by harassment and false accusations of prostitution. She was sentenced to five years in prison at the conclusion of a Houthi sham trial.²³⁸ This is one example to highlight the alarming trend of utilizing social media to further police and control women’s freedom of expression concerning clothing choice.

The above restrictive measures are oppressive, intrusive, and impact women’s freedom of expression. It is important to emphasize that these garments themselves are not oppressive. If women choose, on their own volition, to dress modestly; that is an empowerment of their freedom of expression. However, when their choice to dress how they want is taken away and mandated by men in positions of authority, their fundamental right to choose how to express themselves has been violated. Also it is important to note, these regulatory practices, while they discriminate against Yemeni women, they also reinforce injustices and stereotypes that limit their autonomy concerning independent decisions of marriage, employment, and education on the global stage.²³⁹

11. Targeting of LGBTQIA+ Individuals

Discrimination against LGBTQIA+ individuals is codified in Yemeni legislation and enabled by groups of public and private citizens. Articles 264 and 268 of the Yemeni Penal Code criminalize homosexuality;²⁴⁰ while those provisions contain no express references to trans or genderqueer people, they have been discriminately applied against those populations.²⁴¹ The Yemeni Penal Code punishes women in same-sex relationships with a maximum three-year sentence and punishes sodomy, when conducted by an unmarried person, with a maximum of

²³³ Abo Alasarar, *supra* note 228.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ PENAL CODE, art. 264, 268 (1994) (Yemen).

²⁴¹ *Yemen: Events of 2021*, HUMAN RTS. WATCH, <https://www.hrw.org/world-report/2022/country-chapters/yemen>, (last visited Apr. 16, 2024) [hereinafter, “*Events of 2021*”].

100 lashes or up to one year in prison.²⁴² If a homosexual individual is married, the maximum sentence is death by stoning.²⁴³ Yemen is one of only seven countries in the world to impose the death penalty for homosexuality.²⁴⁴

Actors in the Yemen Civil War have routinely targeted the LGBTQIA+ community. In 2020, Yemeni forces arrested a transgender woman for sodomy and indecent practices.²⁴⁵ She was imprisoned for eight months where she was abused, tortured and subjected to a forced anal exam.²⁴⁶ In 2022, Southern Transitional Council and Houthi forces arrested at least five people for their non-conforming gender presentation or for their LGBTQIA+ rights activism on social media.²⁴⁷ Security Belt forces accused a third-gender person for sodomy and arrested, beat and raped them.²⁴⁸

In 2013, people suspected of being Al-Qaeda members (who were government actors, at the time) killed eight men in the street whom they suspected of being gay; in 2023, the State allegedly charged 118 members of the Houthi military for homosexuality; and in 2024, the State sentenced 13 people to death for homosexuality and charged 40 people with crimes related to homosexuality (including nine that the court sentenced to death—seven by stoning and two by crucifixion).²⁴⁹

Though Yemen neglects to report on discrimination against LGBTQIA+ individuals (based on the government’s belief that “violence or discrimination against LGBTI persons is [irrelevant] for official reporting”), those who are openly a part of the LGBTQIA+ community do face discrimination.²⁵⁰ There are reports of severe violence towards LGBTQIA+ individuals, such as arbitrary detention, ill-treatment, torture, abuse, and sexual violence. For example, Houthi and Security Belt forces arbitrarily detained and tortured nine individuals they accused of “supporting the enemy” by spreading “prostitution and homosexuality” between 2016 and 2020,²⁵¹ and law enforcement officers arbitrarily detailed, tortured, and sexually abused a trans woman during her eight-month prison sentence for charges of sodomy and “indecent practices.”²⁵²

²⁴² PENAL CODE, art. 264, 268 (1994) (Yemen).

²⁴³ *Id.*

²⁴⁴ See *Yemen LGBTQI+ Resources*, AMERA INT’L, <https://amerainternational.org/sexual-orientation-and-gender-%20identity-country-list/yemen-lgbtqi-resources/> (last visited Apr. 16, 2024).

²⁴⁵ *Events of 2021*, *supra* note 241.

²⁴⁶ *Id.*

²⁴⁷ *Yemen 2022*, AMNESTY INT’L, <https://www.amnesty.org/en/location/middle-east-and-north-africa/yemen/report-yemen/> (last visited Apr. 16, 2024).

²⁴⁸ *Id.*

²⁴⁹ *Yemen*, HUMAN DIGNITY TRUST, <https://www.humandignitytrust.org/country-profile/yemen/> (last visited Apr. 16, 2024).

²⁵⁰ 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: YEMEN, U.S. DEP’T STATE (2020), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/yemen/>.

²⁵¹ *Situation of Human Rights in Yemen, including Violations and Abuses Since September 2014: Report of the Group of Eminent International and Regional Experts on Yemen*, UN Doc. A/HRC/45/6 at 11-12 (Sept. 28, 2020).

²⁵² *Events of 2021*, *supra* note 241.

In January and February of 2024, Houthi-led courts sentenced over 40 individuals due to sexual orientation or gender identity.²⁵³ In the northern court in Dhamar, nine individuals were sentenced to death and 23 were given prison sentences varying from six months to 10 years.²⁵⁴ In the southern court in Ibb, 13 students were sentenced to death and 3 were sentenced to floggings.²⁵⁵ These recent sentences suggest Houthi authorities are escalating their enforcement of laws criminalizing trans and genderqueer individuals. These executions, if carried out, will be the first reported executions of LGBTQIA+ individuals in more than a decade.²⁵⁶

Yahya al-Zandani, a transgender man, detailed his experience with Yemeni authorities as well as being abused and threatened by family members and strangers, who specifically threatened to subject him to an “honor killing.”²⁵⁷ Al-Zandani was involuntarily admitted to a psychiatric hospital, after Yemeni authorities mislabelled his gender identity as homosexuality, deemed him mentally ill, and forcibly medicated him, the latter of which resulted in a long-term negative impact.²⁵⁸ In reflecting on his experience, Al-Zandani said, “I have only been in this world for 23 years, yet it seems like a million lifetimes of torture.”²⁵⁹ Al-Zandani has been unable to continue his education,²⁶⁰ and despite eventually fleeing the country, he is still not permitted to travel freely, still cannot receive help from Arab NGOs, and still fears for his life from his family and the Houthi military, who his family reported him to.²⁶¹

12. Targeting of Migrant Women

The Yemen Conflict has interfered with migrant women's passing through Yemen en route to neighboring states such as Saudi Arabia. This can be accredited to escalation in nearby conflicts in Ethiopia and Eritrea causing desperate civilians to flee.²⁶² Although migrants in Yemen were common before the conflict, the number of migrants has increased—about 77,000 migrants having crossed into Yemen in just the first half of 2023.²⁶³

²⁵³ *Yemen: Huthis Must Stop Executions and Release Dozens Facing LGBTI Charges*, AMNESTY INT’L (Feb. 9, 2024), <https://www.amnesty.org/en/latest/news/2024/02/yemen-huthis-must-stop-executions-and-release-dozens-facing-lgbt-i-charges/>.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: YEMEN, U.S. DEP’T STATE (2020), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/yemen/>.

²⁵⁷ Azhar Al-Ruabie, GENDER DYSPHORIA DURING WAR: A TRANSGENDER YEMENI MAN SPEAKS OUT, *Al-Monitor* (2020), <https://www.al-monitor.com/originals/2020/06/transgender-yemen-war-lgbtq-taboo-covid19-homosexuality.html>, (last visited Feb. 23, 2024).

²⁵⁸ Azhar Al-Ruabie, GENDER DYSPHORIA DURING WAR: A TRANSGENDER YEMENI MAN SPEAKS OUT, *Al-Monitor* (2020), <https://www.al-monitor.com/originals/2020/06/transgender-yemen-war-lgbtq-taboo-covid19-homosexuality.html>, (last visited Feb. 23, 2024).

²⁵⁹ Arya Karijo & Adam Ramsay, *‘I’m a Yemeni Trans Man and My Family Want to Kill Me,’* OPEN DEMOCRACY (Mar. 29, 2021), <https://www.opendemocracy.net/en/5050/im-a-yemeni-trans-man-and-my-family-want-to-kill-me/>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *UNHCR Position on Returns to Ethiopia*, UNHCR (March 2022), <https://www.refworld.org/policy/counrypos/unhcr/2022/en/124066>.

²⁶³ *Human Rights Violations Against Migrants in Yemen Increase Amid Soaring Arrivals: IOM Warns*, INT’L ORG. MIGRATION (May 31, 2022),

Reports indicate that migrant smugglers, the Yemeni government, Houthi forces, and Saudi Security Forces have all perpetrated gender-based violence against migrants. Due to Yemen's difficult terrain, many migrants rely on smugglers or traffickers to escort them through mountains such as the Sarawat Mountains. These smugglers, some collaborating with the Yemen Immigration, Passport, and Nationality Authority (IPNA), routinely extort, rape, and threaten migrants. Migrants in an IPNA camp have been subjected to sexual exploitation, forced labor, and other forms of abuse.²⁶⁴ Migrants who resist exploitation are detained.²⁶⁵ In interviews done by Human Rights Watch, three of the ten women and girls interviewed were raped by smugglers or other migrants.²⁶⁶ For instance, a 14-year-old Ethiopian girl named Hamdiya told Human Rights Watch that smugglers threatened to rape her when she was unable to pay them more money than they'd initially agreed.²⁶⁷ Other instances include a 20-year-old woman becoming pregnant from rape by a smuggler.²⁶⁸

Houthi forces use gender-based violence to extort money from migrants and their families back home in Ethiopia.²⁶⁹ Houthi forces also subject women attempting to cross into Saudi Arabia to sexual slavery where soldiers routinely rape and sexually harass these women.²⁷⁰ Once migrants reach the Saudi border, Saudi security forces are responsible for GBV against women and girls as young as 13 years old. Reports include women being raped by Saudi security forces and pushed back across the border into Yemen without their clothes.²⁷¹ Human Rights Watch also reports that migrant men have been executed for refusing to rape fellow migrants at the instruction of Saudi security forces.²⁷²

<https://www.iom.int/news/human-rights-violations-against-migrants-yemen-increase-amid-soaring-arrivals-iom-war>
ns.

²⁶⁴ Lama Fakh & Nadia Hardman, *Warring Parties in Yemen Silent Amid Reports of Migrant Abuse*, HUMAN RIGHTS WATCH (Dec. 7, 2022),

<https://www.hrw.org/news/2022/12/07/warring-parties-yemen-silent-amid-reports-migrant-abuse>.

²⁶⁵ *Id.*

²⁶⁶ NADIA HARDMAN, "THEY FIRED ON US LIKE RAIN" SAUDI ARABIAN MASS KILLINGS OF ETHIOPIAN MIGRANTS AT THE YEMEN-SAUDI BORDER, HUMAN RIGHTS WATCH (2023).

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Nadda Osman, *Yemen: Houthis and STC Accused of Forcing Ethiopian Women into "Sexual Slavery,"* MIDDLE EAST EYE (Sept. 7, 2023),

<https://www.middleeasteye.net/news/yemen-ethiopia-women-forced-houthis-stc-sexual-slavery>.

²⁷⁰ *Id.*

²⁷¹ Letter Morris Tidball-Binz, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, et al. to Salman bin Abdulaziz Al Saud, King of Saudi Arabia (Oct. 3, 2022),

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27562>.

²⁷² NADIA HARDMAN, "THEY FIRED ON US LIKE RAIN" SAUDI ARABIAN MASS KILLINGS OF ETHIOPIAN MIGRANTS AT THE YEMEN-SAUDI BORDER, HUMAN RIGHTS WATCH (2023).

IV. 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.²⁷³ 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, conflict, the specialized law takes precedence.²⁷⁴ In the context of armed conflict, IHRL is the *lex generalis*, while IHL is the *lex specialis* that takes precedence.²⁷⁵

The International Court of Justice (“ICJ”) has applied this maxim in several cases.²⁷⁶ For instance, in the *Nuclear Weapons Advisory Opinion*,²⁷⁷ 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,²⁷⁸ the Court must apply the more specialized IHL standard that recognizes certain circumstances during which a deprivation of life is permissible.²⁷⁹ 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.²⁸⁰ 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.²⁸¹

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.

²⁷³ *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Int’l L. Comm., UN Doc. A/CN.4/L.702, ¶¶ 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%7D>.

²⁷⁴ 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).

²⁷⁵ Michael N. Schmitt, *Investigating Violations of International Law in Armed Conflict*, 2 HARV. NAT’L SEC. J. 31, 53-54 (2011).

²⁷⁶ 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).

²⁷⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8) [hereinafter “*Nuclear Weapons Advisory Opinion*”].

²⁷⁸ International Covenant on Civil and Political Rights, art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter, “*ICCPR*”].

²⁷⁹ *Nuclear Weapons Advisory Opinion*, *supra* note 105, ¶ 25.

²⁸⁰ See *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgment, 2005 I.C.J. 168, ¶¶ 216-220 (Dec. 19).

²⁸¹ *Id.*

B. Analysis of the Conflict’s Thematic Areas Concerning Gender-Based Violence

1. Sexual and Physical Violence

Rape and other forms of sexual violence are prohibited under IHL.²⁸² This prohibition is supported by state practice, and, while Common Article 3 of the Geneva Conventions does not explicitly mention rape or sexual violence, its prohibition on “violence to life and persons” including cruel treatment and torture, as well as “outrages on personal dignity,” encompasses rape and sexual violence.²⁸³ Moreover, Article 4 of Additional Protocol II lists the prohibition against rape as one of many fundamental guarantees to all persons who do not take a direct part or who have ceased to take a direct part in hostilities.²⁸⁴ By extension, rape and any form of sexual or “indecent” assault are both war crimes²⁸⁵ and crimes against humanity.²⁸⁶

Sexual violence is additionally prohibited under IHRL, predominantly as a form of torture,²⁸⁷ the prohibition of which is a peremptory norm of international law.²⁸⁸ It can alternatively be considered a form of cruel, inhuman or degrading treatment.²⁸⁹ Moreover, because rape and other forms of sexual violence are perhaps the most egregious manifestation of discrimination against women and LGBTQIA+ individuals,²⁹⁰ such conduct additionally violates IHRL prohibitions on discrimination.²⁹¹

Additionally, under the Convention on the Elimination of Discrimination Against Women (CEDAW), which Yemen has ratified,²⁹² requires state parties to take all appropriate measures to

²⁸² ICRC Rule 93, *supra* note 45.

²⁸³ *Id.*; 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 [hereinafter, “Fourth Geneva Convention”].

²⁸⁴ 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, art. 4(2), June 8, 1977, 1125 U.N.T.S. 609 [hereinafter, “Additional Protocol II”].

²⁸⁵ Rome Statute, *supra* note 44, at art. 8(2)(b)(xxii), (e)(vi); Statute of the International Criminal Tribunal for Rwanda, art. 4(e) (Nov. 8, 1994) [hereinafter, “ICTR Statute”]; Statute of the Special Court for Sierra Leone, art. 3(e) (Jan. 16, 2002) [hereinafter, “SCSL Statute”].

²⁸⁶ Rome Statute, *supra* note 44, at art. 7(1)(g); Statute of the International Criminal Tribunal for Yugoslavia, art.5(g) (May 25, 1993); ICTR Statute, *supra* note 285, art. 3(g).

²⁸⁷ ICRC Rule 93, *supra* note 45.

²⁸⁸ *UN Experts Call for States to Uphold Absolute Prohibition of Torture in Armed Conflict*, OHCHR (June 26, 2023),

<https://www.ohchr.org/en/statements/2023/06/un-experts-call-states-uphold-absolute-prohibition-torture-armed-conflict>.

²⁸⁹ *See, e.g., Aydin v. Turkey*, App. No. 23178/94, Eur. Ct. H.R. (1997); *Valasinas v. Lithuania*, App. No. 44558/98, Eur. Ct. H.R. (2001); *Martí de Mejía v. Perú*, Case 10.970, Inter-Am. Comm. H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 (1996); *Prosecutor v. Delalić*, Case No. IT-96-21-T, Judgment (ICTY Nov. 16, 1998).

²⁹⁰ *CEDAW General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38 (1992) [hereinafter, “General Recommendation No. 19”].

²⁹¹ *See e.g.* Convention on the Elimination of All Forms of Discrimination Against Women, art. 2, Dec.18, 1979, 1249 U.N.T.S. 13 [hereinafter, “CEDAW”]; ICCPR, *supra* note 278, at art. 26.

²⁹² *Ratification Status for Yemen*, UN TREATY BODY DATABASE,

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en (last visited April 16, 2024).

modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and other practices which are based on the inferior or superiority of either of the sexes.²⁹³ Where States fail to effectively protect women and girls from physical and sexual abuse within their families and elsewhere, as well as where they fail to prevent, investigate, and punish such actions, they have violated their human rights obligations.²⁹⁴ Here, Yemeni authorities have failed to protect women and girls from widespread abuse, which proliferates under a culturally permissive attitude toward such violence. Those authorities have additionally failed to prevent, investigate, and punish violent actions, which are thus, routinely committed with impunity.

Accordingly, the proliferation of sexual violence in Yemen, and the parties' to the conflicts' engagement in that practice or failure to due diligently prevent and punish it, constitutes a violation of both IHRL and IHL.

2. Psychological Violence

The Committee on the Elimination of All Forms of Discrimination Against Women lists psychological violence among the forms of gender-based violence which are prohibited under CEDAW.²⁹⁵ Accordingly, states parties have an obligation to— with due diligence— prevent, investigate, and punish instances of psychological violence, as well as to address cultural patterns which give rise to such conduct.²⁹⁶ The impunity with which such violence is committed in Yemen, as well as the high rate of prevalence of such violence, constitutes violations of Yemen's human rights obligations.

3. Physical, Mental, and Reproductive Health

a) *Physical and reproductive health*

Attacks on medical facilities and interference with civilians' access to medical care violates 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. CEDAW calls on State Parties to eliminate gender discrimination in health care in order to ensure, “on a basis of equality of men and women, access to health care services, including

²⁹³ CEDAW, *supra* note 291, at art. 5.

²⁹⁴ *X and Y v. Georgia*, Communication No. 24/2009, UN Doc. CEDAW/C/61/D/24/2009, ¶ 9.3 (2015), ¶ 9.3; *General Recommendation No. 19*, *supra* note 290.

²⁹⁵ *General Recommendation No. 35, on Gender-Based Violence Against Women, Updating General Recommendation No. 19*, UN Doc. CEDAW/C/GC/35, ¶ 14 (July 26, 2017) [hereinafter, “*General Recommendation No. 35*”].

²⁹⁶ CEDAW, *supra* note 291, at arts. 2, 5.

those related to family planning,”²⁹⁷ and that rural women “have access to adequate health care facilities, including information, counseling and services in family planning.”²⁹⁸

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.²⁹⁹ 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, women included, 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.³⁰⁰ This provision has also been recognized as CIL.³⁰¹ 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.³⁰² 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,³⁰³ denial of civilians’ access to hospitals,³⁰⁴ use of medical centers as shields,³⁰⁵ prevention of the delivery of medical supplies,³⁰⁶ and targeting humanitarian aid organizations attempting to deliver aid to civilians³⁰⁷ 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.³⁰⁸ For more information on the protection of medical facilities and providers, please see Yemen Accountability Project, *Starvation: Building the Case for Prosecuting Starvation Crimes in Yemen* (2021).³⁰⁹

²⁹⁷ *Id.* at art. 12(1).

²⁹⁸ *Id.* at art. 14(2)(b).

²⁹⁹ International Covenant on Economic, Social, and Cultural Rights, art. 12, Dec.19, 1966, 993 U.N.T.S. 171 [hereinafter, “ICESCR”].

³⁰⁰ Fourth Geneva Convention, *supra* note 283, at art. 3.

³⁰¹ *Id.*

³⁰² Rome Statute, *supra* note 44, at art. 8.

³⁰³ *See, e.g.*, YAP 2015 Matrix #YSN150401, #YHJ15072701, and #YTZ15110801; YAP 2019 Matrix #YHU19031401, #YTZ19110602, and #YSD1903271.

³⁰⁴ *See, e.g.*, YAP 2015 Matrix #YTZ15103001, and #YAD15040704; YAP 2016 Matrix #YTZ16112101; YAP 2017 Matrix #YSD17070501.

³⁰⁵ *See, e.g.*, YAP 2016 Matrix #YTZ16112102.

³⁰⁶ *See, e.g.*, YAP 2015 Matrix #YTZ151202; YAP 2020 Matrix #YNA20022501 and #YTZ20111703.

³⁰⁷ *See, e.g.*, YAP 2017 Matrix #YNA17061902; *See* UNICEF, *YEMEN HUMANITARIAN SITUATION REPORT* (2018).

³⁰⁸ Fourth Geneva Convention, *supra* note 283, at art. 3.

³⁰⁹ YEMEN ACCOUNTABILITY PROJECT, *STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN* (2021).

b) *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.³¹⁰ Only a later article in the Fourth Geneva Convention, inapplicable to NIACs, refers to the need for isolation areas for prisoners with mental diseases.³¹¹ 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.³¹² This demonstrates that mental health is recognized as a human right and is enforceable in Yemen, a state party to the Convention. CEDAW also incorporates this right- though the Convention itself doesn't specifically address mental health, its Committee has, on multiple occasions, advocated for mental health supports for women such as addressing high suicide rates and substance abuse in girls³¹³ and increasing access to mental health facilities.³¹⁴ This suggests that CEDAW considers mental health under the umbrella of overall health. 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. Gender-Based Violence and the Right to an Education

ICESCR enshrines a right to education, including free and compulsory primary school and equally accessible secondary and higher education.³¹⁵ The Convention on the Rights of the Child ("CRC") lists the same obligations as the ICESCR.³¹⁶ Furthermore, under CEDAW, State Parties are obligated to ensure equal educational opportunities to women as are afforded to men as well as the elimination of gender stereotyping in the education system.³¹⁷

³¹⁰ Fourth Geneva Convention, *supra* note 283, at art. 3.

³¹¹ *Id.* at art. 91.

³¹² ICESCR, *supra* note 299, at art. 12.

³¹³ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Finland*, UN Doc. CEDAW/C/FIN/CO/6, ¶¶ 185-186 (2008).

³¹⁴ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Guatemala*, UN Doc. CEDAW/C/GUA/CO/7, ¶¶ 35-36 (2009).

³¹⁵ ICESCR, *supra* note 299, at art. 10.

³¹⁶ Convention on the Rights of the Child, art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter, "CRC"].

³¹⁷ CEDAW, *supra* note 291, at art. 10.

5. Arbitrary Imprisonment

Article 9 of the 1948 Universal Declaration of Human Rights specifies that “No one shall be subjected to arbitrary arrest, detention or exile.”³¹⁸ The International Covenant on Civil and Political Rights (ICCPR) expounded on this in its Article 9 with statements that “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law,” along with provisions mandating informing an arrestee of the charges against them and entitling one who is arrested to a trial within a reasonable time.³¹⁹ In addition, the Rome Statute, to which Yemen is a signatory but not a ratifying party, recognizes that “imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law” can constitute a crime against humanity if “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”³²⁰

The UN Working Group on Arbitrary Detention (WGAD) refers to several legal categories of cases when assessing if deprivations of liberty are arbitrary. The WGAD is a group of experts who are mandated by the Human Rights Council to “formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty.”³²¹ They have also drafted basic principles of arbitrary detention which was adopted in 2015. We can use their highly persuasive work to better interpret the treaty and customary obligations Yemen is bound to follow.

The legal categories the WGAD uses include “When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty,” when the deprivation of liberty results from the exercise of certain guaranteed rights or freedoms under international law, when a trial’s “nonobservance of the international norms relating to the right to a fair trial” is severe enough, and when deprivation of liberty “constitutes a violation of international law on the grounds of discrimination” of certain protected statuses.³²²

In addition, during times of armed conflict, people who are detained “enjoy the more specific protection of international humanitarian law [IHL]”³²³ in order to prevent instances of arbitrary detention. The most relevant in this case are the Fourth Geneva Conventions of 1949 and the 1977 Additional Protocols I. Article 43 of the Fourth Geneva Conventions states that any person who has been detained “shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.”³²⁴ Article 78 further specifies that the decisions regarding detainment have to be done according to a regular procedure, which must include “the right to appeal.”³²⁵ Importantly, these provisions originally only applied to ‘protected persons’ who included people in a conflict who were in the hands of a party to which they were not a national. However, the 1977 Additional Protocol added guarantees and protections to all persons in the hands of a party to

³¹⁸ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter, “UDHR”].

³¹⁹ ICCPR, *supra* note 278.

³²⁰ Rome Statute, *supra* note 44, at arts. 7(1)(e), (1)(i).

³²¹ HRC, Res. 6/4, U.N. Doc. A/HRC/RES/6/4, ¶ 1(e) (Sept. 28, 2007).

³²² *Methods of Work of the Working Group*, Human Rights Council, U.N. Doc. A/HRC/36/38, at ¶ 8 (July 13, 2017).

³²³ Alfred de Zayas, *Human rights and indefinite detention*, 87 INTERNATIONAL REVIEW OF THE RED CROSS 15, 20 (2005).

³²⁴ Fourth Geneva Convention, *supra* note 283.

³²⁵ *Id.*

conflict in Article 75; some of these guarantees were prohibitions against torture, degrading treatment, mutilation, and “outrages against personal dignity.”³²⁶ Protections for detainees to know what they are being charged with and trial rights are also mentioned.³²⁷

In Yemen, multiple WGAD legal categories of arbitrary imprisonment are met, and numerous violations of the Geneva Conventions and its Protocol are documented. The ‘guardianship requirement’ customarily adopted by both sides of the conflict is under no legal basis which justifies keeping the women imprisoned. There is evidence of women, including Fatima Al-Arouli, detained for exercising rights of expression and protesting against the ruling party. Furthermore, there is evidence of gender-based violence and discrimination amongst women who have been imprisoned and who experience torture, rape, and deprivation from liberties guaranteed by law including the right to talk with lawyers and family members. Incidences of degrading treatment for women have been numerous. There has also been no attempt to have detainment actions reconsidered by a court of law nor has the right to appeal been enforced. All of these instances violate the category of deprivation of liberty arising from the exercise of guaranteed rights of expression. The practice of holding detainees without charges violates Article 9 of the ICCPR, as well.

From the evidence, the activities of all parties in the Yemen conflict relating to arbitrary imprisonment violate IHL and IHRL, and could even be shown to be a crime against humanity.

6. Honor Killings

Honor killings, and the failure to prevent, investigate, and punish the perpetrators of them, constitute a violation of international law because honor killings are a violation of the right to life.³²⁸ When they are committed in a discriminatory fashion, they are additionally violative of IHRL prohibitions on discrimination.³²⁹ States have a due diligence obligation to prevent honor killings³³⁰ and Yemen has failed to fulfill this obligation.

Honor killings may additionally constitute a form a torture or cruel and inhuman treatment.³³¹ Both the Committees on Torture and on the Elimination of Discrimination Against Women has indicated that the purpose and intent requirements for such acts are met when acts or omissions are gender-specific or perpetrated against a person on the basis of sex.³³² These Committees have acknowledged the uniquely severe impact of violence on a victim when they

³²⁶ 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 [hereinafter, “Additional Protocol I”].

³²⁷ *Id.*

³²⁸ ICCPR, *supra* note 278, at art. 6; *see also* UDHR, *supra* note 318, at art. 3; CRC, *supra* note 316, at art. 6; UN Declaration on the Elimination of all Forms of Violence Against Women, G.A. Res. 48/104, UN Doc. A/48/49 (Dec. 20, 1993) [hereinafter, “Declaration on the Elimination of Violence Against Women”].

³²⁹ ICCPR, *supra* note 278, at art. 26; CEDAW, *supra* note 291, at art. 2; UDHR, *supra* note 318, at arts. 2, 7.

³³⁰ *Velásquez-Rodríguez v. Honduras*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶172-4 (July 27, 1988); *Luopajarvi*, *supra* note 178, at 5.

³³¹ *Luopajarvi*, *supra* note 178, at 8.

³³² *General Recommendation No. 35*, *supra* note 295, at ¶ 17; *V.L. v. Switzerland*, Communication No. 262/2005, UN Doc. CAT/C/37/D/262/2005 (Jan. 22, 2007); *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Human Rights Council, UN Doc. A/HRC/31/57, at ¶ 8 (Jan. 5, 2016).

are targeted because of their gender.³³³ Accordingly, where Yemeni authorities have failed to prevent instances which might amount to torture, investigate instances which may amount to torture, and assure proper redress for victims, they have violated their obligations under the Convention against Torture.³³⁴

7. Female Genital Mutilation

The practice of female genital mutilation is illegal under international law, particularly of IHRL. The UN General Assembly Declaration on the Elimination of Violence against Women includes female genital mutilation as a type of GBV which is prohibited under international law.³³⁵ The UN General Assembly has additionally unanimously condemned female genital mutilation and has called on states to implement and enforce legislation banning the practice.³³⁶

Female genital mutilation is violative of a number of human rights instruments, particularly the Convention on the Rights of the Child (CRC).³³⁷ This is the case because most women, as is the case in Yemen, are targeted during infancy.³³⁸ CRC Article 16 protects the right to privacy, a protection that is violated by the practice of female genital mutilation.³³⁹ As is CRC Article 24, which requires States to take all effective and appropriate measures with a view to abolishing traditional practices which are prejudicial to the health of children.³⁴⁰ The Committee on the Rights of the Child has consistently identified female genital mutilation as a harmful traditional practice, violative of Article 24, and has called for its elimination.³⁴¹ Female genital mutilation additionally violates prohibitions on discrimination under various human rights treaties,³⁴² as well as the right to health.³⁴³ Female genital mutilation may additionally be

³³³ *General Recommendation No. 35*, *supra* note 295, ¶ 17; *Fernández Ortega et al. v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 215, ¶124 (Aug. 30, 2010); *see also Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Human Rights Council, UN Doc. A/HRC/7/3, at ¶ 36 (Jan. 15, 2008).

³³⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art.12-14,16 ,1465 U.N.T.S. 85 [hereinafter, “CAT”].

³³⁵ Declaration on the Elimination of Violence against Women, *supra* note 328, at art. 2.

³³⁶ G.A. Res. 67/146 (Mar. 5, 2013); *see also Economic and Social Council Draft Resolution on Ending female genital mutilation*, UN Doc. No. E/CN.6/2010/L.8 (Mar. 12, 2010).

³³⁷ Yemen is a party to the CRC. *Ratification Status for Yemen*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en (last visited April 16, 2024); *see also* G.A. Res. 61/143 (Jan. 30, 2007).

³³⁸ *Female Genital Mutilation Dashboard (FGM) - Yemen*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/data/fgm/YE> (last visited April 16, 2024).

³³⁹ CRC, *supra* note 316, at art. 16.

³⁴⁰ *Id.* at art. 24(3).

³⁴¹ *Sources of International Human Rights Law on Female Genital Mutilation*, UN WOMEN, <https://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html> (Feb. 25, 2011); *Concluding Observations*, CRC, UN Doc. No. CRC/C/15/Add.67, ¶ 6 (Jan. 24, 1997); *Concluding Observations*, CRC, U.N. Doc. No. CRC/C/15/Add.10, ¶ 13 (Oct. 18, 1993); *Concluding Observations*, CRC, UN Doc. No. CRC/C/15/Add.83, ¶ 24 (Oct. 21, 1997).

³⁴² ICCPR, *supra* note 278, at art. 26; ICESCR, *supra* note 299, at art. 3.

³⁴³ ICESCR, *supra* note 299, at art. 12.

considered a form of torture or cruel, inhuman or degrading treatment, and is thus additionally violative of the Torture Convention.³⁴⁴

Accordingly, the parties failure to effectively prohibit and prevent female genital mutilation is a violation of IHRL.

8. Forced Marriage

The practice of forced marriage, particularly of girls, violates IHRL and implicitly violates IHL. For further discussion of those violations, please refer to the YAP's previous white paper concerning the effect of the conflict on children (2023).³⁴⁵

9. Restrictions on Movement

Restrictions on free movement are illegal under IHRL, specifically under the ICCPR Article 12³⁴⁶ and particularly when such restrictions are discriminatory in nature.³⁴⁷ Every person has the right to move freely throughout the whole territory of a state.³⁴⁸ States, thus, fail to comply with their international human rights obligations when a woman's ability to move freely is made subject, by either law or practice, to the decision of another person, including a relative.³⁴⁹ Accordingly, the *mahram* system in Yemen is violative of IHRL.

ICCPR article 12 permits states to derogate from their obligation to protect the right to freedom of movement in exceptional circumstances.³⁵⁰ In invoking a derogation from the right to freedom of movement, restrictions must be necessary to serve permissible purposes—which as enumerated under ICCPR Article 12, include, protecting national security, public order, public health or morals, or the rights and freedoms of others—and the purposes of the derogation must be proportionate to the states' purpose.³⁵¹ The targeting of women, rather than the population as a whole, undermines any contention that such restrictions are intended to serve the purposes enumerated under ICCPR article 12 as legitimate bases for derogation. Moreover, the inordinate impact the *mahram* system has on women's ability to work, travel, and engage in other activities indicates that even where the system served a permissible purpose, its impact would not be proportionate to such purpose. In any event, derogations from ICCPR article 12 must be non-discriminatory.³⁵² Here, *mahram* systems, as adopted by various entities across Yemen, is, by design, discriminatory and is thus, impermissible.

³⁴⁴ CAT, *supra* note 334; *see also* ICCPR, *supra* note 278, at art. 27.

³⁴⁵ YEMEN ACCOUNTABILITY PROJECT, STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN (2021).

³⁴⁶ ICCPR, *supra* note 278, at art. 12; *see also* UDHR, *supra* note 318, at art. 13.

³⁴⁷ CCPR General Comment No. 27: Art. 12 (Freedom of Movement), UN Doc. CCPR/C/21/Rev.1/Add.9, at ¶ 6 (Nov. 2, 1997) [hereinafter, "CCPR General Comment No. 27"].

³⁴⁸ *Id.* at ¶¶ 4-5.

³⁴⁹ *Id.* at ¶ 6.

³⁵⁰ ICCPR, *supra* note 278, at Art. 12(3); CCPR General Comment No. 27, *supra* note 347, at ¶ 11.

³⁵¹ ICCPR, *supra* note 278, at Art. 12(3); CCPR General Comment No. 27, *supra* note 347, at ¶ 11.

³⁵² CCPR General Comment No. 27, *supra* note 347, at ¶ 11.

10. Restrictions on Freedom of Expression

Both of the principal parties to the Yemen Civil War have engaged in impermissible restrictions on freedom of expression, particularly as it relates to the targeting of women activists and journalists, as well as restrictions on dress.

a) Targeting of Women Activists and Journalists

Women in Yemen suffer violations of their right to freedom of expression guaranteed by article 19 of the UN's Universal Declaration of Human Rights. Article 19 states, "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."³⁵³ While this right affects all women in Yemen, it has a particularly negative effect on women journalists and activists attempting to report on and criticize actions of the Yemeni government and the Houthis.

Several organizations have spoken out against the treatment of women journalists and activists in Yemen. The United Nations has outlined human rights abuses that have occurred against those in these fields, with a note from the High Commissioner that underscored that journalists are also protected under international humanitarian law as civilians and that attacks against them "may amount to war crimes" and that, "[j]ournalists are under attack from all quarters... They are killed, beaten and disappeared; they are harassed and threatened; and they are jailed and sentenced to death for merely trying to shine a light on the brutality of this crisis."³⁵⁴

Amnesty International has called for the internationally recognized government of Yemen to cease the prosecution and harassment of journalists within its territory after judicial authorities had prosecuted journalists for criticizing public institutions and Yemeni officials.³⁵⁵ Amnesty International's Acting Deputy Director for the Middle East and North Africa stated, "[t]argeting journalists and activists for exercising their right to freedom of expression has a chilling effect on society. Its real aim is to silence dissent and deter critical voices."³⁵⁶

Human Rights Watch has also noted the negative Houthi influence since their 2014 takeover of Sanaa stating that the group's "systemic violations of women's and girls' rights," which includes their freedom of expression have increased and effectively made life more difficult for them in Yemen.³⁵⁷ Human Rights Watch has also pointed out that Yemen has failed to implement recommendations from the Universal Periodic Review that urged it to investigate and prosecute all abuse committed against Yemeni journalists and human rights activists.³⁵⁸

³⁵³ UDHR, *supra* note 318, at art. 19.

³⁵⁴ *Yemen: Human Rights Violations Against Journalists, Coming 'From All Quarters,'* UN NEWS (Aug. 6, 2020), <https://news.un.org/en/story/2020/08/1069652>.

³⁵⁵ *Yemen: Government Must Stop Prosecution and Harassment of Journalists,* AMNESTY INT'L (Aug. 18, 2022), <https://www.amnesty.org/en/latest/news/2022/08/yemen-government-must-stop-prosecution-and-harassment-of-journalists/>.

³⁵⁶ *Id.*

³⁵⁷ Jafarnia, *supra* note 148.

³⁵⁸ *Joint Recommendations for the Universal Periodic Review of Yemen,* HUMAN RTS. WATCH (Feb. 15, 2024), <https://www.hrw.org/news/2024/02/15/joint-recommendations-universal-periodic-review-yemen>.

This condemnation of the treatment of women journalists and activists in Yemen by various international organizations signifies a growing global awareness of the dire situation they face, which stands to have a resurgence given the recent attention Houthis have garnered in the Red Sea in the last six months. The global community, through these organizations, has called upon Yemen's internationally recognized government to fulfill its responsibility in upholding its human rights obligations and dropping all charges against journalists. The support and solidarity shown by these organizations contribute significantly to the collective effort to protect the rights and well-being of women journalists and activists in Yemen and highlight the imperative need for immediate action to address these egregious violations.

b) Restrictions on Clothing

The freedom of expression encompasses the right to choose what—and what not—to wear.³⁵⁹ Governments have an obligation to respect, protect, and ensure every individual's right to expression free from coercion.³⁶⁰ Interpretations of religion, culture, or tradition are not permissible excuses from failing to fulfill this obligation.³⁶¹ Both forced dress codes and blanket bans on the wearing of religious dress constitute violations of the right to freedom of expression,³⁶² the right to privacy,³⁶³ and, as is true of Yemen, the right to be free from discrimination.³⁶⁴

11. Victimization of LGBTQIA+ Individuals

Victimization and violence against LGBTQIA+ individuals is a violation of IHL and IHRL. The Rome Statute prohibits persecution against any identifiable group or collectively on many bases including gender.³⁶⁵ The Rome Statute defines “gender” as male and female sexes, a definition which the International Criminal Court’s Office of the Prosecutor has clarified to encompass “characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes.”³⁶⁶ Persecution is thus not limited in its application to men and women alone, but is also applicable to transgender and nonbinary individuals.³⁶⁷

Under IHRL, the Torture Convention obligates all states party, which includes Yemen, to especially protect the rights of individuals against torture and ill-treatment of marginalized

³⁵⁹ WOMEN’S RIGHT TO CHOOSE THEIR DRESS, FREE OF COERCION, AMNESTY INT’L (2010), <https://www.amnesty.org/es/wp-content/uploads/2021/07/ior400222010en.pdf>.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² ICCPR, *supra* note 278, at Art. 19.

³⁶³ *Id.*, at art. 17.

³⁶⁴ *Id.*, at art. 26; CEDAW, *supra* note 291, at art. 2; *see also Questions and Answers on Restrictions on Religious Dress and Symbols in Europe*, HUMAN RTS. WATCH (Dec. 21, 2010), <https://www.hrw.org/news/2010/12/21/questions-and-answers-restrictions-religious-dress-and-symbols-europe>.

³⁶⁵ Rome Statute, *supra* note 44, art. 7(1)(h).

³⁶⁶ INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR, POLICY ON THE CRIME OF GENDER PERSECUTION (2022).

³⁶⁷ *Id.*

groups regardless of “gender, sexual orientation, transgender identity.”³⁶⁸ In 2015, 12 United Nations entities released a joint statement asserting that “failure to uphold the human rights of LGBTIA+ people and protect them against abuses, such as violence and discriminatory laws and practices, constitute serious violations of IHRL.”³⁶⁹

Despite the fact that human rights treaties do not explicitly reference sexual orientation or gender identity, they have continually extended provisions to protect LGBTQIA+ persons, especially from “arbitrary deprivation of life and liberty, freedom from torture, cruel, inhumane, or degrading punishment,³⁷⁰ and to secure freedom of association, assembly, expression, and to health, education, housing, and other economic, social, and cultural rights.”³⁷¹ For example, human rights treaty bodies have considered the criminalization of homosexuality and same-sex intimate relationships as violations of the protection from arbitrary deprivation of liberty where law enforcement effectuate arrests on the basis of sexual orientation or gender identity.³⁷² Significantly, those bodies have also found that the imposition of the death penalty based solely on the basis of sexual orientation constitutes arbitrary deprivation of the right to life.³⁷³ The authoritative bodies to the ICCPR, ICESCR, and CEDAW have all found that criminalization of same-sex relationships go against the fundamental rights within the treaties.³⁷⁴

The Yogyakarta Principles are perhaps the leading international framework for combating human rights violations based on sexual orientation and gender identity.³⁷⁵ The Yogyakarta Principles (and their successor, the Yogyakarta Principles Plus 10) are a guide of state obligations based on existing human rights laws,³⁷⁶ that consist of 29 principles of state obligations in terms

³⁶⁸ *General Comment No. 2 (2007) on the Implementation of Article 2 by States Parties*, Committee Against Torture, UN Doc. CAT/C/GC/2, at ¶ 21 (Jan. 24, 2008) [hereinafter, “*CAT General Comment No. 2*”].

³⁶⁹ *Joint Statement on Ending Violence and Discrimination Against LGBTI People*, UNDP (Oct. 5, 2015), <https://www.undp.org/publications/joint-statement-ending-violence-and-discrimination-against-lgbti-people>.

³⁷⁰ See Alon Margalit, *Still a Blind Spot: The Protection of LGBT Persons During Armed Conflict and Other Situations of Violence*, 100 INTERNATIONAL REVIEW OF THE RED CROSS 237 (2018); *CAT General Comment No. 2*, *supra* note 368, at ¶¶ 21-22.

³⁷¹ Margalit, *supra* note 370; ENDING VIOLENCE AND OTHER HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: A JOINT DIALOGUE OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND THE UNITED NATIONS 12-13, 29 (2016), https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

³⁷² Margalit, *supra* note 370; *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (HRCComm. March 31, 1994); *G. v. Australia*, Communication No. 2172/2012, UN Doc. CCPR/C/119/D/2172/2012 (HRCComm. June 28, 2017) (noting that the prohibition against discrimination encompasses discrimination on the basis of gender identity, and highlighting the protection of the transgender complainant from arbitrary interference with her privacy and family life); *Concluding Observations: Ethiopia*, Human Rights Committee, UN Doc. CCPR/C/ETH/CO/1, at ¶ 12 (July 25, 2011).

³⁷³ Margalit, *supra* note 370; GA Res. 71/198, ¶ 6 (Dec. 19, 2016); *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on a Gender-Sensitive Approach to Arbitrary Killings*, UN Doc. A/HRC/35/23, at ¶¶ 45, 47-48 (June 6, 2017).

³⁷⁴ Margalit, *supra* note 370.

³⁷⁵ INT’L COMM. JURISTS, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY (2007) [HEREINAFTER, “THE YOGYAKARTA PRINCIPLES”].

³⁷⁶ INT’L COMM. JURISTS, THE YOGYAKARTA PRINCIPLES PLUS 10 – ADDITIONAL PRINCIPLES AND STATE OBLIGATIONS ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION, GENDER EXPRESSION AND SEX CHARACTERISTICS TO COMPLEMENT THE YOGYAKARTA PRINCIPLES (2017).

of the rights and protections of LGBTQIA+ individuals.³⁷⁷ They create an obligation for states to ensure that there are systems in place to enable victims to be heard by a competent court or other adjudicator to be able to seek redress.³⁷⁸ Together, the documents use existing, binding international standards to protect the LGBTQIA+ community.³⁷⁹ For example, Principle 4 mirrors the language in article 6 of the ICCPR³⁸⁰ by stating that “everyone has a right to life...the death penalty shall not be imposed on any person on the basis of...sexual orientation or gender identity.”³⁸¹

The Yogyakarta Principles are widely accepted and states have used them to create legislation that protects sexual orientation and gender identity (“SOGI”) rights.³⁸² However, the principles serve an advisory role rather than as a source of legal enforcement.³⁸³

In its criminalization of LGBTQIA+ individuals on the basis of sexual orientation—and enabling state and private parties to enforce that criminalization—Yemen is likely liable for IHRL violations against LGBTQIA+ individuals. Yemen is party to the ICCPR, ICESCR, and CEDAW, all which have found that criminalization of same-sex relationships goes against the fundamental rights within the treaties.³⁸⁴ Additionally, Yemen is party to the Committee Against Torture, which protects LGBTQIA+ individuals from arbitrary deprivation of life and liberty, torture, and cruel or inhumane treatment.

In maintaining a Penal Code that punishes individuals for homosexuality, and charging and sentencing individuals on the basis of homosexuality (sentencing some individuals to death), Yemen criminalizes identity in violation of human rights treaties, even without overwhelming evidence of recent enforcement. Furthermore, Yemen’s arbitrary detainment of Al-Zindani, trans women, and nine individuals on the basis of sexual identity violates their obligations under the Committee Against Torture.

Additionally, during times of armed conflict, the Geneva Conventions Common Article 3 binds both states and non-state groups to extend minimum protections to *all non-combatants without discrimination* during times of armed conflict.³⁸⁵ The international community generally

³⁷⁷ *The Yogyakarta Principles – An Overview*, THE YOGYAKARTA PRINCIPLES, <http://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles-2/> (last visited April 16, 2014).

³⁷⁸ THE YOGYAKARTA PRINCIPLES, *supra* note 375.

³⁷⁹ Andrew Park, *Yogyakarta Plus 10: A Demand for Recognition of SOGIESC*, 44 N.C.J. INT’L L. 223 (2019); *see, e.g.*, THE YOGYAKARTA PRINCIPLES, *supra* note 375, at 4, *compared with* ICCPR, *supra* note 278, at art. 6 (The Principles pull from treaties such as the International Covenant on Civil Political Rights (ICCPR)).

³⁸⁰ ICCPR, *supra* note 278, at art. 6.

³⁸¹ THE YOGYAKARTA PRINCIPLES, *supra* note 375.

³⁸² *Id.*

³⁸³ *See e.g.* SHEILA QUINN, AN ACTIVIST’S GUIDE TO THE YOGYAKARTA PRINCIPLES (2016), http://yogyakartaprinciples.org/wp-content/uploads/2016/10/Activists_Guide_English_nov_14_2010.pdf (discussing how a Lebanese group utilized the Yogyakarta Principles to enhance its human rights activism training program).

³⁸⁴ Margalit, *supra* note 370; *General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, CEDAW, UN Doc. CEDAW/C/GC/28 (Dec. 16, 2010); *Concluding Observations: Uganda*, CEDAW, UN Doc. CEDAW/C/UGA/CO/7, ¶¶ 43-44 (Nov. 5, 2010).

³⁸⁵ Margalit, *supra* note 370; Fourth Geneva Convention, *supra* note 283, at art. 3.

accepts the requirement against adverse distinction as CIL,³⁸⁶ and could likely extend it to prevent and respond to discriminatory treatment and abuse of individuals based on their gender or sexual orientation,³⁸⁷ an extension that is generally accepted as customary law.³⁸⁸

IHL protects all detainees, including LGBT detainees, from inhumane treatment and from torture and humiliating or degrading punishments, including sexual violence, extraneous medical procedures, and “inhuman, brutal, or dangerous” penalties.³⁸⁹ In inflicting penalties, actors must account for the detainee’s sex and, by extension, their sexual orientation.³⁹⁰

In cases where LGBT persons have been, or may have been, treated in breach of IHL, states must investigate the incident and punish those responsible for serious violations.³⁹¹ For the state to find harms against an LGBTQIA+ person violate IHL, “there must be a causal link between their abuse and real or presumed sexual orientation,” and there must be a “sufficient nexus to the armed conflict.”³⁹² Thus, “the existence of the armed conflict needs to be material to the perpetrator’s ability to commit the harmful act, to his decision to commit it, or to the manner or purpose it was committed.”³⁹³

The State’s responsibility to investigate and respond to incidents of potential IHL violations against LGBTQIA+ persons necessarily involves “a due diligence obligation to use reasonable means to prevent and repress IHL violations by private persons whom the state has control over.” As such, “the State is not only responsible for its own IHL violations against LGBT persons by its armed forces and other persons acting under its direction or control, but may also be liable for its failure to take appropriate measures to prevent, investigate, or prosecute those violations.”

The Geneva Convention Common Article 3 require parties to avoid and prevent inhumanely torturing (through sexual violence, extraneous medical procedures, or other such acts) or humiliating any detainees, including LGBTQIA+ individuals, and to investigate and remediate instances of inhumane treatment when they do. As such, Yemen’s torture of a trans woman during her eight-month prison sentence, including through the use of a forced anal exam, violates Yemen’s obligations under Common Article 3. Yemen’s institutionalization and forced medicalization of Yahyia Al-Zindani does so as well. Yemen’s lack of response to such instances,

³⁸⁶ Jean-Marie Henckaerts, *Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, 87 INT’L REV. RED CROSS 857 at 175 (2005).

³⁸⁷ Margalit, *supra* note 370.

³⁸⁸ Henckaerts, *supra* note 386.

³⁸⁹ Margalit, *supra* note 370.

³⁹⁰ *Id.*

³⁹¹ *Id.* at 252.

³⁹² *Id.*; Gloria Gaggioli, *Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law*, 96 INT’L REV. RED CROSS 514 (2015).

³⁹³ Margalit, *supra* note 370; *cf.* Prosecutor v. Tadić, Case No. IT- 94-1-T, Judgment (Trial Chamber), ¶¶ 572-3 (ICTY May 7, 1997) (“The only question, to be determined in the circumstances of each individual case, is whether the offences were closely related to the armed conflict as a whole”); Prosecutor v. Kunarac, Case No. IT-96-23 & 23/1 (Appeals Chamber), ¶ 58 (ICTY June 12, 2002); *but see* Prosecutor v. Kayishema, Case No. ICTR-95-1-T, Judgment (Trial Chamber), ¶¶ 599-604, 623 (ICTR May 21, 1999) (noting that the fact that the alleged crimes were committed during armed conflict is insufficient, and requiring a direct link between these crimes and the armed conflict).

and lack of reporting on any of them, also likely violates their obligations under IHL to investigate and respond to instances of IHL violations.

12. Targeting of Migrant Women.

The victimization of migrants during the Yemen Civil War violates both IHL and IHRL as migrants are a protected class of peoples. As an initial matter, “migrant” has no formal international legal definition. However, IHRL, including the UN, UN DESA, and the UNHCR, typically agree that an “international migrant is someone who changes his or her country of usual residence, irrespective of the reason, for migration or legal status.”³⁹⁴ For purposes of this paper, this definition captures the mostly East African people who migrate through Saudi Arabia through Yemen as migrants.

Under IHRL, the Universal Declaration for Human Rights (a customary UN document that is widely recognized as having inspired, and paved the way for, the adoption of over seventy human rights treaties and is applied on a permanent basis at global levels), article 14 states that “everyone has the right to seek and enjoy asylum from persecution in other countries.”³⁹⁵ Provisions of the ICCPR are implicated within the Universal Declaration for Human Rights as both focus on issues such as right to life, the proclamation of such rights for all people, and the forbidding of discrimination.³⁹⁶ People must enter another country to exercise this right articulated in article 14.³⁹⁷ Once a migrant has entered another country, everyone in that country, both citizens and migrants, are entitled to the same international human rights.³⁹⁸

Respecting human rights refers to refraining from human rights violations including rape, detention, or torture. Protecting human rights requires states to prevent human rights violations which would see states protecting migrants from smugglers and sanctioning abusive powers. Fulfilling human rights requires taking measures to ensure the realization of human rights by providing social services.³⁹⁹ Further, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which Yemen is a party to, says each state shall adopt legislative measures necessary to establish criminal offenses for smuggling and trafficking.⁴⁰⁰ Lastly, paragraph 23 of the New York Declaration for Refugees and Migrants, states that member states recognized and would address, following their obligations under international law, the special needs of all people in vulnerable situations who were traveling within large movements of migrants.⁴⁰¹ The New York Declaration “reaffirms the importance of the international refugee regime and contains a wide range of commitments by Member States to strengthen and enhance

³⁹⁴ *Definitions: Refugees and Migrants*, UNITED NATIONS, <https://refugeesmigrants.un.org/definitions> (last visited Apr. 16, 2024); *Key Migration Terms*, INT'L ORG. MIGRATION, <https://www.iom.int/key-migration-terms> (last visited Apr. 16, 2024).

³⁹⁵ UDHR, *supra* note 318, at art. 14.

³⁹⁶ *Id.*; *International Human Rights Law*, UNITED FOR HUMAN RIGHTS, <https://www.humanrights.com/what-are-human-rights/international-human-rights-law/> (last visited Apr. 16, 2024).

³⁹⁷ UDHR, *supra* note 318, at art. 14.

³⁹⁸ *International Standards Governing Migration Policy: OHCHR and Migration*, OHCHR, <https://www.ohchr.org/en/migration/international-standards-governing-migration-policy> (Apr. 16, 2024).

³⁹⁹ *Id.*

⁴⁰⁰ G.A. Res. 55/25 (Nov. 15, 2000).

⁴⁰¹ *The New York Declaration on Refugees and Migrants*, G.A. Res. 71/1, (Oct. 3, 2016).

mechanisms to protect people on the move.”⁴⁰² Although non-binding, Yemen is a party to the New York Declaration for Refugees and Migrants, and political and concrete action of members should be made to improve responses to displacement of people signed to provide orderly and regular migration along with commitments and understandings regarding all aspects of international migration.⁴⁰³

The Yemeni government is in violation of the customary Universal Declaration for Human Rights article 14 because its agency, the Yemen Immigration, Passport, and Nationality Authority (IPNA) has been involved in the extortion, rape, harassment, detainment, and deportation of migrants within Yemen. Accordingly, the Yemeni government has failed to provide OHCHR humanitarian obligations of respecting and protecting human rights in these migrant camps by not addressing or attempting to rid of the corruption its government is involved in with smuggling migrants. Additionally, the Yemeni government’s lack of action violates the New York Declaration and the United Nations Convention against Transnational Organized Crime which both require positive action taken to address migrant human rights violations.

Migrants are protected under IHL because, even though IHL does not contain specific rules about migration or protection of migrants as a category of persons, they are not left outside the scope of its rules.⁴⁰⁴ The Geneva Convention (IV) article 27 Treatment I states that “women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”⁴⁰⁵ Further, Additional Protocol I article 77 provides for the protection of children requiring aid and care, and Additional Protocol II Article 4(2) provides for the humane treatment of civilians.⁴⁰⁶ The Rome Statute Article 7(1)(g) prohibits crimes against humanity when committed as part of a widespread attack directed against any civilian population including rape, sexual slavery, enforced prostitution, or any other form of sexual violence.⁴⁰⁷ Further, the Rome Statute Article 7(1)(e) prohibits the imprisonment or other severe deprivation of civil liberty.⁴⁰⁸

Rape, forced rape, and forced labor are all explicitly prohibited by the Geneva Convention and the Rome Statute.⁴⁰⁹ The Yemeni government is likely in violation of article 27, along with Additional Protocol I article 77 and Additional Protocol II article 4(2), due to the IPNA and Yemeni military personnel for not protecting women against attacks of rape or enforced prostitution. Instead, they are doing the opposite by subjecting and forcing women into rape. The Rome Statute article 7(1)(e) is also violated due to migrants being forced into labor against their will via threats. Yemen is a sovereign nation with the prerogative to regulate the presence of foreigners in its country, and the government is failing to do so. Similarly, the Saudi

⁴⁰² *New York Declaration for Refugees and Migrants*, UNHR, <https://www.unhcr.org/us/what-we-do/protect-human-rights/asylum-and-migration/new-york-declaration-refugees-and-migrants> (last visited Apr. 16, 2024).

⁴⁰³ *The New York Declaration*, *supra* note 401; *The New York Declaration: Frequently Asked Questions*, UNHCR (2017), <https://globalcompactrefugees.org/media/new-york-declaration-frequently-asked-questions-2017>.

⁴⁰⁴ *IHL and the Protection of Migrants Caught in Armed Conflict*, ICRC (Jun. 4, 2018), <https://blogs.icrc.org/law-and-policy/2018/06/04/ihl-protection-migrants-armed-conflict/>.

⁴⁰⁵ *International Humanitarian Law Databases*, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl> (last visited Apr. 16, 2024).

⁴⁰⁶ Additional Protocol I, *supra* note 326.

⁴⁰⁷ Rome Statute, *supra* note 44, at art. 7(1)(g).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*; *International Humanitarian Law Databases*, ICRC, <https://ihl-databases.icrc.org/en/customary-ihl> (last visited Apr. 16, 2024).

government is most likely in violation of article 27 and 7(1)(g) of the Rome Statute for not protecting women and committing rape.

V. 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.⁴¹⁰

B. 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 human rights violations occurring in Yemen.⁴¹¹ The report also endorsed the creation of an international–Yemeni hybrid tribunal or a UN-created International, Impartial, and Investigative Mechanism, similar to ones created in response to the conflicts in Syria and Myanmar.⁴¹² However, previous investigative mechanisms have been limited to evidence collection, analysis, and preservation, and do not create a basis for prosecution.⁴¹³ Due to political deadlocks, the UNSC has been unwilling to effectively address the conflict in Yemen.⁴¹⁴ 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.⁴¹⁵

⁴¹⁰ See YEMEN ACCOUNTABILITY PROJECT, *AIDING & ABETTING: HOLDING STATES, CORPORATIONS, AND INDIVIDUALS ACCOUNTABLE FOR WAR CRIMES IN YEMEN* 37-53 (2020); YEMEN ACCOUNTABILITY PROJECT, *STARVATION: BUILDING THE CASE FOR PROSECUTING STARVATION CRIMES IN YEMEN* 33-37 (2021); YEMEN ACCOUNTABILITY PROJECT, *CULTURAL PROPERTY: BUILDING THE CASE FOR PROSECUTING THE DESTRUCTION OF CULTURAL PROPERTY IN YEMEN* 31-40 (2023).

⁴¹¹ *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014*, UN Doc. A/HRC/45/6, ¶ 99 (Sept. 28, 2020).

⁴¹² *Id.*

⁴¹³ HRC, Res. 39/2, UN Doc. A/HRC/RES/39/2 (Sept. 27, 2018); HRC, Res. 71/249, UN Doc. A/RES/71/248 (Dec. 21, 2016).

⁴¹⁴ Laura Graham, *Pathways to Accountability for Starvation Crimes in Yemen*, 53 CASE W. RES. J. INT'L L. 401, 434 (2021).

⁴¹⁵ *Statement by Group of Experts on Yemen on HRC Rejection of Resolution to Renew Their Mandate*, OHCHR (Oct. 8, 2021), <https://www.ohchr.org/en/press-releases/2021/10/statement-group-experts-yemen-hrc-rejection-resolution-renew-the-ir-mandate>.

Within the international judicial system, one possible avenue for accountability may be through the International Court of Justice (“ICJ”). As Yemen and Saudi Arabia 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.⁴¹⁶ 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.⁴¹⁷

The ICJ’s *erga omnes partes* jurisprudence may present a blueprint for states that are not injured by actions committed throughout the Yemen Civil War to contest violations of international law which arise under those conventions to which Yemen is a state party and which secure a common interest.⁴¹⁸ In the *Obligation to Prosecute* case, the ICJ held that Belgium had *erga omnes partes* standing to bring claims against Senegal because the common interest secured by the Torture Convention outweighed the interest of any individual state party to that convention.⁴¹⁹ At least theoretically, this holding means that any state party to the Torture Convention could contest Torture Convention violations in Yemen on an *erga omnes partes* basis. While Yemen has submitted reservations to many IHRL treaties, rejecting those treaties creation of ICJ jurisdiction, it has not done the same as it relates to the Torture Convention.⁴²⁰ The ICJ’s jurisprudence on the *erga omnes partes* question has thus far not expanded beyond application to the Genocide and Torture Conventions,⁴²¹ though it is possible that states may have *erga omnes partes* standing to contest violations of other treaties of a similar character.⁴²²

As it relates to the other parties to the conflict, ICJ jurisdiction is more elusive, 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

⁴¹⁶ *Declarations Recognizing the Jurisdiction of the Court as Compulsory*, ICJ, <https://www.icj-cij.org/declarations> (last visited Apr. 16, 2024).

⁴¹⁷ *Ratification Status for Yemen*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en (last visited April 16, 2024).

⁴¹⁸ Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 ICJ 422, ¶¶ 68-70 (July 20) [“Obligation to Prosecute”]; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Preliminary Objections, Judgment, 2022 I.C.J. 1, ¶¶ 106-09 (July 22); Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order, 2024 I.C.J. 1, ¶¶ 33-34 (Mar. 28); Application of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syria), Provisional Measures, Order, 2023 I.C.J. 1, ¶¶ 58-59 (Nov. 1).

⁴¹⁹ Obligation to Prosecute, ¶¶ 68-70.

⁴²⁰ CAT, *supra* note 334, arts.12-14, 16.

⁴²¹ Obligation to Prosecute, ¶¶ 68-70; Gambia v. Myanmar, ¶¶106-109; South Africa v. Israel, ¶¶33-34; Canada and the Netherlands v. Syria, ¶¶ 58-59.

⁴²² Oona Hathaway et. al, *A New Tool for Enforcing Human Rights: Erga Omnes Partes Standing*, 61 COLUMBIA J. TRANSNAT’L L. 42 (forthcoming 2024).

Emirates (“UAE”) are not parties to the ICCPR nor the ICESCR.⁴²³ 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 30.⁴²⁴ 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.⁴²⁵

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.⁴²⁶ 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.⁴²⁷ 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.⁴²⁸

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.⁴²⁹ 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...”⁴³⁰ 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 obligates parties to submit reports to the Committee and allows the Committee to discuss and offer recommendations.⁴³¹ While other regional human rights Courts exist, their jurisdiction is limited to alleged violations committed by state parties.⁴³²

2. Yemeni Domestic Courts

When considering accountability mechanisms in responses to the conflict in Yemen, it should be noted that international law is based upon the principle of complementarity and should be

⁴²³ *Ratification Status for Yemen*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=193&Lang=en (last visited April 16, 2024).

⁴²⁴ CAT, *supra* note 334, arts.12-14, 16.

⁴²⁵ CRC, *supra* note 316.

⁴²⁶ Statute of the International Court of Justice, art. 36(2)(a) Oct. 24, 1945, U.S.T. 993, 33 U.N.T.S. 993.

⁴²⁷ 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).

⁴²⁸ Ashley, *supra* note 427, at 386.

⁴²⁹ Arab Charter on Human Rights, May 22, 2004, 12 Int’l Hum. Rts. Rep. 893.

⁴³⁰ *Id.*, at art. 5, 8, 10, 33(3).

⁴³¹ *Id.* at art. 48.

⁴³² *A Rough Guide to the Regional Human Rights Systems*, UNIVERSAL RTS. GROUP, <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/> (last visited Apr. 16, 2024).

utilized when domestic courts are unwilling or unable to pursue justice.⁴³³ 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.⁴³⁴ 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.⁴³⁵ However, there has yet to be a single verdict for any of these cases.⁴³⁶ 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."⁴³⁷ 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.⁴³⁸

Another avenue may be pursued through universal jurisdiction, as many countries have enacted legislation that allows them to prosecute certain international crimes within their domestic courts.⁴³⁹ 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.⁴⁴⁰ However, under similar facts, the highest court in France annulled an indictment against a former

⁴³³ INFORMAL EXPERT PAPER: THE PRINCIPLE OF COMPLEMENTARITY IN PRACTICE, INT'L CRIM. CT. (2009), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009_02250.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.").

⁴³⁴ *About Us*, NATIONAL COMMISSION TO INVESTIGATE ALLEGED VIOLATIONS TO HUMAN RIGHTS, https://www.nciye.org/en/?page_id=105 (last visited Apr. 16, 2024).

⁴³⁵ Nour El Bejjani Noureddine, *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>.

⁴³⁶ *Id.*

⁴³⁷ *Situation of Human Rights in Yemen, including Violations and Abuses Since September 2014: Report of the Group of Eminent International and Regional Experts on Yemen*, UN Doc. A/HRC/45/6, at ¶¶ 9, 98 (Sept. 28, 2020).

⁴³⁸ Vadapalli, *supra* note 427, at 829.

⁴³⁹ 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/>.

⁴⁴⁰ *Top German Court Reject's 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>.

Syrian official based on the “dual criminality rule” as Syria does not explicitly criminalize crimes against humanity.⁴⁴¹

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.⁴⁴² 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.⁴⁴³ As noted above, Yemen and 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 that support the Coalition through arms sales.⁴⁴⁴ NGOs have called on domestic governments to prohibit the sale of weapons to the Coalition and limit the licensing to manufacturing companies whose weapons support the conflict.⁴⁴⁵ 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.⁴⁴⁶ 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.⁴⁴⁷

4. Alternative Mechanisms

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.⁴⁴⁸ 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.

⁴⁴¹ Benedicte Jeannerod & Aisling Reidy, *Fighting Impunity for Crimes in Syria: Victory in Germany, Setback in France*, HUMAN RTS. WATCH, (Jan. 27, 2022), <https://www.hrw.org/news/2022/01/27/fighting-impunity-crimes-syria-victory-germany-setback-france>.

⁴⁴² 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).

⁴⁴³ See Universal Jurisdiction, INT’L JUST. RES. CTR., <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/> (last visited Apr. 15, 2024); see also *R v. Evans and Another and the Commissioner of Police for the Metropolis and Others, ex parte Pinochet*, UKHL (Mar. 24, 1999) (rejecting the argument that jus cogens violations allow for universal jurisdiction without an underlying treaty obligation).

⁴⁴⁴ Vadapalli, *supra* note 427, at 829.

⁴⁴⁵ *Id.*

⁴⁴⁶ *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/>.

⁴⁴⁷ Vadapalli, *supra* note 427, at 815.

⁴⁴⁸ Ashley, *supra* note 427, at 395.

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.

VI. RECOMMENDATIONS

The Yemen Accountability Project recommends the following actions for bringing accountability to perpetrators of IHRL and IHL violations which involve gender-based violence in Yemen:

A. Ceasefire

- All parties to the conflict should renew the ceasefire agreement immediately and allow a UN peacekeeping force entry to Yemen.

B. Investigations

- Criminal investigators and groups, like Yemen Data Project and ACLED, should continue to document and investigate evidence of attacks on and operations involving gender-based violence 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.

C. 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 veto. They should also advocate to the UN Security Council to create an ad hoc tribunal

for Yemen, similar to the SCSL's model, which had a statute that was limited in scope, to prosecute those who bore the greatest responsibility.⁴⁴⁹

- 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 IIMM, to collect and archive evidence before it is lost and to share it with States pursuing national prosecutions using universal jurisdiction.
- The international community, along with civil society and the Yemeni government should engage in judicial capacity building to sustain a national justice system post-conflict to interrupt any potential atrocity cycle that would allow Yemen to slip back into violence.

D. 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.

E. 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.

F. 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 involving gender-based violence.
- Global civil society, including the International Committee of the Red Cross and other NGOs should assist in collecting evidence of and documenting gender-based violence. Humanitarian aid organizations should also continue providing humanitarian aid to Yemen's children and other civilians in need of such assistance.
- Grassroots efforts aiming to complement more formal, top-down forms of accountability, like *gacaca* courts seen in Rwanda, should be considered in the big picture of accountability. The people of Yemen should be consulted concerning these sorts of gap-filling accountability mechanisms to ensure the people get the justice they want.

⁴⁴⁹ SCSL Statute, *supra* note 285, at art. 1(1).

G. Transitional Justice

An essential part of transitioning from periods of systemic violence and atrocity crimes to peace requires a robust implementation of transitional justice mechanisms. While international criminal prosecutions play a major role in victims' access to justice and form the centerpiece of legal criminal accountability, other practices can be transformational in reshaping society, building trust, promoting forgiveness, preventing future violence, and respecting and honoring the victims, survivors, and their families. Transitional justice in Yemen faces several hurdles that must be taken into account when designing a path forward: a fractured economy, new and likely fragile government structures, the culturally taboo nature of discussing sexual-based and GB crimes, a traumatized and impoverished civilian population where essentially every person has been victimized during the conflict, and combatants who will need reintegrated into society to name a few.

One of the most common mechanisms of transitional justice is the adoption of truth and reconciliation commissions (TRC). TRCs are fact finding bodies that work to investigate and report on the root causes of conflict and the facts of the atrocities that took place, and are empowered to make nonlegal, nonbinding recommendations to promote peace in the post-conflict society.

Reparations are another popular mechanism of transitional justice. These help address the needs of victims and survivors by directly providing support to those who were severely, oftentimes irreparably, harmed, physically, mentally, and financially. Reparations are a core piece of transitional justice and should be victim-centered. They may provide direct, tangible assistance to victims, such as financial support, access to land, granting of civil and political rights, or access to education. Reparations may also take symbolic forms, also called memorialization, which can include public memorials, commemorative or remembrance days, and official apologies.

One approach to such reparations is the implementation of a comprehensive education system that starts in elementary school. Children should be educated about atrocity crimes that affected their parents, grandparents, and nation, as early as appropriate to promote atrocity awareness in younger generations. Steps should also be taken to educate the community at large, who may be past the age of a school education. Community outreach and reeducation should draw from other successful post-atrocity efforts, like the work of the R/SCSL, to inspire a Yemen-specific framework. This educational reform should be accompanied by physical commemorative sites, including museums, monuments, plaques, and even art installations.⁴⁵⁰

⁴⁵⁰ Physical commemorative sites are also effective in promoting awareness and accountability, and though should be implemented in historically significant places, can take many forms, such as: death camps, concentration camps, and transit camps related to the Holocaust throughout Europe, mass graves and sites of mass killings, such as Choeng Ek in Cambodia and the Nyarubuye Genocide Memorial in Rwanda, or decentralized memorials that you can run into without seeking out, like the *Stolpersteine* (Stumbling Stones) that sit embedded in the sidewalk of the last inhabited location of Jewish, Roma, and other persecuted groups during the Holocaust, by listing their names, date of deportation, and date and place of their murder.

Transitional justice in Yemen is a long-term goal. After the conflict ends, it will take time to rebuild, and the resources that are allocated to transitional justice must be utilized strategically and purposefully. In addition to recommendations made in prior sections of this paper, transitional justice efforts to memorialize the victims of GBV must be implemented post-conflict. Below is a list of YAP's transitional justice recommendations specific to GBV in Yemen in no particular order.

*Civil society and survivors must be engaged, consulted, and included in all aspects of transitional justice. Their ownership in the processes laid out below will be a determinative factor in Yemen's future success.

- **A truth and reconciliation commission that is mandated to encompass GBV crimes** must be a priority post-conflict, to ensure victims of sexual and gender based violence have a space to share their experience, to contribute to fact finding, and to repair the community. This will likely require a cultural shift and societal reeducation to allow victims, most commonly women and girls, to tell their stories without fear of retribution or other negative consequences. Survivors must be consulted on how they want to tell their truth and what measures must be taken to minimize risks of retraumatization.
- **Tangible reparations, in the form of financial support, reestablishment of civil and political rights, and physical and mental health support for victims of GBV** provided by the major perpetrators of the conflict, including the Houthi forces (and their financial supporters), the de jure Yemeni government, and the Saudi-led Coalition.
- **Official apologies from perpetrators for gender based crimes, national days of remembrance for GBV victims and survivors, implementation of national policies against GBV, and memorials to commemorate those lost to and affected by GBV.** Survivors and victims of sexual violence receive little attention in the symbolic reparation/memorial space. This may be, in part, due to the sensitive nature of sexual violence crimes, which may be further perpetuated by an absence of public, outward-facing memorialization of GBV.
- **A reeducation and outreach program to teach Yemeni people of all ages about GBV and their rights concerning protection from such crimes.** This will likely require a cultural shift that empowers victims to tell their stories. We recommend looking at the success of the R/SCSL's outreach programs for guidance and ideas for implementation.
- **Museums and physical commemorative sites** could not only serve as a place to honor victims and survivors, but also raise the social standing of women in general, by challenging social norms of gender persecution. Creating physical sites for GBV memorialization promotes a narrative that sexual crimes are wrong and will not go unnoticed, especially since a large portion of the viewers will likely be men. These physical institutions of memory and education will likely come later on after general stability returns to Yemen, but should still be a consideration when having conversations about accountability.

– **Restorative justice (RJ) processes**, like the use of trauma healing, community building, reintegration, and decision-making circles, should be considered when developing a plan for accountability in Yemen. RJ is a victim-centered, harm-reduction focused practice that looks to repair relationships and hold those who have caused harm accountable. This could be a tool utilized within a TRC or community outreach program.

VII. CONCLUSION

The high prevalence of GBV since and before the onset of the Yemen Civil War demands that the parties involved face accountability, both for their perpetration of such violence and for their failure to prevent, investigate, and punish such violence. GBV varyingly violates IHL and IHRL, and while the ICC lacks jurisdiction over the situation in Yemen,⁴⁵¹ and pursuing accountability through Yemeni domestic courts risks biased and unjust proceedings,⁴⁵² stakeholders could and should pursue accountability for IHL or IHRL violations following the creation of an ad hoc tribunal, similar to the SCSL's model,⁴⁵³ or by filing cases in the domestic courts of third-party States with applicable universal jurisdiction statutes.⁴⁵⁴ 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 the victims of gender-based violence in Yemen.

⁴⁵¹ *How the Court Works*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works>, (last visited Apr. 16, 2024); *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties>, (last visited Apr. 16, 2024).

⁴⁵² *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>.

⁴⁵³ *See* Michael Scharf, *The Special Court for Sierra Leone*, 5 AM. SOC'Y INT'L L. INSIGHTS 14 (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 Apr. 16, 2024).

⁴⁵⁴ *See, e.g., Universal Jurisdiction Annual Review (UJAR) 2020: Atrocities Must Be Prosecuted Soundly and Rigorously*, TRIAL INT'L 20 (Nov. 5, 2022), <https://trialinternational.org/latest-post/universal-jurisdiction-annual-review-2020-atrocities-must-be-prosecuted-soundly-and-rigorously>.