A

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

GAN is a collective of international criminal prosecutors and practitioners who supervise and work with law students on specific atrocity projects for Syria, Yemen, Venezuela, Ukraine, and the Pacific Rim region. YAPôs 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.

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Summarizing the White Paperôs findings and recommendations.

This white paper examines the various means by which the Yemen Civil War has implicated gender-based violence (ñGBVò) and the legal provisions under both international human rights law (ñIHRLò) and international humanitarian law (ñIHLò) 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 violationsô adverse effects and provide relief to those affected by GBV

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

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 legal accountability me

To situate the Yemen Civil War within the proper legal framework, the Group of Eminiment International and Regional Experts on Yemen (ñGroup of Expertsò) have designated the war as a non-international armed conflict (ñNIACò).[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 Hadiôs 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 Hadiôs Yemeni government, the Saudi ï 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 Hadiôs 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 Yemenôs 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 YAPôs previous publications.[27]

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[16] U.N. High Commôr for Human Rights,
, Æ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

[17] U.N. High Commôr for Human Rights,
, Æ 15, U.N. Doc. A/HRC/39/43, (2018).

[18] U.N. High Commôr for Human Rights,
, Æ 33, U.N. Doc. A/HRC/45/CRP.7 (2020).

[19] Intôl 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 Commôr for Human Rights,
, Æ 32, U.N. Doc. A/HRC/45/CRP.7 (2020).

[21] U.N. High Commôr for Human Rights,
, Æ 15, U.N. Doc. A/HRC/39/43 (2018).

[22] at Æ 15.

at Æ 13.

[24] U.N. High Commôr for Human Rights,
, Æ 35, U.N. Doc. A/HRC/45/CRP.7 (2020).

[25] at Æ 31.

[26] at Æ 34.

[27] 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).

The term gender-based violence (ñGBVò) 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 ñphysical, sexual, and psychological violence occurring in the family or within the general community, and perpetrated or condoned by the State.ò[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 (ñICCò)ôs 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 girlsô gender perspectives.[37] This is one of the

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[34] , UN WOMEN, https://www.unwomen.org/en/wstpyp

[35] Helen Durham, et al., , INTôL 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]

[37]

reasons why women and girls are disproportionately harmed by such operations.[38] That harm is exacerbated by women and girlsô 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 lawïincluding international bodies, treaties, and Statesïgenerally considers GBV from a binary perspective.[39] The result is a wide gap in the GBV human rights framework.[40] Additionally, while cisgender women,

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 (ñIDPò) 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

newsï 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 Resistanc - 9

reports include assaults against an 8-year-old boy,

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 groupsô 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 communties.[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 childrenïone a rape and the other an attempted assaultïallegedly committed by Coalition-backed militamen 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

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[119] ID.

[120] Moammar Al-Eryani, , WILSON CENTER (Mar. 24, 2023), https://www.wilsoncenter.org/article/preventing-next-kabul-confronting-houthis-violent-suppression-women-yemen.

[121]

[122]

[123] A GENDERED CRISIS, 113, at 60.

[124] Niarchos, note 114; , Amnesty Intôl 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/; , Mwatana News Release (Oct. 24, 2022), https://reliefweb.int/report/yemen/yemen-sudanese-forces-coalition-commit-sexual-violence-hajjah.

[125] , Mwatana News Release (Oct. 24, 2022), https://reliefweb.int/report/yemen/yemen-sudanese-forces-coalition-commit-sexual-violence-hajjah.

[126] ; A GENDERED CRISIS, 113, at 66-67.

[127] ACAPS, note 110, at 6.

[128] ID.

numbers.[149] A[illegible]nally, Yemeni law prohi[illegible]octor finds that an abortion is nec[illegible]y to preserve the life of th[illegible]ion in cases of rape.[151] Based [illegible]e above listed barriers to ma[illegible]egal abortion is extremely limi[illegible]d such restrictions can incr[illegible]s.[152]

[illegible]Gender-Based Violenc[illegible]n

Exposure to [illegible]Y meaningfully thw[illegible]n education. Moreover, the cultura[illegible]ms which give ri[illegible]hallenging for women and girls, in [illegible]cular, to acces[illegible]to education for girls and wo[illegible]is greatly l[illegible]as functional issu[illegible]uch as displacement.[153]

Yeme[illegible]men struggle to access conflict, such[illegible]e high rate of child ma[illegible] right to educa[illegible]55] and existed even pri[illegible] reported an inability to help her children [illegible] school to marry at a young age.[156] The lac[illegible]rresponding impac[illegible] on literacy rates, is problematic through m[illegible]example, one woman reported an inability to read expiration date[illegible]issues.[157]

Approximately one in four education[illegible]l in the conflict and some students living in more contested regio[illegible]f being caught in the

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[illegible]

[illegible]

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crossfire on their way to or from

Between 2014 and 2020, the U.N. found at least 30 verified cases of individuals ñarbitrarily arrested and detained in violation of Yemeni and/or international law.ò[169] Persons have been found to have been detained without charges for prolonged periods.[170]

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 YAPôs 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 womenôs freedom of movement.[196] These restrictions have impaired womenôs ability to access work, education, and healthcare.[197] Beginning in 2014, authorities in Yemenôs capital of Sanaa have required women to travel with a a male guardian such as a husband, or with written permission from this person.[198]

Houthiôs Land Transport Regulatory Authority expanded the restrictions on womenôs movement in August 2022, ñrequiring 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 .ò[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 .[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]

Additionally, under Yemen's Personal Status Law (1992), married women are required to obey their husbands in order to maintain their , the Islamic term for financial support a husband provides to his wife.[204] A wife cannot leave her marital home without her husbandôs permission or unless she has a ñlegitimate excuseò and she cannot refuse to travel with her husband.[205] A ñlegitimate excuseò 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 husbandôs 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 childrenôs 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 womenôs 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 an ID.[214] In March, 2024, Human Rights Watch reported that all parties to the conflict were escalating restrictions on womenôs movement.[215]

10. Restrictions on Freedom of Expression

Yemeni women and girls have their freedom of expression

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 womenôs 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 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

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[216] 2022 Country Reports on Human Rights Practices: Yemen, U.S. Depôt State (2022), https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/yemen/.

[217] , Euro-Med Human Rts. Monitor (Mar. 7, 2023), https://euromedmonitor.org/en/article/5609/ñNot-your-professionò:-Violations-and-harassment-facing-female-journalists-in-Yemen,-Tunisia,-oPt. [hereinafter, ñ ò].

[218] Mubarak Al-Yousifi, , Fair Planet (Jan. 27, 2023), https://www.fairplanet.org/story/the-cyber%20crime-epidemic-targeting-yemeni-women/.

[219] note 217.

[220] .

[221] .

[222] .

[223] .

[224] .

[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 womenôs 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, interviewers, 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 womenôs 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 staffôs 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 womenôs rights activist reported to Human Rights Watch that when trying to pass through a government-controlled checkpoint

mandated they sell only these specific items, requiring them to su

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 tar

Reports indicate that migrant smugglers, the Yemeni government, Houthi forces, and Saudi Security Forces have all perpetrated gender-based violence against migrants. Due to Yemenôs 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 theyôd 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]

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https://www.iom.int/news/human-rights-violations-against-migrants-yemen-increase-amid-soaring-arrivals-iom-warns.

[264] Lama Fakih & Nadia Hardman, , HUMAN RTS. WATCH (Dec. 7, 2022), https://www.hrw.org/news/2022/12/07/warring-parties-yemen-silent-amid-reports-migrant-abuse.

[266] NADIA HARDMAN, ñTHEY FIRED ON US LIKE RAINò SAUDI ARABIAN MASS KILLINGS OF ETHIOPIAN MIGRANTS AT THE YEMEN-SAUDI BORDER, HUMAN RTS. WATCH (2023).

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[269] Nadda Osman, , MIDDLE EAST EYE (Sept. 7, 2023), https://www.middleeasteye.net/news/yemen-ethiopia-women-forced-houthis-stc-sexual-slavery.

[270]

[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, ñTHEY FIRED ON US LIKE RAINò SAUDI ARABIAN MASS KILLINGS OF ETHIOPIAN MIGRANTS AT THE YEMEN-SAUDI BORDER, HUMAN RTS. WATCH (2023).

apply

Both IHL and IHRL apply during situations of armed conflict.[273] However, under the maxim of , when the , or a general body of law, and the , or more specialized law, conflict, the specialized law takes precedence.[274] In the context of armed conflict, IHRL is the , while IHL is the that takes precedence.[275]

The International Court of Justice (ñICJò) has applied this maxim in several cases.[276] For instance, in the the ,[277] the ICJ expressed that when determining whether a deprivation of life during armed conflict is

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 ñviolence to life and personsò including cruel treatment and torture, as well as ñoutrages on personal dignity,ò 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 ñindecentò assault are both war crimes[285] 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

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[292] , 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 [redacted] achieving the elimination of prejudices and other practices which are [redacted] periority of either of the sexes.[293] Where States fail to effectively prote[redacted] ysical and sexual abuse within within their families and elsewhere, a[redacted] prevent, investigate, and punish such actions, they have violated th[redacted] s.[294] Here, Yemeni authorities have failed to protect women and girls [redacted] hich proliferates under a culturally permissive attitude toward s[redacted] ities have additionally failed to prevent, investigate, and punish viol[redacted] routinely committed with impunity.

Accordingly, the proliferation of sexual violence i[redacted] the conflictsô engagement in that practice or failure to due dili[redacted] t, constitutes a violation of both IHRL and IHL.

2. Psychological Violence

The Committee on the Elimination of All ţ

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5. Arbitrary Imprisonment

Article 9 of the 1948 Universal Declaration of Human Rights specifies that ñNo one shall be subjected to arbitrary arrest, detention or exile.ò[318] The International Covenant on Civil and Political Rights (ICCPR) expounded on this in its Article 9 with statements that ñNo 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,ò 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 ñimprisonment or other severe deprivation of liberty in violation of fundamental rules of international lawò can constitute a crime against humanity if ñcommitted as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.ò[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 ñformulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty.ò[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 ñWhen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty,ò when the deprivation of liberty results from the exercise of certain guaranteed rights or freedoms under international law, when a trialôs ñnonobservance of the international norms relating to the right to a fair trialò is severe enough, and when deprivation of liberty ñconstitutes a violation of international law on the grounds of discriminationò of certain protected statuses.[322]

In addition, during times of armed conflict, people who are detained ñenjoy the more specific protection of international humanitarian law [IHL]ò[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 ñshall 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.ò[324] Article 78 further specifies that the decisions regarding detainment have to be done according to a regular procedure, which must include ñthe right to appeal.ò[325] Importantly, these provisions originally only applied to óprotected personsô 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

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[318] Universal Declaration of Human Rights, G.A. Res.

[319] ICCPR, note 278.
[320] Rome Statute, 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] , Human Rights Council, U.N. Doc. A/HRC/36/38, at £ 8 (July 13, 2017).
[323] Alfred de Zayas, , 87 INTERNATIONAL REVIEW OF THE RED CROSS 15, 20 (2005).
[324] Fourth Geneva Convention, note 283.
[325] .

conflict in Article 75; some of these guarantees were prohibitions against torture, degrading treatment, mutilation, and ñoutrages against personal dignity.ò[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 óguardianship requirementô 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.

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 YAPôs 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 12[346] 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 womanôs ability to move freely is made subject, by either law or practice, to the decision of another person, including a relative.[349] Accordingly, the 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 purposesïwhich as enumerated under ICCPR Article 12, include, protecting national security, public order, public health or morals, or the rights and freedoms of othersïand the purposes of the derogation must be proportionate to the statesô 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 system has on womenôs 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, systems, as adopted by various entities across Yemen, is, by design, discriminatory and is thus, impermissible.

352

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.

Women are deprived of their right to freedom of expression guaranteed by article 19 of the UN's Universal Declaration of Human Rights. Article 19 states, ñ[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.ò[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

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.

The freedom of expression encompasses the right to choose whatïand what notïto wear.[359] Governments have an obligation to respect, protect, and ensure every individualôs 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 ñgenderò as male and female sexes, a definition which the International Criminal Courtôs Office of the Prosecutor has clarified to encompass ñcharacteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes.ò[366] Persecution is thus not limited in its application to men and women alone, but is also applicable to transgender and nonbinary individuals.

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

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[364] , at art. 26; CEDAW, note 291, at art. 2; , HUMAN RTS. WATCH (Dec. 21, 2010), https://

[365] Rome Statute, note 44, art. 7(1)(h).

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

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]

and lack of reporting on any of them, also likely violates their obligations

Within the international judicial system, one possible avenue for accountability may be through the International Court of Justice (ñICJò). As Yemen and Saudi Arabia have not accepted the ICJôs compulsory jurisdiction and are unlikely to consent to the ICJôs jurisdiction on an ad hoc basis, the pathway to jurisdiction would need to stem from a treatyôs compromissory clause.[416] Yemen is a party to a number of IHRL treaties, including the Convention on

Emirates (ñUAEò) 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]

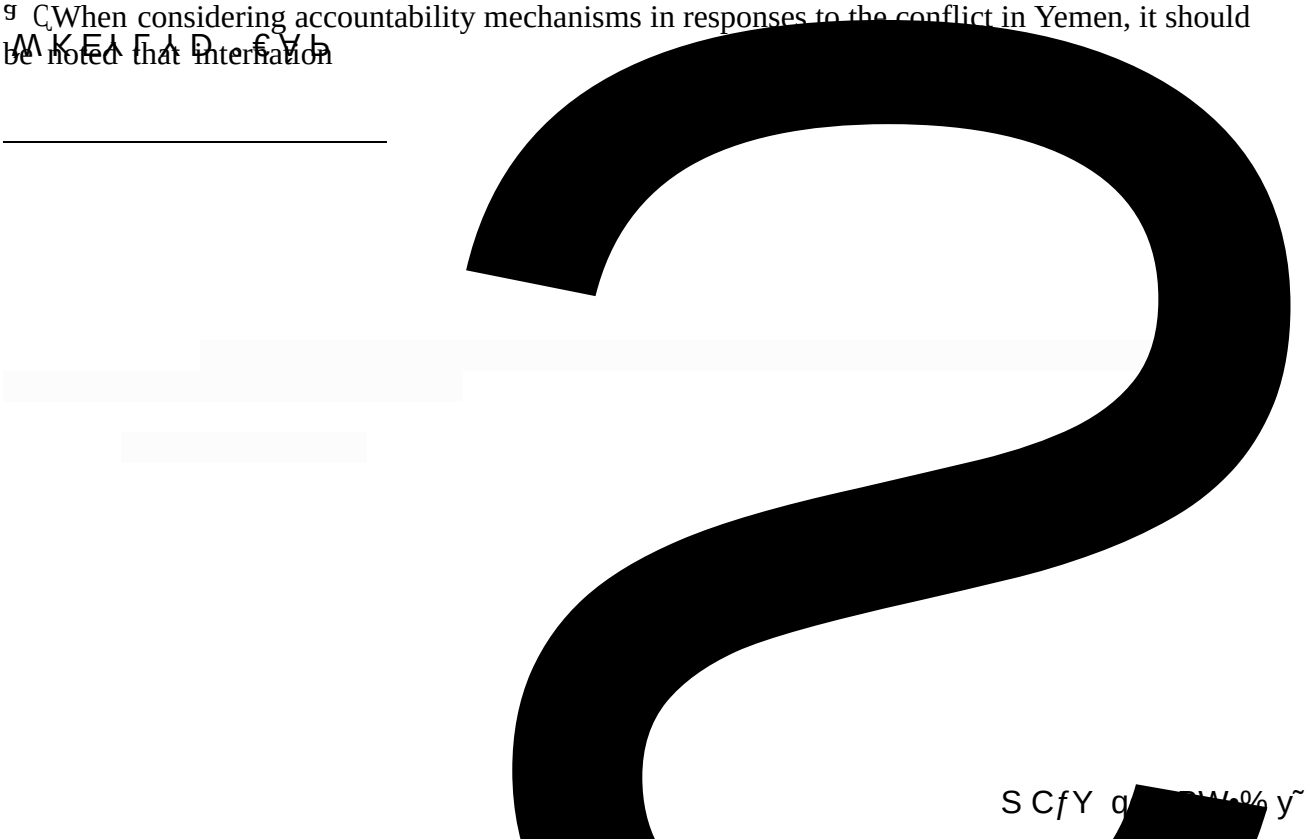
The ICJ as an accountability mechanism for Yemen is also problematic because it would not provide a basis for individual criminal responsibility, as the ICJ adjudicates disputes between States.[426] Accordingly, an additional mechanism would need to be pursued to bridge this accountability gap.

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 ñtake 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 é ò[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

ᶠ ᶜWhen considering accountability mechanisms in responses to the conflict in Yemen, it should be noted that internation



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utilized when domestic courts are unwilling or unable to pursue justice.[433] Yemenôs 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 substantially

Syrian official based on the ñdual criminality ruleò 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 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

Though sanctions can be

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

ï 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.

ï If action in the Security Council is blocked by veto,

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 victimsô 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

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 YAPôs transitional justice recommendations specific to

ï , 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.

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 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 SCSLôs 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.

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[452] MWATANA FOR HUMAN RIGHTS, COURTS FOR ABUSE: A CASE STUDY OF YEMENÔS SPECIALIZED CRIMINAL COURTS: 2015-2020 113-14 (2021), https://mwatana.org/wp-content/uploads/2021/12/Courts-for-Abuse-Study-En.pdf.

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