



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1992**

**Addendum**

**YEMEN\***

[1 October 2002]  
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\* This information submitted by Yemen in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in document HRI/CORE/1/Add.115.

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## I. INTRODUCTION

1. Since the blessed revolutions of 26 September 1962 and 14 October 1963, Yemen has made every endeavour, together with peace-loving peoples and States throughout the world, to combat all forms of torture both directly and indirectly, through the steadfast support it has given at all levels to peoples who cherish this goal.
2. One of the most important components of the six main aims of the glorious September revolution calls for compliance with the charters of the United Nations and other international organizations, adherence to the principles of positive neutrality and non-alignment, and endeavours to promote the principle of peaceful coexistence between nations. Accordingly, and in conformity with the provisions of Article 55 of the Charter of the United Nations, article 6 of the Constitution of the Republic of Yemen that was promulgated after the blessed reunification of the country on 22 May 1990 affirms the State's adherence to the Charter of the United Nations, the Universal Declaration of Human Rights, the Pact of the League of Arab States and the generally recognized rules of international law.
3. This has been given practical expression in Yemen's signing and ratification of, and accession to, the International Bill of Human Rights, together with the majority, if not all, of the relevant international conventions, including, inter alia, as many as 30 International Labour Organization conventions as well as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. However, the endeavours of the Republic of Yemen have not stopped at the signing and ratification of legal instruments; the terms and provisions of the international treaties and conventions Yemen has signed have also been incorporated into various domestic laws and provision has been made therefor in the Constitution and in other laws and legislation. Yemen has furthermore taken administrative, legislative and judicial steps to protect and provide full and adequate safeguards for human rights by vesting responsibility for their preservation and protection in the organs of the judicial system (the Department of Public Prosecutions) and the courts (at their various levels). According to article 149 of the Constitution: "The judiciary is a legally, financially and administratively independent authority the organs of which include the Department of Public Prosecutions. All disputes and offences are adjudicated by the courts, the judges of which are independent and, in their administration of justice, subject to no authority other than the law. No one is permitted to interfere in any way in lawsuits or other judicial affairs, such interference being deemed a punishable offence in respect of which legal proceedings are not subject to any statute of limitations." The Constitution also provides that no citizen may be imprisoned unless in accordance with the terms of a final judgement issued by a competent court. Thus, through its various constitutional provisions and laws, Yemen offers the best possible safeguards for the protection of human rights.
5. Yemen is virtually a pioneer among the countries of the region in this domain. It continues to pursue its tireless and earnest efforts to improve, commensurate with the resources available to it. Yemen complies with the new guidelines followed by the Office of the United Nations High Commissioner for Human Rights and international and regional organizations, by incorporating them into the provisions of agreements and legislation that

prohibit human rights violations and pursuing, investigating and prosecuting human rights violators. One of the most important measures which Yemen has taken was the establishment of the mechanism known as the Higher National Committee for Human Rights and its reorganization pursuant to Presidential Decree No. 89 of 2001, under the terms of which the chairmanship of the Committee was entrusted to the Prime Minister, with the Director of the Office of the President of the Republic acting as his deputy and a number of Ministers concerned with various areas of human rights being appointed as members. The reorganization coincided with the formation of a new Government. One of the most important programmes which the new Government submitted to the House of Representatives provided for the incorporation of human rights into development and the inclusion in the new Government of a new human rights portfolio, the holder of which would also assume the positions of General Secretary of the Higher National Committee for Human Rights and Chairman of the Standing Subcommittee. This meant changing the working methods of the Committee, the first task of which was to formulate a long-term strategy and a short-term plan setting forth its key tasks and priorities for keeping pace with international and regional changes in the field of human rights promotion and protection. These functions include, in particular, the prompt preparation and submission of the reports requested by international organizations, of which the present report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a case in point. The most important of the mechanisms and measures that have been put in place with respect to the Convention against Torture are shaped around the following:

- Standard Minimum Rules for the Treatment of Prisoners;
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Code of Conduct for Law Enforcement Officials;
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **II. IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

### **A. Article 1**

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on

discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### **Paragraph 1**

6. Under the Yemeni Constitution, the practice of physical and psychological torture is prohibited, as is the extraction of confessions by force during investigations. Article 48, paragraph (b), of the Constitution stipulates: “Except in cases of flagrante delicto, no one may be arrested, searched or detained without a warrant issued by a magistrate or the Department of Public Prosecutions, in accordance with the law, where such arrest, search or detention is necessitated by the requirements of an investigation or the maintenance of public order and security. No one shall be placed under surveillance or investigated except in the manner prescribed by law and the dignity of any person whose liberty is in any way restricted must be preserved. The practice of physical or mental torture is prohibited, as is the extraction of a confession by force during investigations. Any person whose liberty is restricted shall have the right to refrain from making statements except in the presence of his lawyer, and no one may be imprisoned or detained in a place other than those subject to the provisions of the Organization of Prisons Act. Torture and inhuman treatment at the time of arrest or during the period of detention or imprisonment shall likewise be prohibited.”

7. This is underlined in article 6 of the Code of Criminal Procedure No. 3 of 1994, which provides: “No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void.”

8. According to article 9, paragraph (b), of the Police Corps Act No. 15 of 2000: “They [i.e. the police] shall not use physical torture or psychological pressure against any person during the taking of evidence or statements or the period of detention or imprisonment.”

### **B. Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **Paragraph 1**

9. The Constitution, the Code of Criminal Procedure and the Police Corps Act each contain numerous provisions that guarantee the freedoms of citizens, safeguard their dignity and security and prevent acts of torture, by prohibiting all forms of torture and regulating the circumstances in which citizens may have their freedoms curtailed. These provisions prescribe severe penalties for anyone who commits, orders or participates in an act of torture and they designate physical or mental torture at the time of arrest or during the period of detention as a criminal offence in respect of which legal proceedings are not subject to any statute of limitations. The provisions are described in detail hereunder.

#### **1. The Constitution**

10. Article 48 of the Constitution provides as follows:

“(a) The State shall guarantee the personal freedom of citizens and shall safeguard their dignity and security. The law shall determine the circumstances under which a citizen may be deprived of his liberty, and no one may be deprived of his liberty except by a judgement from a competent court;

“(b) Except in cases of flagrante delicto, no one may be arrested, searched or detained without a warrant issued by a magistrate or the Department of Public Prosecutions, in accordance with the law, where such arrest, search or detention is necessitated by the requirements of an investigation or the maintenance of public order and security. No one shall be placed under surveillance or investigated except in the manner prescribed by law. The dignity of any person whose liberty is restricted in any way must be preserved. Physical, mental or moral torture are prohibited. It is prohibited to use coercion for the purpose of extracting a confession during an investigation. Any person whose liberty is restricted has the right to refrain from making statements except in the presence of his lawyer. It is forbidden to imprison or detain a person in places other than those governed by the terms of the Organization of Prisons Act. Torture and inhuman treatment at the time of arrest or during the period of detention or imprisonment are prohibited;

“(c) The magistrate or the Department of Public Prosecutions must inform him of the reasons for arrest, as well as question him and permit him to make statements in his defence and lodge any protests. He must then immediately issue a substantiated order for his remand in custody or release him. Under no circumstances may the Department of Public Prosecutions remand a person in custody for longer than seven days unless a further judicial order is issued. The maximum period of remand in custody shall be determined by law;

“(d) When any person is arrested for any reason, an individual designated by him must be notified immediately. The same shall also apply on the issuance of any judicial order for his further remand in custody. If the person arrested is unable to designate anyone, notification must be given to his relatives or to whomsoever it may concern;

“(e) The law shall determine the punishment for anyone who contravenes the provisions of any paragraph of the present article, together with the appropriate compensation for any damage which the person may suffer as a result of such contravention. Physical or psychological torture at the time of arrest, or during the period of detention or imprisonment shall be deemed a criminal offence that is not subject to any statute of limitations. Anyone who commits, orders or participates in such crime shall be liable to prosecution.”

## **2. The Code of Criminal Procedure**

11. According to article 6 of the Code of Criminal Procedure: “No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void.”

## **3. The Police Corps Act**

12. Article 9, paragraph (b), of the Police Corps Act provides: “They [i.e. the police] shall not use physical torture or psychological pressure against any person during the taking of evidence or statements or the period of detention or imprisonment.”

13. According to section II (Acts forbidden to officers), article 90 (d), of the Act:

“No officer may:

“Use his rank or military status to accrue personal gain for himself or others or to inflict harm on others.”

14. By way of a practical example, we should like to mention a case in the Mahwit governorate in which a suspect died after being tortured by a security officer and two police officers. The three men were convicted by a court of law, which ordered that they be discharged from service and sentenced the security director to 10 years' imprisonment and payment of 3 million rials (about US\$ 19,000) in blood money (*diya*). The two other officers were each sentenced to five years in prison.

## **Paragraph 2**

15. The Republic of Yemen, which has affirmed its commitment to the provisions of the Charter of the United Nations, the Pact of the League of Arab States, the Universal Declaration of Human Rights and the generally recognized rules of international law, has no laws making it permissible to derogate from fundamental human rights on any ground whatever, whether in time of war or the threat of war or in the event of internal political instability or any emergency situation. Extraordinary courts cannot be established under any circumstances, as is clearly stated in the Constitution, article 150 of which provides: “The judiciary is an integral entity. The law shall regulate judicial bodies and their levels and shall define the responsibilities

thereof. It shall also stipulate the criteria of eligibility for judicial office, together with the conditions and procedures for the appointment, transfer and promotion of judges and other guarantees relating to them. Under no circumstances shall extraordinary courts be established.”

16. This is underlined in article 7, paragraph 1, of the Code of Criminal Procedure, which states: “Arrests shall not be permitted other than in respect of acts that are punishable by law. They must be carried out in the manner prescribed by law.”

### **Paragraph 3**

17. As already mentioned, nowhere in the legislation of the Republic of Yemen are there any provisions which make it permissible to derogate from fundamental human rights on any ground whatever. Hence, law enforcement officers cannot invoke an order from a superior officer as justification of an act of torture or other cruel, inhuman or degrading treatment. The Constitution and a number of related laws contain provisions that explicitly prohibit all forms of torture and deny law enforcement officers the right to invoke orders from a superior officer as justification for ordering, instigating or tolerating any act of torture. This is clearly explained hereunder.

### **The Constitution**

18. As mentioned above, the provisions of article 48 of the Constitution prohibit all forms of torture, the practice of which is regarded as a criminal offence that is not subject to any statute of limitations. Article 50 of the Constitution likewise provides: “Punishments may not be enforced by illegitimate means. Enforcement shall be regulated by law.”

### **The Police Corps Act**

19. According to section I (The duties of officers), article 89, paragraphs (f) and (l), of the Police Corps Act: “Every officer shall comply with and implement the provisions of the present Act and shall likewise be bound by the following:

“(e) He shall not commit any disciplinary infraction or breach the laws and regulations in force;

“(l) He shall respect citizens and their rights and do his utmost to facilitate and process their official business as efficiently as possible by offering them every possible assistance.”

### **The Penal Code**

20. According to article 35 of the Code: “A person shall not be deemed to have committed a crime, if he committed a criminal act under pressure of physical coercion that he could not resist or in circumstances of force majeure. The person responsible for the coercion shall answer for the crime that occurred, unless it involved the murder or torture of a human being, in which case neither he nor the person subjected to the coercion shall be exonerated of responsibility.”



21. According to article 225 of the section of the Code entitled “The illegal orders”:

“No member of the armed forces shall be made to answer for:

“1. Carrying out an illegal order issued by his superior officer, the responsibility for the implementation of which lies with the superior officer alone, unless the order was in clear breach of the provisions of the Penal Code or general international law, in which case both the superior officer and his subordinate shall be answerable for what happened;

“2. Refusing to carry out an order from a superior officer that was in clear breach of the Penal Code or general international law.”

### **The Code of Military Crimes and Penalties**

22. According to article 42 of the Code: “No person subject to the provisions of the present Code shall be made to answer for:

“(a) Carrying out an illegal order issued by his superior officer, the responsibility for the implementation of which lies with the superior officer alone, unless the order was in clear breach of the provisions of the Penal Code or general international law, in which case both the superior officer and his subordinate shall be answerable for what happened;

“(b) Refusing to carry out an order from a superior officer that was in clear breach of the Penal Code or general international law.”

23. According to article 47 of the Code: “Without prejudice to the Penal Code, a penalty of up to two years’ imprisonment and payment of compensation shall be imposed on any commanding officer who subjects a subordinate to beating, causes him bodily harm, carries out an act likely to damage his health or, for no legal reason, makes him perform additional duties, for the purpose of torturing him, or allowing others to do him harm. If the offence results in the person’s death the penalty shall be capital punishment.”

### **C. Article 3**

1. No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

24. The Republic of Yemen offers all residents in its territory full protection and its laws and regulations extend to them the full guarantees enjoyed by the rest of the citizens without any discrimination among them. The laws in question include the following:

(a) According to article 45 of the Constitution: “No Yemeni citizen may be extradited to a foreign power.” Article 46 likewise provides: “The extradition of political refugees is prohibited.”

(b) According to article 319 of Act No. 48 of 1999, concerning the entry and exit of aliens: “No alien in possession of a special residence permit may be deported, unless his presence poses a threat to the internal or external security and integrity of the State or its national economy or health or such alien constitutes a burden on the State. The process of deportation must be conducted in accordance with a decision issued by the Minister of the Interior after the deportation order has been examined by the competent committee.”

(c) According to article 5 of the Code of Criminal Procedure: “All Citizens are equal before the law. No person shall suffer punishment or damage on account of his nationality, race, origin, language, creed, profession, level of education or social status.”

#### **D. Article 4**

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

25. The laws of the Republic of Yemen, including, in particular, the Constitution and the Penal Code, absolutely prohibit all forms of torture, as illustrated hereunder.

#### **The Constitution**

26. According to article 48 (e) of the Constitution: “The law determines the punishment for anyone who contravenes the provisions of any paragraph of the present article, together with appropriate compensation for any damage which the person may suffer as a result of such contravention or detention. Physical or psychological torture at the time of arrest, or during the period of detention or imprisonment shall be deemed a criminal offence that is not subject to any statute of limitations. Anyone who commits, orders or participates in such crime shall be liable to prosecution.”

27. Article 50 of the Constitution furthermore provides: “Punishments may not be enforced by illegitimate means. Enforcement shall be regulated by law.”

#### **The Penal Code No. 12 of 1994**

28. According to article 35 of this Code: “A person shall not be deemed to have committed a crime, if he committed an act constituting a criminal offence under pressure of physical coercion that he was unable to resist or in circumstances of force majeure. The person responsible for the coercion shall answer for the crime that occurred unless it entailed the murder or torture of a human being, in which case neither he nor the person subjected to the coercion shall be exonerated of responsibility.”

29. According to article 166 of the Code: “Any public official who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person, witness or expert in order to extract a confession to an offence or statements or information pertaining thereto shall face a penalty of up to 10 years in prison. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*).”
30. According to article 167 of the Penal Code: “Any public official who, directly or indirectly, imposes a penalty on a person, that is different from or more severe than that to which he was sentenced or refuses to execute an order for that person’s release, for which he is responsible, or deliberately keeps him in a penal institution beyond the term specified in the incarceration order shall be liable to a term of imprisonment. He shall in every case be removed from his post.”
31. According to article 168 of the Penal Code: “A penalty of up to one year’s imprisonment or a fine shall be imposed upon any public official who abuses his official powers by subjecting others to cruel treatment that derogates from their honour or causes them physical pain. This shall be without prejudice to the right of victims to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*). He shall in every case be removed from his post.”
32. Article 246 of the Code stipulates a maximum penalty of three years’ imprisonment for anyone who unlawfully arrests, detains or deprives a person of his liberty. The penalty is increased to a term of up to five years’ imprisonment, if the perpetrator(s) of the offence is a public official, a person who was impersonating a public official or carrying a weapon, or were two or more persons, or intended to damage the victim’s honour, or if the victim was a minor or was without, or with diminished, mental capacity or if his life or health would have been placed in jeopardy by his being deprived of his liberty.
33. According to article 249 of the Code: “A penalty of up to five years’ imprisonment shall be imposed on anyone who abducts another person. If the victim of the abduction is a female, a juvenile, insane or feeble-minded, or if the abduction is effected through the use of force, threats or deception, the penalty is a term of up to seven years’ imprisonment. If the abduction is accompanied or followed by bodily harm, assault or torture, the penalty is a term of up to 10 years’ imprisonment without prejudice to the right to claim retribution (*qasas*) blood money (*diya*) or indemnity for bodily injury (*arsh*), as appropriate, if such is warranted by the harm caused. If the abduction is accompanied or followed by murder, adultery, prohibited sexual assault or sodomy, the offender is liable to the death penalty.”
34. With regard to punishment of accessories to the crime, article 250 of the Code stipulates: “The above penalties shall be imposed, as appropriate, on any person who participates in the abduction of a person or in the concealment of the abductee following the abduction, if he was aware of the circumstances in which the abduction took place and of the acts which accompanied or followed it. If the accessory to the abduction was aware of the abduction, but unaware of the other circumstances that accompanied or followed it, the penalty shall be reduced to a term of up to five years’ imprisonment.”

35. Article 241 of the Code likewise provides: “Anyone who commits an assault of any kind against the physical integrity of another person, which, without such being his intention, results in that person’s death, shall be liable to pay blood money (*diya*) and to a penalty of up to five year’s imprisonment.”

36. According to article 243 of the Code: “A punishment identical to the crime itself shall be inflicted on anyone who commits an assault of any kind against another person, causing him to suffer a permanent physical disability, by breaking one of his joints, plucking out an eye, amputating an ear or inflicting a measurable bodily wound. If the criminal act is confined to impairment of the functioning of a limb or sense, but the form thereof remains intact, or if retribution is prohibited or abated, without the assailant having been freely pardoned, the penalty shall be payment of blood money (*diya*) or an indemnity for bodily injury (*arsh*) and a term of up to seven years’ imprisonment. If the assault results in a permanent disability which the perpetrator had no intention of causing, the penalty shall be up to three years’ imprisonment in addition to the payment of blood money (*diya*) and an indemnity for bodily injury (*arsh*), as the case may be.”

37. According to article 244 of the Code: “A penalty of indemnity for bodily injury (*arsh*) and up to one year’s imprisonment, or the indemnity plus a fine, shall be imposed on anyone who commits an assault of any kind against the physical integrity of another person, inflicting an injury that cannot be measured or damaging to his health. If assault gives rise to an illness or incapacity to carry out personal functions which does not last for more than 20 days, the penalty shall be a maximum of three years’ imprisonment or a fine, to which shall be added payment of an indemnity for bodily harm (*arsh*) if the assault gives rise to an illness or functional incapacity which lasts more than 20 days.”

#### **The Code of Criminal Procedure No. 13 of 1994**

38. According to article 6 of the Code of Criminal Procedure: “No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void.”

39. According to article 7, paragraph 1, of the Code: “Arrests shall not be permitted other than in respect of acts that are punishable by law. They must be carried out in the manner prescribed by law.”

40. Article 16 stipulates: “By way of derogation from the provisions of article 37, there shall be no abatement of the right for a criminal action to be heard concerning offences which undermine the freedom or dignity of citizens or which constitute an assault on the freedom of private life.”

41. According to article 71 of the Code: “A person under arrest shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose.”

42. Article 178 stipulates that the accused must not be compelled to take an oath or to answer questions. Similarly, his act of declining to do so is not regarded as proof of the charge brought against him. It is also prohibited to use deception or violence against the accused or in any way bring pressure to bear on him with a view to inducing or forcing him to confess.

43. Article 469 states: “The penalties and measures prescribed by law in respect of any criminal offence shall not be applied other than under the terms of a binding final court judgement handed down by a competent court.”

### **The Code of Military Crimes and Penalties No. 21 of 1998**

44. According to section III (War crimes), article 20, of the Code of Military Crimes and Penalties: “A penalty of up to five years’ imprisonment or sanctions commensurate with the results of the crime shall be inflicted on any person in an area of military operations who deserts his post and sets about stealing from a prisoner or from a dead, ill or injured person. He must return the stolen items or their equivalent value.”

45. According to article 21 of the Code: “A penalty of up to 10 years’ imprisonment or sanctions commensurate with the results of the crime shall be inflicted on any person subject to the provisions of this Code who, in time of war, commits an act that causes damage to persons or property entitled to protection under the terms of international agreements to which the Republic of Yemen is a party. The following acts in particular, shall be deemed war crimes punishable under the terms of this Code:

“2. The torture, ill-treatment or deliberate infliction of severe pain on prisoners or their subjection to scientific experiments.

“3. The deliberate infliction of serious damage to the physical and mental integrity and health of military and civilian prisoners, or their conscription into the armed forces.”

46. According to article 22 of the Code: “The right to bring legal proceedings in respect of the crimes referred to in this section shall not be subject to any statute of limitations.”

47. According to article 23: “In the event of the commission of any of the crimes referred to in this section, the most senior officer and his immediate subordinate shall be held responsible therefor and shall not be exempted from the prescribed penalties, unless the offences were committed without their consent or knowledge or it was impossible for them to prevent them.”

48. Under the terms of section IX (Offences involving abuse of authority), article 43, of the Code: “A penalty of up to five years’ imprisonment or sanctions commensurate with the results of the crime shall be inflicted on anyone who abuses his authority by giving orders or asking for deeds to be performed that have nothing to do with his official duties, or by soliciting gifts or other financial benefits.”

49. Article 44 of the Code stipulates: “A penalty of up to five years’ imprisonment shall be inflicted on anyone who abuses his authority or rank by ordering a subordinate to commit a criminal offence. Without prejudice to the provisions of the Penal Code, the person who gave the order shall be regarded as the actual author of the crime, if it was committed or attempted.”

50. Article 47 likewise provides: “Without prejudice to the Penal Code, a penalty of up to two years’ imprisonment and payment of compensation shall be imposed on any commanding officer who subjects a subordinate to beating, causes him bodily harm, carries out an act likely to damage his health, or, for no legal reason, makes him perform additional duties, for the purpose of torturing him or allowing others to do him harm. If the offence results in the person’s death, the penalty shall be capital punishment.”

51. According to article 52 of the Code: “Without prejudice to the provisions of the Penal Code, a penalty of up to five years’ imprisonment shall be inflicted on any person who beats a subordinate.”

52. Article 53 of the Code stipulates a penalty of up to 10 years’ imprisonment for anyone who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person or witness in order to extract a confession to a crime or statements or information pertaining thereto. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diyya*) or indemnity for bodily injury (*arsh*).

### **The Police Corps Act No. 15 of 2000**

53. According to section II, article 7, of the Police Corps Act, the duties of the police include the following:

- “2. Protection of lives, honour and property;
- “4. Guaranteeing the security and safety of citizens and residents;
- “6. Managing prisons and guarding prisoners;
- “7. Guarding public utilities and helping the public authorities to carry out their tasks in accordance with the provisions of this Act;
- “10. Performing the duties required of them in accordance with laws, regulations and decrees.”

54. Article 9, paragraph (b), of the Act stipulates: “They [i.e. the police] shall not use physical torture or psychological pressure against any person during the taking of evidence or statements or the period of detention or imprisonment.”

55. According to section I (The duties of officers), article 89, paragraphs (f) and (l), of the Police Corps Act: “Every officer shall comply with and implement the provisions of the present Act and shall likewise be bound by the following:

- “(e) He shall not commit any disciplinary infraction or breach the laws and regulations in force.”

### **E. Article 5**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

56. As illustrated hereunder, Yemen's domestic laws contain a number of provisions pertaining to this article that aim at establishing the State's jurisdiction over all offences committed in its territory, regardless of the nationality of the perpetrator.

#### **The Penal Code**

57. According to section I (Limits of application of the Penal Code), article 1, of the Penal Code: "Unless otherwise suggested by the context, the following terms and expressions shall have the meanings that appear beside each of them hereunder:

'Territory of the State': the land and territorial waters of the State and anything that is on or under them, including aircraft and naval vessels, wherever they may be, which carry the nationality of the State and fly its flag."

58. According to article 3: "This Code shall apply to all criminal offences committed in the territory of the State, regardless of the nationality of the perpetrator. A crime shall be deemed to have been perpetrated in the territory of the State, if an act constituting a criminal offence was committed therein and, when all or part of the crime was committed in the territory of the State, the present Code applied to anyone who participated therein, even if his participation took place outside the country. The present Code also applies to crimes committed outside the territory of the State for which the Yemeni courts have competence under the Code of Criminal Procedure."

### **The Code of Criminal Procedure**

59. According to article 17 of the Code:

“1. The Code of Criminal Procedure shall apply to any criminal offence committed in the territory of the Republic.

“2. The codes of criminal procedures shall likewise apply to citizens, the nationals of foreign States, and stateless persons.”

60. According to article 75 of the Code: “Valid arrest warrants issued within the limits laid down by law shall have legal force in all parts and dependencies of the Republic, including on board naval vessels and aircraft flying its flag.”

61. According to article 231: “Courts of first instance shall have competence for adjudicating all crimes committed in their area of local jurisdiction.”

62. According to article 232: “The appeal courts shall have competence for adjudicating appeals against verdicts and decisions handed down by courts of first instance within their area of jurisdiction.”

63. According to article 234 of the Code:

“1. Local competence must be established in the place in which the crime was committed or where the accused person resides or was arrested. The competence of the court before which the action is brought must first be established.

“2. In the event of an attempt to commit a crime, the crime shall be deemed to have been committed wherever the offence was initiated.”

64. According to article 236:

“1. If a crime governed by the provisions of Yemeni law was committed abroad by a person with no known place of residence in the Republic and who has not been apprehended therein, criminal proceedings shall be brought against him before the courts in the capital.

“2. If the crime was committed partly outside, and partly inside, the Republic, the court in the area of jurisdiction of which the crime inside the Republic was committed shall have local jurisdiction in the matter.”

65. According to article 244: “The Yemeni courts shall likewise have competence for adjudicating crimes committed at sea on board vessels flying the Yemeni flag, regardless of the nationality of the perpetrator of the crime, and for crimes committed on board foreign commercial vessels present in a Yemeni naval port or Yemen’s territorial waters. The court closest to the first port at which the vessel lays anchor shall have competence in the matter.”



66. According to article 245: “The Yemeni courts shall have competence for adjudicating crimes committed on board Yemeni aircraft, regardless of the nationality of the perpetrator of the crime, and for crimes committed on board foreign aircraft, where the author or victim of the crime is a Yemeni national. If, following the commission of the crime, the aircraft sets down in Yemen, the court in the area of jurisdiction of which the aircraft sets down shall have competence in the matter, provided that the perpetrator is arrested upon landing. If the arrest is made in Yemen, the court in the area of jurisdiction of which the accused person is arrested, shall have competence in the matter. If the accused person is arrested outside the territory of the State, the Yemeni courts may hear the case.”

67. According to article 246: “The Yemeni courts shall have competence for trying any Yemeni who commits a legally designated criminal offence outside the territory of the State, where such person returns to the Republic and the offence in question is punishable under the law of the State in which it was committed.”

### **The Code of Military Crimes and Penalties No. 21 of 1994**

68. According to article 4 of the Code: “The provisions of the present Code shall apply to anyone who commits any of the following acts:

“(a) Offences perpetrated in bases, camps, barracks, institutions, factories, vessels, aircraft, sites or quarters occupied by the military on behalf of the armed forces;

“(c) Offences committed in the course of their duties by persons subject to the provisions of this Code.”

69. According to article 5 of the Code: “Any person subject to the provisions of this Code who perpetrates an act outside the Republic by virtue of which he becomes the author of, or an accessory to, one of the crimes referred to herein shall be prosecuted under this Code, even if such crime has not been prosecuted under the law of the country in which it was committed.”

## **F. Articles 6 and 7**

### **1. Article 6**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

## **2. Article 7**

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

70. With reference to articles 6 and 7 above, we describe below the provisions of the relevant national laws and the other legal procedures pertaining to detention, the legal duration thereof, guarantees of prompt investigation and the right of a person in custody, inter alia, to a defence, to fair treatment at all stages of legal proceedings and to contact anyone of his choosing.

### **The Constitution**

71. Article 48, paragraph (c), of the Constitution stipulates: "Any person who is provisionally arrested on suspicion of the commission of a crime must be brought before a magistrate within a maximum of 24 hours from the time of his arrest. The magistrate or the Department of Public Prosecutions must inform him of the reasons for the arrest, question him and permit him to make statements in his defence and lodge any protests. He must immediately issue a substantiated order for his remand in custody or release him. Under no circumstances may the Department of Public Prosecutions remand a person in custody for a period longer than seven days unless a further judicial order is issued. The maximum period of remand in custody shall be determined by law."

72. According to article 48, paragraph (d), of the Constitution: "When any person is arrested for any reason, an individual designated by him must be notified immediately. The same shall also apply on the issuance of any judicial order for his further remand in custody. If the person arrested is unable to designate anyone, notification must be given to his relatives or to whomsoever it may concern."

**The Code of Criminal Procedure**

73. According to article 7 of the Code of Criminal Procedure:

“1. Arrests shall not be permitted other than in respect of acts that are punishable by law. They must be carried out in the manner prescribed by law.

“2. The Department of Public Prosecutions shall immediately release any person who is unlawfully deprived of his liberty or remanded in custody for a period longer than is permitted by law or under the terms of a court judgement or order.”

74. According to article 8 of the Code:

“1. Investigation officers, the Department of Public Prosecutions and the court shall establish whether a crime has been committed, the reasons and circumstances leading to its commission and the identity of the accused person.

“2. The accused person shall have the right to take part in the reconstruction of the facts and to submit claims to prove his innocence at any stage of the investigation and trial. Such claims must be verified and investigated in every case.”

75. According to article 9 of the Code:

“1. The right to a defence is guaranteed. The accused person has the right to defend himself and to engage the services of defence counsel at any stage of a case, including the investigation stage. The State shall provide defendants without means with an accredited defence lawyer.”

76. According to article 71 of the Code:

“A person under arrest shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose.”

77. Article 73 of the Code provides: “Any person who is arrested shall be immediately notified of the reasons for the arrest. He shall have the right to examine the arrest warrant, to contact whomsoever he believes should be informed of what has occurred and to seek the assistance of a lawyer.”

78. According to article 76: “Any person who is provisionally arrested on suspicion of the commission of a crime must be brought before a magistrate within a maximum of 24 hours from the time of his arrest. The magistrate or the Department of Public Prosecutions must inform him of the reasons for the arrest, question him and permit him to make statements in his defence and lodge any protests. He must immediately issue a substantiated order for his remand in custody or release him. Under no circumstances may the Department of Public Prosecutions remand a person in custody for a period longer than seven days unless a further judicial order is issued.”

79. According to article 77 of the Code: “When any person is arrested for any reason, an individual designated by him must be notified immediately. The same shall also apply on the

issuance of any judicial order for his further remand in custody. If the person arrested is unable to designate anyone, notification must be given to his relatives or to whomsoever it may concern.”

80. According to article 105: “In the aforementioned circumstances, the investigation officer must immediately take statements from the accused person and refer him, together with his written report thereon, to the Department of Public Prosecutions within 24 hours or release him immediately.”

81. According to article 121 of the Code: “Without prejudice to the rights of the defence, investigation proceedings shall be conducted in secret, unless the law otherwise requires. Anyone who initiates or takes part in such proceedings shall refrain from divulging information pertaining thereto. Anyone who breaches this undertaking shall be liable to the penalty prescribed in the Penal Code.”

82. According to article 129 of the Code:

“1. The investigation must be completed within a maximum of two months from the date on which the file was opened. Investigations in which the accused person has been remanded in custody must likewise be expedited.

“2. The Attorney-General shall determine the time limits for investigations in respect of particular kinds of crimes. Where additional time is needed, because of the complexity of the investigation or dimension of the case, approval must be sought from the director of the competent Department of Public Prosecutions. If the additional time required exceeds the maximum period allowed, i.e. two months, the approval of the director of the Department of Public Prosecutions in the governorate must be sought in order to extend the deadline to up to three months.

“3. Except as authorized by the Attorney-General, the investigation shall not last more than six months. In any case, any additional investigation period shall not last more than six months.”

83. According to article 172 of the Code: “Without prejudice to the provisions of chapter II, section II, of the present Code, no person may be arrested or detained unless under the terms of a legally substantiated order issued by the Department of Public Prosecutions or a court.”

84. According to article 174 of the Code: “The court and the investigating officer may arrest or summon any person to appear, if there is strong enough evidence to charge him with the commission of a crime.”

85. According to article 175: “If the accused person fails to appear for no good reason after having been summoned to do so, or if it is feared that he may flee, or if he has no known address, or there are witnesses to the crime, the investigator may issue a warrant for that person’s arrest, even if the offence is not one for which a person may be remanded in custody.”

86. According to article 176 of the Code: “The Department of Public Prosecutions may not remand a person in custody pending an investigation for longer than a period of seven days and the remand order shall not be extended unless pursuant to an order issued by a judge of the competent court.”
87. Article 189 of the Code stipulates: “A remand order issued by the Department of Public Prosecutions shall be valid for a period of only seven days following the date of the arrest of the accused person or, if he was already in custody, of his surrender to the Department. Arrest warrants, summonses and incarceration orders issued by the Department of Public Prosecutions may not be executed more than six months after the date on which they were issued, unless a different time limit is specified therein.”
88. According to article 190 of the Code: “If the Department of Public Prosecutions wishes to extend the period of remand in custody, it must submit the documents to the competent judge before the seven-day limit has elapsed, so that the judge, having listened to the statements of the Department of Public Prosecutions and the accused person, may issue whatever order he deems appropriate. The judge may extend the period of detention for one or more consecutive periods, provided that they do not together amount to more than 45 days.”
89. According to article 191 of the Code: “If the investigation has not been completed, even though the period of remand in custody referred to in the preceding article has elapsed, the Department of Public Prosecutions shall submit the documents to the competent appellate court in the governorate, convened in the deliberation chamber, so that, after listening to the statements of the Department of Public Prosecutions and the accused person, it may issue an order extending the period of remand in custody for successive periods totalling not more than 45 days, if such be in the interests of the investigation, or release the accused person on or without bail. However, if the accused person has been in custody for more than three months, the matter must be referred to the Attorney-General to take whatever steps he views as necessary to expedite the completion of the investigation. The Attorney-General has the right, in the interests of completing the investigation, to authorize the director of the appeals prosecution office to apply for several extensions of the period of remand in custody amounting to not more than three months. The total period of remand in custody shall not exceed six months, unless, before the elapse of such period, it is announced that the accused person will be referred to the competent court. Otherwise, he must be released.”
90. According to article 196 of the Code: “Remand and release orders issued during an investigation and trial shall be executed by the Department of Public Prosecutions.”
91. According to article 221 of the Code: “If, after conducting an investigation, it appears to the Department of Public Prosecutions that a crime has been committed and that the evidence against the accused person is likely to lead to a conviction, criminal proceedings shall be brought before the court competent to hear them.”
92. According to article 296 of the Code: “Expedited trial proceedings shall be mounted in the following circumstances:

“In respect of crimes for which the accused person awaiting trial is already in custody, unless the court decides to release him.”

**General instructions for the Department of Public Prosecutions on the implementation of the Code of Criminal Procedure promulgated by Presidential Decree No. 13 of 1994**

93. According to article 400 of the instructions: “Under no circumstances shall members of the Department of Public Prosecutions establish contacts with foreign diplomatic missions or embassies or consulates in Yemen. They must notify the Attorney-General about any information they require from such entities so that these entities may in turn be contacted through the Ministry of Foreign Affairs.”

94. According to article 409 of the instructions: “Prosecutor’s offices shall draw the attention of the Attorney-General to criminal, civil and commercial matters involving clerical staff employed in diplomatic missions in order to solicit his views on the procedure to be followed in each case, since States do not extend the enjoyment of diplomatic immunity to such staff.”

**Equitable treatment at all stages of legal proceedings**

95. The basic principles underlying the rights of the accused person under Yemeni law are as follows:

- (a) The State guarantees the freedom of citizens and safeguards their dignity and security;
- (b) A person is presumed innocent until proven guilty; penalties are personal; the law cannot be imposed retroactively;
- (c) No citizen may be arrested, searched, detained, placed under surveillance or deprived of his liberty in circumstances other than those defined by law;
- (d) Torture and inhuman treatment is prohibited;
- (e) The private life of citizens is inviolable;
- (f) Everyone has the right to a defence, the right to have recourse to the law, and the right to a fair trial.

**Principle of the prohibition of torture and inhuman treatment**

96. This principle is embodied in the following legal instruments:

- The Constitution (art. 48 (m));
- The Penal Code (arts. 166-169 and 246-247);
- The Criminal Code (arts. 6; 7; 13; 71-73; 76-77; 172; and 184-193).

## **Principle of the right to a defence, the right to have recourse to the law and the right to a fair trial**

### **The Constitution**

97. According to article 47 of the Constitution: “Criminal liability is personal. There is no crime or punishment except as defined by a provision of the Shariah or the law. Every accused person is innocent until proved guilty by a final court judgement. It shall be prohibited to enact any law which punishes acts with retroactive effect from the date of its promulgation.”

98. According to article 49: “The right to defend oneself or be represented by defence counsel is guaranteed at all stages of a case and before all courts in accordance with the provisions of the law. The State shall guarantee legal aid to persons without means in accordance with the law.”

99. According to article 50: “Punishments may not be enforced by illegitimate means. Enforcement shall be regulated by law.”

100. According to article 51: “Every citizen shall have the right of recourse to the courts in order to protect his legitimate rights and interests. He shall have the right to submit complaints, criticisms and proposals, directly or indirectly, to the organs and institutions of the State.”

101. According to article 149: “The judiciary is a legally, financially and administratively independent authority the organs of which include the Department of Public Prosecutions. All disputes and offences are adjudicated by the courts, the judges of which are independent and, in their administration of justice, subject to no authority other than the law. No one is permitted to interfere in any way in lawsuits or other judicial affairs, such interference being deemed a punishable offence in respect of which legal proceedings are not subject to any statute of limitations.”

### **The Code of Criminal Procedure**

102. According to article 8 of the Code:

“1. Investigation officers, the Department of Public Prosecutions and the courts shall establish whether a crime has been committed, the reasons and circumstances leading to its commission, and the identity of the accused person.

“2. The accused person shall have the right to take part in the reconstruction of the facts and to submit claims to prove his innocence at any stage of the investigation and trial. Such claims shall be verified and investigated in every case.”

103. According to article 9 of the Code:

“1. The right to a defence is guaranteed. The accused person has the right to defend himself and to engage the services of defence counsel at any stage of a case, including the investigation stage. The State shall provide defendants without means with an accredited defence lawyer.

“2. The investigation officers, the Department of Public Prosecution and the court must inform the accused person of his rights with respect to the charge against him and of the means of proof available to him. They must safeguard his personal and property rights.”

### **Code of Conduct for Lawyers**

104. Article 3 of the Code provides as follows: “The lawyer is an independent, liberal professional who practises his profession in accordance with the law.”

105. According to article 4: “Lawyers shall act in accordance with the following main aims:

“1. They shall apply the law by working in conjunction with the organs of the judiciary and the Department of Public Prosecutions to promote and consolidate the sovereignty of the law, the integrity of the judicial process and the defence of public freedoms and human rights.

“2. They shall work in conjunction with the organs of the judiciary and the Department of Public Prosecutions to facilitate access to justice, simplify judicial proceedings and remove the obstacles and resolve the difficulties faced by litigants.”

106. Article 51 of the Code reads as follows: “The courts, the Department of Public Prosecutions, the police and other organs before which a lawyer practises his profession must offer him every facility he needs to perform his duties. They shall not reject his petitions without legal justification and shall enable him or his representative to view or copy documents and attend investigations with his client in accordance with the provisions of this Code.”

107. According to article 54: “Anyone who incriminates a lawyer during the practice of his profession or on account thereof shall be liable to the penalty prescribed in the Penal Code.”

### **G. Article 8**

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.



4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

108. According to article 48, paragraph (e), of the Constitution: “The law shall determine the punishment for anyone who contravenes the provisions of any paragraph of the present article, together with the appropriate compensation for any damage which the person may suffer as a result of such contravention. Physical or psychological torture at the time of arrest or during the period of detention or imprisonment shall be deemed a criminal offence that is not subject to any statute of limitations. Anyone who commits, orders or participates in such crime shall be liable to prosecution.”

109. Article 166 of the Penal Code stipulates: “Any public official who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person, witness or expert in order to extract a confession to an offence or statements or information pertaining thereto shall face a penalty of up to 10 years in prison. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*).”

110. According to article 167 of the Penal Code: “Any public official who, directly or indirectly, imposes a penalty on a person that is different from or more severe than that to which he was sentenced or who refuses to execute an order for that person’s release, for which he is responsible, or deliberately keeps him in a penal institution beyond the term specified in the incarceration order shall be liable to a term of imprisonment. He shall in any case be removed from his post.”

111. According to article 168: “A penalty of up to one year’s imprisonment or a fine shall be imposed on any public official who abuses his official powers by subjecting others to cruel treatment that derogates from their honour or causes them physical pain. This shall be without prejudice to the right of victims to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*). He shall in every case be removed from his post.”

112. Article 246 of the Code stipulates a maximum penalty of three years’ imprisonment for any person who unlawfully arrests, detains or deprives a person of his liberty. The penalty is increased to a maximum of five years’ imprisonment, if the perpetrator(s) of the offence is a public official, a person who was impersonating a public official or carrying a weapon, or were two or more persons or intended to damage the victim’s honour, or if the victim was a minor or was without, or with diminished, mental capacity, or if his life or health would have been placed in jeopardy by his being deprived of his liberty.

113. According to article 243 of the Code: “A punishment identical to the crime itself shall be imposed on anyone who commits an assault of any kind against another person, causing a permanent physical disability, by breaking one of his joints, plucking out an eye, amputating an ear or inflicting a measurable bodily wound. If the criminal act is confined to impairment of the functioning of a limb or sense, but the form thereof remains intact, or if retribution is prohibited or abated, without the assailant having been given a free pardon, the penalty shall be payment of bloody money (*diya*) or indemnity for bodily injury (*arsh*) and a term of up to seven years’

imprisonment. If the assault results in a permanent disability which the perpetrator had no intention of causing, the penalty shall be up to three years' imprisonment in addition to payment of blood money (*diya*) and an indemnity for bodily injury (*arsh*), as the case may be."

114. According to article 6 of the Code of Criminal Procedure No. 3 of 1994: "No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void."

115. Article 16 stipulates: "By way of derogation from the provisions of article 37, there shall be no abatement of the right for a criminal action to be heard concerning offences which undermine the freedom or dignity of citizens or which constitute an assault on the freedom of private life."

116. According to article 71 of the Code: "A person under arrest shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose."

117. Article 178 of the Code stipulates that the accused must not be compelled to take an oath or to answer questions. Similarly, his act of declining to do so is not regarded as proof of the charge brought against him. It is also prohibited to use deception or violence against the accused or in any way bring pressure to bear on him with a view to inducing or forcing him to confess.

118. According to article 469: "The penalties and measures prescribed by law in respect of any criminal offence shall not be applied other than under the terms of a binding final court judgement handed down by a competent court."

119. According to article 21 of the Code of Military Crimes and Penalties: "A penalty of up to 10 years' imprisonment or sanctions commensurate with the results of the crime shall be inflicted on any person subject to the provisions of the present Code who, in time of war, commits any act that causes damage to persons or property entitled to protection under the terms of international agreements to which the Republic of Yemen is a party. The following acts in particular shall be deemed war crimes punishable under the terms of the present Code:

"2. The torture, ill-treatment or deliberate infliction of severe pain on prisoners or their subjection to scientific experiments.

"3. The deliberate infliction of serious damage to the physical and mental integrity and health of military and civilian prisoners, or their conscription into the armed forces."

120. According to article 53 of the Code: "A penalty of up to 10 years' imprisonment shall be inflicted on any person who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person, witness or expert in order to extract a confession to an offence or statements or information pertaining thereto. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*)."

121. Article 9, paragraph (b), of the Police Corps Act No. 15 of 2000 likewise provides: “They [i.e. the police] shall not use physical torture or psychological pressure against any person during the taking of evidence or statements or the period of detention or imprisonment.”

122. Reference may also be made to the Arab Convention on Judicial Cooperation signed by 21 Arab States at Riyadh on 4 April 1983. Yemen ratified the Convention by Act No. 36 of 1983, with the Convention entering into force on the date on which the Act was promulgated.

123. Unlike the 1953 Convention concluded between the members of the League of Arab States, the Arab Convention on Judicial Cooperation is not confined to the matter of extradition of criminals, but also covers such issues as disclosure of judicial files and documents, letters rogatory, the testimony of witnesses and experts in criminal cases, and enforcement of penalties against convicted persons.

124. With regard to international letters rogatory, the provisions of articles 253 et seq. of the Code of Criminal Procedure are applied with respect to foreign or Arab States to which the terms of the Convention do not apply. Other Arab States that are bound by the provisions of the Convention are governed only by the provisions of the Convention.

125. Yemen’s willingness to cooperate in criminal proceedings and with respect to judicial assistance is confirmed in the provisions of Yemeni law.

#### **H. Article 9**

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

126. The rules that apply to letters rogatory in cases where Yemen has no agreement with a foreign State or where such agreements are silent in respect thereof have been laid down by the legislature in Section IV of the Code of Criminal Procedure (International Letters Rogatory). According to article 252 of the Code: “During the hearing of a case, the Department of Public Prosecutions or the court may deputize a foreign authority to institute a procedure or procedures in connection with a preliminary or final investigation and may address a letter rogatory to the Ministry of Foreign Affairs for transmission via the diplomatic channel. In urgent cases, the letter rogatory may be sent directly to the foreign judicial authority being requested to institute the procedure. In such case, a copy of the letter rogatory, accompanied by all the documents, must be sent to the Ministry of Foreign Affairs, for transmission via the diplomatic channel.”

127. Conversely, article 253 of the Code stipulates: “The Department of Public Prosecutions or the court shall accept a letter rogatory addressed to it by a foreign authority through the diplomatic channel and shall comply therewith in accordance with the rules laid down in Yemeni law. If the letter rogatory is sent directly, the results of the procedure shall not be communicated to the foreign authorities until the diplomatic request has been received.”

128. According to the manual of instructions of the Department of Public Prosecutions on the application of the Code of Criminal Procedure: “In accordance with the principle of friendly relations between States, States shall respond to requests for judicial assistance even in the absence of any international agreements between them in this regard. Letters rogatory may cover all elements of an investigation, such as the hearing of witnesses, confrontation of witnesses, appointment of experts, confiscation of objects and the search and questioning of accused persons. However, they must not include a request for the incarceration of the person to be questioned, since this procedure may only be executed at the time of extradition” (art. 563).

129. According to article 564 of the manual:

“Due regard shall be had for the provisions of the Convention concluded between the members of the League of Arab States on 9 June 1953, which consist in the following:

“1. Every State bound by the present Convention shall be entitled to request any State Party thereto to execute on its behalf, in that State Party’s territory, any judicial procedure in connection with a case awaiting trial.

“2. The letter rogatory shall be submitted through the diplomatic channel and executed in the following manner:

“(a) The competent judicial authority shall execute a letter rogatory in accordance with its own procedural rules. If the requesting State wishes the letter rogatory to be executed by a different method, the authority shall comply with its wish, provided that such would not contravene the laws of the requested State;

“(b) The judicial authority shall give notice of the place, date and time of execution of the letter rogatory in order to allow the interested party to appear in person, should he wish to do so, or deputize someone to appear on his behalf;

“(c) If the letter rogatory cannot be executed or if it pertains to a subject or procedure precluded by the law of the requested State, the requested State shall duly notify the requesting authority to that effect;

“(d) The requested State shall meet the costs of execution, except for the fees of experts, which shall be paid by the requesting State.

“3. Any judicial procedure instituted pursuant to a letter rogatory in accordance with the preceding provisions shall have the same legal effect as it would have had, if it had been instituted before the competent authority in the requesting State.

“4. The nationals of the State requesting the execution of a judicial procedure in a country that is a member of the League of Arab States shall not be asked to pay costs, a deposit or a surety which the nationals of the requested country would not themselves be required to pay; likewise it is not permissible to deny them the right to legal assistance or exemption from legal fees enjoyed by those other nationals.”

130. We should like to draw attention to the procedures followed by the Yemeni police in cases where an international criminal has been apprehended and is awaiting extradition. The Yemeni branch of the International Criminal Police Organization (Interpol) deputizes the Yemeni police authorities to arrest the foreign criminal whose extradition is sought, to remand him in custody for a period of seven days, to confiscate any items on his person and to question him in the following circumstances:

- (a) Upon receipt of a telex or letter from the Interpol General Secretariat;
- (b) Upon receipt of an Interpol Red Notice;
- (c) Upon receipt of a telex or communication from any national office.

131. These documents must clearly indicate the nature of the charge, the body that issued the arrest warrant, and the fact that extradition of the criminal will be sought. Within one week from the date of arrest of the person whose extradition is sought, the judicial authority in the country requesting extradition must send a telex to support the extradition request. If the telex is not received by the aforementioned deadline, the person shall be released. The Yemeni police may place the foreigner whose extradition is sought under surveillance for a period of one month pending the arrival of the extradition documents through the diplomatic channel. If the requisite documents have not been received by the end of such period, the person in question shall be released.

132. These procedures are without prejudice to the right of the Yemeni police to intervene in any situation that may arise in this regard.

#### **I. Article 10**

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

133. The Constitution, the Code of Criminal Procedure and a number of related laws contain a variety of different provisions prohibiting all forms of torture and upholding the principle of the preservation of human dignity and protection of human rights. These include, in particular, articles 48 and 50 of the Constitution, articles 35, 166-167, 242-246 and 249 of the Penal Code, articles 6, 7, 16, 71, 178 and 469 of the Code of Criminal Procedure, articles 20-23, 43-44, 47 and 52-53 of the Code of Military Crimes and Penalties and articles 7, 9, 90 and 98 of the Police Corps Act, together with the guidelines issued by the Attorney-General on the application of various articles of the Code of Criminal Procedure.

134. Both the Code and the guidelines have been incorporated into the academic curricula for various stages of education, particularly the university stage, where they form part of the core

curriculum for students at State and private universities reading Shariah and non-Shariah law (jurisprudence) and for students at police faculties and academies who will be entrusted with the protection and realization of these rights once they graduate.

135. At the practical level, the Higher Committee for Human Rights has, inter alia, organized periodic human rights awareness seminars for law enforcement officers and members of the Department of Public Prosecutions on the rights of accused persons vis-à-vis the judicial authorities. Of particular note was the seminar held in the capital, Sana`a, between 17 and 20 October 1999, as part of a campaign that was extended in 2000 to cover every governorate in the Republic. The seminar aimed at providing human rights education and training on the subject of the rights of accused persons to police station chiefs, deputy chiefs, political security officers, criminal investigators, members of the Department of Public Prosecutions, military intelligence officers and military police officers in every governorate so as to prevent them from committing violations due to ignorance of the proper procedures to be followed when arresting, investigating and questioning accused persons. The seminar likewise focused on the principles of the sovereignty of the law and respect for human rights in Yemen, looking at two core issues in particular: the human rights of accused persons under national and international law and potential violations of human rights and the penalties prescribed therefor under Yemeni and international law. A special workshop was also run for members of the House of Representatives and the Consultative Council, in addition to a human rights workshop for judicial police officers which was held between 13 and 15 April 2003 and attended by a total of 30 participants from the judiciary, the Department of Public Prosecutions and the Ministry of the Interior. The workshop took up a number of themes, including the legal and ethical rules of conduct for police officers; the provisions of the law prohibiting torture; abuse and individual rights; and a number of the principles underpinning humanitarian and legal work. Moreover, the Ministry of Justice, the Ministry of the Interior and several non-governmental organizations have organized symposiums and workshops too numerous to mention here.

#### **J. Article 11**

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

136. According to article 563 of the Code of Criminal Procedure:

“The Attorney-General shall issue the administrative publications, periodicals, instructions, decisions and official forms required for the proper functioning of the Department of Public Prosecutions.

“He may issue instructions to law enforcement officers and members of the police force working in penal institutions on the exercise of the powers and functions provided for under the present Code. These persons shall be bound to comply with such instructions.”

137. Prison and police station regulations also contain directives on the rules and basic rights of accused persons and the obligations of police officers vis-à-vis prisoners. They also refer to the provisions of the Code of Criminal Procedure and the penalties for violations thereof.

#### **K. Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

138. We refer to articles 7, 8, 9, 73, 105, 121 and 221 of the Code of Criminal Procedure, as described in detail here in the part of this report dealing with articles 6 and 7 of the Convention.

#### **L. Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

139. Article 51 of the Constitution provides: “Every citizen shall have the right of recourse to the courts in order to protect his legitimate rights and interests. He shall have the right to submit complaints, criticisms and proposals, directly or indirectly, to the organs and institutions of the State.”

#### **The Code of Criminal Procedure**

140. According to article 24 of the Code: “The victim, the complainant in a personal status matter, or the civil plaintiff, shall be regarded as a co-litigant with the Department of Public Prosecutions in a criminal proceeding and as a plaintiff in a civil proceeding connected thereto, if such person has any claims ...”

141. Article 91 of the Code provides: “Investigation officers shall investigate crimes, pursue criminals, investigate reports and complaints, gather evidence and information pertaining thereto and record it in their reports for transmission to the Department of Public Prosecutions.”

142. According to article 92: “Where an investigation officer is informed or learns of the commission of a serious crime or of one of the offences referred to in a decision of the Attorney-General, he shall notify the Department of Public Prosecutions thereof and go immediately to the scene of the crime to secure it, seize any items connected with the crime, and carry out the requisite general checks. He shall take all necessary steps to protect the physical evidence and anything that could help with the investigation of the crime. He shall take statements from anyone with information about the dynamics or perpetrators of the crime and shall question the accused person about it. He shall record all of this in a written report and assemble and sign the items of evidence ... He shall surrender these reports to a member of the Department of Public Prosecutions upon his arrival ...”

143. According to article 93: “When a member of the Department of Public Prosecutions receives or views the written reports and the assembled evidence, he shall ensure that they are complete before taking any action thereon. He can return them for completion to the source from which they came or assign the task to someone else or undertake it himself.”

144. According to article 94: “Anyone with information about a crime that the Department of Public Prosecutions could prosecute without the need for a complaint or warrant must report it to the Department of Public Prosecutions or an investigation officer.”

145. According to article 95: “Any public official or public servant who, in the course of his duties or on account thereof, learns of the commission of a crime that could be prosecuted by the Department of Public Prosecutions without the need for a complaint or warrant must report it immediately to the Department of Public Prosecutions or the nearest investigation officer.”

146. According to article 97: “A complaint in which the complainant does not claim his civil rights shall be regarded as a communication and shall not of itself give rise to civil proceedings. The complainant shall not be regarded as a civil plaintiff, unless he declares himself to be such in the complaint or a document he may subsequently submit or where either document contains a claim for compensation.”

147. According to article 99: “If there are witnesses to a crime, investigation officers shall go immediately to the scene in order to examine or secure the physical evidence and take note of the situation at the scene, the persons present and anything that may prove useful in establishing the facts. They shall take statements from anyone present or anyone who can provide information about the crime or the perpetrators thereof. They shall immediately inform the Department of Public Prosecutions that they are going to the scene. As soon as it has been notified about a serious crime to which there are witnesses, the Department of Public Prosecutions shall send someone directly to the scene of the crime.”

148. According to article 110: “If the Department of Public Prosecutions believes that the report on the evidence gathered indicates that a serious crime has taken place, it shall take no criminal proceedings until after an investigation has been conducted.”

149. Article 121 stipulates: “Without prejudice to the rights of the defence, investigation procedures shall be conducted in secret, unless otherwise required by law. Every person who institutes such procedures or participates therein shall refrain from disclosing information about them. Anyone who breaches this undertaking shall be liable to the penalty prescribed in the Penal Code.”

150. Article 167 of the Code stipulates: “The investigator shall hear every witness separately and shall have witnesses confront one another as well as the accused person.”

151. According to article 193 of the Code: “Every person who is deprived of his liberty has the right to submit a written or verbal complaint at any time to the governor of the penal institution and to ask him to transmit it to the Department of Public Prosecutions. Anyone to whom a complaint is submitted must accept it and pass it on to the Department of Public Prosecutions as soon as he has made a note thereof in the relevant logbook.”



152. Article 562 of the Code stipulates: “The police shall transmit to the Department of Public Prosecutions all communications and complaints submitted to them, in the state in which they were received, so that action may be taken thereon.”

### **The Penal Code**

153. Situations in which someone attempts to influence witnesses are dealt with in article 181 of the Code in the following manner: “Anyone who uses force or threats or offers or promises gifts or rewards of any kind in order to induce another person not to give testimony or to give false testimony and who fails to achieve his object shall be liable to a penalty of up to one year’s imprisonment or a fine. The same shall apply with respect to experts and interpreters.”

154. According to article 189: “A penalty of up to one year’s imprisonment or a fine shall be imposed on anyone who discloses information about an investigation being conducted before a court or the Department of Public Prosecutions that it has been decided must be held in secret.”

### **Instructions of the Department of Public Prosecutions on the application of the Code of Criminal Procedure**

155. According to article 2 of the instructions:

“(a) Investigation officers shall accept communications and complaints referred to them in respect of crimes. They and their subordinates shall clarify all matters and conduct the necessary inquiries to help with the investigation of the facts reported to them or of which they learn in any way. They shall take every precaution to protect criminal evidence. Every procedure undertaken by the investigation officers must be recorded in written reports, which they must sign and indicate therein the time and date when the procedure was undertaken.”

156. According to article 3:

“(a) In the case of a crime of any kind to which there are witnesses and of a serious crime or a non-serious crime such as is mentioned in the Attorney-General’s Decision No. 6 of 1979, the investigation officer must go to the scene of the crime immediately to examine the physical evidence of the crime ...”.

“(b) He must immediately notify the Department of Public Prosecutions that he is going to the scene. As soon as a member of the Department of Public Prosecutions learns of the commission of a serious crime, he must go to the scene of the crime.”

157. According to article 8: “If a member of the Department of Public Prosecutions receives a complaint alleging that an investigation officer has committed a breach of or failed to discharge his official duties and if he believes the complaint to be a serious one, he must write to the

director of the Department to solicit his opinion thereon. If the complaint is particularly important, the heads of the Department shall refer it to the public attorneys. The public attorneys shall in turn refer the complaint to the Attorney-General.”

158. Article 9 stipulates: “Members of the Department of Public Prosecutions shall themselves investigate complaints against investigation officers and may not entrust the investigation thereof to a third party.”

159. Article 30 provides:

“(a) As soon as a crime has been reported, a member of the Department of Public Prosecutions shall go to the scene, even if there is some doubt about or a dispute over jurisdiction. After completing his inquiries, he shall send his finding in a memorandum addressed to the director of the Department of Public Prosecutions in order to solicit his views on the question of jurisdiction ...”

160. According to article 44: “The investigator shall not give the witnesses the impression he doubts their testimony by making comments or gestures that intimidate them or stop them from speaking about what they have witnessed.”

161. According to article 62: “If a report is received in respect of a crime that has already been investigated, the members of the Department of Public Prosecutions shall undertake an investigation of the new report, where ...”

162. According to article 63: “The members of the Department of Public Prosecutions shall themselves investigate any allegation made against army or police officers concerning a serious or a non-serious crime, whether or not it was committed in the course of their duties. Members of the Department of Military Prosecutions shall have competence for adjudicating military offences in accordance with the provisions of the Military Penal Code ...”

163. According to article 64: “If the Department of Public Prosecutions receives a complaint against a court official or court clerk concerning an offence committed in the course of or on account of their official duties, it shall take statements from the complainant and his witnesses and, depending on the seriousness of the complaint, shall solicit the opinion of the director of the Department as to the advisability of questioning the person against whom the complaint has been made and of pursuing the investigation.”

164. According to article 69:

“(a) The accused person, the victim, any person who has been harmed by a crime, the person responsible therefor and his representatives may be present at all investigation proceedings. The member of the Department of Public Prosecutions shall conduct the investigation in their absence in an emergency, if he deems such to be necessary because of the nature of the case, or where it is feared that the witnesses may be put under pressure, intimidated or swayed. The opposing parties shall review the investigation whenever they appear or when it is no longer necessary to conduct the investigation in their absence.”

### **M. Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

165. Under the legal system of the Republic of Yemen, anyone who is subjected to any act of torture has the right to apply to the courts in order to seek legal redress. The law determines the appropriate compensation for the dependants of any person who dies as a result of being tortured. This is described in further detail hereunder.

#### **The Constitution**

166. According to article 48, paragraph (e), of the Constitution: “The law determines the punishment for anyone who contravenes the provisions of any paragraph of the present article, together with appropriate compensation for any damage that the person may suffer as a result of such contravention.”

#### **The Penal Code**

167. According to article 5 of the Penal Code: “The infliction of the penalties prescribed in the present Code shall not affect the obligation of the opposing parties to make restitution and pay compensation.”

#### **The Code of Criminal Procedure**

168. According to article 43 of the Code: “Anyone who has suffered harm as a result of a crime is entitled to bring a civil action, regardless of the amount involved, before a criminal court and to claim compensation for damage arising from the crime. The action shall be heard in conjunction with the criminal case.”

169. According to article 44: “Civil proceedings may also be brought independently of the criminal case, if the case has already begun or during the course thereof. The court shall decide the appropriate precautions to be taken as a matter of urgency in order to protect the party that has suffered harm. If the criminal case is discontinued because the accused person is suffering from a mental disability, the civil case shall nevertheless be adjudicated.”

170. According to article 47: “If a person who has suffered harm as a result of a crime is incapacitated and does not have a legal representative to act on his behalf, the Department of Public Prosecutions or the court hearing the criminal case may nominate a representative to claim his civil rights. Under no circumstances may he be obliged to pay legal costs for such assistance.”

171. According to article 48: “A civil action for compensation for damage suffered shall be brought against the person accused of the crime, if that person has reached his majority, and, if he does not have legal capacity, against whoever represents him. If he has no one to represent him, the court may appoint someone to do so or may be satisfied by having the Department of Public Prosecutions represent him. A civil action may likewise be brought against persons bearing civil responsibility for the act committed by the accused person. The Department of Public Prosecutions may cite the persons bearing civil responsibility, even if there is no civil plaintiff in the case, so that they may be sentenced to pay costs owed to the Government ...”.

172. According to article 54: “Civil proceedings may be brought before a court hearing a criminal case against an insured person in order to claim compensation for damage arising from the crime. The insured person shall be governed by all the special provisions set forth in the present Code.”

173. According to article 55: “Civil proceedings shall be extinguished by the lapse of the time limit established in the Civil Code for the hearing of proceedings. However, a civil case arising from a breach of the provisions of section II of the present Code, concerning protection of the freedoms of citizens, shall not be extinguished by lapse of time. If, for any special reason, a criminal action is extinguished after it has been brought, this shall not affect the conduct of a civil action brought in conjunction therewith.”

174. According to article 61: “Where a person who has suffered damage as a result of a crime brings an action for compensation before the court and a criminal action is brought thereafter, if he abandons his initial case, he may bring a civil action before the court hearing the criminal case. In such case, he may not resume his action before a civil court, unless the criminal court decides otherwise.”

#### **N. Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

175. According to article 6 of the Code of Criminal Procedure: “No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void.”

#### **O. Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of

or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

176. The provisions of this article are addressed in various sections of the present report, as well as in article 48, paragraphs (a), (b), (c) and (d), of the Constitution.

177. Furthermore, article 166 of the Penal Code provides as follows: “Any public official who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person, witness or expert in order to extract a confession to an offence or statements or information pertaining thereto shall face a penalty of up to 10 years in prison. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*).”

178. According to article 167 of the Code: “Any public official who, directly or indirectly, imposes a penalty on a person that is different from or more severe than that to which he was sentenced or who refuses to execute an order for that person’s release, for which he is responsible, or deliberately keeps him in a penal institution beyond the term specified in the incarceration order shall be liable to a penalty of a term of imprisonment. He shall in every case be removed from his post.”

179. Article 168 of the Code stipulates: “A penalty of up to one year’s imprisonment or a fine shall be imposed on any public official who abuses his official powers by subjecting others to cruel treatment that derogates from their honour or causes them physical pain. This shall be without prejudice to the right of victims to claim retribution (*qasas*), blood money (*diya*) and indemnity for bodily injury (*arsh*). In all cases, the court shall order the removal of the official from his post.”

180. Article 246 of the Code stipulates a maximum penalty of three years’ imprisonment for any person who unlawfully arrests, detains or deprives a person of his liberty. The penalty is increased to a maximum of five years’ imprisonment, if the offence was committed by a public official, a person who was impersonating a public official or carrying a weapon, or by two or more persons, or if it was committed with intent to damage the victim’s honour, or if the victim was a minor, a person without, or with diminished, mental capacity or if his life or health would have been placed in jeopardy by being deprived of his liberty.

181. According to article 249 of the Code: “A penalty of up to five years’ imprisonment shall be inflicted on anyone who abducts another person. If the victim of the abduction is a female, a juvenile, insane or feeble-minded, or if the abduction is effected through the use of force, threats or deception, the penalty is a term of up to seven years’ imprisonment. If the abduction is accompanied or followed by bodily harm, assault or torture, the penalty is a term of up

to 10 years' imprisonment without prejudice to the right to retribution (*qasas*), blood money (*diya*) or indemnity for bodily injury (*arsh*), as appropriate, if such is warranted by the harm caused. If the abduction is accompanied or followed by murder, adultery, prohibited sexual assault or sodomy, the offender is liable to the death penalty.”

### **The Code of Criminal Procedure No. 13 of 1994**

182. According to article 6 of the Code of Criminal Procedure: “No accused person shall be subjected to torture, inhuman treatment or physical or psychological harm with a view to extracting a confession from him. Any statement which an accused person or witness is proved to have made under pressure created by any of the practices mentioned shall be null and void.”

183. According to article 7, paragraph 1, of the Code: “Arrests shall not be permitted other than in respect of acts that are punishable by law. They must be carried out in the manner prescribed by law.”

184. Article 16 stipulates: “By way of derogation from the provisions of article 37, there shall be no abatement of the right for a criminal action to be heard concerning offences which undermine the freedom or dignity of citizens or which constitute an assault on the freedom of private life.”

185. Article 71 of the Code stipulates: “A person under arrest shall be detained in a place separate from that provided for convicts. He shall be presumed innocent and shall not be harmed physically or mentally with a view to extracting a confession from him or for any other purpose.”

186. Article 178 of the Code of Criminal Procedure states that the accused must not be compelled to take an oath or to answer questions. Similarly, his act of declining to do so is not regarded as proof of the charge brought against him. It is also prohibited to use deception or violence against the accused or in any way bring pressure to bear on him with a view to inducing or forcing him to confess.

187. According to article 469: “The penalties and measures prescribed by law in respect of any criminal offence shall not be applied other than under the terms of a binding final court judgement handed down by a competent court.”

### **The Code of Military Crimes and Penalties No. 21 of 1998**

188. According to section III (War crimes), article 20, of the Code of Military Crimes and Penalties: “A penalty of up to five years' imprisonment or sanctions commensurate with the results of the crime shall be inflicted on any person in an area of military operations who deserts his post and sets about stealing from a prisoner or from a dead, ill or injured person. He must return the stolen items or their equivalent value.”

189. According to article 21 of the Code: “A penalty of up to 10 years' imprisonment or sanctions commensurate with the results of the crime shall be inflicted on any person subject to the provisions of this Code who in time of war commits any act that harms persons and property

entitled to protection under the terms of international conventions to which the Republic of Yemen is a party. The following acts in particular, shall be deemed war crimes punishable under the terms of this Code:

“2. The torture, ill-treatment or deliberate infliction of severe pain on prisoners or their subjection to scientific experiments;

“3. The deliberate infliction of serious damage to the physical and mental integrity and health of military and civilian prisoners or their conscription into the armed forces.”

190. According to article 22 of the Code: “The right to bring legal proceedings in respect of the crimes referred to in this section shall not be subject to any statute of limitations.”

191. According to article 23: “In the event of the commission of any of the crimes referred to in this section, the most senior officer and his immediate subordinate shall be held responsible therefor and shall not be exempted from the prescribed penalties, unless the acts were perpetrated without their consent or knowledge or it was impossible for them to prevent them.”

192. According to section IX (The offence of abuse of authority), article 43, of the Code: “A penalty of up to five years’ imprisonment or sanctions commensurate with the results of the crime shall be inflicted on anyone who abuses his authority by giving orders or asking for deeds to be performed that have nothing to do with his official duties or by soliciting gifts or other financial benefits.”

193. According to article 44: “A penalty of up to five years’ imprisonment shall be inflicted on anyone who abuses his authority or rank by ordering a subordinate to commit a crime. Without prejudice to the provisions of the Penal Code, the person giving the order shall be regarded as the actual author of the crime, if it was committed or attempted.”

194. Article 47 likewise provides: “Without prejudice to the Penal Code, a penalty of up to two years’ imprisonment and payment of compensation shall be inflicted on any commanding officer who subjects a subordinate to beating, causes him bodily harm, carries out an act likely to damage his health, or, for no legal reason, makes him perform additional duties, for the purpose of torturing him or allowing others to do him harm. If the offence results in the person’s death, the penalty shall be capital punishment.”

195. According to article 52: “Without prejudice to the provisions of the Penal Code, a penalty of up to five years’ imprisonment shall be inflicted on any person who beats a subordinate.”

196. Article 53 stipulates a penalty of up to 10 years’ imprisonment for anyone who, in the course of his duties, uses torture, force or threats, directly or indirectly, against an accused person or witness in order to extract a confession to a crime or statements or information pertaining thereto. This shall be without prejudice to the right of the victim to claim retribution (*qasas*), blood money (*diya*) or an indemnity for bodily injury (*arsh*).

**The Police Corps Act No. 15 of 2000**

197. According to section II, article 7, of the Police Corps Act, the duties of the police include the following:

- “2. Protection of lives, honour and property;
- “4. Guaranteeing the security and safety of citizens and residents;
- “6. Managing prisons and guarding prisoners;
- “7. Guarding public utilities and helping the public authorities carry out their tasks in accordance with the provisions of this Act;
- “10. Performing the duties required of them in accordance with the laws, regulations and decrees.”

198. Article 9, paragraph (b), of the Act provides: “They [i.e. the police] shall not use physical torture or psychological pressure against any person during the gathering of evidence or statements or the period of detention or imprisonment.”

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