



General Assembly

Distr.: General
25 July 2013

Original: English

Human Rights Council

Twenty-fourth session

Agenda items 2 and 10

Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General

Technical assistance and capacity-building

Situation of human rights in Yemen

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is the High Commissioner's fourth periodic report on the human rights situation in Yemen submitted in the light of Human Rights Council resolutions 18/19, 19/29 and 21/22.

* Late submission.

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I. Introduction

1. The present report is the fourth periodic report on the human rights situation in Yemen submitted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to Human Rights Council resolutions 18/19, 19/29 and 21/22. It provides an updated assessment of the overall human rights situation in Yemen, from 1 July 2012 to 30 June 2013, particularly against the backdrop of the recommendations contained in previous High Commissioner's reports and Council resolutions 18/19, 19/29 and 21/22. The information contained in this report is based primarily on human rights monitoring carried out by the OHCHR office in Yemen (OHCHR-Yemen).

II. Background

A. International legal framework

2. Yemen is party to eight of the nine core international human rights treaties, as well as to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. On 11 June 2013, the Cabinet approved the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and endorsed the accession of Yemen to the Rome Statute of the International Criminal Court. Yemen is also party to all four Geneva Conventions, as well as to Additional Protocols I and II, and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and is also bound by the customary rules of international humanitarian law.

3. As a State party to the above-mentioned treaties, Yemen is legally bound to respect, protect and fulfil the human rights of those within its jurisdiction. In reviewing the implementation by Yemen of its treaty obligations, the relevant human rights treaty bodies have noted that violations of civil, political, economic, social and cultural rights persist on a considerable scale.

B. Political developments

4. The Gulf Cooperation Council (GCC) Initiative and the Agreement on the implementation mechanism for the transition period ("Transition Agreement"), signed on 23 November 2011, put an end to the 2011 protests and brokered a political settlement in Yemen. The Transition Agreement envisaged a transition period until 2014 divided into two phases: the first phase included an early presidential election, which took place on 21 February 2012 and saw the election of President Abd Rabu Mansur Hadi; the second phase, covering the remaining period until 2014, includes a broad national dialogue, consideration of changes to the Yemeni Constitution, a constitutional referendum, the reform of political and electoral laws, parliamentary and local council elections, and presidential elections, if required. The Transition Agreement affirmed that, once inaugurated, the President and the Government of National Unity would convene the National Dialogue Conference (NDC).¹ On 18 March 2013, NDC began, after several postponements. It was originally scheduled to start in mid-November 2012, but was delayed mainly due to the refusal of factions within Al Hirak al-Janoubi (Al Hirak), the Southern Movement, to attend. NDC is a critical

¹ Paragraph 20 of the GCC Implementation Agreement, 23 November 2011.

process which, once it concludes its work in September 2013, will be followed by a constitution-drafting process leading to a referendum on the adoption of a new Constitution and the holding of general elections in February 2014.² On 20 June 2013, media reported that the Yemeni Supreme Commission for Elections had announced that the Constitutional referendum would take place on 15 October 2013.³

5. NDC has met in nine thematic working groups as defined in the Transition Agreement, on themes varying from the most critical political issues of Southern Yemen and the question of Sa'ada, to those bearing significant human rights dimensions, including State-Building (Principles and Foundations of Constitution), Rights and Freedoms, Good Governance, Independent Institutions and Social Issues, National Reconciliation and Transitional Justice. Issues pertaining to specific groups such as women, youth and marginalized communities have been mainstreamed throughout the work of NDC.⁴

6. The NDC Technical Committee was charged with the organization of NDC, particularly with regard to member representation. It decided to guarantee representation for the southern population at a rate of at least 50 per cent of the total number of conference members, women at a rate of 30 per cent and youth at a rate of 20 per cent of all participating groups and entities.⁵ This process led to the participation of 565 participants from different sections of society. Despite the lengthy and tense nomination process, most of the seats were eventually granted to the major political blocks. This led to complaints by representatives of independent youth movements, which had been at the forefront of the 2011 events, for receiving a limited number of seats. Minority groups like the Jewish and Ismaili communities did not obtain any representation, whereas the Muhamasheen⁶ were given only one seat, with a view to submitting recommendations to tackle the deep-rooted discrimination faced by the members of their community. The United Nations, spearheaded by the Special Adviser to the Secretary-General on Yemen, in addition to other international actors and national stakeholders, have supported the process in various ways, particularly to ensure the active and meaningful participation of all Yemenis, in line with Security Council resolutions 2014 (2011) and 2051 (2012) (para. 3 (a)).

7. The non-participation of some key Southern leaders, combined with demonstrations calling for the independence of the South as well as strikes organized by the Southern pro-independence movement Al Hiraq in Southern cities, added to uncertainty surrounding expectations about the results of the Dialogue. The repression of those demonstrations, most notably on 21 February 2013, has exacerbated tensions in the South.

8. The participation in NDC of the Al Houthi Movement (also known as *Ansar Allah*), the armed group which has de facto control over the Governorate of Sa'ada and other areas in northern Yemen, has been a significant step forward. However, the dispute at NDC as well as in northern Yemen between the Al Houthi Movement and groups such as the

² According to the GCC Implementation Agreement, once NDC concludes its work, the National Consensus Government will appoint a committee to draft the constitutional amendments within three months. A constitutional referendum to approve the changes will then be held.

³ See "Yemen referendum set for October 15th", al-shorfa.com. Available from http://al-shorfa.com/en_GB/articles/meii/newsbriefs/2013/06/21/newsbrief-05.

⁴ The other working groups are Military and Security and Comprehensive Development. For more information, see also www.ndc.ye/page.aspx?show=67.

⁵ For more information, see www.ndc.ye/page.aspx?show=68.

⁶ The Muhamasheen community, also referred to as Al Akhdam ("servant" in Arabic), are a minority group distinct by their African features and are confined to menial jobs. See also A/HRC/19/51, para. 45, and A/HRC/21/37, para. 50.

Salafists and the Islah party, is a serious cause of concern and contributes to the worsening of the fragile security situation.⁷

9. Two new commissions, on property and on dismissals⁸ in the south, were established in January 2013, as confidence-building measures, to address the root causes of southern grievances.⁹ The Dismissals Commission, which consists of five judges and four military officers, started its work on 13 March 2013 and has so far received 60,000 petitions from former military employees and 29,000 petitions from former civilian employees.¹⁰ The Land Commission, consisting of five judges and 24 supporting staff, started its work on 10 March 2013 and has established seven field offices across south Yemen.¹¹ It has so far received 28,000 claims from individuals maintaining that their lands were illegally confiscated by the Northern Government following the 1994 war. The Commissions have a one-year mandate, but the Heads of both Commissions consider that more time will be needed to settle all cases and that the funding allocated by the Government is insufficient.

10. Various local and international actors, including the Security Council envoys who visited Yemen in January 2013, have expressed concern that former President Ali Abdullah Saleh and his loyalists, as well as Al HIRAK leader and former Vice-President Ali Salim al Beidh, are seeking to undermine the transitional process¹² and contributing to the deterioration in the security and humanitarian situation. In addition, the rivalry between the two major political parties – the Joint Meeting Parties and the General People’s Congress, still chaired by former President Saleh – has also ostensibly posed a challenge to the President’s efforts to introduce and implement needed reforms.

C. Security situation

11. During the reporting period, OHCHR noted the frequent tribal road blockades and the persistent sabotage of electricity, oil and gas infrastructure, which contribute to a further deterioration of the humanitarian situation in the country. Kidnappings of foreigners and killings of high-level military and security personnel as well as other individuals were also recorded. For instance, on 13 February 2013, Khalid al-Siwari, a lawyer who had been performing work in connection with the killing of protesters in Sana’a on 18 March 2011, was killed in Sana’a. Another lawyer involved in the “Friday of Dignity” killings case, Hassan al-Dawla, was also killed in Sana’a in December 2011.

12. According to media reports, border security with Saudi Arabia has also dramatically worsened in the aftermath of the 2011 events in Yemen, as thousands of illegal immigrants,

⁷ For more information, see Mohammed Al-Samei, “Back-and-forth accusations between islah and houthis continue mounting”, 4 November 2012. Available from www.yementimes.com/en/1621/report/1563/Back-and-forth-accusations-between-Islah-and-Houthis-continue-mounting.htm.

⁸ The Commission to Consider and Address Land Issues and the Commission on Forcibly Dismissed Employees, established by Presidential Decree No. 2 (2013) of 8 January 8 2013, were enacted with a view to “address issues related to land and employees in the Southern Governorates in order to complete the National Dialogue and National Reconciliation and as required by the public interest”.

⁹ Following the 1994 war between north and south Yemen, the Northern Central Government dismissed thousands of southerners from civil service especially from the military and security departments. Others were relieved from service because due to the privatization of public entities.

¹⁰ OHCHR-Yemen interviews with both Head of the Dismissals and Land Commissions, Aden, 28 May 2013.

¹¹ Aden, Hadramawt, Abyan, Lahij, Dalea, Socotra and Shabwah.

¹² See statement of the President of the Security Council, S/PRST/2013/3, of 15 February 2013.

drug and weapons smugglers try to enter Saudi Arabia.¹³ Yemen is also considered a base for Al-Qaida in the Arabian Peninsula (AQAP) and Saudi Arabia was reportedly trying to secure its borders against possible infiltrations and attacks through the construction of a 1,800 km border fence to bolster security at its frontiers with Yemen.¹⁴

13. After launching Operation Golden Swords in May and June 2012, the military of Yemen reclaimed much of the Governorate of Abyan, clearing the territory's main population centres of AQAP and Ansar al-Sharia. However, the reporting period was marked by the killing of high-level military and security personnel: some reports indicated that these killings were reprisals by Al-Qaida and its affiliates, being forced out of their strongholds; others have viewed these acts as means to settle local political disputes. Although the Government claims that it has diminished the number of Al-Qaida operatives working from their bases in different governorates, the group remains active in Yemen. In addition, a patchwork of State-backed local militias, the Popular Committees, has emerged in Abyan as the frontline security force against the insurgent Al-Qaida affiliates. The diverse composition of Abyan's Popular Committees reflects political and tribal relations that have evolved since the 1994 civil war.¹⁵

14. As part of the GCC Initiative Agreement, and reiterated by the Security Council resolution 2051 (2012), the second phase of the transition also had to focus on the restructuring of the security and armed forces under a unified professional national leadership structure. During the reporting period, President Hadi issued a series of decrees dissolving the First Armoured Division and the Republican Guard and transferring its brigades to the seven different military zones. General Ali Mohsen al Ahmar, previously at the head of the First Armoured Division, was appointed as senior advisor to the President, whereas General Ahmed Ali Abdullah Saleh, son of the former President and in charge of the Republican Guard, was appointed as ambassador to the United Arab Emirates. Other relatives of the former President, who had occupied important security or military position, were also removed from their posts during the reporting period.¹⁶

15. In addition, on 21 February 2013, the President issued Decree No. 5 (2013) on the restructuring of the Ministry of Interior, with the stated aim of responding to the need for oversight, accountability, combating abuse affecting citizens' rights and freedoms, and fighting corruption. The Decree created the position of Inspector General and established the Department of Human Rights that reports directly to the Inspector General.¹⁷

16. OHCHR-Yemen received numerous reports from human rights groups documenting cases of individuals killed by drone strikes in different parts of Yemen. In interviews conducted by OHCHR-Yemen with the families of some of the victims of those attacks, it appears that no official investigation has been carried out and no compensation has been offered to the families. OHCHR recalls the obligation of States under international law to

¹³ See also "Saudi Arabia builds giant Yemen border fence", BBC, 9 April 2013. Available from www.bbc.co.uk/news/world-middle-east-22086231.

¹⁴ See also "Saudi Arabia continues strengthening border security with Yemen", Al Arabiya, 10 April 2013. Available from <http://english.alarabiya.net/en/News/middle-east/2013/04/10/Saudi-Arabia-continues-strengthening-border-security-with-Yemen.html>.

¹⁵ The Committees do not belong to any particular party but are composed of all political factions, including Hirak, Islah and Salafis. For more information see Casey L. Coombs, "Yemen's Use of Militias to Maintain Stability in Abyan Province", 20 February 2013. Available from www.ctc.usma.edu/posts/yemens-use-of-militias-to-maintain-stability-in-abyan-province.

¹⁶ Presidential Decrees Nos. 19 and 20 of 10 April 2013.

¹⁷ At the time of writing the report, the Department mandate has not been clarified yet and its staff has not been appointed.

ensure accountability in all such instances, including through the conduct of credible, prompt and effective investigations.

17. OHCHR notes with concern the lack of transparency surrounding the use of armed drones for targeted killings in Yemen. This contributes to a lack of clarity on the legal bases for the use of lethal force through drone strikes, as well as on safeguards to ensure compliance with the applicable international law. Moreover, the absence of transparency has created an accountability vacuum, in which victims have been unable to seek redress.¹⁸

18. Prominent Government officials in Yemen have been voicing their concern about the legality of drone strikes under international and domestic law, as well as their effectiveness as a counter-terrorism strategy, and have called for adjusting the counter-terrorism strategy and policy of Yemen to ensure that it is coherent with international law. National civil society organizations have also called for an end to drone strikes, which they believe to be undermining the sovereignty of Yemen, as well as driving individuals to join Al-Qaida groups out of revenge and despair. Serious questions also have been raised by civil society organizations as to whether, at least in certain instances, targeted individuals could have been arrested rather than killed. Officials, including President Hadi, however, have defended the drone strikes and maintained that they are carried out by the United States of America in full coordination with the Yemeni authorities and only after approval by the President.

D. Humanitarian situation

19. According to the Office of the Coordination of Humanitarian Affairs (OCHA), as of May 2013, 10.5 million people were in need of food aid, of which about 5 million were faced with acute food shortage; 6.4 million people did not have access to health care and almost 1 million children were facing acute malnutrition. Over 13 million people were without access to safe water and sanitation.¹⁹ Addressing the dire humanitarian situation in Yemen remains critical to ensuring the success and sustainability of the ongoing political dialogue.

III. Situation of human rights and implementation of recommendations of OHCHR

A. Accountability and transitional justice

20. The events of 2011 brought to the forefront the issue of accountability for past human rights violations. There are persistent demands to bring perpetrators from all sides to

¹⁸ Outside of active hostilities in the context of an armed conflict, the use of lethal force in a law enforcement operation is prohibited except in very narrow circumstances. Under international human rights law, this is only insofar as the use of lethal force is required in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In a situation of armed conflict, States must ensure that the use of lethal force complies with international humanitarian law, including the principles of distinction, proportionality and precaution. In case of doubt, individuals are entitled to a presumption of civilian status and are protected against attack.

¹⁹ OCHA, Humanitarian Bulletin, Yemen, issue No. 15, 7 May–8 June 2013.

justice and to provide redress for victims and their families. Concerns over the credibility of judicial investigations into human rights violations committed in the wake of the unrest in 2011 have been highlighted in the High Commissioner's previous report (see A/HRC/21/37). In the case of the Friday of Dignity killings of 18 March 2011, it came to the attention of OHCHR-Yemen that the Specialized Criminal Court ordered the Attorney General, on 27 April 2013, to investigate the 13 suspects in the case, including former President Saleh and his nephew Yahiah. The Attorney General appealed the Court's decision, but the Appeal Court rejected this appeal on 5 June. In accordance with due process, the investigation should therefore be initiated as ordered by the Court.

21. With regard to the case of the Presidential Mosque bombing, in which several people, including former President Saleh, were injured or died, 6 detainees of 28 were acquitted after 20 months in detention. The remaining 22 went on hunger strike on 24 May 2013 protesting against the length of their detention. On 2 June 2013, the Minister of Human Rights, Hooria Mashour, started a hunger strike in solidarity with the 22 detainees, who were kept in detention without trial beyond the limit of six months set by the Penal Code.²⁰ In interviews conducted by OHCHR-Yemen on 2 June 2013, the prisoners interviewed affirmed that they had been exposed to torture and forced to sign confessions.²¹ They stated that after an initial detention in an unidentified location,²² they had been moved to the Political Prison in December 2011. At that time, the Attorney General reportedly informed them that they were being charged with participating in the Presidential Mosque bombing. On 4 June 2013, President Hadi issued a decree to release 19 of the 22 detainees. The Attorney General decided to release 17, who were released on 6 June, and undertook to speedily conclude the investigation of the remaining five detainees.

22. In December 2012, the Government budgeted for 2 billion Yemeni rials (YRIs), approximately US\$ 9 million, to be paid to the victims of the 2011 events. According to Presidential Decree No. 8 (2012), the families of victims killed or totally paralysed as a result of injuries in 2011 would receive 1 million YRIs, those partially paralysed 500,000 YRIs, and each individual who was injured during the "revolution" would receive 360,000 YRIs. The Government announced that these payments should not be considered as compensation, or "blood money". The beneficiaries would still have the right to file complaints and request compensation. According to the Wafaa Society, the institution mandated to distribute the compensation, the total number of beneficiaries is reported to be 3,786.

23. Despite this decision, injured individuals from the 2011 events have been holding demonstrations and sit-ins calling for the implementation of the decree authorizing compensation to be paid for families of the deceased and full treatment to be provided to the wounded. On 12 February 2013, security forces forcefully dispersed a sit-in and hunger strike in front of the Prime Minister's Office. Several individuals were injured, including a Parliamentarian who was partaking in the sit-in in solidarity with the protesters.

24. In her previous reports to the Human Rights Council, the High Commissioner recommended that the Government of Yemen launch transparent and independent

²⁰ The Minister ended her hunger strike as soon as the President promised to look into the detainees' cases.

²¹ OHCHR-Yemen visited the detainees in the Political Security Prison back in June 2012 where they reported the same information.

²² In several meetings conducted by OHCHR-Yemen, top officials at the National Security Office maintained that they did not run detention centres. Several people interviewed by OHCHR confirmed that they were detained by National Security before being referred to the Political Security detention facility.

investigations, compliant with international standards, into any credible allegations of serious human rights violations committed by Government security forces during the events of 2011 (A/HRC/21/37, para. 67 (a)). A commission to investigate allegations of human rights violations that occurred in 2011 was established in September 2012.²³ However, at the time of writing the present report, the Commissioners had not yet been named. OHCHR is concerned that the delay in appointing the Commissioners may hamper the credibility of investigations and raises questions as to the commitment to redress and justice for victims of past human rights violations.

25. No development was recorded with regard to the Law on Transitional Justice and National Reconciliation. The draft law produced by the Ministry of Legal Affairs was submitted to the Prime Minister and the President in May 2012. However, on 5 January 2013, the President submitted a different version of the Law to Parliament for consideration. The preamble of the draft law submitted by the President confirms the immunity granted to the former President and his associates. OHCHR reiterates that the immunities from prosecution granted to former President Saleh and his associates as part of the GCC initiative, by Law No. 1/2012, were a major setback with regard to accountability.²⁴

26. It appears that the latest version of the transitional justice law presented by the President is still under consideration by the Parliament, and that no decision will be taken before the end of NDC, foreseen in September 2013, or before the NDC Transitional Justice Working Group produces its recommendations.

B. Detention and enforced disappearances

27. OHCHR-Yemen has been unable to obtain the official number of detainees and prisoners in prisons and detention centres. Despite Cabinet decision No. 180 (2012), which requested the release of all those imprisoned for their participation in the 2011 events, reports received from local NGOs indicate that the total number of the detainees who remain in prison in conjunction with the 2011 events is 68.²⁵

28. Local NGOs reported that the families of 17 individuals, detained at different dates in 2011, were not aware of their relatives' fate or whereabouts. OHCHR-Yemen interviewed the families of six individuals who have disappeared, and who confirmed that their relatives had been detained by security forces. They had sought information at the Ministries of Human Rights, Interior and Defence but had not received satisfactory responses.

29. OHCHR-Yemen has been able to visit on several occasions the Central Prisons of Sana'a and Aden. At the Sana'a Central Prison, in April and June 2013, OHCHR-Yemen interviewed the detainees charged in the Presidential Mosque case, who complained about

²³ Decree No. 140/2012.

²⁴ The Human Rights Committee also expressed concern about the adoption of Law No. 1/2012 granting a blanket amnesty to former President Saleh and immunity from prosecution for all political crimes apart from acts of terrorism to all those who served with him during his rule. The Committee requested Yemen to repeal the law and to comply with international human rights law prohibiting immunity for those responsible for serious human rights violations in respect of which States are required to bring in perpetrators to justice (CCPR/C/YEM/CO/5, para. 6).

²⁵ 48 detained in Sana'a Central Prison, 19 in Hajjah and one in Ta'izz.

torture and ill-treatment received while in the National Security Prison²⁶ and about the fact that they had been detained for two years without trial.

30. In March 2013, OHCHR-Yemen visited Aden Central Prison, which held 785 prisoners, despite a maximum capacity of 300. Thirty-seven detainees were detained without court order or proper documentation. Among them, three members of Al Hirak were detained in relation to the 21 February 2013 demonstration, accused of incitement to violence. Twenty-five other detainees had been arrested by the Political Security on charges of being Al-Qaida members. The Director of the prison admitted that there were more detainees without proper documentation, arrested by either Central Security Forces or Political Security without a court order. He also admitted that the prison did not have a physician who could visit the prisoners and examine them for signs of torture or perform medical check-ups.

31. OHCHR-Yemen raised these issues with the Minister of Interior in April 2013. The Minister agreed that prison conditions were not in line with international standards and asserted that the Ministry did not have the required budget to improve the situation. However, the Minister undertook to consider the cases of prolonged detention; those detained without arrest warrants, as well as the cases of the 17 disappeared individuals.

C. Freedom of expression, peaceful assembly and association

32. Peaceful demonstrations and sit-ins by various groups have continued to be held throughout Yemen. In southern Yemen, some demonstrations have been repressed with force by Government security forces. As verified by OHCHR-Yemen, at least 10 persons were shot dead and many more wounded during a pro-south independence demonstration on 21 February 2013. Since then, the southern pro-independence movement Al Hirak has been calling for bi-weekly strikes and frequent demonstrations in southern cities.

33. Despite some improvements, the situation of the media and journalists remains of concern. OHCHR-Yemen recorded approximately 60 cases of threat and physical attacks on journalists by security forces and various armed groups during the reporting period, including assassination attempts and assassinations.²⁷ No meaningful efforts have been taken by the Government to bring the perpetrators to justice, despite repeated calls for action by journalists and human rights activists. In addition, the local NGO Freedom Foundation, working on monitoring freedom of the press, recorded more than 15 cases brought against journalists at the Press Court since the beginning of 2013.²⁸ Since 2010, the Audiovisual Media Law has been under consideration by the Cabinet.²⁹ The law has been criticized by local NGOs for not being in line with international standards. No development was recorded during the reporting period.

34. Abdul Elah Haidar Shayi, a journalist sentenced in 2011 to five years' imprisonment on terror-related charges, has yet to be released. His trial has been strongly criticized by local and international human rights organizations for having fallen short of minimum fair

²⁶ Prisoners interviewed also affirmed that they had been subjected to ill-treatment while being detained at the Political Security and the Presidential House.

²⁷ For instance, Wadoud Ali Saleh al-Someti, killed in Aden in February 2013, allegedly by Government Defence Forces.

²⁸ Despite several requests for amendments and the instruction provided by former President Saleh in 2006 to abolish those provisions, the 1991 Press and Publication Law provides for the imprisonment of journalists.

²⁹ According to the information received, the same version of the law has been submitted for the Cabinet's consideration several times since 2010.

trial guarantees. In spite of demonstrations and sit-ins by journalists calling for his release, the Government has not taken any action beyond promising to consider the matter.

D. Judiciary

35. Judges have continued to hold strikes during the reporting period, demanding increased physical security, a better working environment and improved living conditions. In April 2013, a two-week strike was held by judges in the Sana'a Governorate in protest of increased threats and physical assaults. Strikes were also held in various southern governorates in May and June 2013. Some 50 cases where judges were threatened by Government officials, security forces, tribal sheiks or unknown groups were reported. Security concerns have been also raised, particularly for commissioners and judges of special commissions, i.e. the property and dismissal commissions in southern Yemen. The Government recently brought to justice a number of perpetrators linked with physical assault and threats against judges.

36. On 14 May 2013, the Parliament adopted the draft amendment to the Judicial Authority Law, which had been under consideration for some time and provides for more independence of the Supreme Judicial Council from the executive power. In this regard, concerns have been raised about the independence and competence of the judiciary to adjudicate disputes in the next elections. At the time of writing the present report, the amendment is still awaiting endorsement by the President. Meanwhile, on 26 May 2013, the Constitutional Court issued a ruling declaring around 35 articles of the above-mentioned Judicial Authority Law unconstitutional, thus exerting pressure on the Government to expedite the process and fill the legal vacuum.

E. Children's rights

37. In 2012, the peaceful transfer of power and the start of the two-year transitional Government contributed to a decrease of grave violations against children, specifically killing and maiming through live ammunition, which had also affected children. For instance, child casualties due to mines, unexploded ordnance, explosive remnants of war, improvised explosive devices and suicide attacks increased especially in the conflict affected area of the Governorate of Abyan and peaked in the third quarter of 2012, with a reduction after Mine Action Teams had access to those areas.³⁰

38. Some tangible progress to prohibit child recruitment was recorded in 2012, especially following the visit of the Special Representative of the Secretary-General for Children and Armed Conflict in November 2012. Noteworthy are the steps taken by the Government to prohibit the practice, particularly the comprehensive revision of national legislation related to military laws,³¹ Cabinet resolution No. 212 (2012), according to which

³⁰ According to the United Nations Children's Fund (UNICEF), during the reporting period, 80 children (73 boys, 7 girls) were either killed (20 boys, 2 girls) or maimed (53 boys, 5 girls) due to mines, unexploded ordnance, explosive remnants of war, improvised explosive devices and suicide attacks.

³¹ Police Law No. 15 of 2000 and its amendments, Law No. 22 of 1990 on the mandatory National Defence Service, Law No. 23 of 1990 regarding the general reserve, Law No. 35 of 1992 regulating military academies, Law No. 67 of 1991 regarding service in the Armed Forces and Law No. 21 of 1998 on the Military's Penal Code. Several proposals were submitted with amended texts, including resetting the age of voluntary recruitment in the Armed Forces at 18, imposing intensive sanctions for the recruitment of children under 18 and enlisting the six gross violations against children as war crimes in the military Penal Code.

the Government of Yemen officially agreed on the Paris Commitments to end the recruitment and use of children by armed forces and groups in conflict; and the adoption of Cabinet resolution No. 1 2013 to review implementation of Yemeni commitment to end child recruitment in armed conflict. An interministerial committee chaired by the Minister of Legal Affairs including the Ministers of Defence, Interior and Human Rights was established to implement the Government's commitments, by developing an action plan to end the recruitment and use of children. However, despite such progress, child recruitment and use is ongoing. In the 2012 Secretary-General's report on children and armed conflict (A/67/845-S/2013/245), Ansar al-Sharia was added to the list of those who systematically recruit and use children among their forces.³²

39. During the reporting period two juvenile offenders were executed after being convicted of murder.³³ According to UNICEF, there are currently 31 minors on death row, and the President has endorsed the sentence for four of them. Over 150 minors are at high risk of receiving the death sentence if no immediate action is taken.

40. According to the Penal Code, courts may sentence juveniles convicted of murder only to a maximum of 10 years in prison and the Yemeni Juvenile Welfare Law requires courts to refer children 15 years of age and younger to the juvenile court system. This, however, leaves many juvenile offenders to defend their cases before adult criminal courts. In addition, sentences are often imposed on the basis of forced confessions or confessions given without having had access to legal counsel.

41. The issue of birth registration is considered one of the main challenges for the enjoyment of rights by children in Yemen such as the right to fair trial and protection from death penalty. According to information received by UNICEF, in 2006, the birth registration rate amounted to only 22.3 per cent and the registration of children within their first year accounted for just 21 per cent of the total registered births. Most minors in prison lack birth certificates, which poses difficulties for the determination of the age of juveniles at the time they committed an offence. In June 2013, the Minister of Justice created a Specialised Forensic Technical Committee, composed of three doctors. The Committee is mandated, *inter alia*, to assess the age of those accused of serious offences whose penalty may result in capital punishment where there is doubt about their ages at the time of the perpetration of the offence and to supervise and evaluate the cases of children appearing before courts in penal cases during investigation and the sentencing stages.

³² The so-called "name and shame list". Since 2011, Yemen and its parties to the conflict has been listed. Currently the Al Houthi Movement, Government forces which includes Yemeni Armed Forces, the First Armoured Division, military police, the special security forces, the Republican Guards, and pro-Government militias (the Popular Committees), and Ansar al-Sharia are listed in this annex (A/67/845-S/2013/245, annex I). However, the list predates the restructuring of the Armed Forces of April 2003 (see para. 14 of the present report) that abolished the First Armoured Division and Republican Guards.

³³ Hind al-Barti (aged 15 at the time of the offence) was executed on 3 December 2012 and Muhammad Haza'a (under 18 at the time of the offence) was executed on 9 March 2013. In December 2012, the Chairperson of the Committee on the Rights of the Child expressed deep dismay over the execution of Ms. Al-Barti. Noting that death sentences had already been imposed on 21 other juveniles aged under 18 at the time the offences occurred, the Chairperson of the Committee issued an urgent appeal to the Government of Yemen to both immediately halt all executions and take "effective measures to remove juvenile prisoners from death row." See "UN Committee expresses its deep dismay concerning the continuing child executions in Yemen", press release, Geneva, 12 December 2012. Available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12886&LangID=E.

42. The execution of minors is a serious infringement of the commitments undertaken by the Government during its 2009 universal periodic review, when it committed to not impose capital punishment for offences committed by persons under 18 years of age; to ensure that the death penalty is not applied to minors; to review the use of the death penalty on minors and mentally disabled persons; and to take immediate steps to remove juvenile prisoners from death row (see A/HRC/12/13).

F. Women's rights

43. During the period under review, the National Commission for Women³⁴ made efforts to promote the presence and participation of women in NDC. The National Conference on Women was held in March 2013 and produced a list of recommendations representing the needs of women during the transitional phase. The recommendations, which were submitted to the President for inclusion in Government policies, included: a 30 per cent quota for women's representation in the legislative, executive and judicial branches; the economic empowerment of women and the integration of gender aspects in the State budget; the amelioration of health services for women and children; as well as responses to the needs of women in displacement camps, among others.

44. The Technical Committee to prepare for NDC, which consisted of 29 members, including six women, was tasked to ensure at least a 30 per cent representation of women in all constituencies, working groups and bodies.³⁵ Women and gender issues have been mainstreamed throughout the NDC Working Groups. NDC members have organized field visits to seek people's views and ascertain their needs and the expectations which they had of the NDC, including on women's issues and concerns.

45. In November 2012, the position of Adviser to the President on Women's Affairs was created to follow up on the implementation of the National Commission for Women's recommendations of March 2013.³⁶ Two female judges were appointed to the Supreme Committee on Elections.

G. Marginalized groups

46. The Muhamasheen community continues to suffer from discrimination. Although the demands of some individuals working as street cleaners were met through the regularization of their contracts, the situation remained precarious for the majority of the community. In April 2013, members of the Muhamasheen community staged a strike in the capital demanding permanent contracts and social benefits, but agreed to its suspension after the Government promised to provide a solution within a two-month period.

47. Internal displacement directly affects more than half of the country's governorates, with 13 of the 21 governorates being either a source or destination of such displacement.³⁷ The total number of displaced people in Yemen decreased to 299,000 in April 2013, due to the return of internally displaced persons (IDPs) to their homes, particularly in Abyan, owing to an overall improvement of the security situation, the resumption of basic services

³⁴ The National Commission for Women is a governmental body under the authority of the Prime Minister. It is mandated to integrate women's rights and gender issues within national policies and to improve women's participation and their status in the political, economic, social and cultural spheres.

³⁵ The Presidential Decree establishing NDC included this requirement.

³⁶ Decree No. 55 of 6 November 2012.

³⁷ Office of the United Nations High Commissioner for Refugees (UNHCR), *IDPs' Voices & Views, Yemen's National Dialogue* (Yemen, 2013), p. 17.

and the scaling-up of humanitarian activities by various organizations. Despite improvements in some basic services, local authorities are struggling to meet the needs of all returnees, particularly in the south.³⁸

48. While significant returns were observed in the south, most IDPs in the north are still reluctant to return home. To date, only about 10 per cent of registered IDPs in the north have done so. According to the International Organization for Migration, approximately 293,000 people remained displaced in Sa'ada, Hajjah, Amran, Dhamar, Al-Jawf and Sana'a as of May 2013. Over 95 per cent of them lived with host communities or in informal settlements. Most IDPs cite security concerns, damaged homes and infrastructure, lack of basic services and disruption to livelihoods as the main obstacles to return. Others, who were involved in political activity, fear possible persecution by groups that control parts of northern Yemen.³⁹

49. On 25 June 2013, the Government approved a national policy to address internal displacement. The policy, which was developed by the Executive Unit for Internally Displaced Persons in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), through extensive consultations with all stakeholders, including IDPs, includes three strategic objectives: prepare for new displacement and protect civilians from involuntary displacement; protect and assist IDPs and displacement-affected communities; and create conditions for durable solutions. The adoption of the policy will be followed by the creation of a special committee led by the Prime Minister.

50. According to data provided by UNHCR, as of 30 April 2013, the number of refugees was 242,000. As compared to 2012, fewer migrants are arriving in Yemen. However, migrants continue to face exploitation, physical and sexual abuse. Of particular concern are reports of increased human trafficking, including of children, reportedly organized by a network composed of Yemenis, including tribal leaders and officials, as well as nationals of neighbouring countries, who subject migrants, including refugees, to gross human rights violations such as torture, sexual violence and slavery.⁴⁰

H. Cooperation with OHCHR

51. In its resolution 21/22, the Council requested the High Commissioner to provide technical assistance and to work with the Government of Yemen, as needed, to identify additional areas of assistance to enable Yemen to fulfil its human rights obligations. On 26 September 2012, OHCHR and the Government of Yemen signed the Host Country Agreement formally establishing an OHCHR field presence in Yemen.

52. OHCHR-Yemen has, inter alia, provided technical assistance and inputs related to the draft laws on transitional justice. OHCHR-Yemen has also worked with the Ministries of Human Rights and of Legal Affairs to advocate for the establishment of a national commission of inquiry to investigate the human rights violations that took place during the events of 2011 and provided detailed comments on the draft decree establishing this commission. Most of the comments were accommodated in the decree issued.

³⁸ OCHA, Humanitarian Bulletin.

³⁹ Ibid.

⁴⁰ Ibid. Since early April 2013, Yemeni military forces raided the borders between Saudi Arabia and Yemen targeting smugglers' camps in Yemen and resulting in the mass release of Ethiopian migrants. UNICEF and partner organizations, who were able to rescue and register 347 children (334 boys, 13 girls), have expressed their concerns that the actual figure of migrant children and victims of child trafficking could be higher.

53. OHCHR-Yemen has also provided technical assistance to relevant Government institutions and civil society organizations on reports to United Nations treaty bodies and UPR submissions, and it held workshops for a number of national partners, including the NDC Working Group on Rights and Freedoms.⁴¹

54. The draft law on the establishment of the national human rights institution was developed by a technical committee led by the Ministry of Human Rights and composed of Government officials, quasi-governmental organizations⁴² and civil society organizations. Several consultations with civil society organizations, academics, lawyers, political parties, Government officials and Parliamentarians have been organized since November 2012 throughout the country, with support from OHCHR and the United Nations Development Programme. At the time of writing the present report, the technical committee is finalizing the draft law on the basis of the comments received. It is expected that the draft law will be submitted to the Ministerial Committee in September 2013.

IV. Recommendations

55. **The High Commissioner welcomes progress achieved to strengthen promotion and protection of human rights in Yemen, mindful of the significant security, political, and humanitarian challenges faced by the country. In line with her previous recommendations and based on the observations of her Office in Yemen, the High Commissioner:**

(a) **Welcomes the National Dialogue Conference and the inclusion within its agenda of issues pertaining to human rights. It notes with appreciation the efforts undertaken to ensure the inclusiveness of the process as well as the decision to mainstream the concerns of women, children and marginalized communities throughout the works of NDC;**

(b) **Commends the Cabinet decisions to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to ensure the accession of Yemen to the Rome Statute of the International Criminal Court. OHCHR encourages their swift adoption by the Parliament;**

(c) **Notes the establishment of the Commission to Consider and Address Land Issues and the Commission on Forcibly Dismissed Employees for Southern Yemen as a demonstration of the Government's commitment to addressing long-standing grievances and to create confidence;**

(d) **Notes the active cooperation of the Government with OHCHR, the steps taken towards the establishment of an independent human rights institution, including the numerous consultations organized with relevant Government agencies, civil society organizations and other pertinent institutions;**

(e) **Regrets that, since September 2012, the Government has not reached a consensus over the appointments of commissioners for the national commission of inquiry into allegations of human rights violations that occurred in 2011. This delay hampers the credibility of any investigations and points to a lack of solid commitment by the Government towards redress and justice for victims of past human rights**

⁴¹ For more information, see OHCHR, *Annual Report 2012*.

⁴² For instance, the Higher Council for Motherhood and Childhood, which is headed by the Prime Minister and has legal personality and financial independence.

abuses. Similarly, OHCHR regrets that no decision has been taken on the Law on Transitional Justice and National Reconciliation;

(f) Notes with concern the continued detention of individuals arrested in connection with the 2011 events, despite formal commitments towards their release. It also notes the frequent practice of prolonged detention without trial or without proper arrest warrants and documentation. OHCHR is further concerned that peaceful protests, particularly in southern Yemen, are often suppressed, at times with force, with reported arrests, injuries or deaths of protesters.

56. The High Commissioner recommends that the Government of Yemen take the following measures, some of them reiterated from her previous reports:

(a) Expedite the establishment of the national commission of inquiry by naming its members and providing it with all facilities to carry out its task;

(b) Repeal Amnesty Law No. 1/12 and comply with international human rights law prohibiting immunity for those responsible for serious human rights violations, including war crimes and crimes against humanity;

(c) Withdraw the draft Law on Transitional Justice and National Reconciliation submitted by the President to Parliament in January 2013, and submit a revised draft that is in conformity with international standards and good practices;

(d) Release all individuals imprisoned for their participation in the 2011 events and, according to due process and fair trial standards, verify the names of missing persons and inform their families of their whereabouts;

(e) Ensure that prompt, independent and effective investigations are conducted in relation to allegations of the excessive use of force in the context of demonstrations, in particular in cases resulting in the death of individuals;

(f) Ensure that women's participation and women's rights are taken into due consideration in the Constitution drafting process that will follow NDC;

(g) Establish a moratorium on the use of the death penalty pursuant to moratorium resolutions of the General Assembly. Until then, the Government should ensure scrupulous respect of due process-related rights, including fair trial guarantees in cases involving the death penalty, and ensure that the death penalty is not applied to minors;

(h) Ensure that the counter-terrorism policies and strategies comply fully with international law, including human rights law. In this regard, ensure that any use of lethal force, including through the use of armed drones, complies fully with relevant international law, including the obligations of Yemen under international human rights law. Where violations of the law occur, conduct independent, impartial, prompt and effective investigations, and provide victims with an effective remedy.

57. The High Commissioner recommends that the international community:

(a) Encourage prompt, independent and impartial investigations into serious human rights violations that have resulted in loss of life and/or serious injury. Once they have been conducted, extend the necessary and appropriate support to the Government of Yemen in order to ensure accountability and appropriate remedy for any violations of the law;

(b) Provide all necessary financial and technical support for the Government's transitional plan, in particular with regard to those aspects concerning the restoration of the rule of law, the consolidation of human rights protection mechanisms and programmes, and the promotion of human rights;

(c) Heed the call for humanitarian assistance and provide financial support to the Yemen humanitarian response plan for 2013.
