

YEMEN

Submission to the United Nations Human Rights Committee 130th Session, 12 October – 6 November 2020

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All Survivors Project (ASP) is an independent, impartial, international organisation that conducts research and advocacy and facilitates inter-disciplinary dialogue and learning to improve global responses for every victim/survivor of sexual violence including men and boys in situations of armed conflict and forced displacement. Through our work with governmental and non-governmental stakeholders and with male survivors of sexual violence, we seek to ensure that conflict-related sexual violence (CRSV) is prevented and that the rights of all victims/survivors, including men and boys, are fulfilled, and the dignity of all survivors is respected and protected.

ASP makes this submission to the United Nations (UN) Human Rights Committee in advance of its adoption of the list of issues on Yemen at the 130th Session. This submission is based on published reports and it focuses on sexual violence against men and boys. It relates to Articles 2, 7, and 10 of the International Covenant on Civil and Political Rights (the Covenant).

Conflict-related sexual violence against men and boys

During the ongoing armed conflict in Yemen all parties to the conflict have committed serious violations of human rights and international humanitarian law.

The UN Group of Eminent International and Regional Experts (UN Group of Experts on Yemen) documented cases of sexual violence that occurred between 2016 and 2019 and concluded that there are “reasonable grounds to believe that all parties to the conflict committed gender-based violence, including sexual violence”.¹

In June 2020, the UN Secretary-General noted how the humanitarian crisis caused by the armed conflict “have exacerbated pre-existing gender-based discrimination, leading to increased risks of sexual violence”, with women and children facing “a high risk of sexual violence, particularly in displacement settings and areas controlled by parties to the conflict.”²

Within this context, sexual violence against men and boys occurred mostly in situations of deprivation of liberty. Sexual violence in detention was used “to torture, physically harm,

¹ Report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/42/17, 9 August 2019.

² Report of the UN Secretary-General on sexual violence in conflict, UN Doc. S/2020/487, 3 June 2020, para 60.

traumatise, humiliate, and subjugate detainees.”³ Acts of sexual violence against men and boys included rape, genital violence, threat of rape and forced nudity.

All parties to the armed conflict were responsible for CRSV against men and boys. While documenting human rights abuses in Yemen poses significant challenges, the following are documented examples of sexual violence committed against men and boys:

Yemeni armed and security forces

- The UN Group of Experts on Yemen investigating allegations of incidents of sexual violence by the 35th Armoured Brigade of the Yemeni armed forces in al-Shamaytayn, Ta'izz governorate between June 2017 and 2019 concluded that at least two boys were raped, and a man and a boy were sexually assaulted.⁴
- Human Rights Watch denounced in 2018 that Yemeni government officials tortured, raped and executed migrants and asylum seekers from the Horn of Africa in a detention center in the southern port city of Aden. Survivor testimonies described how the guards often took boys during the night and raped them.⁵

First Support and Backup Brigade of the Southern Transitional Council

- The independent human rights organisation Mwatana reported cases of sexual violence against adult male detainees, including genital violence and threats of rape of them or their relatives in the Al Jala camp, under the control of the First Support and Backup Brigade of the UAE-backed Southern Transitional Council.⁶

United Arab Emirates run detention facilities

- The UN Group of Experts on Yemen documented “at least 12 cases of rape of six men and one boy in United Arab Emirates detention facilities, as well as other sexual assaults, and forced nudity. Detainees were raped anally and orally, including penile rape, rape with objects, and gang rape. Sexual assaults included the beating of detainees’ testicles. In addition, in 2018, the Group verified that in March 2018, nearly 200 detainees were stripped naked in a group while personnel of the United Arab Emirates forcibly examined their anuses. During this search, multiple detainees were raped digitally and with tools and sticks.”⁷

³ Situation of human rights in Yemen, including violations and abuses since September 2014 - Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, para 644.

⁴ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, paras 295-297.

⁵ Human Rights Watch, *Yemen: Detained African Migrants Tortured, Raped*, 17 April 2018, <https://www.hrw.org/news/2018/04/17/yemen-detained-african-migrants-tortured-raped>

⁶ Mwatana, *In the darkness – Abusive detention, disappearance and torture in Yemen’s unofficial prisons*, May 2016 – April 2020, <https://mwatana.org/wp-content/uploads/2020/06/In-the-Darkness.pdf>

⁷ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, para 646. For more details, see also paras 223-224.

Non-state armed groups backed by the Saudi Arabia-led Coalition

- Amnesty International reported “that children as young as eight years old have been raped in the Yemeni city of Ta’iz. The suspected perpetrators, including members of militias backed by the Saudi Arabia-led Coalition, are yet to be held to account. The families of four boys told Amnesty International that their sons had been sexually assaulted in a series of incidents over the past eight months. In two of the cases, families alleged that those responsible were Islahi-aligned militia men supported by the Saudi Arabia-led Coalition.”⁸

Houthi armed group

- The UN Group of Experts on Yemen found 12 cases of sexual violence in the de facto authority (Houthi) detention facilities, “consisting of sexual violence against five women, six men, and one boy. In the cases related to men and boys, their testicles were beaten, tied, or had heavy objects hung from them, and forced nudity was used. There were also threats of rape against detainees and their wives, and unverified reports of rapes of boys.”⁹

Shortcomings in national criminal law

Impunity for CRSV, which may amount to war crimes, remains pervasive.¹⁰ According to the UN Group of Experts on Yemen, “those who had sought prosecution were met with indifference, reprisal, and impunity. In the case of survivors from marginalized communities, their status may have been a factor in the refusal by parties to investigate and prosecute cases. No perpetrator has been held to account for any of the sexual violence documented in the Group’s reports.”¹¹

Further access to medical services for survivors is lacking, and the UN Group of Experts reported “the absence of male-specific sexual violence services.”¹²

Under the Yemeni penal code, rape is defined in a gender-inclusive manner and framed on the lack of consent. Article 269 of the Yemen Penal Code states that “...punishment is through imprisonment for a period not exceeding seven years for anyone who assault by rape any person be it male or female without consent...It is deemed rape, every sexual insertion which is committed on the other person be it male or female, without consent.”¹³

⁸ Amnesty International, “Yemen: Ta’iz authorities must tackle child rape and abuse under militia rule”, 8 March 2019, <https://www.amnesty.org/en/latest/news/2019/03/yemen-taiz-authorities-must-tackle-child-rape-and-abuse-under-militia-rule/>

⁹ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, paras 645 and 418.

¹⁰ Report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/42/17, 9 August 2019.

¹¹ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, para 657.

¹² Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, para 658.

¹³ See Republican Decree for Law No 12 for the Year 1994 Concerning Crimes and Penalties, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>

However, the code does not effectively criminalise other crimes of CRSV. Under Article 270 of Yemen's Penal Code, "any act that falls on the body of the human being and defames the honor thereof; is carried out from one person to another other than adultery, homosexuality or lesbianism is considered a disgrace to honor." Other crimes include "disgraceful act" defined as "any act which conflicts with public ethics or losing chastity including undressing and intentional exposure of the genital organs and the saying and gesticulation violating the chastity and contradictory to good conduct" (Article 273). These provisions fail to proscribe a range of conducts that amount to crimes of sexual violence in armed conflict, including enforced sterilisation, sexual slavery, forced prostitution, genital violence and sexual mutilation, forced nudity and other acts of comparable gravity.

Criminalisation of same-sex relationships

Another significant obstacle to justice for survivors of CRSV is the criminalisation of same-sex relationships, despite clear obligations under international human rights law to decriminalise it.

Article 264 in the Yemen Penal Code states that "homosexuality is the contact of one man to another through his posterior; both sodomites whether males or females are punished with whipping of one hundred strokes if not married. It is admissible to reprimand it by imprisonment for a period not exceeding one year punishment by stoning to death if married." "Lesbianism" is also criminalised in Article 268 ("Lesbianism is intercourse between one female and another. Anyone engaged in this act with another shall be punished with imprisonment for a period not exceeding three years. If the act happens under coercion imprisonment may be expanded to seven years.")

The UN Human Rights Committee and other human rights mechanisms and experts have repeatedly urged states to reform laws criminalising consensual same-sex conduct.¹⁴ The UN High Commissioner for Human Rights has unequivocally stated that "States that criminalize consensual homosexual acts are in breach of international human rights law since these laws, by their mere existence, violate the rights to privacy and non-discrimination".¹⁵

Such laws, in addition to being discriminatory, can tacitly encourage violence and can deter survivors of sexual violence from seeking justice or medical and other support for fear of being arrested and prosecuted.

¹⁴ In 1994 the Human Rights Committee held that a provision of a Tasmanian law criminalising consensual sex between adult males which "enabled the police to enter the household" where "two consenting adult homosexual men may be committing an offence" violated Article 17 of the ICCPR, *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994). Toonen has subsequently been uniformly followed by UN human rights bodies. For further information and treaty provisions and their interpretation see OHCHR, *Born Free and Equal - Sexual Orientation and Gender Identity in International Human Rights Law*, second edition 2019.

¹⁵ See Report of the Office of the United Nations High Commissioner for Human Rights, Discrimination and violence against individuals based on their sexual orientation and gender identity, UN Doc. A/HRC/29/23 (2015).

Conclusions

In light of the above, ASP encourages the Human Rights Committee to include the following issues in the List of Issues for Yemen:

- Provide figures and information on investigations, prosecutions and convictions for CRSV, disaggregated by gender and age;
- Provide information on provision of health and mental health and psychosocial support (MHPSS) services to all survivors of sexual violence irrespective of their sex, gender or sexual orientation, gender identity and/or expression and sex characteristics (SOGIESC);
- Confirm whether Yemen plans to review its penal code to bring it in line with its obligation under the Covenant, including by decriminalising consensual same-sex relationships.