



# A Passage to Justice

Selected Yemeni Civil Society Views  
for Transitional Justice and Long-Term  
Accountability in Yemen

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New York, NY 10019  
P. +1 212-548-0600  
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Students attend class in a makeshift classroom in Taez, Yemen, on October 7, 2020.

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# 1. Introduction

This is a report commissioned by the Open Society Foundations as part of a project about options for long-term accountability in Yemen.

The Open Society Foundations' support to Yemeni partner organizations has grown out of the work done on U.S. counter-terrorism operations. With the outbreak of armed conflict in Yemen in 2014, Open Society expanded its support for the documentation of the conduct of the different parties to the armed conflict in Yemen. The Foundations' support also encompassed enabling Yemeni civil society organizations (CSO) to carry out high-level advocacy efforts.

In addition to the contributions that Yemeni civil society can make through their documentation work to reducing civilian harm and increase compliance with international humanitarian law (IHL), Open Society believes that Yemeni CSOs can also play an essential role supporting the transitional justice process and efforts to develop a comprehensive and a long-term vision for accountability in Yemen.

Articulating this vision, clarifying the substantive core of Yemeni demands for justice, and building political momentum around an accountability agenda are crucial. They can ensure that accountability and redress are meaningfully incorporated into any post-conflict settlement for Yemen. They constitute the key objectives underpinning the work carried out in the framework of Open Society's project on long-term options for accountability in Yemen.

## 1.1. This report

In identifying the views of Yemeni civil society actors on accountability for violations committed in Yemen by all parties to the armed conflict since 2014, this report hopes to provide information that can help the design of future accountability and redress mechanism(s). This report also aims to generate discussions that will accompany the wider transitional justice process. The options and recommendations in this report can also provide elements to help states, multilateral institutions, and the donor community identify ways to build trust and support for accountability, redress, and the transitional justice agenda in Yemen.

The report reflects consultations and interviews with Yemeni civil society organizations and a select number of other stakeholders. A total of 26 semi-structured interviews were organized in order to obtain these organizations' recommendations on the preferred accountability, redress, and transitional justice mechanisms for Yemen—at the national and international levels—to

address violations committed by the parties to the armed conflict in the territory of Yemen since 2014. The interviews also explore redress options for the victims. The organizations interviewed represent 12 different governorates (Abyan, Amran, Taiz, Hodeidah, Sana'a, Mareb, Al Dhale'a, Aden, Shabwa, Hajjah, Hadramout and Al Mahweet).

This report was written and primarily researched by the Open Society consultant, with contributions from the Mwatana Organization for Human Rights as well as from the Open Society Human Rights Initiative and the Open Society Justice Initiative. The Mwatana Accountability and Redress team also provided substantial inputs and guidance during the inception of the project as well as throughout its implementation—including during the interviews and consultations phase.

## **1.2. Questionnaire**

A questionnaire was developed to guide the interview process, comprising four main sections: accountability mechanisms at the national, regional and international levels; personal and subject-matter jurisdiction; redress for victims of human rights abuses and IHL violations; and key aims and purpose of future accountability mechanisms for Yemen.

In addition to interviews and consultations, the identification of options and recommendations for accountability and redress in Yemen also relied on a review of documents from international and domestic bodies reporting on justice and legal issues in Yemen. These documents included legal instruments, reports from Yemeni civil society, and reports from international, regional, and Yemeni nongovernmental organizations.

## **1.3. Data Tabulation**

The questionnaire combined open questions with ranking questions. This selection was done to ensure that as much content was generated as possible from the interviewees. The interview process also aimed at obtaining a clearer understanding about what could be learned from previous attempts (for instance, those carried out in the framework of the National Dialogue Conference). The focus here was on how the process was conducted and what proposals for accountability and redress would look like today in comparison to how they were formulated previously.

## 1.4. Target Group

Organizations contacted for the interviews included human rights organizations, youth organizations, and victims' associations, many of them established and registered before 2015. Despite efforts to interview the highest possible number of organizations to ensure gender inclusiveness and geographic representation, there were many challenges that made accurate representation difficult to achieve. Of the representatives who participated, 10 were women and 16 were men. Moreover, due to the nature of the topics discussed and the security risks they posed, certain parts of the interview were reformulated and adapted to mitigate security risks for the organizations interviewed.

## 1.5. Methodology

The interview process relied on a pluralistic approach combining different qualitative methods to yield a wide variety of insights from the respondents as well as to grasp subtleties and nuances.

The interviews were conducted with the help of two interpreters interchangeably. Many of the conversations revolved on language, its inadequacy to translate into concepts the realities expressed by some of the interviewees. In other cases, the interviews generated new meanings for known vocabulary.

The great majority of the findings contained in the report directly reflect the voices of the interviewees. There are also parts in the report where these voices may seem less situated and/or where the voice speaking is that of the researcher based on the feedback shared by the respondents. To the extent that the responses provided by the respondents were influenced by the questions posed (and that the questions often reflected Western concepts), additional consultations are needed to get at the assumptions underlying the answers and to instill genuine Yemeni ownership over the process which may include the development of a Yemeni vocabulary and the specific understandings that come with it.

## 2. Part I—Key Findings from Interviews and Consultations with Yemeni Civil Society Organizations

### 2.1. Summary

During the protests that took place in different parts of Yemen in 2011, justice was central to the claims and demands of the protesters. When the National Dialogue Conference (NDC) was established by the Gulf Cooperation Council initiative in 2011, it was mandated to take measures “to ensure that violations of human rights and humanitarian law do not occur in the future.”<sup>1</sup> Between 2013 and 2014, a working group was established on Issues of National Dimensions, National Reconciliation and Transitional Justice.

If the NDC and its working group on transitional justice were established today, the discussions would revolve around a far more complex set of issues. Since it began in 2014, the conflict in Yemen has resulted in an estimated 18,568 civilian casualties.<sup>2</sup> Now in its sixth year and with no signs of abating, the conflict challenges a conventional understanding of what constitutes “civilian harm.”

The protracted nature of the conflict in Yemen and its cumulative impact on the lives of civilians has altered the way Yemenis view the concept of harm beyond loss of life and destruction. For many of the respondents consulted in this project, the economic and social costs of the conflict in Yemen—which—

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1 See “Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council (GCC), 21 November 2011.” [http://constitutionnet.org/sites/default/files/yemen\\_agreement\\_on\\_the\\_implementation\\_mechanism\\_for\\_the\\_transition\\_process\\_in\\_yemen\\_in\\_accordance\\_with\\_the\\_initiative\\_of\\_the\\_gulf\\_cooperation\\_council\\_2011-present.pdf](http://constitutionnet.org/sites/default/files/yemen_agreement_on_the_implementation_mechanism_for_the_transition_process_in_yemen_in_accordance_with_the_initiative_of_the_gulf_cooperation_council_2011-present.pdf)

2 Figures provided by the Yemen Data Project (last verified in January 2021). For more information, see: <https://yemendataproject.org>. Figures provided by other organizations may vary. For instance, according to data collected by the Armed Conflict Location & Event Data Project (ACLED), in March 2020 the organization estimated more than 112,000 people had died as a direct result of the violence. These numbers include an estimated 12,690 civilians who had died in targeted attacks. <https://acleddata.com/2020/03/25/acleddata-resources-war-in-yemen>. OCHA estimates of September 2019 report 7,508 civilian deaths including 1,997 children. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24968&LangID=E>.

include indirect deaths<sup>3</sup> and suffering caused by the impact of the war on access to food, health services, and other critical infrastructure<sup>4</sup>—should be understood within the notion of “civilian harm.”

One of the key IHL challenges in contemporary armed conflicts is the blurring of the distinction between civilians and combatants and between civilian and military targets. Interviews with Yemenis indicated that the conflict in Yemen also blurred distinctions between combatants and business actors; perpetrators and financial operators; business transactions and economic hostilities; and parties to the armed conflict and third states that support parties engaged in the conduct of hostilities.

The NDC left a conflicting legacy behind. Nevertheless, many of the questions it raised not only remain valid today but were also important for the exercise undertaken in the framework of the Open Society’s project. One of the key questions that still persists is about the trade-offs of rendering justice as part of Yemen’s political transition process or of letting justice follow a separate track outside of the political process.

Respondents were cognizant of the tensions between peace and justice and that the directions sought under each one may not always coincide. They acknowledged the contributions made by the NDC to transitional justice and to human rights but they were also frank in their skepticism about a process that early on saw the adoption of a law granting immunity from prosecution to former President Saleh and his cabinet.

This report is essentially about dichotomies and what can be done to reconcile them, about choices that combine individual elements in an “integrated

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3 The term “indirect deaths” is used by Professor Keith Krause to describe “indirect victims of violence who died after being deprived of access to food, shelter, water or basic necessities.” According to Krause, numbers of indirect victims could be considerably higher than those of direct victims of violence. For more, see Keith Krause, “Bodies Count: The Politics and Practices of War and Violent Death Data,” *Human Remains & Violence*, Volume 3, No. 1 (2017).

4 United Nations Development Program, *Assessing the Impact of War in Yemen on Achieving the Sustainable Development Goals*.  
[https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP-YEM%20War%20Impact%20on%20SDGs\\_compressed.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNDP-YEM%20War%20Impact%20on%20SDGs_compressed.pdf). This report is part of a series exploring the “alternative pathway Yemen could have gone through if the war had not occurred.”



circuit,”<sup>5</sup> and about principles and “red lines” that can inform a future process for long-term accountability in Yemen. Respondents highlighted the centrality of justice in establishing political order. They firmly believed that justice and accountability could play a fundamental role in reconciling Yemenis and in contributing to the full realization of rights and the participation of socially disadvantaged sectors in the political, social, and economic processes of the country.

## 2.2. Recommendations for a future process of transitional justice and for long-term accountability in Yemen

Interviewees acknowledged the difficulty of promoting a transitional justice process in the current circumstances. Yemen faces fragmentation along deeper and seemingly irreconcilable political divides, obstacles to a negotiated ceasefire and peace process, and other constraints such as those resulting from the global COVID-19 pandemic. Interviewees were also aware that many of the measures proposed will take time to yield concrete results and political dividends.

The perspectives and views of interviewees have been divided in two sets. The first relates to directions that should inform a future transitional justice architecture in Yemen. The second set consists of recommendations for long-term accountability.

Central to both sets is the **formulation of a Yemeni vision of post-conflict accountability and transitional justice** that can help prioritize goals and outcomes. This formulation can also help the Yemeni government and other international actors support medium and long-term accountability goals for Yemen. A Yemeni vision is also crucial to strengthen the advocacy capacity of Yemeni CSOs to build a long-term accountability agenda.

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5 The term “integrated circuit” has been borrowed from Donna Haraway’s *Cyborg Manifesto*, published in 1991. The term is used by the writer and philosopher to describe the blurring of boundaries between spaces and identities and the emergence of “affinity politics” as opposed to identity politics. For more, see: [https://warwick.ac.uk/fac/arts/english/currentstudents/undergraduate/modules/fictionnownarrativemediaandtheoryinthe21stcentury/manifestly\\_haraway\\_---\\_a\\_cyborg\\_manifesto\\_science\\_technology\\_and\\_socialist-feminism\\_in\\_the\\_....pdf](https://warwick.ac.uk/fac/arts/english/currentstudents/undergraduate/modules/fictionnownarrativemediaandtheoryinthe21stcentury/manifestly_haraway_---_a_cyborg_manifesto_science_technology_and_socialist-feminism_in_the_....pdf)

### 2.2.1. Directions for a transitional justice process in Yemen

Interviewees, when asked which issues should inform a future process of transitional justice in Yemen, identified the following elements:

*A victim-centered approach.* Interviewees highlighted the importance of rendering a future process of transitional justice in Yemen centered on victims. From their perspective, interviewees felt that future actions should support the involvement of victims' groups and associations in "processes of discourse and participation."<sup>6</sup> In other words, victims should play a central role in the design and the establishment of future accountability and redress mechanisms for Yemen.

- **Truth-telling:** For the interviewees, truth-telling should be distinguished from the documentation of human rights and IHL violations and also from accountability work carried out with a view to establishing the responsibility of perpetrators and holding them accountable. Even though truth-telling could also contribute to these, it should essentially be geared toward the public recognition of these violations and the suffering of the victims.
- **Redress:** Redress was an essential element of a victim-centered approach. Respondents from the 26 organizations participating in this report, considered redress included financial compensation but it was also more. Redress, first and foremost, should start with the acknowledgement of the violations perpetrated or wrongs committed against the victims.
- **Mental health support:** A significant number of respondents saw psychosocial support as a need to be factored into redress options to be taken in favor of victims. Mental health was raised by many respondents as a general need in Yemen due to the protracted nature of the conflict. Some respondents also raised the issue of mental health concerns in relation to the violations committed against children, inviting future consultations on redress mechanisms to consider including children and youth as special categories of victims.

#### *Criminal accountability processes*

Respondents showed no clear preference for any specific type of judicial mechanism. Instead, the responses pointed to different possibilities, including national courts, international courts, and other judicial options. Some

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6 Paul Seils, "The Place of Reconciliation in Transitional Justice," International Center for Transitional Justice, briefing paper, June 2017. <https://www.ictj.org/publication/reconciliation-transitional-justice>

respondents highlighted the importance of promoting legal awareness and technical knowledge. Without these, they argued, it would be difficult for Yemenis to understand the different types of options available and to make informed decisions about their preferences. Additional consultations with Yemeni stakeholders and comparative experiences from other contexts were also deemed useful to inform future accountability processes.

### *Institutional reform*

The current capacity of the justice system in Yemen to promote accountability for human rights and IHL violations has been significantly curtailed by the ongoing armed conflict. Yet even before the current conflict, there were already serious concerns about judicial independence and the ability of courts to render justice in an impartial manner. Various substantive and procedural laws are also at odds with international standards. For the respondents, institutional reform should be an important component of transitional justice efforts in the country. For them, reform measures can also make an important contribution to the capacity of Yemeni public institutions to retain the necessary level of ownership over future efforts undertaken in the realm of transitional justice.

## **2.2.2. Recommendations for long-term accountability in Yemen**

Yemeni civil society has a crucial role to play in accountability for human rights and IHL violations in Yemen. However, it needs the commitment and support of the international community to conduct deeper accountability work such as investigations and to expand documentation work to new issues and patterns of concern. Below is a set of key steps toward building long-term and sustainable accountability in Yemen.

### *Supporting Yemeni civil society organizations to expand the documentation of human rights and international humanitarian law violations*

For a majority of the organization participants interviewed, documentation work helps identify violations and patterns of abuse, thus contributing to a greater understanding about the conflict in Yemen.

To the extent that the work carried out by Yemeni human rights organizations can also prompt international mechanisms—such as the UN Group of Eminent Experts (GEE)—to start investigating certain issues, it is essential to support Yemeni organizations to carry out documentation work and expand the scope of issues covered. This support is also needed to design new and relevant tools and methods of information collection.

As the already difficult restrictions of access to Yemen and movements inside the country risk becoming more onerous due to the COVID-19 pandemic, the bulk of documentation work will inevitably fall on the shoulders of Yemeni CSO. For the organizations interviewed, support from the international community and donors was essential to strengthen their technical capacity to carry out documentation work. Some of the interviewees also expressed the view that support from the international community was needed for deeper accountability-oriented work.

*Supporting Yemeni civil society organization efforts at collecting, preserving, and analyzing information and evidence*

At the international level, mechanisms such as the Group of Eminent Experts on Yemen (GEE) collect and report information about human rights and IHL violations committed by the conflict parties in Yemen. In the Human Rights Council session of October 2020, the GEE's mandate was renewed and strengthened to include the collection and preservation of evidence. However, despite this, the GEE's challenges and limitations to gaining access to Yemen and other coalition countries is now compounded by new limitations arising from the COVID-19 pandemic.<sup>7</sup> At the local level, some Yemeni CSO are working to fill the capacity gap between documentation for the sake of reporting and investigations with an eye toward accountability and redress processes, including engaging with certain judicial *fora*.

To address the gap between documentation and investigative work, states, multilateral institutions and the donor community should support Yemeni organizations to be sufficiently resourced, including in capacity and technology, to conduct in-depth investigations and collect, preserve, and analyze information and evidence at the level necessary for effective engagement with various adjudicative *fora*.

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7 In its September 2020 report, the Group of Eminent International and Regional Experts on Yemen (GEE) noted that for a second consecutive year, it had not been able to access Yemen and other coalition countries "despite repeated requests." As a result, the group had to alter its working methods and "narrow the breadth of matters investigated." See Human Rights Council, 45th session, 14 September 2020 (A/HRC/45/6), *Situation of Human Rights in Yemen, including violations and abuses since September 2014*, Report of the Group of Eminent International and Regional Experts on Yemen. <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

*An accountability agenda that addresses violations of social and economic rights*

Based on the insights shared by the respondents, a more comprehensive understanding of the economic and social dimensions of the conflict in Yemen could help bring these issues under the purview of what constitutes “adjudicable harm.” It could also help bring about redress processes and reparation options for the victims.

To make this possible, the donor community, states, and international organizations should invest time and resources to design tools and methods of information collection about the economic and social costs of war that can support the future establishment of redress options and reparations for victims.

*Harnessing open-source technology to support and strengthen accountability and redress efforts in Yemen*

There is room for open source technology to contribute to a wide array of processes, judicial in the case of accountability efforts and also other processes such as redress efforts and even reconstruction planning.

To achieve the above, organizations carrying out visual documentation of human rights and IHL violations need additional support from the donor community and from states. More concretely, increased opportunities should be explored to strengthen the contributions that these organizations can make to accountability and redress efforts in Yemen. One recommendation would be to invest in the capacity of these organizations to develop new and innovative methods to discover relevant content and material.

## **2.3. Challenges to accountability, redress, and transitional justice in Yemen**

### **2.3.1. A plethora of actors**

The fact that most of the feedback provided during the interview process leaned toward the Yemeni parties to the conflict illustrates the challenges inherent to designing an accountability and redress mechanism that considers a wide range of actors implicated in the armed conflict in Yemen, state and non-state armed actors, Yemeni and non-Yemeni, the public as well as private corporate actors that by virtue of their financial transactions and business operations sell or transfer items that contribute to the rising civilian toll and the destruction seen in the country.

### 2.3.2. The impact of the Yemeni conflict on social and economic rights

Questions about “social, economic and political inequalities” and what type of violations could be “adjudicable” also emerged during the interview process. For a majority of respondents, a transitional justice framework should encompass issues of social and economic harm as may have resulted from the protracted nature of the conflict due to the cumulative impact of destruction and damage on the country’s critical infrastructure and livelihoods. Key examples provided by the interviewees included poverty, loss of jobs and salaries, loss of education, and lack of health care support.

### 2.3.3. Grieving migrants and other non-Yemeni nationals

Even though the report focuses mainly on redress options that address the grievances of Yemeni victims, a strong case should be made about the need to include victims of non-Yemeni nationality within the purview of a future redress mechanism. Migrants who have died as a result of lack of compliance with IHL in the conduct of hostilities in Yemen have been reported on several instances.<sup>8</sup> In addition to this, large numbers of migrants have also been reported detained in different places of detention across Yemen, in many cases in inhuman and deplorable conditions.<sup>9</sup> Migrants—including refugees—enjoy the protection provided by IHL to the civilian population. Future redress mechanisms should consider their needs to access an effective remedy.

### 2.3.4. Meaningfully engaging with victims in the age of COVID-19

Finding ways to engage with victims will need to consider limited possibilities to travel to and in Yemen as well as other types of restrictions in place, such as those relating to COVID-19. Future work on accountability and redress must also take into consideration the impact of the corona virus pandemic on crisis financing and the decreased availability of funds for activities falling outside “emergency preparedness” and “emergency response.” To maintain national

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8 Ben Hubbard and Shuaib Almosawa, “Airstrike Kills Dozens of Somali Migrants off Yemen’s Coast,” *New York Times*, March, 17, 2017. <https://www.nytimes.com/2017/03/17/world/middleeast/yemen-airstrike-somali-migrants.html>

9 International Organization for Migration, “Migrants Die while Detained in Inhumane Conditions in Yemen,” May 2, 2019. <https://www.iom.int/news/migrants-die-while-detained-inhumane-conditions-yemen>.

ownership over the transitional justice process, it is essential to maintain a substantial engagement with Yemeni stakeholders including victims' groups and associations beyond the perfunctory exercise of obtaining feedback. The value of channels of communication, digital and otherwise, should be measured by their ability to be accessible to people and to generate meaningful conversations that enable victims and other stakeholders to articulate their needs.

### **2.3.5. Peace versus Justice**

For many respondents, there should be more articulation between the ongoing peace negotiations and matters of accountability for the violations that occurred in Yemen and of redress for the victims. For them, not addressing these linkages could derail prospects for genuine national reconciliation and sustainable peace in Yemen. Victims' issues should also enjoy better representation in the peace negotiations. The purpose, they argued, was not to transform the negotiations into a forum for raising grievances but instead to render the peace process more inclusive of accountability and redress concerns. Not all respondents were aware about the possibilities available for victims' groups and affected communities to contribute to the processes led by the Office of the Special Envoy of the Secretary-General of the United Nations for Yemen (OSES-GY).

### 3. Part II – Analysis of the Interviews and Consultations with Yemeni Civil Society Organizations

#### 3.1. Background about transitional justice in Yemen

##### 3.1.1. Views of interviewees on the legacy of the National Dialogue Conference: “There is learning that can inform transitional justice in Yemen.”

For 15 respondents, the challenges that emerged during the NDC can inform future processes and help avoid similar pitfalls. Four main categories of remarks emerged during the interview process. These include the immunity law that was passed in 2012, which shielded the former Yemeni president and those who worked with him from prosecution for crimes committed during his 33-year rule. According to one interviewee, this law “seriously handicapped the transitional justice law from the beginning and created many obstacles to its implementation”; any future new law “should comprise all the crimes, all the violations and all the perpetrators.”

There were also internal obstacles for the NDC to fulfill the goals established through the Gulf Cooperation Council initiative:<sup>10</sup> “There was no internal national reconciliation, there were many divisions from past issues, from previous conflicts.” As a result, there was little space for real discussions and also for “other voices” such as those of young people. As illustrated by one female respondent from Sana’a, “many of the important discussions during the NDC were completely taken over by political parties. What space was left for us, for the youth?” As another female respondent from Hajjah said, “some of the results of the NDC were positive but some people were excluded from the

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10 In its resolution 2051 (2012), the United Nations Security Council outlined the areas of focus for a second phase of the political transition process in Yemen, which included the convening of a National Dialogue Conference in accordance with the Implementation Mechanisms set forth in the Gulf Cooperation Council Initiative. The council also called for a “comprehensive, independent and impartial investigation into alleged abuses perpetrated during the protests that took place in the capital Sana’a and other parts of Yemen in 2011, consistent with international standard.” For more, see: <https://www.un.org/press/en/2012/sc10671.doc.htm>



process. This would have ensured real participation. It would have benefited the entire country.” Instead, “plenary and working group discussions often delved into expressions and expositions of historical grievances or entered into mechanical procedures for revising the constitution or establishing the rules of order for voting.”<sup>11</sup>

In addition to the above, the fact that there were little or few shared understandings about some of the concepts used during the NDC on transitional justice and reconciliation meant that participants were stalled many times on procedural issues. This also generated disagreements about what should constitute the focus of the working groups. As one participant from Sana’a explained, “during the NDC, there were many disputes. People asked themselves where to look: What conflict? 1962? Key stakeholders disagreed about which conflicts should be encompassed under the transitional justice law.” Instead of seeking agreement on the purpose of a future law on transitional justice, participants dwelled instead on issues of temporal and personal jurisdiction. As a result, “what happened was that the parties with grievances picked their conflicts but left out others. So for instance, the Hashemite family wanted grievances addressed in relation to the wars in the 1960s.” Another matter concerned the narrow timeframes established for the adoption of certain decisions. Some of the deadlines stipulated by the working groups were deemed unrealistic vis-a-vis the complexity of the issues at hand. More time would have been beneficial to carry out the kind of background work that was needed to arrive at a shared understanding of some of the concepts and terms used.

As positive points, respondents mentioned the efforts carried out to increase awareness with examples informed by other contexts. One female participant from Sana’a also referred to “efforts to learn more about the concepts used in relation to transitional justice, about political processes, about elections.” There was also more support by the international community to strengthen the capacity of CSOs on matters related to transitional justice and reconciliation. According to one respondent from Mareb, “there was a lot of work carried out during the NDC. Then the war came and people forgot about it. But between 2012 and 2014, there were a lot of trainings on transitional justice with UN organizations and other partners.”

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11 Stephen Steinbeiser, “No Peace without Justice: The Arab Spring, the National Dialogue and Yemen’s Descent into Chaos,” *International Journal of Archaeology and Social Sciences in the Arabian Peninsula*, No. 4 (2015), paragraph 2.

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**“But peace also failed because of the architecture of the NDC as a whole. The NDC deepened the divisions between Hadi’s camp and others and between what each one of them were doing. The media was manipulated by the parties. There were no oversight mechanisms to prevent this. This is why it is so important to ensure the neutrality of the CSOs. Only they can monitor.”**

–Participant from Sana’a

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The NDC has left lessons that can guide future processes. As advised by a female participant from Aden, “we need to continue the work started with the NDC.” This will imply working on two key aspects: processes that ensure greater representation of victims and affected communities; and forging a Yemeni vision on accountability, redress, and transitional justice. As one participant from Sana’a suggested, “Yemen needs to deal with the issues of the past. If there is no Yemeni vision to tackle the past, there will be new conflicts generating new cycles of violence and violations.”

### *Evolution of Transitional Justice Mechanisms in Yemen*

A working group on Issues of National Dimensions, National Reconciliation and Transitional Justice was established in 2013 within the framework of the National Dialogue Conference (NDC). One of the key aims of this group consisted of the “formulation of constitutional and legal principles and recommendations in order to realize transitional justice and national reconciliation.” A final report by the working group was prepared and submitted as part of an “Outcomes Document.” With the start of the conflict in 2014, these outcomes were abandoned along with other transitional processes established during the national dialogue.

A Presidential Decree dating from 2013 established the Commission to Address Issues of Employees Forced Out of Their Jobs in the Civil, Security and Military Fields (known by its shorter version, the Commission on the Forcibly Retired) and a Commission on Land-Related Disputes.<sup>12</sup> The Commission on the Forcibly Retired investigated around 20,000 cases. Even though its work was interrupted with the outbreak of the conflict in 2014, a compensation fund was established in 2013 by presidential decree to “compensate civil, security, and military servants who deserve compensation in the southern governorates.”<sup>13</sup>

In 2012, the Yemeni Executive established a National Commission of Inquiry<sup>14</sup> to investigate all human rights violations committed since 2011. In 2017, the commission released an interim report. Its mandate was also amended to refer cases to the Yemeni public prosecution to facilitate the undertaking of judicial proceedings. In September 2017, the Human Rights Council requested the High Commissioner to provide “substantive capacity-building, technical assistance, advice, and legal support”<sup>15</sup> to enable the Commission of Inquiry to conduct its investigatory work “in line with international standards.”<sup>16</sup> Despite clear references made in the amendment to the commission’s original mandate to the role of the Yemeni public prosecution and judiciary, it is unclear whether judicial proceedings have resulted in the indictment of persons responsible for human rights violations.<sup>17</sup>

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12 For more information on the two commissions and in particular that on the “Forcibly Retired in the Southern Governorates,” see Jens Kambeck, “Returning to Transitional Justice in Yemen – a backgrounder on the Commission on the Forcibly Retired in the Southern Governorates,” Report No. 3, July 26, 2016, Center for Applied Research and Partnership on the Orient. [https://carpo-bonn.org/wp-content/uploads/2016/07/carpo\\_policy\\_report\\_03\\_2016.pdf](https://carpo-bonn.org/wp-content/uploads/2016/07/carpo_policy_report_03_2016.pdf).

13 Ibid, pp. 6, 22.

14 See Human Rights Council, 42nd session, (A/HRC/42/33), September 9, 2019, “Implementation of Technical Assistance Provided to the National Commission of Inquiry to Investigate Allegations of Violations and Abuses Committed by All Parties to the Conflict in Yemen.” [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_42\\_33\\_AEV.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_42_33_AEV.pdf).

15 Human Rights Council, (A/HRC/RES/36/31), October 3, 2017, “Human Rights, Technical Assistance and Capacity-building in Yemen.”

16 Human Rights Council, (A/HRC/RES/36/31), October 3, 2017, “Human Rights, Technical Assistance and Capacity-building in Yemen.”

17 According to the Group of Experts’ report of September 2020, “the National Commission of Inquiry has referred over 1,000 cases to the Attorney-General. To date, only 19 cases have been brought to trial, and the cases remain pending.” See Human Rights Council, 45th Session(A/HRC/45/6), September 14, 2020 “Situation of Human Rights in Yemen, including violations and abuses since September 2014,” Report of the Group of Eminent International and Regional Experts on Yemen. For more, see:

An “Equity and National Reconciliation Commission” was to be created through the adoption of the draft law on transitional justice and reconciliation. Although the law remains unimplemented, the core features of the commission included investigating human rights violations since January 2011; receiving complaints from human rights victims; assuring compensation or reparation to the victims and disclosing “the truth of what happened during the period covered by the provisions of this law.”<sup>18</sup>

### 3.1.2. A Yemeni entity for transitional justice and redress?

Some respondents shared proposals for an entity to be established<sup>19</sup> to lead the country through the transitional justice process. To be attuned with the Yemeni context, the mechanism should capture “bottom-up” proposals. Built-in features allowing for the integration of the community and associated levels in the formulation of proposals were one of the key features highlighted by the interviewees.

Proposals made about representatives in a future transitional justice entity included civil society leaders, victim associations, judges, sheikhs, and political leaders. Leadership was one of the key traits the representatives would have to possess, in addition to outstanding professional backgrounds, and experience and ethical standards such as neutrality and impartiality.

Respondents found that a transitional justice entity could lead victims and other constituencies through the necessary collective reflections and discussions on different possibilities for accountability and redress mechanisms. For them this could also help build the relevant constituencies and garner public support for future proposals. As one female respondent noted, “society needs to be prepared for transitional justice and for that we need public support. A lot of this support will be achieved through learning more about transitional justice.”

In addition to the above, there were also proposals made by 14 respondents for a similar entity to lead redress-related processes. For two respondents, a hybrid entity with Yemenis and non-Yemenis should be established to be in

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[<https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>].

18 See “Law on Transitional Justice and National Reconciliation.” <http://www.peaceandjusticeinitiative.org/wp-content/uploads/2012/03/Yemeni-draft-Transitional-Justice-Law.pdf>.

19 Some of the proposals contained elements similar to those included in the Equity and Reconciliation Commission that was to be established through the adoption of the Law on Transitional Justice and National Reconciliation.

charge of redress matters. Other proposals included an international redress entity, a trust fund, an entity established within the transitional justice framework, and an entity managed by a core group of Yemeni CSOs.

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**“Redress is difficult, healing is difficult. The government tried but it was difficult. Which authority is going to deal with that? Local? International? Who is going to take the lead?”**

–Organization from Mareb

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For the interviewees, the entity should be in charge of administering payment to victims in the forms of both financial and non-cash compensation. The entity could also play an important role in homogenizing criteria for the determination of victim compensation, ensuring conformity with international human rights standards and addressing the policy issues involved, in addition to other core aspects of its mandate.

A common concern voiced by the interviewees was related to the composition of a future redress entity. For them, the entity should be composed of individuals of the highest moral caliber and professionalism and possess outstanding education credentials. Vetting and other processes would need to be in place to provide as many guarantees as possible that the members did not fall prey to partisan politics and/or corruption.

## 3.2. Perspectives of interviewees for a transitional justice architecture in Yemen

### 3.2.1. A victim-centered approach

Based on the insights shared by a majority of interviewees, a transitional justice process in Yemen should be victim-oriented. This means that long-term options should consider the right of victims to redress and reparations as well as their right to know the truth about violations.

Future processes should also give victims a central role in the articulation and implementation of mechanisms. The participation of victims was seen as essential for their sense of human dignity: interviewees articulated transitional justice as a journey from exclusion to inclusion, from passive to active, from invisibility to a realm where victims would be able to exercise agency and claim their rights. In the words of a female participant from Amran, “Transitional justice can make people feel that they are at the center of their own world—even if it is only their world. That they are the subject of rights and duties that they can create.”

Ready-made formulas that did not consider the participation of victims in developing processes and mechanisms were promptly discarded by interviewees. One example concerned compensation offered to victims without prior acknowledgement of the wrongs and/or violations committed. For many of the respondents interviewed, this was deemed “offensive” to victims.

#### *Truth-telling: “It is where it all starts”*

Interviewees interpreted truth-telling in two different ways: For some, truth-telling was about the acknowledgement of the wrong-doing and harm caused to the victims. For others, it was essentially about the establishment of what had occurred—in other words, knowing the truth.

Respondents under the first category said that the acknowledgement of the truth was the place to start and that it constituted the first step toward providing redress for the victims. An organization from Abyan said that “the process starts with truth-telling which is a measure of redress for victims. After this, comes the possibility for victims to heal and to forgive. Then we can speak about reparations.” Respondents gave further emphasis to this point by noting that providing compensation to victims without acknowledging the wrong(s) done to the victims was not an option.

For other respondents, truth-telling was related to establishing the responsibility of the perpetrator(s). From their perspective, knowing the truth was about ascertaining facts and establishing what had happened. Interviewees under this category emphasized the importance of documenting human rights and IHL for purposes of “truth recovery.” For them, “accountability is really essential but it needs truth.”

*The role of the victims in truth-telling: “Listening to victims makes us think about peace. It also makes us think about how we can relate what they have suffered to other audiences.”*

Insights shared by the interviewees pointed to two distinct conceptualizations of the role of victims: They should be participants in the establishment of truth-telling mechanisms and they should also be their beneficiaries. To give victims an active identity meant fostering processes that enabled their genuine and meaningful participation. From this perspective, providing redress was concomitant with the participation of the marginalized and excluded voices of victims in those processes.

One recommendation made by the respondents was to increase awareness-raising activities aimed at victims. In the words of one participant from Aden, “One essential thing is to have a very good awareness about justice and rights. Without this awareness, victims won’t come forward.” Information about processes from other countries—the examples of Morocco, Tunisia, and South Africa were mentioned—could also help inform relevant activities in Yemen.

### *Redress*

**Interviewees’ views on redress: “Dignity is the most important element for redress to exist in reality.”**

All 26 interviewees agreed that redress was a fundamental feature of a victim-oriented accountability mechanism and of a future transitional justice process in Yemen. The answers provided by the respondents also offered different glimpses of what redress could mean for the victims of the conflict in Yemen and what redress would entail.

Interviewees described three key steps toward redress: 1) financial compensation needs to be complemented by apologies and by the acknowledgement of the wrong done; 2) financial compensation alone is not sufficient to address the full extent of grievances; and 3) compensation should not only be financial but should also include other measures such as jobs, salaries, education, and medical care. In the words of one respondent, “other forms of compensation can be considered, for instance, salaries can be paid, perpetrators can apologize. God knows what will make a victim feel compensated. It is different for everyone.”

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**“Paying victims small amounts of money and taking the steam off from the perpetrators—this is what is happening now. There is no real repentance. This is why this little money, this little compensation is so offensive to the victims. They feel insulted and their misery exploited. It is not even symbolic because symbolic would make it right.”**

—Representative of a victims’ association

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Some respondents also raised critical questions about the need for redress options to consider some of the structural inequalities that lie at the heart of the cycles of violence and conflict seen in much of Yemen’s contemporary history. For them, there had to be more than the possibility afforded to victims to share the truth of events they had experienced. Many of the dilemmas raised focused on the extent to which structural social and economic issues could be factored in assessment(s) with a view toward reparations and future redress measures.

**Perspectives of interviewees on mental health support as a non-material form of redress: “The level of trauma in Yemenis runs deep.”**

For interviewees, compensation to victims of human rights abuses and IHL violations should comprise non-material forms of reparation such as psychosocial or mental health support. For eight respondents, addressing mental health and psychological support was important to understand the non-material side of grievances and wounds. A respondent in Taiz said, “We should consider intangible aspects like the impact that the conflict has had on the mental health of Yemenis.”

For a redress mechanism to include addressing issues of mental health, there has to be a more comprehensive understanding of the impact of the armed conflict on the mental health of Yemenis. As one female participant from Amran explained, “The level of trauma in Yemenis runs deep. It will take years to recover and the work needs to start now.” A respondent from Hodeidah said, “It really comes down to the assessment. We need to understand more about the grievances of victims before we can propose concrete measures.”

Mental health was also raised in connection to violations committed against children in Yemen. According to 10 respondents, these violations can be organized into two main categories: 1) gender-based violence, and 2) child recruitment. Even in cases where children do not suffer a violation directly—



for instance, when they are the relatives of victims—there should be redress measures such as psychological and mental health support that are specifically for them.

In sum, for many respondents mental health should be a feature of redress options and reparations. Transitional justice, accountability, and redress mechanisms in Yemen should also be cognizant of children and youth as special categories of victims who deserve as much representation as possible in any systems of transitional justice.

### **3.2.2. Criminal justice and accountability processes**

#### **Views of interviewees on judicial mechanisms: “If the person is responsible, the person should be prosecuted.”**

There was a range of answers about what forms of judicial mechanisms could address violations. Four participants favored international courts, two preferred hybrid courts, and three thought national courts could be effective. There were also three instances in which respondents chose a judicial option (a court) without offering additional details. Respondents’ choices that did not revolve around a judicial mechanism were sometimes articulated in terms of purpose. Five respondents felt strongly about criminal accountability as one of a judicial mechanism’s primary purposes, but they did not give additional information about the type of mechanism that could serve this purpose.

Respondents also distinguished between the role that the national justice system could play in transitional justice in the longer run and its current capacity to investigate and prosecute perpetrators. This capacity has been severely curtailed by the current armed conflict prevailing in the country. Before the conflict, there were serious concerns about judicial independence *vis-a-vis* political powers in the country and the ability to render justice in an impartial manner before the conflict.

Even if respondents generally agreed that “if the person is responsible, then the person should be prosecuted,” their views became less uniform when compared against other factors such as types of violations, the nationality of perpetrators, and temporal jurisdiction. This could be due to several reasons. Some respondents lacked familiarity with the strengths and weaknesses of the different options. Moreover, despite the increased availability of prosecutorial options in the realm of human rights and IHL—generally speaking—existing options provide limited possibilities to pursue criminal accountability related to the Yemen conflict.

### *An overview of accountability mechanisms for Yemen*

Few accountability mechanisms exist inside and of outside Yemen, including through UN institutions, international courts, regional human rights bodies, sanctions regimes, and non-Yemeni national legal processes. Below are some of the key ones, including limitations to their ability to review or adjudicate on Yemen-related claims:

International Criminal Court (ICC): The ICC has jurisdiction to prosecute individuals alleged to have committed serious international crimes such as genocide, war crimes, crimes against humanity and the crime of aggression. The ICC can only investigate a crime in limited circumstances such as when a country has accepted the court's authority. Yemen signed the Rome Statute on December 28, 2000; however, it has not ratified it.

Group of Eminent International and Regional Experts on Yemen (GEE): The GEE on Yemen was established by the UN Human Rights Council in 2017. Its mandate includes carrying out "comprehensive examination of all alleged violations and abuses of human rights and other appropriate and applicable fields of international law committed by all parties to the conflict since 2014." The GEE is expected to engage with Yemeni authorities and all parties to the armed conflict or stakeholders in order to "to promote accountability for human rights violations and abuses in Yemen." The GEE can make recommendations for corrective action based on its factual and legal findings. It can also provide elements collected during its investigatory work for judicial proceedings. However, the GEE should not be confused with a judicial body and it has no authority to provide redress to victims.

United Nations Security Council Sanctions: A Security Council Sanctions Committee (the "2140 Sanctions Committee") and a Panel of Experts were established pursuant to UNSC Resolutions 2140 (2014). The Panel's main incumbencies include "providing the Committee with information relevant to the designation at a later stage of individuals and entities who may be engaged in or providing support for acts that threaten the peace, security or stability of Yemen." The Panel of Experts can base its findings and recommendations on information obtained from individual victims. Measures adopted can encompass a broad range of options—such as targeted arms embargoes, travel bans, and financial restrictions. However, these measures are not judicial in nature and the Sanctions Committee is not a judicial body.

National Commission of Inquiry: A national committee was established by Republican Decree No. 140 of 2012 to investigate allegations of violations of human rights in 2011. In 2017, its mandate was amended to enable the commission to refer cases to the Yemeni public prosecution and judiciary with a view to undertaking judicial proceedings. In resolution 36/31 adopted on September 29, 2017, the Human Rights Council requested the High Commissioner to provide "substantive capacity-building, technical assistance, advice and legal support"<sup>1</sup> to support the Commission to conduct its investigatory work. To date, it remains unclear whether judicial proceedings have held anyone accountable for human rights violations in relation to the Yemen conflict.

National jurisdictions: Universal jurisdiction allows states to investigate and prosecute individuals for serious human rights abuses regardless of the nationality of the alleged perpetrator or the territory where the abuse took place. However, it is unlikely to find states with national laws allowing for universal jurisdiction to prosecute crimes committed outside of the state's territory—for instance, in Yemen. One of the key limitations concerns the difficulty to collect evidence that can be used for the prosecution of violations perpetrated in Yemen, due to geographical distance and the overall security situation in Yemen, among others.

**Views on the current state of Yemen’s national courts: “The justice system has collapsed.”**

For 22 respondents, Yemen’s courts and the justice system have suffered from long and deep-rooted issues that have been rendered worse by the ongoing armed conflict. Many interviewees used the word “collapsed” to describe the current state of the justice system. One respondent from Taiz explained that the collapse was literal: “The justice system has collapsed and this also means the infrastructure.” In addition to this, the judiciary also suffered from interrupted salaries, human resources gaps, and lack of equipment.

For these respondents, the collapse of the justice system was concomitant with the collapse of the state. To rehabilitate the justice system, they argued, the Yemeni state had to become strong again: “People are eager to have the state back.” Furthermore, problems in the justice system should not be looked at in isolation as they reflect wider and more systematic patterns that affect other state institutions. As one interviewee from Abyan explained, “This is not a sector issue; it is a system issue.”

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**“In present times, the justice system is politicized. The judiciary, in particular, needs to undergo a series of reforms. These reforms are needed to ensure that rights and justice are available to people. But today, the judiciary is more of an extension of the executive branch. There is no real separation of powers. And because of this, there is no real judiciary.”**

–Interviewee from Sana’a

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Other interviewees noted that many of the issues affecting the Yemeni judiciary and justice system predated the events that unfolded in 2014. One such issue concerned the lack of independence of the judiciary. As one interviewee explained, “The human factor in the judiciary is the most important one but also the most challenging one. Today there are no neutral and independent judges. The justice system in Yemen is allegiant to the parties to the conflict.”

In defense of the judiciary, some interviewees also acknowledged the difficulties faced by many judges to maintain independence and impartiality in the midst of conflict. As explained by an interviewee from Mokha, “If the courts are in the territory of the perpetrators, then there is no justice.” Respondents also added that “judges face a lot of risks and threats,” “the hands of the judiciary are tied” and that “the system is also under attack by the

different parties. In some parts of Yemen, judges are not getting their salaries, judges are being humiliated.”

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**“The justice sector is one sector to be assessed by the measures that are taken within the transitional justice process. Because transitional justice is about that too: Reforming and rehabilitating institutions. Many of the institutions that are needed to manage and lead the transitional justice process have collapsed.”**

–Interviewee from Sana’a

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For many interviewees, “One of the greatest needs of the transitional justice process will be the reform of the justice sector.” Capacity building for the judiciary and other justice system actors, especially measures that could contribute directly to the separation of powers and to increasing the independence of the judiciary, were some of the other recommendations made. In the words of an organization from Abyan, “The best thing that could happen would be to divide justice and politics to discard any possibility of political interference in the justice system. One practical measure would be to make appointments for the judiciary based on qualifications and not on political considerations.”

### **Scoping the possibility of a special court for Yemen**

One of the matters that the interview process sought to clarify consisted of identifying elements that could provide a rationale as well as indicate future support for the establishment of a special court. The points below reflect and build upon the perspectives shared by the interviewees about accountability in general, since only two respondents proposed a hybrid tribunal for Yemen.

#### *Contributing to Yemeni ownership*

For interviewees, national ownership was a very important feature of a transitional justice process. That implied supporting national institutions to play a role in accountability and redress processes. In the case of the national judiciary that meant supporting its capacity to conduct judicial proceedings in a manner consistent with international standards. But even in the event of international options, interviewees deemed essential for national stakeholders to—if not participate—then at least contribute significantly to their establishment and to other aspects of their organization.

A special court would provide more guarantees of participation. Unlike international and national courts that could in theory take upon Yemen-related cases—but which have defined temporal, personal, and subject-matter jurisdiction—in the case of a special court these issues are not defined *a priori* but instead need to be discussed before the court is created. This can also trigger more public discussions and have “a positive flow-on effect upon general human rights discourse.”<sup>20</sup>

#### *A more comprehensive mandate*

As noted earlier, options available to Yemeni victims come with a range of limitations. The majority of existing mechanisms, including those available through UN institutions, international courts, regional human rights bodies, sanctions regimes, and Yemeni and non-Yemeni national legal processes—have limited ability to review or adjudicate on Yemen-related claims.

While these limitations may not constitute enough reason *per se* to implement a special court for Yemen, they provide a strong rationale. A special court—to the extent that it reflects the objectives set by a host of different actors—can have a more comprehensive jurisdictional reach than any of the currently available options would be able to achieve on their own. In other words, one of the inherent strengths of a special court would be its flexibility to address the complex cadre of human rights and IHL violations in Yemen in a manner that available options are unable to do.

#### *A balance between international and national elements*

Discussions with the interviewees also revealed a concern about the proportion of international and national elements in a future accountability mechanism—in some instances, more than other “defining features,”<sup>21</sup> for instance subject-matter or personal jurisdiction. For the respondents, a balanced approach was important to ensure that any future mechanisms and the wider future transitional justice process would contribute to institutional reform and more concretely to the post-war rebuilding of the judiciary.

A special court—as a hybrid mechanism of mixed composition and jurisdiction—would address some of these concerns. Since there is no model special court, the mandate for a special court for the Yemeni context could

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20 Open Society Justice Initiative, *Options for Justice—A Handbook for Designing Accountability Mechanisms for Grave Crimes*, (Open Society Foundations, 2018), p. 74.

21 Open Society Justice Initiative, “Options for Justice in Yemen—Mechanism Purpose, Relationship to the Domestic System, and Jurisdiction,” (Open Society Foundations, April 2020), p.13.

reflect a compromise between international and national elements. The mechanism's founding instruments could also address this concern through other aspects of its design, including the integration of international judges and staff, capacity building for local officials, and recruitment processes.

In conclusion, interviewees considering judicial options felt that "all ceilings should be reached." In the case of a special court, for interviewees it would be important for this option to stand side by side with other options, including those proposed with regards to strengthening the national justice system. Moreover, since a mechanism such as a special court could be established for many different purposes, it is important to carry out additional consultations to determine the key aspects of its mandate. Future proposals should avoid being prescriptive, and instead remain at the level of general principles that can be used to seed additional discussions and reflections.

### 3.2.3. Institutional reform

**Views of interviewees on judiciary reform: “One of the greatest needs of the transitional justice process will be the reform of the justice sector.”**

As noted in previous sections, courts in Yemen are operating in an environment increasingly controlled by the parties to the armed conflict. Many are estimated to have fallen prey to partisanship and co-option by political forces. In some circumstances, parallel legal structures have disrupted the functioning of the formal justice sector. In other situations, the justice system has had to confront the appearance of shadow security structures that are not answerable to state authorities.

Reasons invoked by the interviewees in support of judiciary reform included the involvement of the national justice system in order to guarantee the necessary level of Yemeni ownership with regards overall transitional justice efforts. According to responses provided by 11 respondents, the involvement of the judiciary was needed to avoid mechanisms adrift from Yemeni context and reality.

For some respondents, the involvement of the national judiciary could also contribute to the sustainability of the “accountability enterprise” in the country long after the current conflict ends. Including the Yemeni judiciary from the outset would also help avoid the perception of the mechanism and the wider accountability and redress concerns as “foreign imposition” or “foreign interference.”

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**“The war had made matters worse for the courts. There is a lot of political interference in the justice system, in the judiciary. There is really no judicial independence— it is as if a whole parallel system existed in Yemen with that which lives on paper.”**

—Participant from Abyan

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Despite the views shared by the interviewees, the level of difficulties reported remains too generalized to generate proposals for targeted interventions. For instance, certain parallel judicial structures are known to have been established. Yet questions remain about the extent to which judicial operators belonging to the “formal system” have been co-opted by these structures or to the degree of overlap between the two structures. It was also not sufficiently clear what difficulties were a result of the armed conflict and what challenges

were rooted in systemic issues that the justice system in Yemen had been grappling with for years.

In order to make constructive proposals that can support the reform of the judiciary and contribute to its capacity, it will be important to strengthen the evidence base with a view to a more realistic and accurate overview of the justice sector's weaknesses and shortcomings.

Proposals made for institutional reform efforts and better rule of law as a part of a future transitional justice process were made by 6 out of 11 respondents. However, to render that possible and tangible, future efforts should be informed by data that is available and reliable. This is important not only to provide accuracy in the analysis of the justice sector but also to build understanding of the broader set of constraints—and of opportunities—in which the judiciary works.

### **3.3. Recommendations for long-term accountability in Yemen**

#### **3.3.1. Supporting Yemeni civil society organizations to expand the documentation of human rights and international humanitarian law violations**

For a majority of the organizations interviewed, documentation work helped identify new violations and patterns of abuse and generate a greater understanding about the conflict. In addition to this, it also had an impact on the collection of evidence and could prompt mechanisms—such as the UN Group of Eminent Experts (GEE)—to start investigating certain issues. One concrete example given was the non-payment and loss of salaries for public servants as a result of the move of the Central Bank to Aden. The matter was taken in the report of the GEE dated September 2019.<sup>22</sup> Similar concerns were also reflected in the Group of Experts' 2020 report.<sup>23</sup>

To the extent that the work carried out by Yemeni human rights organizations can prompt international mechanisms—such as the GEE—to start investigating certain issues including violations of economic, social, and

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22 Group of Eminent International and Regional Experts, "Situation of Human Rights in Yemen, including Violations and Abuses since September 2014," report submitted to the United Nations High Commissioner for Human Rights (A/HRC/42/17), September 3, 2019, paragraphs 94 and 95.

23 *Ibid.*, paragraphs 103 and 104.



cultural rights,<sup>24</sup> Yemeni organizations must be supported to strengthen their human resources and technical capacity to design tools and methods of information collection and carry out documentation work. Such support is also important with an eye towards deeper-accountability work, such as investigations and the compilation of evidence and case files.

As the already difficult restrictions of access to Yemen and movements inside the country risk becoming more onerous due to the COVID-19 pandemic, the bulk of documentation work as well as accountability-oriented work are expected to fall on the shoulders of Yemeni CSOs. For the organizations concerned, support from the international community and donors is essential to strengthen their technical capacity to carry out documentation work. Support from the international community is also needed to look at new ways of bringing outside technical support for documentation and deeper accountability-oriented work. This can include looking for lessons learned and “solutions” found in other country contexts in response to the restrictions of access resulting from the corona virus pandemic.

### **3.3.2. Supporting Yemeni civil society organizations’ efforts at collecting, preserving, and analyzing information as evidence**

Some of the organizations interviewed distinguished between documentation work from the collection and preservation of evidence. Documentation work, for instance, built out information about violations of human rights and IHL as well as about patterns of abuse, both new and recurrent. However, documentation work did not keep or maintain information at a standard that would be possible to use as part of criminal investigations or criminal accountability processes, and likely not for redress processes. Collection and preservation of evidence, on the other hand, as well as investigations into particular international crimes, their perpetrators and what redress is owed to victims required additional specialized sets of skills and processes.

There is a lack of organizations or mechanisms currently focused on collecting, preserving, and analyzing information and evidence with an eye towards future accountability and redress processes in Yemen or outside of Yemen. At the international level, mechanisms such as the GEE collect and report information; the GEE can also now collect and preserve evidence but it will have limited ability to interact with judicial bodies in the way of mechanisms established for other situations and contexts, for instance the International, Impartial and Independent Mechanism for Syria. In addition to

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24 Ibid., paragraphs 94 and 95.

this, mechanisms such as the GEE are facing increasing non-cooperation of parties. For instance, in its September 2020 report, the GEE noted that it had not been able to access Yemen and other coalition countries despite repeated requests.<sup>25</sup>

At the local level, some Yemeni CSOs are working to fill the capacity gap between documentation for purposes of reporting and investigations for the sake of accountability and redress processes, including engaging with certain judicial *fora*. However, support is required to ensure that these organizations have the training, capacity, and technology needed to conduct in-depth investigations and collect, preserve and analyze information and evidence at the level necessary for effective engagement with various adjudicative *fora*.

Despite the proposals made by the GEE in its 2020 report for the establishment of a “criminally-focused investigation body to conduct further investigations and prepare case-files” and other accountability measures, gaps in the documentation of abuses but also in the collection of evidence and in the conducting of investigations will need to be addressed by Yemeni organizations. However, as one of the organizations interviewed explained, “Most of the focus in Yemen today is still on the documentation. The collection of evidence carried out by national organizations remains weak and does not live up to international standards. It is important to provide more capacity-building.”

To be able to address the gap between documentation and investigative work, states, international NGOs, multilateral institutions, and the donor community should support Yemeni organizations to be sufficiently resourced. This should include capacity and technology to conduct in-depth investigations and collect, preserve, and analyze information and evidence at the level necessary for effective engagement with various adjudicative *fora*.

### **3.3.3. An accountability agenda that addresses violations of social and economic rights**

For the respondents, in addition to harm suffered as a result of the conduct of hostilities—for instance, civilians killed and injured—there was also harm that resulted from the behavior of parties to the conflict and other actors in the economic and social spheres. One of the examples in point was the loss of salaries and rising unemployment as a result of the move of the Central Bank

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25 Group of Eminent International and Regional Experts, “Situation of Human Rights in Yemen, including Violations and Abuses since September 2014,” report submitted to the United Nations High Commissioner for Human Rights (A/HRC/45/6), September 14, 2020, paragraph 7.

to Aden, or the non-payment of salaries to civil servants living in various parts of Yemen.

Interviewees also raised other concerns, such as social exclusion and lack of access to justice. For them, these were issues that had long persisted in Yemeni society. A deeper understanding of the economic and social dimensions of conflict thus also implied looking at the historical disadvantages of certain social groups in Yemeni society, including but not limited to women.

One of the fundamental questions raised by the above concerns is whether issues of economic and social harm can constitute “adjudicable harm.” In other words, the concerns raised by the interviewees trigger critical questions in respect to state responsibility and/or criminal accountability for violations of economic, social, and cultural rights. The September 2019 report<sup>26</sup> of the GEE is illustrative in this regard: there were as many recommendations made by the GEE about improving international humanitarian IHL compliance in the conduct of hostilities as there were about measures to improve the right of Yemen’s population to an adequate standard of living and the enjoyment of social and economic rights.

Beyond possible “litigation pathways,” the economic and social dimensions of the conflict can also be influential in bringing about various redress processes and reparation options for the victims. For instance, the issue of corruption, which was often raised by the respondents, or the issue of “the weaponization of humanitarian aid,” could lead to cutting-edge work on asset recovery with respect to legal claims on behalf of victims.

Much of the future transitional justice process in Yemen will be about finding innovative ways to translate the economic and social grievances that conflict parties and other actors have caused into elements that can inform the creation of accountability and redress mechanisms as well as guarantees of non-repetition. To make this possible, the donor community, states and international organizations should support human rights organizations to document violations of economic and social rights including to design new tools and methods of information collection.

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26 Group of Eminent International and Regional Experts, “Situation of Human Rights in Yemen, including Violations and Abuses since September 2014, as submitted to the United Nations High Commissioner for Human Rights (A/HRC/42/17), September 3, 2019. – <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/240/87/PDF/G1924087.pdf?OpenElement>.

### **3.3.4. Harnessing open-source technology tools to support and strengthen accountability and redress efforts in Yemen**

In the last decade, there has been an exponential increase in the visual documentation of the conduct of hostilities mediated through technological advances such as machine learning and geospatial technologies.

With physical access to armed conflict contexts being increasingly difficult and in many instances blocked by the conflict parties, visual documentation has become an important component of justice and accountability efforts. As one organization from the field has rightly noted “without it there would have been a reliance on anecdotal evidence.”

Open-source technology withholds many potential uses and data visualization, in particular, can contribute to a wide array of processes—judicial in the case of accountability efforts—but also other processes such as advocacy efforts in the context of an armed conflict. One example is data collection to scrutinize certain political processes, for instance de-escalation efforts and declared ceasefires.

There is room for open source technology to encompass new areas of analysis in respect to the conflict in Yemen, such as social and economic issues. Such developments can enhance the documentation work done by human rights organizations. They can also contribute to the work carried out by mechanisms such as the GEE and the Panel of Experts and thus contribute to the process of bringing about future accountability measures.

Not least importantly, such developments can inform future redress routes for the victims. Some possibilities that have been suggested for Yemen include the use of datasets to inform reconstruction plans informed by detailed data information on infrastructure damage across the country. This data could also be used to shape and influence policy commitments on victims and redress by agencies looking at reconstruction planning, including those established by some of the conflict parties.

To achieve the above, human rights organizations need additional support from the donor community and from states. More concretely, more opportunities should be explored to strengthen the contributions that these organizations can make to accountability and redress efforts in Yemen. One recommendation would be to invest in the capacity of these organizations to develop new and innovative methods to discover relevant content and material.

With conflict parties suppressing independent media and other sources of reporting on violations, this support is also essential for organizations to design content verification processes that lend the necessary credibility and reliability to accountability efforts. Moreover, it could also encourage the development of professional standards that address the challenges of using open-source information as evidence by judicial bodies in the case of accountability efforts.

## 4. Part III–Conclusion

To inspire confidence for a future transitional justice process in Yemen, a sense of what can realistically be achieved is necessary. The following recommendations complement many of the views and recommendations already included in earlier sections of the report. They take into account the process-based approach that has been proposed by the interviewees and provide guidelines to support action by a broad range of actors, including the international community, financing partners, national governments, and Yemeni civil society.

Central to the recommendations below is the formulation of a Yemeni vision of post-conflict accountability and transitional justice that can help prioritize goals and outcomes. Establishing clear roles and functions of local, national, and international stakeholders is also crucial in supporting medium and long-term accountability goals for Yemen.

### 4.1. Programmatic directions for transitional justice in Yemen

#### 4.1.1. Supporting a nationally-led transitional justice process in Yemen

##### *Supporting and promoting the role of Yemeni civil society*

Interviewees envisioned a leading role for Yemeni civil society in a future process of transitional justice. Civil society was perceived as one of the few neutral constituencies in today's Yemen. However, many interviewees also acknowledged the increasing pressure that Yemeni CSOs are facing from the parties to conflict.

In order for civil society in Yemen to play a leading role in a future transitional justice process, which includes the design of accountability mechanisms, the international community must support the capacity of these organizations to conduct themselves with neutrality and transparency. Suspicions about the intentions of CSOs can create distrust amongst victims and vis-à-vis parties to the conflict. Harassment and reprisals against CSOs must be swiftly denounced in order to safeguard these organizations' neutrality and thus their operational space and access to victims and affected communities.

The international community should also support the technical capacity of Yemeni civil society. This is essential to develop proposals for criminal

accountability and transitional justice. Without these, it will be hard for demands for justice to gain space in peace negotiations. The early support of the OSESGY regarding the role of Yemeni CSOs in formulating a Yemeni vision for transitional justice, accountability, and redress is essential. Interviewees have also emphasized that the adoption of processes by the OSESGY is crucial to continue ensuring that civil society efforts and recommendations are reflected in discussions about achieving durable peace in Yemen.

### *Increasing legal awareness about transitional justice processes and mechanisms*

In the 2016 report,<sup>27</sup> the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence made a strong case about CSOs' and victims' level of knowledge and the positive impact this could bear on the outcome(s) of a future transitional justice, accountability and redress process.<sup>28</sup>

Referring to discussions held in Yemen during the NDC, the Special Rapporteur noted that there had been little familiarity with key concepts and terms and that CSOs had struggled as they lacked a common understanding of key concepts.<sup>29</sup>

For the respondents, promoting legal awareness activities was also seen as essential to increase the level of knowledge of victims and other stakeholders about the transitional justice process. Without a more informed understanding of the “technical” aspects of the process and mechanisms, they argued, it would be difficult to formulate concrete proposals and to advocate for transitional justice policy changes.

To help raise the political profile of the accountability and transitional justice agenda in Yemen, the UN and other relevant organizations should support legal awareness-raising activities for Yemeni CSOs and victims' associations. This support could include technical exchanges on comparative experiences from other contexts to inform Yemen-related discussions.

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27 Report to the General Assembly on National Consultations Concerning the Design and Implementation of Transitional Measures (A/71/567), 2016.  
[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/71/567](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/567).

28 Elisabeth Salmon, “Reflections on International Humanitarian Law and Transitional Justice: Lessons to Be Learnt from the Latin American Experience,” *International Review of the Red Cross*, Volume 88, Number 862, (June 2006), p. 329.

29 Report to the General Assembly on National Consultations, see supra No. 24.

*Situating transitional justice in the humanitarian-development-peace triple nexus*

Almost one year after the WHO declared COVID-19 an international public health emergency, the pandemic's crisis response and financing have raised many concerns about under-investment in other areas. As resources continue to be mobilized to curb additional waves of the corona virus, as well as the rise and spread of new coronavirus variants, more questions are raised about the funding that will be available to support activities falling outside what is understood as "emergency response." As one report noted, "There is a missing link in the financing response and little funding provided for programming that falls between 'masks and budget support.'"<sup>30</sup>

Beyond reductions in aid budgets and less private investment available, COVID-19 has also exposed significant shortcomings in crisis response systems. The latter includes a failure to prepare for the impact of the pandemic on justice systems. In some contexts, especially those where armed conflict is strife, the pandemic risks exacerbating systemic challenges, including lack of access to justice, prison overcrowding, and judicial backlogs.

This report recommends Yemeni organizations integrate their accountability-related work in the humanitarian-development-peace building nexus. By contributing to operationalizing the "Triple Nexus"<sup>31</sup> and the Sustainable Development Goals, particularly SDG 16 on peace, justice, and inclusion, the organizations would be in a stronger position to address the additional pressures induced by the pandemic regarding financing their activities. It would also strengthen the financial capacity of the organizations concerned to ensure continuity to their activities in the field of accountability and transitional justice.

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30 Norwegian Refugee Council, *Make or Break: The Implications for Covid-19 for Crisis Financing*, July 2020. [https://www.nrc.no/globalassets/pdf/reports/make-or-break--the-implications-of-covid-19-for-crisis-financing/nrc\\_make\\_or\\_break\\_implications\\_covid19\\_crisis\\_financing\\_ov.pdf](https://www.nrc.no/globalassets/pdf/reports/make-or-break--the-implications-of-covid-19-for-crisis-financing/nrc_make_or_break_implications_covid19_crisis_financing_ov.pdf).

31 In his remarks to the General Assembly on taking the oath of office in December 2016, the Secretary-General designate explained that "humanitarian response, sustainable development and sustaining peace are three sides of the same triangle." <https://www.un.org/sg/en/content/sg/speeches/2016-12-12/secretary-general-designate-ant%C3%B3nio-guterres-oath-office-speech>.



### 4.1.2. Creating an enabling environment for transitional justice in Yemen

#### *Trust-building steps with the Judiciary*

As was seen in previous sections, for some respondents, judiciary reform should be one of the components of a future transitional justice process. Without a strengthened rule of law sector, they argued, accountability and transitional justice would not be sustainable in the longer run. Despite their clear recommendations, respondents did not seem sure about where and how to start. Some of the measures proposed—such as the harmonization of domestic legal norms with international standards and the adoption of legislation about reparations and victim participation—are also difficult to solidify without key legislative and executive organs like the Yemeni Parliament being fully restored.

In sum, despite the understanding that institutional reform can strengthen the technical capacity of the judiciary, this is a long-term endeavor and it will take time to achieve concrete results. One of this report's recommendations is to gain a better understanding about the operational judicial capacity across Yemeni territory. A first measure in this process can be to initiate a series of consultations with stakeholders from the judiciary and criminal justice sector in order to scope receptivity to a future technical assessment exercise. This will help identify the areas that institutional reform should be focusing on as a matter of priority as well as the role that the judiciary could play in with regards transitional justice/accountability and redress.

#### *Reaching out to victims*

In order to continue supporting the voices of victims as key components in the design and implementation of transitional justice processes and mechanisms in Yemen, comprehensively understanding who the victims are as well as what their needs are constitute a fundamental step to render the process a victim-oriented one.

Taking the time to build channels of communication that promote awareness and understanding about transitional justice are fundamental to manage expectations. They are also important to ensure the adoption of processes that are victim-sensitive.

A possible step in this direction could be the articulation of an outreach plan to victims as a precursor to more targeted actions in the future such as a victimization survey and/or a needs assessment. This step could also support victims to develop a firmer position on accountability and redress matters

before establishing a more formal coalition that can serve as a platform to voice their demands.

### 4.1.3. Integrating justice in political processes

#### *Building complementarity and linkages between peace and justice*

One female participant from Sana'a used the expression "the Yemeni state has to be back on its feet" to describe two of the requisite conditions for accountability and transitional justice: functioning state institutions and peace. Even though other respondents also insisted on "dealing with peace" before addressing accountability and transitional justice, for others what "peace" and "an end to conflict" meant in Yemen today had been significantly changed by the protracted nature of the Yemeni conflict, compounded by the likelihood that the effects of armed conflict will continue to reverberate for years to come. From their perspective, peace and justice should not be sequenced as one outcome temporally succeeding another but instead as two goals to be pursued simultaneously. As one respondent said, "Peace and justice. Not peace or justice."

Almost all of the suggestions made by the respondents pointed to the need to render the peace talks more inclusive of transitional justice and human rights. For a number of respondents, supporting Yemeni civil society to articulate their vision of justice and accountability was an essential first step to ensure that justice gained more space in the political landscape in Yemen, including in the peace negotiations.<sup>32</sup> This report recommends that the OSESGY includes a focused discussion on accountability in the monthly agenda as well as the topics of redress and transitional justice. Inclusion of these issues can ensure that they these are meaningful elements in the negotiations with different parties to conflict and take into consideration the inclusion of Yemeni CSOs working on those issues.

#### *Returning language to Security Council resolutions*

While Yemen has drawn few references in recent debates about transitional justice organized within the UN system,<sup>33</sup> it should be noted that

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<sup>32</sup> For 11 respondents, the work led by the OSESGY should be more inclusive of accountability and other forms of transitional justice. Some measures proposed were: victims should be reflected in the discussions held at the negotiations table among the parties to the conflict; human rights, rule of law and democracy should be part of the peace agreement; and transitional justice should be part of a peace settlement. One female respondent suggested "putting accountability on the table so that the parties can discuss it."

<sup>33</sup> See "Reconciliation Must Evolve to Reflect Growing Complexity of Today's Conflicts, Participants Stress during Day-long Security Council Open Debate," (SC/14024),

accountability and other forms of transitional justice were included in the early Security Council resolutions endorsing the GCC initiative for a political transition in the country. As early as 2012, the Security Council called upon the Yemeni government “to address transitional justice and support national reconciliation,” including the passing of specific legislation as well as investigations into human rights abuses perpetrated against protestors in 2011 in order to ensure full accountability.”<sup>34</sup> Similar language was found in Security Council resolutions of 2014 and 2015,<sup>35</sup> reflecting both a collective commitment to upholding human rights as well as an understanding that a political transition in Yemen had to include concrete steps in support of transitional justice and accountability such as investigations into alleged human rights violations. Despite this, as compliance with human rights and IHL has been eroding since 2014, language and references to accountability and transitional justice have been gradually dropped from Security Council resolutions and other instruments adopted from 2015 onwards.<sup>36</sup>

By creating legal obligations for states, language plays an essential role in promoting accountability. For this reason, this report recommends that language on accountability be re-incorporated into Yemen-specific Security Council resolutions. This would send a strong signal to the parties to the conflict that ongoing violations are not met with impunity. Taking a more “linguistically” assertive approach to violations of human rights norms and of IHL would also complement the efforts made by existing mechanisms – such as the GEE and the Panel of Experts —in raising attention about the violations and abuses committed in Yemen since 2014.

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November 19, 2019. <https://www.un.org/press/en/2019/sc14024.doc.htm>. Also, letter dated February 4, 2020, from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General (S/2020/98\*), February 5, 2020. [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2020\\_98.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_98.pdf).

<sup>34</sup> See Security Council (S/RES/2051), June 12, 2012. <http://unscr.com/en/resolutions/2051>.

<sup>35</sup> Security Council (S/RES/2140), February 26, 2014. <http://unscr.com/en/resolutions/2140>, and (S/RES/2201), February 15, 2015. <http://unscr.com/en/resolutions/2201>.

<sup>36</sup> To the exception of UNSC Resolution 2201 (2015), February 15, 2015.