



Yemen's Compliance with the International Covenant on Economic, Social and Cultural Rights: The Death Penalty

Submitted by The Advocates for Human Rights

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and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. The conflict in Yemen continues to be one of the largest humanitarian crises in the world. The Group of Eminent International and Regional Experts (a group established by the United Nations Human Rights Council¹) reported that Yemen has faced over six years of unceasing suffering,² and there continue to be regular incidents of enforced disappearances, arbitrary detention, torture, and other forms of ill-treatment.³
2. The Government of Yemen⁴ has taken some steps to investigate and prosecute human rights abuses, but the ongoing conflict, compounded by the COVID-19 pandemic, has severely limited its ability to investigate and prosecute people responsible for human rights violations.⁵ By contrast, the *de facto* authorities⁶ do not appear to have taken steps to combat human rights abuses, and instead continue to use trumped up charges of “spying” to prosecute journalists and human rights defenders, even sentencing them to death.⁷
3. Violence and discrimination against journalists, human rights defenders, women, minorities, children, and LGBTIQ+ individuals remain prevalent in Yemen. While the *de facto* authorities are primarily responsible for the imposition of the death penalty at present, longstanding issues of discrimination against minority groups, in particular the Muhamasheen, may be facilitating the *de facto* authorities’ recruitment efforts and risk further prolonging the conflict.

¹ In late 2021, the UN Human Rights Council chose not to renew the Group of Eminent International and Regional Experts’ mandate. See International Commission of Jurists, “Yemen: failure to renew Group of Eminent Experts’ mandate a serious blow to accountability,” (Oct. 8, 2021). Available online at: [https://www.icj.org/yemen-failure-to-renew-group-of-eminent-experts-mandate-a-serious-blow-to-accountability/#:~:text=The%20UN%20Human%20Rights%20Council's,Jurists%20\(ICJ\)%20said%20today](https://www.icj.org/yemen-failure-to-renew-group-of-eminent-experts-mandate-a-serious-blow-to-accountability/#:~:text=The%20UN%20Human%20Rights%20Council's,Jurists%20(ICJ)%20said%20today).

² Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, § III.

³ Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, § IV(C).

⁴ In this report the term “Government of Yemen” refers to the internationally recognized Yemeni Government.

⁵ Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, ¶ 75.

⁶ The “*de facto* authorities” concerns the authorities based in Sana’a, where Ansar Allah is the primary political actor, and is supported by an armed group referred to as the Houthis. These authorities are frequently referred to in United Nations publications as the “*de facto* authorities.” See e.g., Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, n. 3.

⁷ Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, ¶ 58.

4. “Yemen ranks second to last in terms of gender equality.”⁸ Women have been sentenced to arbitrary detention and denied fair trial rights on “morality” charges,⁹ children continue to be recruited and used as soldiers in the hostilities—only to be later criminally tried for their involvement in the conflict—and the Yemeni justice system has been used to reinforce traditional gender roles. Difficulties in maintaining clear birth records prevent the Government of Yemen from adequately protecting children, including from the improper imposition of the death penalty against children fighting with rebel groups.

Yemen fails to uphold its obligations under the International Covenant on Economic, Social and Cultural Rights

5. The death penalty remains in force in both law and practice,¹⁰ and it is authorized for a variety of offenses including: aggravated murder or any offences resulting in death, terrorism-related offenses, false testimony, rape, homosexuality, adultery, treason, espionage, military-related offences, and apostasy.¹¹ The United Nations High Commissioner for Human Rights estimated that a total of 315 different offenses are punishable by death in Yemen.¹² In accordance with the law of *Qisas*, crimes resulting in death must be punished by the death penalty unless the family of the victim pardons the offender.¹³
6. No death sentence can be carried out without the President’s endorsement.¹⁴ Most executions are carried out by firing squad,¹⁵ though they may also be carried out by beheading.¹⁶ Executions for certain crimes including providing false testimony, adultery,

⁸ Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, ¶ 67.

⁹ Human Rights Council, 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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, ¶ 69.

¹⁰ Amnesty International, “Yemen,” Accessed Dec. 22, 2022, Available online at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/>.

¹¹ Republican Decree for Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Unofficial English translation available online at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>, arts. 125-128, 141, 179, 226-228, 234, 249, 259, 263-264, 280, 321.

¹² Human Rights Council, *Situation of human rights in Yemen: Report of the United Nations High Commissioner for Human Rights*, (Sept. 7, 2015) U.N. Doc. A/HRC/30/31.

¹³ Republican Decree for Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Unofficial English translation available online at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>, arts. 13, 51-3.

¹⁴ The Constitution of the Republic of Yemen, art. 123.

¹⁵ Amnesty International, *Death Sentences and Executions: 2019*, (London: Amnesty International, 2020), 10. Available online at: <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

¹⁶ Article 485 of the [2] provides that “[t]he execution of the death sentence shall be by means of severing the head of the sentenced defendant by the sword’s edge at the neck, or shooting with bullets until death, without any mangling or torture.” Republican Decree for Law No. 13 for the Year 1994 Concerning Criminal Procedures. Unofficial English translation available online at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83553/92349/F757830823/YEM83553.pdf>, art. 485.

and homosexuality may be carried out by stoning.¹⁷ Some crimes, such as spying, carry a mandatory death sentence.¹⁸

7. In 2019, Yemeni authorities sentenced at least 55 people to death and carried out 7 executions.¹⁹ In July 2019, the *de facto* authorities' Specialized Criminal Court sentenced 30 academics and politicians to death on espionage and treason charges that Amnesty International has called "trumped up." Before trial, "those sentenced has faced alleged torture, excessive pre-trial and incommunicado detention, and a lack of access to medical care or legal counsel."²⁰ Similarly, in April 2020 the Specialized Criminal Court sentenced 4 additional journalists to death.²¹ And on December 7, 2022, the Specialized Criminal Court of First Instance convicted 16 individuals for "communicating with and assisting the 'Saudi-Emirati aggression countries,' and sentenced them to death by firing squad."²²
8. Use of the death penalty has increased in recent years. According to Amnesty International, authorities in Yemen carried out at least 5 executions in 2020 and at least 14 in 2021.²³ At least nine of the executions in 2021 were carried out in public.²⁴ In 2021, the *de facto* authorities carried out all of the recorded executions.²⁵ Amnesty International reports that on September 18, 2021, the *de facto* authorities executed nine people by gunfire "in front of hundreds of people in Sanaa's Tahrir square" after the "Specialized Criminal Court" sentenced them to death.²⁶ Amnesty International has documented that at least one of those nine people had been under 18 years of age at the time of the offense.²⁷

¹⁷ Republican Decree for Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Unofficial English translation available online at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>, arts. 179, 263-264.

¹⁸ *Yemen: Illegal detention remains rife after five years of war*, Amnesty International, (Mar. 24, 2020), Available online at: <https://www.amnesty.org/en/latest/news/2020/03/yemen-illegal-detention-remains-rife-after-five-years-of-war/>.

¹⁹ Amnesty International, *Death Sentences and Executions: 2019*, (London: Amnesty International, 2020), 9, 11. Available online at: <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

²⁰ Amnesty International, *Death Sentences and Executions: 2019*, (London: Amnesty International, 2020), 13. Available online at: <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

²¹ See e.g., Amnesty International, *Yemen: Further information: Journalist denied urgent health care: Tawfiq al-Mansouri*, (Aug. 1, 2022), Available online at: <https://www.amnesty.org/en/documents/mde31/5895/2022/en/>.

²² Euro-Med Human Rights Monitor, *Death penalty for 16 Yemenis reflects high cost of Houthi impunity*, (Dec. 18, 2022), Available online at: <https://euromedmonitor.org/en/article/5480/Death-penalty-for-16-Yemenis-reflects-high-cost-of-Houthi-impunity>.

²³ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 11. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

²⁴ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 14. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

²⁵ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 4. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

²⁶ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 50. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

²⁷ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 14, 50. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

9. Authorities in Yemen sentenced at least 298 people to death in 2021, an increase from at least 269 in 2020.²⁸ *De facto* authorities issued at least 113 of those death sentences in 2021, while the Government of Yemen issued at least 185 death sentences.²⁹ According to Amnesty International, “[i]n both cases most death sentences were issued in [the defendant’s] absence.”³⁰
10. The International Covenant on Economic, Social and Cultural Rights does not expressly prohibit the death penalty, but lack of access to economic, social, and cultural rights may result in an uneven and discriminatory application of the death penalty.
11. This report analyzes several of the issues the Committee identified in its recent List of Issues for Yemen, including, as relevant to the death penalty, its requests for:
 - an update regarding the State’s efforts to ensure that the maximum available resources are being devoted to give effect to the Covenant rights (art. 2(1));
 - information regarding the steps taken to ensure that non-discrimination efforts, including strategies to address discrimination against the Muhamasheen, are actualized (art. 2(2)); and
 - information regarding child labor, forced and early marriage, recruitment of child soldiers, sexual harassment and rape, and child registration at birth (art. 10).

The report also addresses issues relating to women, gender and the death penalty.

I. The Government of Yemen fails to ensure maximum available resources are devoted to give effect to Covenant rights, especially in areas under the *de facto* authorities’ control, as politically motivated prosecutors, unfair trials, and death sentences remain ongoing (List of Issues, paragraph 8).

12. The Committee requested that Yemen provide an update regarding “how the State party uses its available resources to the maximum to give effect to the Covenant rights.”³¹ As set forth in the List of Issues, the Committee has focused principally on financial expenditures to ensure that the Covenant’s rights are maintained, including information to understand the Government’s efforts to ensure that sufficient funds are allocated towards social benefits programs, such as employment, social security, food, housing, water and sanitation, health, education and culture.
13. In response to the List of Issues, the Government of Yemen provided statistical information regarding its allocation of funding.³² It also described a number of new legislative efforts,

²⁸ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 12-13. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

²⁹ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 50. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

³⁰ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 50. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

³¹ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the third periodic report of Yemen*, (Nov. 5, 2020), U.N. Doc. E/C.12/YEM/Q/3, ¶ 8.

³² See Committee on Economic, Social and Cultural Rights, *Yemen’s Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, pp. 19-21.

including efforts to reform the central bank to combat misallocation of public funds and to address the public debt.³³ Despite these measures, the Government of Yemen has not provided additional statistical information showing the effect, if any, these efforts have had in helping to mitigate the vast impoverishment the people of Yemen are currently experiencing.

14. Indeed, the World Bank has found that “Yemen has long been the poorest country in the Middle East and North Africa” and that by 2021, the value of the Yemeni riyal depreciated to historic lows which has increased food prices and pushed more people into extreme poverty.”³⁴
15. These circumstances are likely to result in people living in extreme poverty being disproportionately affected by the death penalty. UN experts have warned that “[p]eople living in poverty are disproportionately affected by the death penalty.”³⁵ Moreover, in the specific context of Yemen, *de facto* authorities have been known to impose the death penalty against individuals seeking to expose human rights violations in the country, through journalistic efforts or otherwise acting as human rights defenders.³⁶
16. **Suggested recommendations** relating Yemen’s efforts to ensure maximum available resources are devoted to give effect to Covenant rights:
 - Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards;
 - In the interim, eliminate the death penalty as a possible sentence for offenses that do not involve an intentional killing committed by the person being sentenced, and eliminate the mandatory death penalty;
 - In the interim, order that all persons sentenced to death by virtue of the mandatory death penalty receive resentencing hearings in which they are authorized to present evidence in mitigation, including evidence related to socio-economic status and discrimination, if relevant;
 - On at least an annual basis, publish statistical information regarding the measurable impact of Yemen’s reforms to its public expenditures including, *inter alia*, updates regarding the percentage of the population with access to social rights, employment, social security, food, housing, water and sanitation, health, and education;

³³ Committee on Economic, Social and Cultural Rights, *Yemen’s Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶¶ 73-76.

³⁴ World Bank, *The World Bank in Yemen*, (Oct. 20, 2022) Available online at: <https://www.worldbank.org/en/country/yemen/overview>.

³⁵ UNOHCHR, *Death penalty disproportionately affects the poor, UN rights experts warn*, (Oct. 6, 2017), Available online at <https://www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn#:~:text=%E2%80%9CIf%20you%20are%20poor%2C%20the,from%20lower%20socio%2Deconomic%20gro> ups.

³⁶ Human Rights Council, *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, (Sept. 13, 2021), U.N. Doc. A/HARC/48/20, ¶ 58.

- Seek out and disseminate information on the *de facto* authorities' efforts (if any) to comply with Yemen's obligations under the convention;
- Provide financial resources in criminal proceedings against people living in poverty so that they can participate on an equal basis in restitution practices, such as the payment of blood money, that may result in forgiveness from victims' families or mitigated sentencing.

II. Yemen has failed to ensure that non-discrimination efforts are fully actualized so as to ensure that the use of the death penalty is minimized (art. 2(2)) (List of Issues, paragraph 10).

17. The Committee also expressed concern regarding the lack of information regarding Yemen's policies and strategies to address discrimination against marginalized groups, in particular the Muhamasheen. The List of Issues focuses principally on the lack of adequate living and working conditions. But it is equally important to consider how discrimination against the Muhamasheen may result in an increase in the use of the death penalty against them.
18. Yemen's State Party report explains that the Government of Yemen has had issues in obtaining data regarding marginalized groups and asserts that these challenges are largely because of the Houthi coups. Nonetheless, the Government of Yemen has committed to working with non-governmental organizations to try to resume various social policies and programs to assist disadvantaged and marginalized groups.
19. The Government of Yemen's response does not directly address the Muhamasheen, or efforts to combat discrimination against them.³⁷ But it does express concerns regarding the governance used by the *de facto* authorities, and acknowledges that the *de facto* authorities have not sought to ensure that their actions comply with Yemen's obligations under the Covenant. Notably, in the Government of Yemen's State Party Report, it recalls that "cases have been filed by the competent authorities . . . against armed leaders for the Houthi militias."³⁸
20. Unfortunately, it is not clear from the State Party Report precisely what charges Yemeni authorities brought against the Houthi leaders, and so it is not clear what effect (if any) these cases will have on the *de facto* authorities' use of the death penalty. Moreover, the Government of Yemen itself is responsible for application of the death penalty in the ongoing conflict; the Government of Yemen's Public Prosecutor has sought (and obtained) a death sentence for leaders from the Houthi militia forces.³⁹
21. These efforts to seek accountability may inadvertently exacerbate the plight of the Muhamasheen. The Muhamasheen experience extreme poverty. As a result, militia groups have taken advantage of their situation and have used financial promises to recruit

³⁷ The Government of Yemen's report refers to the 'marginalized groups' (al-fiat al-muhamasha) as opposed to the proper noun Muhamasheen (meaning the 'marginalized'). See LOI ¶ 83.

³⁸ See Committee on Economic, Social and Cultural Rights, *Yemen's Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶ 30(5) (unofficial translation).

³⁹ Committee on Economic, Social and Cultural Rights, *Yemen's Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶ 30(5) (discussing Case No. (4) 2020, and recalling that in the Court's ruling).

Muhamasheen (adults and minors) to fight on their behalf.⁴⁰ Given the wide applicability of the death penalty in Yemen,⁴¹ especially in the context of military and para-military related crimes, failure to address the financial plight of the Muhamasheen is likely to exacerbate the frequency that these individuals are recruited, prosecuted, and ultimately sentenced to death.

22. The Muhamasheen are also subject to social stigmas and “rarely [have] anyone to defend them.”⁴² Such lack of representation likely will impede their fair trial rights in capital cases.
23. In addition to the Muhamasheen, the Committee should address other forms of intersectional discrimination as they relate to the death penalty. Notably, homosexuality remains a crime punishable by death. The Yemeni Penal Code criminalizes same-sex sexual conduct.⁴³ Under Yemen’s interpretation of Islamic law, people arrested on charges related to homosexuality are subject to the death penalty by stoning.⁴⁴ Even though there have been no reported executions based on sexual orientation or gender identity or expression in more than a decade, the existence of the penalty compounds violations of the economic, social, and cultural rights of the LGBTIQ+ community in Yemen.⁴⁵
24. **Suggested recommendations** relating to discrimination, including discrimination against the Muhamasheen:
 - Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards;
 - In the interim, eliminate the death penalty as a possible sentence for offenses that do not involve an intentional killing committed by the person being sentenced, including removing the death penalty as a possible punishment for same-sex consensual sexual conduct, and eliminate the mandatory death penalty;
 - In the interim, order that all persons sentenced to death by virtue of the mandatory death penalty receive resentencing hearings in which they are authorized to present evidence in mitigation, including evidence related to socio-economic status and discrimination, if relevant;
 - Take concrete measures to adopt welfare or other social benefits campaigns specifically targeting the Muhamasheen;

⁴⁰ Mahmoud Rizq, Insaf, *Political, Economic and Cultural Factors & the Suffering of the Muhamasheen*, (Sept. 8, 2020), Available online at: <https://insaf-ye.org/archives/2275>.

⁴¹ See *supra* ¶¶ 5-7.

⁴² Mahmoud Rizq, Insaf, *Political, Economic and Cultural Factors & the Suffering of the Muhamasheen*, (Sept. 8, 2020), Available online at: <https://insaf-ye.org/archives/2275>.

⁴³ Republican Decree for Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Unofficial English translation available online at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>, art. 270.

⁴⁴ Republican Decree for Law No. 12 for the Year 1994 Concerning Crimes and Penalties. Unofficial English translation available online at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/83557/92354/F1549605860/YEM83557.pdf>, arts. 249, 264.

⁴⁵ U.S. Department of State, “2019 Country Reports on Human Rights Practices: Yemen,” Accessed 7 Aug. 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/yemen/>.

- Sponsor educational and other de-stigmatization campaigns regarding the Muhamasheen;
- Provide financial resources in criminal cases involving indigent persons, including the Muhamasheen, to ensure that they can participate on an equal basis in restitution practices, such as the payment of blood money, that may result in forgiveness from victims' families or mitigated sentences;
- Ensure that all Muhamasheen and LGBTIQ+ persons charged with capital offenses have access to fully qualified legal counsel, including financial support for a thorough defense investigation and provision of expert witnesses, particularly in support of a mitigated sentence;
- Provide and publish transparent information on the number of charged with capital offenses, sentenced to death, and on death row, disaggregated by status as Muhamasheen, age, gender, nationality, race, ethnicity, crimes of conviction, date of conviction, relationship to the victim, status of any appeals or requests for pardon or clemency, and date of execution (if applicable), to facilitate an analysis of people on death row;
- On at least an annual basis, publish statistical data regarding how authorities monitor and document acts of harassment, persecution, violence, and discrimination perpetrated against LGBTIQ+ individuals, including all reports of such acts over the reporting period, how authorities responded in each case, and the ultimate outcome;
- Regularly publish data regarding local laws, regulations, and policies intended to protect the rights of LGBTIQ+ individuals (if any) and prevent and punish violence and discrimination on account of sexual orientation and gender identity or expression; and
- On at least an annual basis, publish information on the number of persons charged, tried, or sentenced for violating provisions of the penal code that criminalize sexual conduct between persons of the same sex, including demographic information about the persons charged, such as age, gender, nationality, race, ethnicity, status as Muhamasheen, crimes of conviction, date of conviction, penalty imposed, and status of any appeals or requests for pardon or clemency.

III. Yemen has failed to adequately protect children from the death penalty (art. 10) (List of Issues, paragraphs 16, 18).

25. The Committee identified a number of concerns regarding children, and requested, in particular, Yemen to “provide information on concrete measures taken by the State party to prevent the further recruitment of children into armed forces and armed groups.”⁴⁶ It

⁴⁶ Committee on Economic, Social and Cultural Rights, *Yemen's Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶ 16.

also requested that Yemen provide an update on “measures to ensure that all children . . . are registered at birth and receive a birth certificate free of charge.”⁴⁷

26. The Government of Yemen’s response highlights its long-standing efforts to work with international organizations, such as UNICEF.⁴⁸ The Government of Yemen also explained that it will be working with UNICEF and the Yemeni Personal Status Authority on a project to expand children’s access to birth certificates, including by launching a campaign to raise community awareness on the importance of birth registration and coordination with the education and health sectors.⁴⁹
27. Even though Yemen has outlawed the use of the death penalty against children,⁵⁰ children nonetheless continue to be at risk of being sentenced to death due to difficulties in assessing their age. Yemen’s efforts to expand children’s access to their birth certificates should be lauded, but they are currently insufficient to ensure that no person is sentenced to death for a crime committed while under the age of 18 years. As discussed above, Amnesty International has documented that at least one person who was executed in Yemen in 2021 had been under 18 years of age at the time of the offense.⁵¹
28. **Suggested recommendations** relating to the protection of the family, and in particular children, from the death penalty:
 - Immediately commute the death sentences of all persons sentenced to death for an offense they committed when under the age of 18 years, or when there is a reasonable doubt that the person was age 18 or older at the time of the offense;
 - In capital cases, ensure that the prosecution bears the burden of proving beyond a reasonable doubt that a youthful defendant was at least 18 years of age at the time of the alleged offense;
 - In capital cases involving youthful defendants, ensure that defense counsel has sufficient funding to prepare and present expert testimony regarding the defendant’s actual age, if the defendant does not have a valid birth certificate;
 - Ensure that no person who was recruited to join an armed group when under the age of 18 can face the death penalty for any crimes committed while involved with the armed group;
 - In the interim, ensure that defense counsel representing a person in a capital case who joined an armed group when under the age of 18 has sufficient training and funding to present evidence in mitigation regarding the context of the recruitment

⁴⁷ Committee on Economic, Social and Cultural Rights, *Yemen’s Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶ 18.

⁴⁸ See Committee on Economic, Social and Cultural Rights, *Yemen’s Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3 p. 30.

⁴⁹ Committee on Economic, Social and Cultural Rights, *Yemen’s Response to the List of Issues for its Third Periodic Report*, (Dec. 30, 2022), U.N. Doc. E/C.12/YEM/RQ/3, ¶ 103.

⁵⁰ Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Yemen*, (8 Nov. 2018), U.N. Doc. A/HRC/WG.6/32/YEM/1, ¶59.

⁵¹ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 14. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

and retention of child soldiers and the effect of such practices on a child's relative culpability.

IV. Yemen has failed to ensure the equal rights of men and women to the enjoyment of all economic, social, and cultural rights set forth in the Covenant (art. 3).

29. The Government of Yemen currently fails to protect women in areas under the *de facto* authorities' control from politically motivated prosecutions, unfair trials, death sentences, and brutal human rights violations in detention facilities.⁵²
30. According to Amnesty International, "the Huthis and their allied forces have stepped up their use of an anti-terrorism court as a way to settle political scores, often handing down death sentences on spurious accusations of espionage and 'aiding an enemy country' following grossly unfair trials,"⁵³ and in some cases women seem to bear the brunt of these practices. For example, in October 2016, Houthi authorities arrested Ms. O, apparently because her husband was an al-Qai'ida suspect. Her father reported that authorities beat her up in his presence. Authorities also forced her to watch other detainees being tortured. Authorities also wrongfully accused her of engaging in an "illegitimate sex act" with a codefendant. Amnesty International characterized her trial, where she had no legal representation, as "grossly unfair." For several months before her trial, she was barred from contacting the outside world. Her three male codefendants were released on bail months before the verdict, and she was the only defendant who remained in custody. In January 2018, a Houthi court in Sanaa sentenced her to death for spying, and she remains on death row.⁵⁴ As noted above, spying carries a mandatory death sentence in Yemen.⁵⁵ Amnesty International describes her prison conditions as "woefully inadequate;" she does not have access to hygiene products and her relatives are too fearful of the *de facto* authorities to visit her.⁵⁶
31. Ms. O's case highlights a troubling trend identified by the Cornell Center on the Death Penalty Worldwide in its groundbreaking 2018 report: "women who are seen as violating entrenched norms of gender behavior may be sentenced more harshly."⁵⁷ The study also observed that authorities tend to arrest, charge, and sentence women to death in conjunction

⁵² These issues were previously presented more fully by The Advocates for Human Rights in its submission regarding Yemen's Compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, (Sept. 20, 2021).

⁵³ *Yemen: Illegal detention remains rife after five years of war*, Amnesty International, (Mar. 24, 2020), Available online at: <https://www.amnesty.org/en/latest/news/2020/03/yemen-illegal-detention-remains-rife-after-five-years-of-war/>.

⁵⁴ Mohammed Alragawi, *Yemen: Women captives recall ordeal in Houthi prisons*, Anadolu Agency, (23 Feb. 2021), Available online at: <https://www.aa.com.tr/en/middle-east/yemen-women-captives-recall-ordeal-in-houthi-prisons/2153806>

⁵⁵ *Yemen: Illegal detention remains rife after five years of war*, Amnesty International, (Mar. 24, 2020), Available online at: <https://www.amnesty.org/en/latest/news/2020/03/yemen-illegal-detention-remains-rife-after-five-years-of-war/>.

⁵⁶ *Young Yemeni woman on death row suffers the wrath of the Huthis' 'psychological war' on opponents*, Amnesty International, (Apr. 13, 2018), Available online at: <https://www.amnesty.org/en/latest/news/2018/04/young-yemeni-woman-on-death-row-suffers-the-wrath-of-the-huthis-psychological-war-on-opponents/>.

⁵⁷ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, (Sept. 2018), at 6, Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

with the conduct of their spouses or other family members.⁵⁸ According to Amnesty International, the *de facto* authorities' Supreme Court overturned Ms. O's sentence in August 2021.⁵⁹

32. Ms. O's trial and conviction, however, are not unique. In August 2021, a *de facto* authorities' court in Sanaa sentenced two women to death on charges of aiding "the enemy" and "communicating with a hostile foreign country."⁶⁰ Civil society organizations also documented human rights violations against women in detention facilities controlled by the *de facto* authorities' militias.⁶¹
33. News reports have outlined substandard conditions for women incarcerated by Houthi forces in Yemen. "Activists and former detainees described to The Associated Press a network of secret detention facilities where they are tortured and sometimes raped."⁶²
34. There may be detained women who believe they are on death row even though claims have yet to be adjudicated. A recently imprisoned woman reported that shortly after she was detained, and before any legal proceedings occurred, she was taken "to the basement of a converted school, its filthy cells filled with female detainees. Interrogators beat her bloody, gave her electrical shocks and, as psychological torture, scheduled her execution only to call it off last-minute."⁶³ This woman was not accused of murder; it is believed she was arrested because she expressed opposition to Houthi forces.
35. **Suggested recommendations** relating to women and the death penalty:
 - Abolish the death penalty and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards;
 - In the interim, eliminate the death penalty as a possible sentence for offenses that do not involve an intentional killing committed by the person being sentenced, and eliminate the mandatory death penalty;
 - In the interim, order that all persons sentenced to death by virtue of the mandatory death penalty receive resentencing hearings in which they are authorized to present evidence in mitigation, including evidence related to socio-economic status, gender, gender-based violence, and discrimination, if relevant;

⁵⁸ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, (Sept. 2018), at 8, Available online at: <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

⁵⁹ Amnesty International, *Death Sentences and Executions: 2021* (London: Amnesty International 2022), 50. Available online at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>.

⁶⁰ Ismaeel Naar, *Houthi court sentences 11 Yemenis to death, including two women and a professor*, Al Arabiya News, (Aug. 28, 2021), Available online at: <https://english.alarabiya.net/News/gulf/2021/08/28/Houthi-court-sentences-11-Yemenis-to-death-including-two-women-and-a-professor>.

⁶¹ Mohammed Alragawi, *Yemen: Women captives recall ordeal in Houthi prisons*, Anadolu Agency, (Feb. 23, 2021), Available online at: <https://www.aa.com.tr/en/middle-east/yemen-women-captives-recall-ordeal-in-houthi-prisons/2153806>

⁶² Associated Press, *Women who dare dissent targeted for abuse by Yemen's rebels*, (Apr. 29, 2020), Available online at: <https://apnews.com/article/0ba4a955901572c1ce013a6045fba49a>.

⁶³ Associated Press, *Women who dare dissent targeted for abuse by Yemen's rebels*, (Apr. 29, 2020), Available online at: <https://apnews.com/article/0ba4a955901572c1ce013a6045fba49a>.

- Take concrete measures to hold non-state actors accountable for human rights violations committed against women and offer effective remedies to victims of those human rights violations;
- Immediately vacate any death sentences issued by non-state actors and ensure that no person is executed on the basis of any legal proceedings carried out by non-state actors;
- When negotiating with non-state actors for exchanges of prisoners, prioritize women who have been sentenced to death by non-state actors and women who are at risk of being sentenced to death;
- Implement legislative reforms to prevent the application of the death penalty when women and girls who have experienced gender-based violence, including early and forced marriage as well as rape and sexual assault, commit acts of violence against their abusers;
- Ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in capital representation and who have gender-sensitive training relating to self-defense and mitigation;
- Provide financial resources in cases involving indigent women so that they can participate on an equal basis in restitution practices, such as the payment of blood money, that may result in forgiveness from victims' families or mitigated sentencing, prioritizing women who are accused of killing an abusive family member;
- Commute the sentence of every woman sentenced to death for an offense that does not involve an intentional killing committed by the woman;
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security as well as economic, social, and cultural rights pre-trial, during admission to any detention facility, and while incarcerated;
- On at least an annual basis, publish transparent information on the number of women charged with capital offenses, sentenced to death, and on death row, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crimes of conviction, date of conviction, sentencing authority, relationship to the victim, status of any appeals or requests for commutation or clemency, location of detention, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.