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# REPORT

# The Impact of the War on Yemen's Justice System

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This report outlines Yemen's current justice system and identifies key impacts of the war on both formal and informal justice processes and institutions in six governorates—Aden, Hadhramout, Ibb, Marib, Sana'a, and Taiz. The ongoing war has resulted in an ever-changing landscape of military and political control over certain areas, fragmenting Yemen's justice system amongst the authorities in control. Alongside fragmentation of justice institutions, new local actors have emerged to take on informal roles in the delivery of justice where the state is effectively absent, the war solidifying their position of power over local communities. Over six years of war and subsequent instability throughout the country have increased challenges to the rule of law and delivery of impartial justice throughout Yemen, while legal needs of Yemenis, and in particular IDPs, are rising.



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# Executive Summary

Over six years of war have severely deteriorated Yemen's already weak state institutions. Between 2015 and 2017, Yemen's formal judiciary was effectively suspended in areas that witnessed active and prolonged military confrontations. As a result of the conflict, the justice system has fragmented alongside the lines of authorities in control of different areas of Yemen—the internationally recognized Republic of Yemen Government (ROYG), Ansar Allah (Houthis), and the Southern Transitional Council (STC) — creating a complex system of parallel legal structures. At the same time, informal legal structures involving a variety of local and tribal actors have become increasingly prominent in the absence of functioning state institutions. While tribal customary law practices have a longstanding tradition that predates the establishment of the state, disputes are now more often resolved by customary law than through the formal judiciary in urban and rural areas alike.

Yemen thus constitutes a complex pluralistic justice system, with both formal and informal legal structures and a variety of state and non-state actors performing official functions in either or both structures. The ongoing conflict has resulted in a number of significant challenges to these legal structures. Yemen's formal judiciary faces issues of fragmentation, severe damage to judicial infrastructure, security threats, demographic change, a growing case load, and weakened law enforcement authorities. These issues have drastically impacted the judiciary's ability to uphold the rule of law, deliver justice, and maintain credibility among Yemeni citizens. In addition, professional associations such as the Judges Association and the Yemeni Bar Association (YBA) remain largely inactive. Despite their lack of formal legal training or licenses, Ansar Allah in 2020 reinstated an old practice of permitting "lawsuit agents" (*wukalâ' al-sharî*) to litigate before courts.

The war has also affected Yemen's tribal structures and customary law practices, particularly in areas under control of Ansar Allah who have suppressed opposition efforts of many tribal leaders through public insults, property destruction, and executions. To maintain control over tribes, Ansar Allah has supported the emergence of new, young, and ambitious sheikhs loyal to them. In some cases, Ansar Allah supervisors, known as *mushrifeen*, have been appointed to official positions and weakened sheikhs' power and influence by intervening in arbitration. In other (mainly remote) areas, sheikhs may have gained more authority due to the lack of government presence.

The ongoing conflict and resulting instability throughout the country have exacerbated pre-existing challenges to the rule of law and delivery of justice, with citizens in need of justice bearing the brunt of the problem. At the same time, the war has contributed to an increase in disputes. The deterioration of living and economic conditions has led to a significant rise in personal status cases, including domestic violence, divorce, and alimony. The suspension of salaries and the loss of steady income for many Yemenis has resulted in disputes over rent. Moreover, with many Yemenis displaced and having fled intense fighting, as well as land grabbing by militias, disputes over land and property ownership have increased. Cases of assault, rape, and murder have also risen due to ineffective security institutions and the absence of avenues for accountability caused by successive changes of authorities in control of some governorates.

Deterioration of the already fragmented justice system and an increase in legal needs resulting from the war means accessing justice in Yemen has become increasingly

difficult, with women, children, minorities, and internally displaced persons (IDPs) disproportionately impacted. These vulnerable groups continue to face several barriers in seeking access to justice and are in dire need of meaningful legal protection.

## Introduction

The war in Yemen<sup>1</sup> escalated in March 2015 when a Saudi-led coalition in support of the internationally recognized Republic of Yemen Government (ROYG) intervened against Ansar Allah, which had seized control over Yemen's capital Sana'a from President Abed-Rabbo Mansour Hadi's government in late 2014.<sup>2</sup> Yemen's military units in response either aligned themselves with Ansar Allah or the ROYG's military. At the same time, the Southern Transitional Council (STC) increased its calls for secession of the south. Amidst the chaos that followed Saudi Arabia's military campaign to reinstate Hadi's ROYG, groups such as Al-Qaeda in the Arab Peninsula (AQAP) initially expanded their reach in areas in the east and south. The United Arab Emirates (UAE) subsequently launched counter-terrorism operations supporting local security forces such as the Security Belt, Hadrami Elite, Shabwani Elite, as well as the STC. After regaining control over Al Mukkallah and other southern areas previously controlled by AQAP, the UAE officially withdrew from Yemen in 2020 but continues to support several local southern forces.<sup>3</sup> Escalation between the ROYG and the STC continued, despite the signing of the Riyadh Agreement in November 2019.<sup>4</sup> In line with the agreement, a power-sharing government between the two parties was announced in December 2020. Nonetheless, escalation between the ROYG and STC remains possible.

Throughout six years of war, Yemen has fractured into multiple areas of political and military control with frontlines continually changing, as ongoing clashes between Iran-backed Ansar Allah and the Saudi-led military coalition supporting the ROYG over control in Marib underscore.<sup>5</sup> While Ansar Allah controls most of Yemen's northwest, including Sana'a, ROYG and government aligned-territory covers al-Jawf, Marib, Shabwa, northern Hadhramout, al-Mahra, and Taiz city. STC-controlled areas include Aden, Lahj, al-Dhale, and the island of Socotra. UAE-backed military authorities control most of coastal Hadhramout and the Joint Resistance Forces, overseen by Tareq Saleh, control most of the coast in Taiz governorate.<sup>6</sup>

Over the course of the war, which has left a devastating impact on many aspects of Yemeni society and has been referred to as the world's worst humanitarian crisis,<sup>7</sup> the rule of law and in particular Yemen's justice system have not received much attention. However, the war has severely damaged the country's state infrastructure, including its justice system. Between 2015 and 2017, Yemen's judiciary was effectively absent in cities that witnessed the most intense fighting, such as Taiz and Aden. The opposing interests of key parties have undermined the Yemeni government and the country continues to fragment between areas controlled by the ROYG and those controlled by Ansar Allah. As a result, parallel legal structures have emerged that exist independently and often in contrast with one another. By 2017, the judiciary had gradually begun to resume activities amidst a complex political landscape and sustained security threats, which has led to a serious backlog of cases faced by the judiciary currently. Consequently, informal legal structures and customary law practices often provide the only reliable option for Yemenis to resolve their disputes, filling a void left by an absent formal legal system.

The aim of this report is therefore two-fold. At its foundation, it seeks to provide insight into the impact of the war on the justice system in Yemen through outlining the status quo of both formal and informal legal structures and identifying the key challenges to both structures. From there, by outlining certain impacts of the war on Yemen's justice system, the report aims to underline areas for further research and future engagement. This report will not analyse the structure of Yemen's legal system in detail. Rather, it will focus on key issues for both formal and informal structures as a result of the war. The scope of the report is furthermore limited to an explanation of these legal systems and institutions rather than a detailed analysis of the law itself.

This report draws on a comprehensive literature review on the rule of law in Yemen and qualitative in-depth interviews (IDIs) with respondents from Yemen's legal community. In total, 60 interviews were conducted between April and June 2021 in six governorates (Aden, Hadhramout, Ibb, Marib, Sana'a, and Taiz) and with experts internationally. In each governorate, local enumerators interviewed approximately ten respondents, including lawyers, judges, prosecutors, police officers, sheikhs, and arbitrators. In Sana'a, interviews were limited to three lawyers due to security considerations. Interviews were conducted using a questionnaire that addressed the primary challenges related to Yemen's justice system and the impact of the war.<sup>8</sup>

In addition, three focus group discussions (FGDs) were conducted in June 2021, with a total of 27 participants (16 men and 11 women) from Yemen's legal community. Two FGDs took place in-person in Aden and Marib. These locations were chosen to reflect appropriate geographical representation of north and south Yemen and both urban cities and tribal areas. Aden is the temporary capital of the ROYG, represents a wide range of the south, and is an urban city in which Yemenis tend to rely more on the formal legal system. Marib, on the other hand, is a northern governorate that represents one of the most traditional tribal areas of Yemen. Marib is also an example of a governorate in which formal and informal legal systems interact. A final and third FGD was conducted virtually with Yemeni legal experts located outside Yemen.

The data collection, through IDIs and FGDs, has been limited by security risks, restricted access to certain areas in Yemen, and COVID-19 controls. The ongoing conflict was a limiting factor when identifying locations and respondents, and security risks prevented the convening of a FGD in Ansar Allah-controlled areas.

## 1. Overview of the Legal System in Yemen Prior to the Conflict

Yemen has a pluralistic legal system consisting of two separate legal structures: 1) a formal, state-sponsored structure and 2) an informal structure based on customary law practices. This section provides a brief overview of Yemen's formal legal framework and customary law practices as an introduction to the war's impact on both structures.<sup>9</sup>

### 1.1. Formal State Structures

The concept of the modern Yemen state was adopted in North Yemen in 1962, when the Yemen Arab Republic was established, and in South Yemen in 1963, when the People's Democratic Republic of Yemen was founded. The two countries unified in 1990. The Yemeni Constitution, adopted in 1991, forms the foundation for the

formal justice system and laid down the principle of separation of powers between the legislative, judicial, and executive branches of government. In theory, the Yemeni state has sole responsibility for establishing and implementing the law in Yemen. The Yemeni judicial system is over 50 years old, yet a number of formal judicial entities were created more recently. For instance, the Office of the Public Prosecutor and the practice of lawyers as a formal profession only developed within the justice system in Yemen in the 1970's.<sup>10</sup>

### *1.1.1. Legal Framework*

Yemen follows a civil law system, influenced to a large extent by Egyptian civil law. Yemen's laws are derived from 1) the Constitution, 2) legislation (such as the Civil Code, Criminal Code, Commercial Law), and 3) official decrees. Yemeni legislation in turn is a combination of civil law, *Sharia* (Islamic) law, and custom. According to the Constitution, *Sharia* law is "the basis of all laws"; constitutional articles and any laws or regulations must be drafted in accordance with *Sharia* law to be considered valid.<sup>11</sup> The *Sharia* Committee of Parliament is charged with ensuring compliance of draft legislation with *Sharia* law. The Yemeni Civil Code recognizes that judges in state courts may use custom to seek guidance, but only when the law is otherwise silent.<sup>12</sup>

### *1.1.2. Judicial Structure*

Yemen's formal judicial system, as established before the war, is composed of three distinct bodies: the Supreme Judicial Council (SJC), the Ministry of Justice, and the Office of the Public Prosecutor. The SJC is the highest judicial authority with nine members, including the President of the SJC, the President of the Supreme Court, the Minister of Justice, the Attorney General, the Chairman of the Judicial Inspection Board (JIB), and the Secretary General of the SJC. The Ministry of Justice is part of the executive branch and oversees the courts' financial and administrative matters, including infrastructure, procurement, and recruitment, while also exerting indirect influence over judges. In practice, the Minister of Justice has a seat in both the cabinet and the SJC, linking the judiciary to the executive branch. The Office of the Public Prosecutor is the investigative office headed by the Attorney General, who is appointed by Presidential Decree. The Office of the Public Prosecutor is part of the judiciary, although it operates administratively under the Ministry of Justice.

The court system consists of three layers: (1) the Courts of First Instance (*Mahakim Ibtidayya*), which exist at the district level; (2) the Courts of Appeal (*Mahakim Ist'nafiyya*), with one court for each governorate; and (3) the Supreme Court (*Mahkamah Oliya*), a single court that operates at the state level.

## **1.2. Informal Legal Structures**

Informal legal systems exist as mechanisms for dispute resolution outside of a state's formal judiciary.<sup>13</sup> These systems may include traditional legal practices, indigenous customs, or customary law practices of non-state actors. The informal legal structures in Yemen—a combination of tribal traditions, *Sharia* law, and civil law—play an important role in delivering justice in both rural and urban areas through the application of customary law and arbitration.

### *1.2.1. Customary Law*

Customary law is a broad concept that includes customary rules, provisions, and alternative dispute resolution processes such as reconciliation, mediation, and

arbitration. While formal legislation such as the Arbitration Act of 1992 and the Civil Code of 2002 have incorporated definitions of both mediation and arbitration, dispute resolution methods based in customary law have long existed within Yemen's informal legal sphere.<sup>14</sup> The use of customs in Yemen dates to before the establishment of the Yemeni state. Customs have a strong binding role in Yemeni society, especially in rural, tribal areas where more than 60 percent of the population resides.<sup>15</sup> Yemen's tribal areas are concentrated in the far north on the border with Saudi Arabia, in the governorates of Sa'ada and Al-Jawf, in the northern highlands around Sana'a, in the middle of the Marib governorate, and in the south in the governorates of Abyan and Shabwa. There are other tribal areas distributed between the east and west of the country. Tribal societies are generally not found in the central and densely populated regions, such as the governorates of Ibb and Taiz, or in urban cities such as Sana'a, Aden, al-Mukalla, and Hodeidah.<sup>16</sup> In these areas, customs dominate the majority of social transactions, contracts, and disputes.<sup>17</sup>

Customary law is generally enforced by social obligations, community leaders, and powerful non-state actors. Customary law is upheld informally, mostly by community figures with social authority such as tribal leaders or military commanders. Arbitrators may act as moderators who attempt to bring parties together and implement a ruling voluntarily. Alternatively, arbitrators may possess the ability to pressure litigants to accept and implement their rulings.<sup>18</sup>

While customary rules are typically disseminated verbally rather than in writing, they can also be derived from customary principles written in case law, with proceedings recorded and archived by arbitrators.<sup>19</sup> Further, *sheikh al-margha* Hadi Sayyad has attempted to collect many of these customary rules in a script called "A Document of the Customary Rules of Reference for all Yemeni Tribes."<sup>20</sup> This resource contains 594 clauses covering customary principles on matters of murder, blood money, compensation, evidentiary support, and divorce. The script was written in a unique form of the Yemeni dialect in 1837 and published in 2014.<sup>21</sup>

### 1.3. The Relationship between Formal and Informal Legal Structures

Informal and formal legal structures exist parallel to each other and at times interact with each other. Historically, the relationship between the state and tribes has impacted customary law practices in Yemen. State and tribal leaders have viewed each other as a threat to the other's authority, both before and after the establishment of the Yemen Arab Republic in the 1960s. During the Mutawakkilite Kingdom in north Yemen, the ruler, or Imam, would take some of the tribal leaders' sons hostage to maintain their loyalty, or at least to prevent them from rebelling against him. In the 1970s, President Ibrahim al-Hamdi attempted to limit the influence tribes gained from their participation in the revolution against the Imamate Kingdom. Al-Hamdi was assassinated only two years into his presidency, for reasons widely believed to be related to his reform agenda. When former President Ali Saleh later came to power, he acted to empower certain tribes, most notably his own Hashid tribe,<sup>22</sup> appointing them to high-ranking military positions to secure military loyalty. To maintain influence over other tribal leaders, Saleh granted privileges such as land, cars, and monthly stipends.<sup>23</sup> In south Yemen, the state, controlled by the Socialist Party, "took deliberate steps to undermine tribal structures and to increase the presence of and reliance on state mechanisms."<sup>24</sup>

In 1992, to regulate the procedural relationship between formal and informal law, Yemen enacted its Arbitration Act (following on two earlier such acts), which recognizes all types of customary law arbitration and mediation as equivalent to a

Court of First Instance proceeding falling under the state’s jurisdiction.<sup>25</sup> Formal courts, such as the courts of appeal, may uphold customary arbitration rulings that are subject to appeal. With the increased use of customary law practices during the war, formal courts were furthermore forced to acknowledge customary rulings when they resumed their functions. For example, under the *pacta sunt servanda* principle, formal courts in Hadhramout upheld original judgments in personal disputes that were issued on the basis of customary law by Al-Qaeda in the Arabian Peninsula (AQAP)’s courts during AQAP’s control over Al-Mukalla city.<sup>26</sup>

## 2. The Impact of the War on Formal Legal Structures

The rule of law in Yemen saw a rapid deterioration from 2012 to 2014, following the 2011 protests and political transition.<sup>27</sup> During that time, state institutions—including the judiciary—suffered extensive physical damage. Over six years of war that followed have continued to damage judicial structures and forced the suspension of their operations for prolonged periods during intense fighting. For instance, when Ansar Allah controlled Taiz and Aden between 2015 and 2017, no formal judiciary functioned in these governorates. Since then, it has taken nearly two years for the government to partially resume the work of its institutions in Taiz and Aden. The following sections outline key areas of impact on the judiciary, law enforcement authorities, and the legal profession.

### 2.1. The Judiciary

Yemen’s formal state structure has fragmented between the different authorities that control certain areas of Yemen as a result of the war: the internationally recognized ROYG, Ansar Allah, and the Southern Transitional Council (STC). As a result, two parallel justice systems have developed: one under the ROYG in the interim capital of Aden and one under Ansar Allah in Sana’a. While the STC has gained control in southern areas, it has not established its own parallel justice system.<sup>28</sup> Each authority formed its own Supreme Judicial Council (SJC), Supreme Court, and Ministry of Justice, in addition to appointing an Attorney General and appointing judges through the High Judicial Institute (HJI).<sup>29</sup> This fragmentation of authority has created numerous obstacles to the proper functioning of Yemen’s justice institutions. In January 2020, the ROYG’s SJC issued a decree prohibiting courts under its authority to recognize or enforce rulings issued by courts under the authority of Ansar Allah, not differentiating between criminal (political) and other civil verdicts.<sup>30</sup> The order led to significant difficulties for citizens with ongoing cases, and many commercial and civil lawsuits were suspended.<sup>31</sup> Both judges and lawyers have reported confusion in dealing with this decision. While some comply with the order reasoning that it was issued by the SJC, others believe that the court’s verdicts should disregard politics, and yet others make a distinction between the types of cases. As one judge exemplified, “when the ruling is for the custody of a child, I implement the verdict, but for the criminal sentences, we have nothing to do with what the courts of the other authority issue, and vice versa.”

Fragmentation has also affected the level of coordination between the state’s justice institutions. Prosecutors note insufficient cooperation from both law enforcement agencies and courts. One prosecutor mentioned that “the war weakened cooperation between the police and the prosecution, especially in cases where the state or a

high-ranking military leader or official is involved.” A second prosecutor noted the “lack of consideration from some judges who release or reduce sentences of at-risk offenders, while the prosecution has made great efforts, endured pressure and threats to achieve justice,” expressing surprise that these judges reduce a sentence without a strong reason.

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“The war created a divided spectrum within society that affected the performance of the judiciary and its decisions; according to those divisions, decisions of the judiciary that are located in one area cannot be implemented in the area of the other party.” - Prosecutor in Taiz

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### *2.1.1. Infrastructure Damage and Capacity*

Already before the war, Yemen’s judicial infrastructure faced many challenges. A United States Institute of Peace (USIP) study conducted before fighting erupted in 2014 concluded that judicial facilities in all governorates faced significant problems.<sup>32</sup> Since then, the war has further damaged the judiciary’s physical presence, with many buildings either completely or partially destroyed.<sup>33</sup> In 2019, the Ministry of Justice—under the de facto authority in Sana’a—estimated the cost of physical damage to judicial buildings at approximately 100 million USD, including approximately 47 judicial facilities that had either been completely or partially destroyed.<sup>34</sup> A more recent assessment found that courts in Aden, Taiz, Lahj, and Shabwa commonly had poor infrastructure and lacked essential equipment, furniture, telecommunications devices, and stationery.<sup>35</sup> In Taiz, some courts resumed their work from very small apartments, limiting their capacity. To illustrate these poor conditions, a lawyer in Ibb noted: “according to Yemeni law, the accused should not be handcuffed during trial. However, asking the judge to uncuff the accused during the trial in accordance with the law would be a joke because the court does not have the minimum safety standards.”

Before the war, although some courts had computers to facilitate administrative procedures, most courts documented trials and administrative procedures manually. The shortage of qualified staff meant that judges had to perform some administrative tasks themselves.<sup>36</sup> Due to further conflict-related financial challenges, power outages, and insufficiently-trained staff, most of the courts and prosecutors’ offices continue to rely on documenting their work manually, with pen and paper.<sup>37</sup> This has affected the courts’ administrative capacity and ability to easily access court documents. In some cases, courts have lost all their archives. The closure of the judiciary in some areas between 2015 and 2017, the physical destruction of infrastructure, the significant increase in crimes and personal disputes, the high number of IDPs, and numerous safety challenges have resulted in backlogs of cases that negatively impact judicial capacity and the rights of the accused. One lawyer stated, “according to the law, the judge cannot proceed to trial without the presence of the prosecutor, but I have had cases where the judge proceeded to trial in the absence of the prosecutor, who was unable to attend due to the large number of cases.”<sup>38</sup>

The infrastructure challenges that emerged during the war have paralyzed the

capacity of the judiciary, affecting its credibility among Yemen citizens. Courts are overwhelmed with a backlog of cases and shortage of staff, which may lead to important legal procedures being bypassed.

### *2.1.2. Interference and Polarization*

It is well known that corruption is rampant in Yemen, and the judiciary is no exception. Corruption, political polarization, and executive interventions have undermined the public's trust in judicial integrity and independence, and the war has only further damaged the judiciary's credibility.<sup>39</sup> An explicit example of executive overreach is the appointment of former President of the Revolutionary Committee and current member of the Supreme Political Council Mohammed Al-Houthi as head of the newly formed "justice system" in Sana'a. Most see this position as more influential than the President of the SJC.<sup>40</sup> Ansar Allah further appointed supervisors, also known as *mushrifeen*, in state and non-state institutions alike, including the judiciary, in particular to replace court chiefs not affiliated with them. These *mushrifeen* could be former administrative employees or new employees exercising more authority than their job mandate permits, such as supervising the court's work. Likewise, Ansar Allah has replaced public notaries with those loyal to them. As a further example of this politicization, Judge Mohamed Al-Dailami, former Minister of Justice in Sana'a, has mobilized the public notaries in a campaign to financially support the war against the Saudi-led coalition.

The ROYG, Ansar Allah, and the STC have all exercised pressure on judges and prosecutors in Yemen, motivated by political, security, and personal interests.<sup>41</sup> The majority of respondents have affirmed the existence of executive interference in the judiciary's work, at least to some extent. A law professor stated that the law permits executive interference in the judiciary in some cases: "for example, according to article 293 the Procedures Act, the President of the Republic may, after the approval of the SJC, request that the President of the Supreme Court reconsider any judgment that he deems to contain an error that harms justice." Other manifestations of the executive's indirect interference in judicial affairs is through selectively accepting new candidates to the HJI and assigning unwanted judges to remote areas.<sup>42</sup> One judge explained that nepotistic hiring practices of administrative court staff have also affected judicial integrity: "the war didn't affect—in general—the courts' integrity in their rulings, but rather administratively in terms of increasing favouritism and regional subordination in appointments, promotions, and assuming positions, and depriving them of their dues [allowances and benefits]."

In January 2021, President Hadi appointed Ahmed Al-Musai as the new Attorney General. The Southern Judges Club, a body affiliated with the STC, objected to Al-Musai's appointment on the basis that he is not a member of the judiciary and that the appointment is not in accordance with applicable laws on the judiciary.<sup>43</sup> Members of the Southern Judges Club began a strike in February over the appointment of Al-Musai and other issues.<sup>44</sup> STC forces have closed courts in areas under their control, such as Aden and Hadhramout, and have prevented other judges from carrying out their work. In June, the Southern Judges Club released its conditions for judicial reform to revoke their strike.<sup>45</sup> Also in June, the ROYG Chief of the Supreme Court issued an order to the court chiefs to take legal measures to resume the courts' work. The order required Aden's governor and police chief to reopen the Judicial Complex, which includes the Supreme Court, the SJC, the Ministry of Justice, and the Administrative Court. The order also stipulated that the President and the executive members of the Southern Judges Club be investigated by the JIB.<sup>46</sup> As of the date of this report's publication, the Southern Judges Club approved the partial re-opening of courts, however escalation continues as the Southern Judges Club announced it

will administer a judicial authority in southern Yemen independently of the current ROYG Supreme Judicial Council.<sup>47</sup>

Ansar Allah has also used the judiciary to further its political aims, in particular as a tool to suppress opponents, mainly in Sana'a through the politically monopolized Specialized Criminal Court.<sup>48</sup> This court assigned to Saleh Al Shaer, one of the most prominent Ansar Allah leaders, the role of judicial custodian. The Specialized Criminal Court's mission is to legalize the unlawful seizure of assets of Ansar Allah's political and business opponents, but it has also sentenced 35 parliamentarians and four journalists to death for treason.<sup>49</sup>

A further indirect impact of the war on the rule of law has been an increase in pressure and interference from military and high-ranking security officers on police forces. A lawyer in Aden noted that pervasive executive interference "decreased after the war due to the weakness of the executive authority. However, most interventions now are from the military forces and parallel security sectors." As a prosecutor in Marib explained, "Police sometimes receive pressure if the accused is from a tribe participating in the battle frontlines, as they may feel they deserve some exemption in exchange for those efforts or sacrifices." According to another police officer in Ibb, "There is pressure from powerful officials as the war has affected the independence of the police due to the multiplicity and overlap of security agencies." In Aden, the Security Belt forcibly closed the courts in support of the Southern Judges Club strike.<sup>50</sup> However, during the strike, the STC did request that the Office of the Public Prosecutor accelerate the legal process for certain people in detention.<sup>51</sup>

Finally, the war has empowered the police to exert undue influence over the prosecution, even though the prosecution is legally superior when it comes to judicial seizure and has the right to question the police about any alleged infringements. Police have overstepped their mandate by conducting investigations and collecting evidence, both of which are within the exclusive purview of prosecutors. The police have also become less inclined to cooperate with prosecutors, especially in cases where the state or a high-ranking military leader or official is the defendant.

### *2.1.3. Credibility*

Despite the above challenges to the judiciary's capacity and political interference, approximately 40 percent of respondents still indicated that they trust the judiciary. One lawyer noted that, "If I don't trust the system, then I should quit my job," while another opined that "In general, the judges are qualified and trustworthy." However, most of the respondents only trusted the judiciary "to some extent." This is also related to politicization of and interference with certain courts. As one lawyer explained, "As for the specialized criminal court in Sana'a, I do not trust them at all. Most court rulings, especially political ones, are issued according to the wishes of the political authority and not according to the law. There is no minimum commitment to the judicial procedures stipulated in the Constitution or the laws." Another lawyer added, "The judge is poor and has no authority to enforce his decisions."

### *2.1.4. Security Challenges*

The lack of security forms another considerable barrier to the resumption of the judiciary's functions. Even after judicial functions resumed amidst the conflict, certain areas where prosecutorial offices and courts operated were forced to close again due to the coalition's aerial bombardment and other safety issues. Several judges have been killed or gone missing, while others fled the country for political reasons or relocated to safer places.<sup>52</sup> While active military confrontations have ceased in some areas, state security institutions continue to face significant security

challenges. As one lawyer bluntly stated, “The law now is the law of the jungle.” Across Yemen, judges, prosecutors, and lawyers do not feel secure and remain concerned about their own safety and that of their families. A judge in Ibb said, “Several judges have been killed by rockets targeting their homes,” while another from Aden explained, “The presence of many non-state security forces makes the judges subject to the moods of these forces.” Judges consistently lack protection and have been exposed to violations including beatings and threats, leading to repeated strikes to protest these conditions. In Taiz, the UN Group of Eminent Experts on Yemen (GEE) reported that some judges have faced violent attacks, intimidation, and attempted assassination by government military forces affiliated with the Yemeni Congregation for Reform, better known as the al-Islah (Islah) party.<sup>53</sup> Prosecutors have been assaulted, threatened, and kidnapped. When one prosecutor was asked about witness protection and whether there are any practical guarantees, he responded, “We cannot protect ourselves.” Lawyers have also been detained and assaulted; in Sana’a, several lawyers were arrested and their offices were raided and closed by Ansar Allah.

After the city of Aden was liberated, local committees backed by the UAE immediately formed southern security units composed of activists and resistance fighters to protect the city, providing a minimum level of stability. This was the genesis of the Security Belt forces, a mix of former military personnel and new recruits from the al-Hirak, a separatist group demanding complete independence of the south.<sup>54</sup> The Security Belt became the STC’s military wing, an entity with no clear mandate whose functions overlap with the police. The GEE has accused the Security Belt of severe human rights violations including summary executions, rape, and torture.<sup>55</sup> The Security Belt has also been accused of assaulting and threatening judges, prosecutors, and lawyers.<sup>56</sup>

#### *2.1.5. Economic Challenges*

Yemen’s already poor economy has collapsed as a result of the ongoing war. The loss of a significant portion of public revenues has greatly impacted the state’s budget and its ability to fulfil its fiscal duties including the payment of public salaries. The estimated operating budget for the judiciary was 27 billion rials (YER) (approximately USD 125 million) in 2014.<sup>57</sup> While the current lack of transparency by formal authorities in Yemen makes it difficult to understand the details of the judiciary’s budget, the 2019 budget published by the ROYG used similar budget figures of 2014, with the addition of 30 percent to the salaries in line with the announced increase for all public salaries. Local news has estimated the ROYG judiciary payroll to be 32 billion YER (approximately USD 34 million) in 2019.<sup>58</sup> The judiciary’s final statements have been criticized for the existence of an accounting imbalance.<sup>59</sup>

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**“A judge’s salary today is not equivalent to a quarter of his salary before the war.” - Prosecutor in Aden**

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The majority of Yemen’s civil servants have not received a salary since August 2016.<sup>60</sup> There are some exceptions, including judges and public prosecutors who have continued to receive their monthly salaries (but not any of their other benefits). It is important to note that the local currency, the Yemeni rial, has deteriorated rapidly and significantly since the war’s onset.<sup>61</sup> One of the judges reported that his monthly salary before the war was YER 150,000, which was equivalent to USD 700; today it is the equivalent of USD 250 using the exchange rate in Sana’a, or USD 160 using

the exchange rate in Aden.

Decreases and delays with respect to salary payments, as well as cuts in bonuses in the courts and offices of public prosecutors, have affected staff retention. Some respondents attribute the absence of employees and slowdown in work due to poor financial conditions. The courts and offices of public prosecutors are suffering either from absent workers or insufficient operating budgets.<sup>62</sup> Since the majority of the courts' buildings are rented, many courts have difficulties paying the rent or performing essential maintenance.

## 2.2. Law Enforcement Authorities

With the fragmentation of state institutions, responsibility for law enforcement has been split between state and non-state actors. Already before the war, the security sector in Yemen was generally built on political, tribal, and regional loyalties.<sup>63</sup> However, the power vacuum that arose after the collapse of the state opened the door for non-state forces to clash with police mandates, such as the Security Belt in Aden and other southern governorates. When the Ansar Allah-Saleh alliance attacked Aden in 2015, many of the commanders and members of the military and security units who were from the north and loyal to Saleh joined the forces invading Aden. After Aden was liberated, it took significant time to re-establish law enforcement and northern police officers were replaced by southerners.

Security services' infrastructure suffered significant damage in most of the governorates covered in this report, especially in areas that witnessed armed conflict such as Aden, Taiz, and Hadhramout. For example, when active military confrontations in Taiz that displaced thousands of people ceased, the city and surrounding areas were divided into areas controlled by the ROYG and areas controlled by Ansar Allah. When people finally returned to their homes, many discovered their houses were occupied. Security forces were unable or unwilling to protect their properties, and no institutional fora existed in which to dispute these cases. A police officer in Taiz noted, "The security in the city of Taiz has been completely destroyed in terms of buildings, furniture and devices, equipment, security equipment, civil defence equipment, and the communication system was looted." With respect to security personnel, the officer continued, "They have scattered into three categories: the first remained with the ranks of the 'legitimate' government and the resistance, the second joined the Houthis, and the third retired or were wounded, kidnapped, or became martyrs." In Aden, an officer said, "Some police stations have been destroyed or looted, including administrative offices, files, data, military vehicles, and telecommunications."

Even governorates that did not experience conflict, such as Ibb, have witnessed the incapacitation of law enforcement institutions. A police officer in Ibb said, "War is the basis for generating a state of emergency and dealing with cases based on custom, and most law enforcement officials are not qualified." The officer continued, "The war has affected not only the police, but it has also paralyzed state authorities and affected the cooperation between the executive and the judiciary in protecting the rule of law."

In general and throughout Yemen, it has become very challenging for law enforcement authorities to arrest suspects. According to one prosecutor, "Arresting the fugitives from justice and bringing them to trial becomes a considerable challenge. The offenders can run to the areas controlled by the other party where the relevant authority has no control."

Furthermore, law enforcement authorities face certain security challenges. Some indirect effects of the war include the widespread carrying of weapons, the presence of armed gangs, and assassinations, resulting in personal insecurity for law enforcement personnel. As one police officer stated, “there is no safety. Although we are responsible for the security of others, we are the primary targets of the war.”

Finally, severe financial challenges have affected the presence of law enforcement personnel on the ground. While the average monthly salary of an officer is approximately 70,000 YER (USD 100), respondents noted that police officers do not receive their salaries regularly.

## 2.3. The Legal Profession

With courts closed as a consequence of the war, many lawyers lost their income and were forced to close their offices, some returning to their hometowns in the countryside. Those that continued their work noted changes in the types of cases they received, including increased personal disputes regarding land, divorce and custody, and human rights violations such as enforced disappearances and arbitrary detention. In contrast, they reported a general decline in commercial cases.<sup>64</sup>

### 2.3.1. The Yemeni Bar Association

The Yemeni Bar Association (YBA), which regulates the legal profession,<sup>65</sup> has fragmented into three associations: one under the ROYG, one under Ansar Allah, and the Southern Bar Association, affiliated with the STC. While challenges facing the YBA date back to before the war,<sup>66</sup> respondents confirmed that the YBA has been generally inactive during the war, except for the issuance of membership cards or the provision of individual support for lawyers who have been detained or assaulted.

To practice law in Yemen, a lawyer is required to obtain a law degree and undertake three years of training (articling).<sup>67</sup> However, the Lawyering Act of 1999 provides authorization for “lawsuit agents” (wukalâ’ al-sharî) who do not have formal legal training or YBA licenses and who are authorized to litigate on behalf of clients in remote areas due to the lack of trained lawyers in those areas.<sup>68</sup> In the following years, as the number of lawyers throughout Yemen increased, “lawsuit agents” were no longer commonly accepted. In 2020, however, Ansar Allah’s Ministry of Justice in Sana’a over-ruled this practice and began permitting lawsuit agents to practice law and litigate before the courts again. This poses the risk of more solidly institutionalizing the practice of law by non-legal professionals.

### 2.3.2. Economic Challenges

In Yemen, there is no standard rate for calculating lawyers’ fees. Instead, the rate is based on an estimation and agreement between lawyer and client. The Lawyering Act regulates legal fees and provides that lawyers’ fees should not exceed ten percent of case value, unless the attorney and client agree otherwise.<sup>69</sup> Like other legal professionals, lawyers have been affected by inflation and the collapse of the value of local currency, resulting in a decline in the value of their fees. Consequently, some lawyers have started to accept only foreign currencies as payment.

## 3. The Impact of the War on Informal Legal Structures

In both urban and rural areas in Yemen, customary law is commonly applied in judicial proceedings and resolving disputes and it has been estimated in 2012 that 80 percent of conflicts in Yemen are resolved using customary law,<sup>70</sup> which has increased in areas of Yemen as a result of the war. This part of the report will explain customary law practices in Yemen and identify ways in which the war has impacted the use of these informal practices.

### 3.1. Arbitration

Informal arbitration and mediation are two distinct processes.<sup>71</sup> *Sheikh* Mohammed Sayyad, an authority on dispute resolution processes in Yemen, explains the differences as follows: “Mediation is a discretionary endeavour to reconcile the relationship. The nature of the rights awarded may be less or more than what is in the customary rules; it depends on the consent of the parties to the conflict. Arbitration means litigation according to the levels of customary litigation and formal legislation, where the implementation of the ruling is compulsory.”<sup>72</sup> Irrespective of these differences, the terms “arbitration,” “mediation,” and “reconciliation” may be used interchangeably in the Yemeni legal context. For instance, an arbitrator may become involved in a dispute as a mediator who also performs arbitration functions.<sup>73</sup>

### 3.2. Arbitration Actors

A large variety of actors can be involved in arbitration based on customary law. In Yemen’s cities, arbitrators can be sheikhs, military leaders, judges, legal practitioners, religious leaders, neighborhood leaders (*aqil*), arbitration firms, or arbitration committees. Most legal practitioners interviewed for this report are either currently engaging in customary arbitration or have had some experience with the practice.

In tribal areas, sheikhs are the key actors in resolving conflicts and implementing arbitration rulings.<sup>74</sup> Some sheikhs even have their own prisons and may detain those who dispute their authority. The authority and influence of a sheikh is affected by his family status, leadership style, wealth, land ownership, and his connections with the government. However, the war has affected tribal structures, particularly those under the control of Ansar Allah. Ansar Allah has suppressed opposition efforts of many tribal leaders by insulting them, destroying their homes, and even executing many of them for a variety of alleged crimes, including lack of cooperation or treason. To maintain control over the tribes, Ansar Allah has reportedly executed over 40 tribal leaders since 2015 and has supported newer, younger, and more ambitious sheikhs who are loyal to them.<sup>75</sup> In some cases, the mushrifeen have negatively affected the sheikhs’ power and influence by intervening in their arbitration and deciding who mediates tribal conflicts.<sup>76</sup>

In some areas under Ansar Allah’s control, parties have postponed their disputes for fear of having ordinary, individual issues turned into proxies for broader political disagreements. Some of the prominent sheikhs that oppose Ansar Allah have also refused to be involved in resolving disputes for fear that after the arbitration ruling is issued, one of the parties may approach Ansar Allah to revoke the ruling, which would either undermine the sheikh’s authority or cause him trouble. Therefore, these

sheikhs have avoided arbitration, and the cases they would normally preside over are referred to either mushrifeen or security authorities for resolution.

In all governorates, aqil (neighborhood leaders) are important community actors who liaise between the district authorities and the local communities. For example, aqil may distribute essential supplies to communities during shortages. They work closely with the police and sometimes with the intelligence services and by law are responsible for delivering court summonses. According to a mapping study conducted by USIP, the role of the aqil in dispute resolution has expanded since the onset of the political crisis in 2011.<sup>77</sup> One of the reasons for this is that disputes between neighbours have drastically increased, and aqil are well-positioned to help resolve these disputes.<sup>78</sup> Respondents in this study affirmed the role of the aqil during the ongoing war, at least with respect to their involvement in settling minor disputes. While aqil are generally male, two female aqil, one in Ibb and one Aden, have been identified. The aqil in Aden interviewed introduced herself as the first female aqil in Yemen since 2003. She confirmed that most mediation cases in her community concern family and neighbourhood disputes.

Alongside these existing actors, new arbitration actors have emerged because of the war, such as the mushrifeen in the Ansar Allah-controlled northern areas and the Security Belt in the STC-controlled southern areas. The mushrifeen and the Security Belt are in positions of de facto authority in their respective areas, so their involvement in disputes may not be with the parties' consent. However, this is also the case with respect to certain arbitrators who possess significant influence in communities.

In Yemeni, mushrifeen translates to “supervisors.” The mushrifeen are part of a structure that was created by Ansar Allah after they took control of Sana'a to tighten their grip on state and non-state institutions and actors. The mushrifeen have acquired absolute authority, and arbitrators may hesitate to resolve serious disputes without involving the mushrifeen in the arbitration process.<sup>79</sup> Resolving disputes, one of the mushrifeen's main activities, is one of the ways they exert influence and receive benefits such as financial gain, power, and greater social authority.

The Security Belt is a new security force that does not act under the authority of the ROYG. Rather, its members receive their orders from the STC.<sup>80</sup> The legal status of the Security Belt remains vague, and it has no clear mandate. However, of relevance is the Security Belt's role in interacting with communities and resolving individual disputes. People in Aden may reach out to the Security Belt seeking help with all kinds of disputes. According to an interviewed Security Belt officer, the Security Belt does not receive or refer cases to the Office of the Public Prosecutor. Instead, they undertake their own investigations. The officer also noted there is limited cooperation between the Security Belt and the judiciary in criminal cases.

### **3.3. Procedures and Enforcement Mechanisms**

In formal arbitration, if a dispute is successfully resolved, the resolution will be documented and signed by the parties and will become enforceable in the same manner as a verdict by a Court of First Instance. If the parties do not implement the resolution voluntarily, the aggrieved party can seek enforcement from the Courts of Appeal, as long as an appeal of the resolution has not been filed. The enforcement of customary law rulings is different. A police officer interviewed mentioned that he deals with customary arbitration resolution directly, without an order from the Courts of Appeal to enforce customary arbitration rulings.

In tribal areas, violations of customary law are considered to bring dishonour to tribesmen and their families. As such, enforcement mechanisms for customary law are quite strong and tribal collective responsibility is an important enforcement tool.<sup>81</sup> In tribal arbitration, the arbitrator requires guarantees before taking on a case to ensure a smooth arbitration and compliance with rulings. The arbitrator may ask each party to appoint a guarantor, who must possess enough influence to exert social pressure on the parties. In more serious cases, the arbitrator may require guarantees before agreeing to arbitrate the matter, in order to ensure the parties intend to resolve the dispute and adhere to the resolution. The guarantees may either be a person (guarantor) or a material good (Yemeni dagger, weapons, money).<sup>82</sup> If the parties fail to abide by the commitments made by the guarantor, the guarantor then becomes a party to the dispute.<sup>83</sup>

### 3.4. Appealing and Arbitration

There are two different routes for appealing an arbitration ruling, either through the formal judiciary or via customary arbitration. The formal judiciary is more widely utilized in the cities, while customary arbitration appeal is more typical in rural areas. Pursuant to the Arbitration Act, a customary verdict is considered to be of equal weight to a verdict by a Court of First Instance. Article 53 of the Arbitration Act sets out the conditions to appeal, which include the absence of an arbitration agreement, arbitrators exceeding their powers, violation of the arbitration agreement, or the arbitration agreement's violation of Sharia law or public order provisions. After receiving the arbitration verdict, litigants can either accept and implement it voluntarily and seek judicial enforcement, or they can appeal.<sup>84</sup> Appeals of arbitration rulings must be brought before the Courts of Appeal. In more traditional areas, a tribal appeal mechanism often exists, whereby the parties have the chance to appeal the arbitration verdict by choosing another tribal arbitrator, known as a *sheikh of al-margha* and *manha*.<sup>85</sup>

### 3.5. Resorting to Customary Law

Multiple factors lead litigants to resort to informal customary law as opposed to the formal judiciary. Often, it may be the only option they have, either because they live in remote tribal areas where the state has limited authority, or because the judiciary is absent. Yemenis also consider informal arbitration practices to be more transparent, participatory, and efficient and less corrupt than the state judiciary.<sup>86</sup>

#### 3.5.1. Types of Disputes

Customary arbitration covers a wide range of disputes, but most commonly cases relate to land disputes, inheritance claims, and commercial disputes. Customary arbitration could cover criminal matters, unless prohibited by law. Article 5 of the Arbitration Act specifies that arbitration is prohibited for the following cases: Islamic legal punishments; the annulment of marriage contracts; impeachment and prosecution of judges; disputes related to compulsory enforcement procedures; all matters in which arbitration is not permissible; and everything related to public order.<sup>87</sup> However, even in some criminal cases that should be restricted to the formal judiciary, customary law may be applied in practice. One prosecutor explained, "in criminal cases, except for the complaints where the victim is entitled to waive his right, only the prosecution has the authority to handle the cases. However, in reality there are interventions even in serious cases such as killing."

The type of the dispute is an important determining factor in selecting the mode of dispute resolution. In family law cases, people may prefer customary law practices over the formal judicial system for privacy reasons. Prior to the war, the vast majority of divorce and separation issues were already resolved through informal legal processes or through family, friends, mediators, sheikhs, or other parties.<sup>88</sup> Individuals tend to resort to the formal judiciary and law enforcement authorities to seek justice for more violent crimes.<sup>89</sup> In 2006, the National Democratic Institute conducted a study on tribal conflict resolution in the governorates of Marib, Al-Jawf, and Shabwah, covering 422 sheikhs, community leaders, and local council members. The majority of the respondents in that study (52%) preferred to have the courts handle cases, especially violent crimes. However, those who preferred customary law did so because of the absence of courts or their poor performance (slow, unjust, or even absent) and efficiency in handling such cases in more tribal areas.<sup>90</sup>

One of the respondents to this study, a lawyer and arbitrator, explained that people may prefer customary arbitration over formal judicial processes in cases of murder because of compensation considerations. According to the Penalty Law, blood money (*diyya*) is five million YER (approximately 8,000 USD), while according to Sharia law, it could be up to approximately \$150,000 USD. Customary law, which tends to provide outcomes between these two extremes, may thus be a preferable option.

### *3.5.2. The Stature of the Parties*

The stature or prominence of the parties in relation to each other is another important factor in deciding to pursue customary arbitration or formal judicial processes, especially for the weaker party. The party with more power may pressure the other to accept customary arbitration or may impose certain conditions in relation to the dispute. In other cases, both parties may choose customary arbitration for practical reasons, particularly if the arbitrator is known for successfully enforcing his rulings. In circumstances where a complainant asks a particularly powerful village sheikh to arbitrate a matter, the other party may be socially obligated to accept customary arbitration over formal judicial processes.

One change caused by the war is that it aggrandized new actors and put them in a position of power over the local communities, such as military commanders and/or leaders of non-state armed groups. In some cases, the powerful figures may engage in unlawful pressure to oblige the complainant to participate in arbitration rather than formal judicial processes. As an arbitrator who is a military commander in Taiz noted, “People are keen to choose an arbitrator who can protect their rights due to the absence of state authorities – an influential figure who can force the parties to meet and come to amicable solutions. This was not the standard before the war.”

### *3.5.3. Increase in the Use of Customary Law during the War*

Since the formal judiciary has always been absent in remote areas of Yemen—both before and during the current conflict—the war has not impacted reliance on customary law in these tribal areas. However, the use of informal customary law practices and formal state structures appears to have an inverse relationship; customary law practices flourish in the absence of a state system due to the frequent interruptions of their services.

In the urban areas of governorates experiencing armed conflict, such as Taiz, Aden, and Hadhramout, the absence of the state and the collapse of its institutions, including the judiciary, forced people to resort to customary law to resolve their disputes. After the onset of the war, it took a couple of years for state institutions to gradually return to work as the intense fighting subsided. For instance, all respondents in Aden affirmed a significant increase in the application of customary law to resolve individual disputes, especially between 2015 and 2017, whereas customary law was not as widely practiced in Aden before the war.

Despite this observed shift in urban areas, the traditionally tribal city of Marib witnessed the opposite: an increase in the use of formal courts to resolve disputes. According to interviews and group discussions that took place with several judges and lawyers, the increased reliance on formal courts is not limited to IDPs. Rather, the increase is due to the existence of an effective formal judiciary and the impact of displaced persons from urban areas with no tribal ties. In Taiz, some respondents explained that when the state's legal system resumed its formal functions in recent years amidst the conflict, people's reliance on customary law decreased. As a prosecutor in Taiz explained, "when a judge who is known for his wisdom, patience and ability to quickly solve disputes was appointed as the chief of Al-Mawasit District Court in Taiz, the number of people resorting to arbitration and customary law decreased."

## 4. Legal Needs and Access to Justice

### 4.1. Legal Needs

The ongoing conflict and absence of state security have led to a significant increase in crime and individual disputes and to noticeable changes in the nature and volume of cases brought before the judiciary. General patterns observed in all governorates include increased land and rent disputes due to the deterioration of living and economic conditions, as well as cases involving assault, embezzlement, and theft. In addition, an increase in personal status cases can be witnessed, including domestic abuse, divorce, and custody cases. The data collected shows that, in terms of number and proportion, the most common cases are summary offences, such as petty thefts. However, across the six governorates, there has also been a pattern of increased human rights violations by all parties to the conflict, including arbitrary detention, torture, enforced disappearances, and violations of labor and employment laws.

In Taiz, personal status cases as well as individual land and property disputes increased due to land grabbing by militias following mass displacement at the onset of the conflict. This situation has given rise to new legal needs for returnees, former IDPs who have returned to their homes and may have found other people or families occupying them. In Aden, respondents reported a significant increase in the number of killings, kidnappings, and rape of women and children. Additionally, criminal cases including assaults and manslaughter have increased as a direct consequence of the volatile security situation and governance by non-state groups in the south. According to one judge, most cases in Hadhramout involve land disputes that pre-date the conflict. This can be explained by the frequent interruptions to the judiciary's services in Hadhramout during the conflict, which increased processing times for all cases. Ibb witnessed an increase in the plundering of public funds and property endowments for charitable purposes (*waqf*).<sup>91</sup> Lawyers in Sana'a reported that the specialized criminal court issued sentences to confiscate assets from several political opponents.

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“Even the number of law students, in both governmental and private colleges, has jumped four times; the motivation is that most of them have personal disputes.”  
- Professor of Law

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## 4.2. Demographic Changes

Adding to the aforementioned challenges facing the judiciary, conflict-generated internal displacement led to significant demographic changes. Over the course of the war, approximately four million people have been internally displaced in Yemen.<sup>92</sup> Lawyers in Marib and Ibb explained that the war has resulted in high numbers of IDPs, which has overwhelmed the judiciary in these cities.

As Marib is primarily a tribal society, people traditionally rely on tribal arbitration instead of formal judicial proceedings to settle disputes. Before the war, the governorate had only three courts, including one in the capital city of Marib, which faced limited capacity and sporadic closure due to security issues.<sup>93</sup> One judge in Marib explained that before the war, Marib had the lowest case average among all of the cities, with just 30 cases per year and an average of two trial sessions per day. Now, with Marib hosting over one million IDPs,<sup>94</sup> approximately 1,000 cases are heard per year and a single judge may work on up to 100 to 150 cases. In 2017, there were only three judges in the city, none of whom were female. Six more were added after that. The infrastructure capacity of Marib’s three courts remains the same, although a Specialized Criminal Court and a Public Funds Court were established as the city expanded. A similar situation can be seen in Ibb where a significant number of IDPs settled in the early years of the conflict after fleeing Taiz and Hodeidah. This created high housing demands and legal needs.

## 4.3. Access to Justice

Women, children, and marginalized and vulnerable groups have always faced barriers to obtaining justice in Yemen, which have been exacerbated by the war. While the Constitution guarantees equal opportunities and access to justice for all citizens,<sup>95</sup> in practice there are several formal measures, traditions, and beliefs that limit Yemenis equal access to justice, both in formal and informal legal structures.

As a cross cutting issue, Yemenis are facing financial challenges due to dire living and economic conditions. To save money, many clients have sought consultations instead of hiring lawyers to take on and file their cases. Therefore, many lawyers provide pro bono assistance, especially regarding human rights violations or when working with clients in poverty. The Yemeni Women’s Union also provides limited legal aid to women in some cities.

### 4.3.1. Women

According to the Global Gender Gap Report 2020, Yemen is the worst-ranked country for gender equality out of 153 countries.<sup>96</sup> Barriers such as cost, lengthy proceedings, and lack of law enforcement prevent women from pursuing claims. A 2014 study that examined the most frequent legal problems encountered by men and women found that women are slightly less likely than men to have legal issues, including conflict with neighbours and crime. However, when it comes to family and land issues, women experience disputes more frequently than men.<sup>97</sup> According to the same study, 41 percent of family issues involved divorce and separation, while land disputes were typically associated with inheritance issues.<sup>98</sup> The majority of respondents interviewed for this report affirmed this and noted a significant increase in livelihood and child support disputes. Many legal experts interviewed have attributed this increase to general economic strife. Instances of child marriage have increased for the same reasons.

Most women in Yemen do not have a source of income and lack independence due to narrow social definitions regarding women's roles. As a result, women are typically disadvantaged in legal disputes, and they are more than often required to be accompanied by a male "guardian." In addition, women who bring their relatives before a court face social consequences for doing so, which is why women opt to maintain good familial relationships rather than pursuing a court case against their relatives.

Furthermore, state laws and institutions do not provide measures to guarantee women access to justice, or to accommodate women considering the traditional and conservative Yemeni culture. In most of the courts and police stations, there are hardly any women on staff to help encourage women to make use of formal rule of law institutions.<sup>99</sup> An additional and equally important matter is the lack of adequate detention facilities for women. A police officer interviewed for this report confirmed that safe and secure detention facilities are non-existent in Aden; this is an issue that also reportedly exists in other parts of Yemen. Finally, corruption among the police is widespread. As a result, citizens, and especially women, are hesitant to reach out to the police in the first place.

In Aden, respondents specifically reported that the conflict has led to an increase in violence against women, rape, and harassment, even by some security forces. The UN Security Council has accused Sultan Zabin, Director of the Criminal Investigation Department in Sana'a, of responsibility for the systematic arrest, detention, torture, sexual violence, and rape against politically active women, including at least one minor.<sup>100</sup>

**Example from a case in Sana'a:** A woman wished to annul her marriage contract because of the mistreatment and exploitation she suffered at the hands of her husband. In accordance with the law, she was required to announce and file the case in her husband's local court district, even though he lived in another governorate far away from her own. She was required to follow the same procedural rules when seeking alimony or custody of her child. After facing the long and arduous process of filing the case against her husband, who refused to attend the trial process, a judgment was issued in her favour. Although she had waited the required legal period to remarry, her ex-husband retained the right to consider the judgment non-existent and appeal to the Supreme Court, as stipulated in the new draft amendment to the Law of Pleadings. As a result, while she divorced him, her husband reserved the right to revoke it at any time.

### 4.3.2. Religious Minorities

With a predominantly Islamic population, Yemen's legal system has been shaped by Islamic law, inadequately representing minorities in Yemen. A study conducted between July 2015 and March 2017, showed the existence of discriminatory practices based on race, gender, ethnicity, and religion by both state institutions and non-state actors.<sup>101</sup>

Ansar Allah in particular has discriminated against Yemeni minorities, including Jews and Baha'i. Described by the United States State Department as an antisemitic group, Ansar Allah has adopted antisemitic propaganda which led many Jewish Yemenis to flee the country.<sup>102</sup> The rise of Ansar Allah's power in the northern governorate Sa'ada coincided with their deliberate efforts to expel minorities from the area, including displacing Jewish Yemenis from their homes in Sa'ada and Raida. In 2021, Ansar Allah expelled some of the very last remaining Yemeni Jews out of the country.<sup>103</sup> Ansar Allah has furthermore continued to suppress the Baha'i minority by prosecuting them, confiscating their money, and expelling them from the country.<sup>104</sup>

### 4.3.3. Muhamasheen

In Arabic, *Muhamasheen* means "marginalized" and has been used to describe certain ethnic groups in Yemen. The Muhamasheen (singular *Muhamash*) are a minority community within Yemen, numbering somewhere between 500,000 to 3.5 million.<sup>105</sup> They are also described pejoratively as *Akhdam*, or "servants." Within the caste-based system of Yemeni society, the Muhamasheen are seen as the lowest class of citizens or are perceived as existing outside social structures due to their "foreign" ethnicity. Most Yemenis believe that the Muhamasheen are descended from Abyssinians who invaded Yemen in approximately the sixth century.<sup>106</sup> The Muhamasheen face ethnic discrimination due to their dark skin; while those with remnants of other ethnicities with light skin, such as Persians and Turks who also invaded Yemen, became part of the respected class of society. The Muhamasheen are segregated from the rest of society, most of them residing in slums on state-owned land that lack essential services or are subject to state-sanctioned removal attempts.<sup>107</sup>

Discrimination against the Muhamasheen has deprived them of fundamental rights, including the right to education, healthcare, employment in the public and private sectors, and equal access to justice.<sup>108</sup> The Constitution states that all citizens are equal, yet in practice the state lacks policies or other serious measures to ensure the equal rights of the Muhamasheen or other minorities, with the exception of very limited welfare, educational, and healthcare programs in some cities.<sup>109</sup> The 2013-2014 National Dialogue Conference (NDC) outcomes emphasized the need to adopt a national strategy and establish a commission to address the widespread discrimination against the Muhamasheen, including effective measures to integrate them into society and government that would be reflected in the draft Constitution.<sup>110</sup> Nevertheless, not a single judge or prosecutor in Yemen is Muhamasheen. According to Al-Hudifi, President of the Union of the Muhamasheen, there may have been a few Muhamasheen police officers hired in south Yemen before unification in 1990.<sup>111</sup>

Several reports have observed that the Muhamasheen have become more vulnerable

and deprived of access to justice because of the ongoing conflict, noting that “[the Muhamasheen] face difficulties in securing legal redress where they are subject to violence or other unlawful conduct.”<sup>112</sup> Discrimination against the Muhamasheen in accessing justice has involved serious human rights violations. In the case of rape of a group of young boys, the police did not take any action and later abandoned the case because the victims were Muhamasheen.<sup>113</sup> Several other instances have been reported in which perpetrators faced no punishment for the rape of Muhamasheen women or children. Respondents to the present study affirmed that police typically do not take claims from Muhamasheen seriously, especially when such claims are made against non-Muhamasheen. Consequently, the majority of complaints lodged by the Muhamasheen do not go further than the police station. If a case does reach the judiciary, it will proceed no further than the court of first instance due to the complainant’s inability to pay litigation fees. As a result, the Muhamasheen usually resolve their civil disputes among their community or through their aqil, without approaching state institutions.

*A recent high-profile story concerns that of the rape of a girl in Taiz, known as “Rasail,” by five boys. The case remained pending with the Taiz Office of the Public Prosecutor. Under pressure from the public, it was referred to the Attorney General where the matter continued to languish. While one of the accused was arrested, the authorities did not take any action to arrest the other individuals involved. Rasail’s lawyer was also subject to several threats.*<sup>114</sup>

According to Al-Hudifi, the Muhamasheen are not recognized as equal to other citizens before the law from the moment a case is brought before judicial institutions: “While authorities address the other litigants by their names or ‘brothers’, we are called ‘*khadem*’.” As Al-Hudifi explained, state authorities appear only when the perpetrator of a crime is from the Muhamasheen. When a victim is Muhamasheen, authorities become reluctant to investigate the matter or to press charges against the accused. In some cases, members of the Muhamasheen have spent seven years in prison without being charged with any crime.<sup>115</sup> The ongoing war has also threatened the Muhamasheen’s right to secure housing, as some Muhamasheen neighborhoods in Sa’ada and Taiz have been hit by the Saudi-led coalition airstrikes and forced the community to constantly seek safer shelter.<sup>116</sup> Finally, the ongoing war has exposed Muhamasheen to severe polarization to take a side in the conflict. In particular, Ansar Allah has exerted pressure on the Muhamasheen, including children, recruiting them to join its forces.

#### *4.3.4. Internally Displaced Persons*

Yemen has witnessed several non-international armed conflicts during the last two decades, the most important of which are the six Sa’ada wars that began in 2004 against Ansar Allah and the war against Ansar al-Sharia, a branch of AQAP, which took control of Abyan governorate in 2012. These wars resulted in large numbers of IDPs who have yet to be compensated for their losses or accommodated in any way. The National Dialogue Conference, which took place after the six Sa’ada wars and just before the onset of the current war, specifically addressed the issue of IDPs. One of the NDC’s outcomes concerns the “issuance of a special law, which shall establish an independent national body to deal with cases of internal displacement as result of wars and armed conflicts.” The rights of IDPs were also embedded in the Draft of the Constitution of 2015, with article 121 stating that “internally displaced persons as a result of natural disasters

or conflicts have the right to protection and humanitarian aid. The state shall ensure decent life, education, and appropriate healthcare without discrimination and shall compensate them. The state shall act to end the causes of displacement.”

The ongoing war caused an estimated 4 million Yemenis to flee their homes; 1.2 million have possibly returned to their regions in 2020.<sup>117</sup> IDPs are scattered throughout Yemen, where they suffer from a lack of basic needs and are subjected to discrimination, unfair treatment, and abuse from state and non-state actors and are often denied basic rights such as the right to movement, housing, health care, and education.<sup>118</sup> IDPs in Yemen face compounded challenges. First, they have lost their homes and been forced to move as a direct result of the conflict. Second, they are not welcomed by the host communities and continue to experience a denial of their most fundamental rights. As a lawyer in Aden stated, “IDPs are among the most likely to be subject to mass arrest, displacement, and rape. Many attacks are carried out by the security services and similar security units.” Another lawyer in Hadhramout explained, “As I work with a charity organization, I have seen many of the IDPs suffer injustices.” While IDPs suffer many injustices, they are also unlikely to be able to access justice. According to a police officer, “Police may not take the claim seriously if the victim belongs to a marginalized group or the claim is made by a displaced person.”

## 5. Conclusion

This report has outlined Yemen’s current justice system and identified key impacts of the war on both formal and informal justice processes and institutions in six governorates—Aden, Hadhramout, Ibb, Marib, Sana’a, and Taiz. The ongoing war has resulted in an ever-changing landscape of military and political control over certain areas, fragmenting Yemen’s justice system amongst the authorities in control. Alongside fragmentation of justice institutions, new local actors have emerged to take on informal roles in the delivery of justice where the state is effectively absent, the war solidifying their position of power over local communities. Over six years of war and subsequent instability throughout the country have increased challenges to the rule of law and delivery of impartial justice throughout Yemen, while legal needs of Yemenis, and in particular IDPs, are rising.

## Annex I Glossary

Ansar Allah	The political term for Houthis
Aqil	Neighbourhood leader
Sheikh	Tribal leader
Mushrifeen	Powerful members of Ansar Allah appointed to the state and non-state institutions as a supervisor.
Hudud	Certain punishments according to Islamic law
Wukalá' al-sharí	Lawsuit agents. An old Yemeni practice allows non-lawyers, lawsuit agents, to stand before the court.
Al-margha	The highest rank of the tribal customary law judges. A judgment from Al-margha is final.
Muhamasheen	Marginalized groups
Akhdam	A derogatory term used for marginalized groups with dark skin, meaning servant.
Sulh	Mediation
Tahkím	Arbitration
Mahakim Ibtidayya	Courts of First Instance
Mahakim Ist'enaftiyya	Courts of Appeal
Mahkamah Oliya	Supreme Court
Diya	Blood money paid the victim's relatives as compensation
Sharia	Islamic law
Hashemite	Descendants of the Prophet Mohammed
Imam	Ruler
Waqf	Assets that are donated for being held in perpetual trust for general or specific charitable causes.

## Annex II

### Sample Population Data Collection

#### Targeted governorates

Governorate	No. of in-depth interviews	No. of focus group discussions
Aden	10	1
Hadhramout	10	0
Ibb	11	0
Marib	11	1
Sana'a	6	0
Taiz	10	0
Other; outside of Yemen	2	1
<b>Total</b>	<b>60</b>	<b>3</b>

#### Focus Group Discussions

Profession	Governorates			Male	Female	Total
	Aden	Marib	Virtual			
Judge	1	2	0	1	2	3
Prosecutor	0	2	0	2	0	2
Lawyer	7	4	2	6	7	13
Human Rights activist	2	2	0	3	1	4
Law Professor	0	2	2	4	0	4
Journalist	1	0	0	0	1	1
<b>Total</b>	<b>11</b>	<b>12</b>	<b>4</b>	<b>16</b>	<b>11</b>	<b>27</b>

## In Depth Interviews

Profession	Governorate							Male	Female	Total
	Aden	Hadhramout	Ibb	Marib	Sana'a	Taiz	Other			
Judge	1	1	1	1	0	1	0	4	1	5
Prosecutor	1	1	1	1	0	1	0	5	0	5
Lawyer	4	4	3	4	3	3	0	17	4	21
Police Officer	1	1	1	1	0	1	0	5	0	5
Aqil	1	1	1	1	0	1	0	4	1	5
Sheikh	0	1	1	2	0	1	2	7	0	7
Mushrifeen	0	0	1	0	0	0	0	1	0	1
Security Belt Officer	1	0	0	0	0	0	0	1	0	1
Arbitrator	2	1	1	1	0	1	0	6	0	6
Other (law professor; activist; member of parliament)	0	0	1	0	1	0	2	4	0	4
<b>Total</b>								<b>54</b>	<b>6</b>	<b>60</b>

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