

# The Role of the Judiciary in Achieving Transitional Justice and Reconciliation in Yemen

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**Cover photo:** A young man looks out at Cairo Citadel in Taiz city, where a Yemeni flag is seen over the war-wrecked historic site on July 18, 2021 // Sana'a Center Photo by Ahmed Basha.



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## Executive Summary

An almost decade-long conflict has severely impacted Yemen's judiciary, weakening its already fragile infrastructure and further undermining its competence and credibility. Additionally, the judiciary has faced political polarization, diminishing trust in its neutrality and casting doubt on its ability to handle politically sensitive cases associated with transitional justice post-conflict. Notwithstanding the challenges, efforts must be exerted for the judiciary to assume a foundational role in post-conflict Yemen and serve as a channel for restoring the rule of law and reinstating public trust in state institutions. Following a comprehensive review of the transitional justice landscape in Yemen, including an examination of the outcomes of the National Dialogue Conference, Yemen's 2015 draft constitution, the draft transitional justice laws from 2012 and 2014, as well as an analysis of the violations of international human rights and humanitarian law resulting from the war, this policy brief identifies the obstacles and opportunities facing Yemen's judiciary. It also explores alternative judicial mechanisms such as traditional customary laws, drawing lessons from the case of Rwanda's *gacaca* courts. To conclude, it offers a set of recommendations on how to bolster and enhance the role of the judiciary in advancing transitional justice.

# 1. Introduction

The United Nations defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”<sup>[1]</sup> It includes a range of processes, including formal and informal judicial procedures, reconciliation, reparations, institutional reform, and other measures. Transitional justice, however, varies from one context to another.

Nearly a decade has passed since transitional justice was first discussed in Yemen, gaining prominence during the National Dialogue Conference (NDC) held in 2013-14 following the uprising that led to the ouster of former president Ali Abdullah Saleh. Yemen’s 2015 draft constitution<sup>[2]</sup> was formulated based on the outcomes of the NDC, which stipulated the establishment of a transitional justice and national reconciliation commission. In parallel, the Ministry of Legal Affairs drafted the first version of the law on transitional justice and national reconciliation in 2012 and a second in 2014. Such commendable efforts, however, were superseded by the Houthis’ takeover in 2014 and the outbreak of war in 2015.

Since then, Yemen has witnessed an unprecedented rise in violations amid deep political fragmentation and polarization, including within the country’s judicial system. Unlike traditional forms of justice mechanisms, which are overseen by judicial institutions, transitional justice deals with distinct grievances that arise in exceptional circumstances, and which often implicates state actors, operating on a scale that the judiciary is not fully equipped to handle. In fragile states like Yemen, guaranteeing the fairness and effectiveness of the legal system is especially difficult, given the vast legacy of violations and grievances that need to be dealt with post-conflict, further complicated by the presence of a fragile peace process. Over the course of the war, judicial institutions have also suffered severe material damage, in addition to the burden of a huge backlog of cases arising from the conflict.<sup>[3]</sup>

In light of these challenges, this paper contends that the judiciary must play a critical and fundamental role in post-conflict Yemen and serve as a conduit for the restoration of the rule of law and rebuilding people’s trust in state institutions. To shine a light on its significance, this paper provides a comprehensive overview of the transitional justice landscape in Yemen, before moving on to an examination of how the judiciary can play a central role in achieving transitional justice in Yemen, drawing on examples from other countries with similar experience.

[1] “Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace,” United Nations, October 11, 2023, [https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023\\_07\\_guidance\\_note\\_transitional\\_justice\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf), p.2.

[2] Draft Constitution for the New Yemen, The General Secretariat of the NDC, Sana’a, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e3655fb01fb904703943d6fc4057\\_Constitution%20Draft%20Eng%20V1.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e3655fb01fb904703943d6fc4057_Constitution%20Draft%20Eng%20V1.pdf)

[3] Mohammed Alshuwaiter, “The Impact of the War on Yemen’s Justice System,” ILAC Report, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>

## 1.1. Methodology

This paper adopts an analytical approach, involving a review and analysis of primary sources, including the NDC outcomes,<sup>[4]</sup> the draft constitution,<sup>[5]</sup> and the draft transitional justice law. Additionally, secondary sources addressing the state of the conflict in Yemen and its impact on justice and human rights are considered, including relevant UN literature and human rights reports.

A comparative approach is employed to explore other countries' relevant experiences in transitional justice. Rwanda in particular, despite the grave atrocities witnessed during its conflict, has a legacy of successful transitional justice practices that serve as valuable lessons. Research was also informed by the perspectives of some of Yemen's most prominent figures working in the field of justice, including Nour El Bejjani Nouredine, Head of the International Center for Transitional Justice (ICTJ) Yemen Programs; Eshraq al-Maqtari, Spokesperson and Investigative Judge at Yemen's National Commission to Investigate Alleged Violations of Human Rights (NCIAVHR); Judge Yahya Alkawari, Supreme Court Judge; Mohamed Naji Alaw, Lawyer; Ahmed Arman, Minister of Legal and Human Rights Affairs; and Dr. Olfat Aldobui, Member of the Consultation and Reconciliation Commission.

Using a multifaceted approach, the paper aims to shed light on the complex interplay between the judiciary and transitional justice, highlighting both the challenges and opportunities in navigating this delicate process.

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<sup>[4]</sup> "The All-Inclusive National Dialogue Conference's Document," Republic of Yemen, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fcd58ec4a3b378a2333fb5\\_NDC%20Doc%20Eng%20V1.2.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fcd58ec4a3b378a2333fb5_NDC%20Doc%20Eng%20V1.2.pdf)

<sup>[5]</sup> Draft Constitution for the New Yemen, The General Secretariat of the NDC, Sana'a, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fbo1fb904703943d6fc4057\\_Constitution%20Draft%20Eng%20V1.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fbo1fb904703943d6fc4057_Constitution%20Draft%20Eng%20V1.pdf)

## 2. Transitional Justice in the National Dialogue Conference

When the NDC was established under the auspices of the Gulf Cooperation Council (GCC), one of its goals was to take “steps aimed at achieving national reconciliation and transitional justice, and measures to ensure that violations of human rights and humanitarian law do not occur in future.”<sup>[6]</sup> Transitional justice emerged as a central theme in the NDC’s discussions, which were organized around nine thematic working groups. In addition to the working group dedicated to the National Dimension, National Reconciliation and Transitional Justice, two other groups worked on specific grievances: the Southern Issue and the Sa’ada Issue. The remaining working groups focused on state and institutional reforms, participation in governance, the rule of law, rights, and freedoms – all essential pillars of transitional justice.<sup>[7]</sup>

Of all the outcomes of the NDC addressing transitional justice, the one focusing on recognition and redress was the most directly associated with it. It included restructuring of the state in a decentralized manner and granting broader authorities to the regions,<sup>[8]</sup> as well as acknowledging the Southern Issue,<sup>[9]</sup> the development needs of Sa’ada<sup>[10]</sup> in the far north of Yemen, and recognizing the languages of Al-Mahra and Socotra.<sup>[11]</sup> Critically, it also included the investigation of forced disappearances during Yemen’s previous conflicts,<sup>[12]</sup> the acknowledgment of the victims of these conflicts, and memorializing them in the national memory.<sup>[13]</sup> Compensation and remediation was another transitional justice-related outcome, which meant reinstating and compensating southern civil servant workers who lost their jobs after the 1994 civil war,<sup>[14]</sup> compensating those who suffered mistreatment during the Sa’ada Wars,<sup>[15]</sup> addressing injustices against the Tihama population,<sup>[16]</sup> and acknowledging victims of terrorist and counter-terrorism operations.<sup>[17]</sup>

<sup>[6]</sup> “Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council,” December 2011, [https://peacemaker.un.org/sites/peacemaker.un.org/files/YE\\_111205\\_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/YE_111205_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.pdf), Article 21, paragraph f.

<sup>[7]</sup> The NDC had nine working groups: Independence of Special Entities, Comprehensive and Sustainable Development, Military and Security, Sa’ada Issue, Rights and Freedoms, Good Governance, State Building, Southern Issue, and Transitional Justice. Rafat al-Akhali, “What Yemen’s Youth Got Out of the National Dialogue Conference,” April 7, 2014, Atlantic Council, <https://www.atlanticcouncil.org/blogs/menasource/what-yemen-s-youth-got-out-of-the-national-dialogue-conference/>

<sup>[8]</sup> “The All-Inclusive National Dialogue Conference’s Document,” Republic of Yemen, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fcd58ec4a3b6378a2333fb5\\_NDC%20Doc%20Eng%20V1.2.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fcd58ec4a3b6378a2333fb5_NDC%20Doc%20Eng%20V1.2.pdf). Under State-Building outcomes, p.100

<sup>[9]</sup> Ibid. Under the Southern Issue outcomes, p.33

<sup>[10]</sup> Ibid. Under the Sa’ada Issues outcomes, p.48

<sup>[11]</sup> Ibid. Under State-Building outcomes, p.93

<sup>[12]</sup> Ibid. Under issues of National Dimension, National Reconciliation, and Transitional Justice outcomes, p. 61

<sup>[13]</sup> Ibid. p. 71

<sup>[14]</sup> Ibid. Under the Southern Issue outcomes, p. 34

<sup>[15]</sup> Ibid. Under the Sa’ada Issue outcomes, p. 51

<sup>[16]</sup> Ibid. Under issues of National Dimension, National Reconciliation, and Transitional Justice outcomes, p. 67

<sup>[17]</sup> Ibid. p. 55

Also directly related to transitional justice was the outcome on rehabilitation of affected individuals, which entailed reforming the public sector,<sup>[18]</sup> service cooperatives, agricultural cooperatives,<sup>[19]</sup> developing road infrastructure, as well as rebuilding institutions and factories in the south damaged following the 1994 civil war and in other conflict-affected regions, including Sa'ada, Abyan and Hajjah.<sup>[20]</sup> Institutional reform of state agencies, especially those involved in human rights violations, was another outcome.<sup>[21]</sup> The one on national reconciliation, highlighted as a fundamental principle of transitional justice, emphasized the proposed transitional justice commission's role in establishing the foundations for national reconciliation and promoting a culture of tolerance and coexistence.<sup>[22]</sup>

The outcome on accountability called for the prosecution of those involved in the killing of peaceful protesters in 2011, including members of security and military institutions; exposing those responsible for approving projects that harmed the environment and people in the coastal areas of Aden, Mukalla, and Hudaydah; and other acts of corruption related to state resources.<sup>[23]</sup> Outcomes to do with community participation promised to look at the make-up of the armed forces, security, and intelligence services so that there is 50 percent representation from the north and 50 percent from the south in senior army, security, and intelligence leadership, and that women make up 30 percent of employees in all state institutions, and empowering other disenfranchised groups.<sup>[24]</sup>

## 2.1. The Draft Constitution of 2015

The drafters of the 2015 constitution took into account the outcomes of the NDC, incorporating some of them in distinct legal articles that addressed the state's structure, governance system, rights, and freedoms. For instance, Chapter Four, Article 273, Section Three, dealt with the specificity of both Sana'a and Aden cities, noting that "the city of Aden has a special economic and administrative status within the governorate of Aden. It shall enjoy autonomous legislative and executive authorities."<sup>[25]</sup> It also established the Sa'ada Reconstruction Fund to compensate those affected by the wars in the governorate. Article 424 stipulated that "the South (Aden and Hadramawt) shall be equally represented in the first electoral cycle in federal legislative power and in all leadership structures in legislative, judicial, and executive bodies, including the army and security,"<sup>[26]</sup> while Article 76 stated that women's representation should be no less than 30 percent in various authorities.<sup>[27]</sup>

<sup>[18]</sup> Ibid. p. 57

<sup>[19]</sup> Ibid. Under All-Inclusive, Integrated, and Sustainable Development outcomes, p. 227

<sup>[20]</sup> Ibid. Under issues of National Dimension, National Reconciliation, and Transitional Justice outcomes, p. 58

<sup>[21]</sup> Ibid. p. 57

<sup>[22]</sup> Ibid. p. 60

<sup>[23]</sup> Ibid. p. 60

<sup>[24]</sup> Ibid. Under Southern Issue outcomes, p. 38

<sup>[25]</sup> "Draft Constitution for the New Yemen," The General Secretariat of the NDC, Sana'a, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fb01fb904703943d6fc4057\\_Constitution%20Draft%20Eng%20V1.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fb01fb904703943d6fc4057_Constitution%20Draft%20Eng%20V1.pdf), p. 47

<sup>[26]</sup> Ibid. p. 89

<sup>[27]</sup> Ibid.

Chapter 10, the last of the draft constitution, entitled “Transitional Provisions,” dealt with Yemen’s transitional phase more generally, including transitional justice. It laid out how the state would commit to taking measures to achieve transitional justice and national reconciliation, including uncovering the truth about human rights violations, holding individuals and entities responsible for violations accountable, restoring dignity and providing reparations, reforming institutions that engaged in violations, and ensuring the non-recurrence of these violations.<sup>[28]</sup>

Importantly, it stipulated the issuance of the transitional justice and national reconciliation law, the establishment of a transitional justice commission, addressing the grievances of the youth revolution and the Southern Movement, caring for their families and the families of martyrs, commemorating their memory, and establishing a compensation fund. While the draft constitution did not delve extensively into the provisions of transitional justice, it granted the necessary constitutional framework. It considered the 20 points of principles outlined by the NDC Technical Committee,<sup>[29]</sup> including the 11th dealing with the Southern Issue,<sup>[30]</sup> as integral references to consider when drafting the transitional justice law.<sup>[31]</sup> The Technical Committee recommended accelerating the issuance of the transitional justice law in consensus between the components of the political process and relevant civil society organizations, in line with international human rights conventions and international standards for transitional justice.<sup>[32]</sup>

## 2.2. Immunity and the Draft Transitional Justice Law

A transitional justice law<sup>[33]</sup> was drafted by the Ministry of Legal Affairs prior to the conclusion of the NDC and the constitution drafting. The urgency stemmed from mounting local and international pressure following the enactment of the immunity law in January 2012, which granted former President Ali Abdullah Saleh and his senior officials immunity from legal and judicial prosecution for violations committed during their rule,<sup>[34]</sup> sparking criticism from several human rights

<sup>[28]</sup> Ibid.

<sup>[29]</sup> The 20 points consist of principles outlined by the NDC technical committee to set the stage and create a conducive environment and build trust among the participants. They include, for example, an official apology to the south from the parties involved in the summer war of 1994, as well as an apology to the people of Sa’ada and other affected areas by the parties involved in those conflicts. Clause 17, specifically, calls for the expedited issuance of the transitional justice law, aiming to address past injustices and promote reconciliation. See: “Text of the final report of the Preparatory Committee for the Comprehensive National Dialogue Conference [AR],” AlMasdar, December 2012, <https://almasdaronline.com/article/39472>

<sup>[30]</sup> The eleven demands developed by the Southern Issue working groups were aimed at fostering confidence and facilitating discussions on several priorities, which included releasing political detainees associated with the peaceful Southern Movement; and expediting the work of the two committees tasked with investigating cases of civil, military, and security personnel who were unlawfully dismissed from their positions following the 1994 war, and providing them with appropriate compensation. See: “The Southern Issue Team at the Dialogue Conference Presents 11 Demands for Preparation [AR],” Al-Masdar, April 3, 2013, <https://almasdaronline.com/article/43696>

<sup>[31]</sup> “Draft Constitution for the New Yemen,” The General Secretariat of the NDC, Sana’a, 2013, [https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fb01fb904703943d6fc4057\\_Constitution%20Draft%20Eng%20V1.pdf](https://assets-global.website-files.com/5b54ded3eadb58942db8e365/5fb01fb904703943d6fc4057_Constitution%20Draft%20Eng%20V1.pdf)

<sup>[32]</sup> “The 20 points on which there is national consensus [AR],” Sana’a News, May 28, 2013, <https://www.sanaanews.net/news-21287.htm>

<sup>[33]</sup> The draft consists of 35 articles distributed into six chapters.

<sup>[34]</sup> “Gulf Cooperation Council (GCC) Initiative Agreement,” OSESGY, January 23, 2012, [https://osesgyunmissions.org/sites/default/files/gcc\\_initiative\\_yemen\\_english.pdf](https://osesgyunmissions.org/sites/default/files/gcc_initiative_yemen_english.pdf)

organizations.<sup>[35]</sup> At the NDC, the Minister of Legal Affairs, Mohammed al-Mikhlaifi, claimed that one of the reasons for issuing the law before the conference concluded was to foster a positive atmosphere for the victims and those affected by political conflicts.<sup>[36]</sup>

Still, Prime Minister Mohammed Salim Basindawa praised the transitional justice draft law for its comprehensiveness and its aim of alleviating the effects of the immunity law by affirming the right to truth and reparations.<sup>[37]</sup> But the law stirred widespread controversy across all political, legal, and human rights bodies. It upset supporters of President Saleh in the General People's Congress (GPC), while also failing to meet the expectations of many civil society activists, human rights organizations, and victims' families.<sup>[38]</sup> Many criticized its lack of adherence to international standards for transitional justice.<sup>[39]</sup> A memorandum presented by the Peace and Justice Initiative<sup>[40]</sup> to the Minister of Legal Affairs Al-Mikhlaifi and the Minister of Human Rights Hooria Mashoor emphasized the need to consider accountability in an amended version of the law, stating that compensation alone cannot replace the criminal aspect of serious violations.<sup>[41]</sup>

<sup>[35]</sup> "Yemen transition tainted by 'immunity' deal," Amnesty International, November 24, 2011, <https://www.amnesty.org/en/latest/news/2011/11/yemen-transition-tainted-eimmunity-deal/>

<sup>[36]</sup> Yemen Information Center, <https://yemen-nic.info/news/detail.php?ID=54698>

<sup>[37]</sup> "Prime Minister: The Draft Transitional Justice Law Came To Accommodate The Outcomes Of The Dialogue [AR]," Al-Thawrah, June 8, 2014, <https://althawrah.ye/archives/85420>

<sup>[38]</sup> Maged al-Madhaji, "Transitional justice laws in Yemen: circumventing the truth and silencing victims [AR]," al-Mufakkira al-Qanuniyya, January 30, 2013, <https://legal-agenda.com/قوانين-العدالة-الانتقالية-في-اليمن-تح/>

<sup>[39]</sup> Summary prepared by the Office of the United Nations High Commissioner for Human Rights, United Nations, November 7, 2013, [https://www.upr-info.org/sites/default/files/documents/2014-03/a\\_hrc\\_wg6\\_18\\_yem\\_3\\_e.pdf](https://www.upr-info.org/sites/default/files/documents/2014-03/a_hrc_wg6_18_yem_3_e.pdf)

<sup>[40]</sup> The Peace and Justice Initiative is a network of international criminal law professionals who aim "to encourage and support legal redress for atrocity crimes such as crimes against humanity, genocide, war crimes, aggression, terrorism, and torture." See: <https://www.peaceandjusticeinitiative.org>

<sup>[41]</sup> "Position Paper on Yemeni Draft Law on Transitional Justice and National Reconciliation," The Peace and Justice Initiative, March 2012, <https://www.peaceandjusticeinitiative.org/wp-content/uploads/2012/03/PJI-Position-Paper-on-Yemeni-TJ-law-for-MHR-and-MLA.pdf>

## 3. War Violations and Ongoing Transitional Justice Efforts

### 3.1. Decade-Long Violations

In the past decade, Yemen has witnessed unprecedented violations, both in terms of nature and scale. These include the use of illegitimate methods of war such as indiscriminate aerial bombardment, siege, shelling of civilian neighborhoods, bombings of homes, use of snipers, landmine planting, recruitment of children, arbitrary arrests, enforced disappearance, torture, extrajudicial killing, and the targeting of ethnic and religious minorities and migrants, among other violations.<sup>[42]</sup> Some of these actions are specified in Yemen's penal code and are also considered crimes in international human rights law and UN humanitarian treaties. These violations have not been limited to military conflict zones but have also occurred in areas far from the battleground.<sup>[43]</sup> All parties involved in the Yemeni conflict, whether domestic parties such as the Houthis and government forces, or those perpetrated by the Arab coalition led by Saudi Arabia and the UAE, have been implicated in serious human rights violations and breaches of international humanitarian law, some of which have been systematic.<sup>[44]</sup>

Alarmed by the worsening human rights situation in Yemen, the UN High Commissioner for Human Rights established the Group of Eminent Experts in 2017 to investigate and report on human rights and international humanitarian law violations. In their fourth and final report released in 2020, the team summarized the violations taking place in Yemen, accusing all direct parties to the conflict, including arms-exporting countries, of committing serious violations of international human rights law and international humanitarian law, including what could be considered war crimes. The report noted that violations investigated during their mandate including airstrikes, shelling, enforced disappearances, torture leading to death, sexual violations, and child recruitment, were just a fraction of the violations perpetrated against civilians by warring parties, specifying the Houthis, the internationally recognized government, the Southern Transitional Council, Saudi Arabia, and the UAE.<sup>[45]</sup>

Yemen's conflict has resulted in nearly 3 million displaced individuals living in challenging conditions.<sup>[46]</sup> The majority of the population lives below the poverty line, facing significant obstacles in moving between cities and traveling abroad.<sup>[47]</sup>

<sup>[42]</sup> "Submission to the Universal Periodic Review of Yemen," Sana'a Center For Strategic Studies, October 17, 2023, <https://sanaacenter.org/publications/main-publications/21011>

<sup>[43]</sup> "Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014," Human Rights Council, September 29, 2020, <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/GEE-Yemen/A-HRC-45-CRP7-en.pdf>.

<sup>[44]</sup> Ibid.

<sup>[45]</sup> Ibid.

<sup>[46]</sup> IDPs in Yemen, UNHCR, 2021, <https://reporting.unhcr.org/yemen-idps-yemen-4>.

<sup>[47]</sup> Jasmin Diab and Anas Jerjawi, "Displacement in Yemen: An Overview," Euro-Mediterranean Human Rights Monitor, May 22, 2022, <https://euromedmonitor.org/en/article/5120/Displacement-in-Yemen:-An-Overview>

The residents of Taiz continue to suffer from a siege imposed on their city, a blockade that has caused deaths from associated road accidents or lack of medical treatment.<sup>[48]</sup> The psychological, health, and social damage directly resulting from the economic situation, non-payment of public sector salaries, and loss of business in Yemen since the war is incalculable. A postwar settlement will need to produce a comprehensive plan of reconstruction to remedy this.

A look into these violations further reveals varying degrees of severity, including broader violations that affect large segments of the population — such as the targeting of schools, hospitals, and government institutions, as well as road closures — and ones specifically targeting individuals — sniping, torture, arrest, and seizure of personal property, as well as administrative abuses and denial of financial entitlements, such as salaries for public service employees. Comprehensively categorizing these violations will prove key in determining the appropriate mechanisms for post-war transitional justice, such as those focusing specifically on questions of accountability, reparations, or institutional reform.

## 3.2. Current Transitional Justice Efforts

### 3.2.1 Government-led efforts

In conjunction with the NDC, in 2013, some official committees were formed to tackle specific grievances, including the ‘Committee for Considering and Addressing Land Issues in the Southern Governorate and the ‘Commission to Address Issues of Employees Forced Out of Their Jobs in the Civil, Security, and Military Fields.’<sup>[49]</sup> Both were tasked with addressing southern grievances.<sup>[50]</sup> In May 2023, Presidential Leadership Council (PLC) chief Rashad al-Alimi issued a decree to settle the status of 52,766 dismissed civilian, security, and military employees in the southern provinces, still pending since the 1994 civil war.<sup>[51]</sup> This decision was seen as a gesture of goodwill towards the STC, which had become a partner within the PLC.<sup>[52]</sup>

Other committees established in 2013 include: ‘The Fund for Families of the Martyrs and Wounded of the February 11 Revolution and its Peaceful Movement,’<sup>[53]</sup> and the ‘Reparation Fund for Victims of Human Rights Violations, Conditions of the Wounded and Martyrs of the 1994 War and Sa’ada Wars, and Care for their

<sup>[48]</sup> “Yemen: Siege of Taiz Is Collective Punishment of Civilians, Houthi Group Must Lift It Immediately” Euro-Mediterranean Human Rights Monitor, August 16, 2023, <https://euromedmonitor.org/en/article/5785/Yemen:-Siege-of-Taiz-is-collective-punishment-of-civilians,-Houthi-group-must-lift-it-immediately>

<sup>[49]</sup> “Presidential Decree No. (2) for 2013,” February 13, 2024, [https://yemen-nic.info/db/laws\\_ye/detail.php?ID=69022](https://yemen-nic.info/db/laws_ye/detail.php?ID=69022).

<sup>[50]</sup> Jens Kambeck, “Returning to Transitional Justice in Yemen: A Background on the Commission on the Forcibly Retired in the Southern Governorates,” Carpo Reports, July 26, 2016, [https://carpo-bonn.org/wp-content/uploads/2016/07/carpo\\_policy\\_report\\_03\\_2016.pdf](https://carpo-bonn.org/wp-content/uploads/2016/07/carpo_policy_report_03_2016.pdf)

<sup>[51]</sup> “Framework: Background of President Rashad Al-Alimi’s decision to settle the situation of 52,000 southern employees deported after the ‘94 war [AR],” Yemen Future, May 16, 2023, <https://yemenfuture.net/news/14531>

<sup>[52]</sup> “52,000 Yemenis return to their jobs after 29 years: Will the STC lose a winning card? [AR],” May 20, 2023, <https://www.aljazeera.net/politics/2023/5/20/52-عاما-من-بعد-لوظائفهم-يعودون-لوظائفهم-بعد-29-عاما-من-بعد>

<sup>[53]</sup> “Republican decision to set up fund for families of victims of February 11 revolution [AR],” National Information Center, September 11, 2013, <https://yemen-nic.info/news/detail.php?ID=55668>

Families.<sup>[54]</sup> Most of these committees were halted with the onset of the war in 2015, except the National Commission to Investigate Alleged Violations to Human Rights (NCIAVHR), which was established in 2012 by a presidential decree and is still operating from Aden.<sup>[55]</sup> Immediately after the PLC was formed in 2022, the Consultation and Reconciliation Commission (CRC) was also set up, though internal conflicts within the PLC have prevented it from working effectively.<sup>[56]</sup> In April, 2024, the CRC formed five permanent committees, one of which focused on transitional justice.<sup>[57]</sup>

### 3.2.2 Civil Society and International Organizations' Initiatives

Local civil initiatives have also been established to resolve specific conflicts and support the families of victims; some of these engage in reconciliation and mediation within the framework of transitional justice. The Abductees' Mothers Association, for instance, is one of the most active initiatives that successfully mediated the release of kidnapped individuals. The association has strongly advocated the need of holding the perpetrators of kidnapping and torture accountable and compensating the affected individuals. Tribal mediators have also played a significant role in releasing detainees.<sup>[58]</sup> Another example is the Community Mediation Committees in Aden, which form part of the Promoting Inclusive Access to Justice in Yemen (PIAJ) project supported by the United Nations Development Programme (UNDP). These committees primarily handle more minor cases, such as individuals detained in police stations and resolving individual disputes. The initiative serves as a pilot bottom-up approach, with the potential for expansion to various other governorates.<sup>[59]</sup> Individual initiatives, like those led by Hadi Jumaan, who collects bodies of the deceased and returns them to their families, are also noteworthy.<sup>[60]</sup>

International organizations, including the UN's Group of Eminent Experts (whose mandate was suspended in 2021), the International Center for Transitional Justice (ICTJ) and International IDEA, have contributed to enhance the awareness of transitional justice and provided training on transitional justice to several Yemeni local organizations, judiciary members, and party leaders. Local human rights organizations like Mwatana, Sam and others, are also involved by monitoring and documenting violations to ensure victims' right to reparations and truth disclosure.

<sup>[54]</sup> "Republican decision 191 to treat harm to victims of rights violations, to deal with victims of 1994 war, Sa'adah wars and take care of their families [AR]," National Information Center, October 13, 2013, [https://yemen-nic.info/db/laws\\_ye/detail.php?ID=69389](https://yemen-nic.info/db/laws_ye/detail.php?ID=69389)

<sup>[55]</sup> "National Commission to Investigate Alleged Violations to Human Rights," February 17, 2024, <https://www.nciye.org/en/>

<sup>[56]</sup> Maysaa Shuja Al-Deen, "The Presidential Council's Year of Failure," Sana'a Center of Strategic Studies, July 11, 2023, <https://sanaacenter.org/publications/analysis/20500>

<sup>[57]</sup> "The Consultation and Reconciliation Commission forms its specialized committees [AR]," Saba Net, April 4, 2024, [sabanew.net/viewstory/109130#:~:text=والجريات%20والحقوق%20لجنة%20الثقافة%20المساندة%20المصالحة%20والتشاور%20هيئة%20شملت](http://sabanew.net/viewstory/109130#:~:text=والجريات%20والحقوق%20لجنة%20الثقافة%20المساندة%20المصالحة%20والتشاور%20هيئة%20شملت)

<sup>[58]</sup> Nadwa Al-Dawsari, "Peacebuilding in the Time of War: Tribal Cases-Fire & De-escalation Mechanism in Yemen," Middle East Institute, April 2021, <https://www.mei.edu/sites/default/files/2021-04/Peacebuilding%20in%20the%20Time%20of%20War.pdf>

<sup>[59]</sup> "Restorative Justice in Action: Community Mediation Committees in Yemen," UNDP, January 18, 2024, <https://www.undp.org/yemen/stories/restorative-justice-action-community-mediation-committees-yemen>

<sup>[60]</sup> "Hadi Jumaan: 2022 Aurora Humanitarian," Aurora Humanitarian Initiative, <https://aurorapize.com/en/hadi-jumaan-2022-aurora-humanitarian>

Another noteworthy local initiative is the Reconciliation and Social Peace Committee in Taiz, comprising political leaders dedicated to peacebuilding and conflict resolution. Formed to address the armed confrontations in the Al-Hujariah region between 2019 and 2020, which resulted in casualties among both military and civilian populations, the committee successfully facilitated reconciliation among the parties involved. It also provided compensation to 22 casualties as a form of redress to achieve political reconciliation. In March 2023, it released a report on the homes and public and private facilities in Taiz city that were attacked, destroyed, or seized by armed elements during the war. It also works on cases of individuals forcibly disappeared, victims of armed conflicts, and other issues that intersect with the principles of justice.<sup>[61]</sup>

At the time of writing, the Sana'a Center for Strategic Studies was leading a consultation initiative that involves human rights activists and legal experts with the aim of gaining a deeper understanding of the intricacies of transitional justice and determining the most effective approach within the Yemeni context. At its first and second Yemen International Forums, which brought together more than 200 Yemeni stakeholders to engage in dialogue, the Sana'a Center placed central emphasis on transitional justice. One of its flagship initiatives has been the support of the Yemen Declaration for Justice and Reconciliation,<sup>[62]</sup> marking an initial step towards integrating transitional justice into the broader peace process.

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<sup>[61]</sup> Zoom interview with Dr. Olfat Aldobui, member of the Reconciliation and Social Peace Committee, January 29, 2024.

<sup>[62]</sup> "The Yemen Declaration for Justice and Reconciliation," Yemen Justice, 2023, <https://yemenjustice.org/en/>

## 4. The Impact of War on Yemen's Judiciary

The judiciary is poised to play a critical role in Yemen's transitional justice process, but it is weak and crippled with inefficiencies that predate the current crisis. As with most of Yemen's state institutions, the outbreak of conflict has led to a near complete paralysis of its functioning, especially in the early years of the war,<sup>[63]</sup> impacting both its physical infrastructure and its personnel. Over the course of the war, several court houses were either destroyed, neglected, or unable to pay building rents,<sup>[64]</sup> while judicial personnel, including judges, were subject to threats and assassinations, and some even forced to flee or migrate. Worst of all, was the fragmentation of the judiciary and its exposure to political polarization, undermining its authority and the rule of law.<sup>[65]</sup>

### 4.1. The Split of the Judiciary and Political Polarization

Yemen now has two separate judicial systems, each working independently. One is aligned with the internationally recognized government, and the other operates under the de facto authority of the Houthi group (*Ansar Allah*). Neither system recognizes the other.<sup>[66]</sup>

In areas under the internationally recognized government, the judiciary has fallen victim to the numerous power struggles occurring between the different parties. In one particular incident, prior to the formation of the Presidential Leadership Council (PLC) in 2022, the judiciary became polarized between the Southern Transitional Council (STC) and the government, led at the time by President Abdo Rabbuh Mansour Hadi. Tensions peaked in February, 2021, when the Southern Judges Club, an association of judiciary members from southern governorates affiliated with the STC, declared a general strike in response to President Hadi's unilateral appointment of Attorney General Ahmed al-Musa. The STC and other factions opposed to the appointment argued that the decision did not comply with judicial law.<sup>[67]</sup> In response, the STC shut down courts in Aden and coastal Hadramawt. Subsequently, the head of the government-aligned Supreme Court issued an order to investigate both the

<sup>[63]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System," ILAC Report, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>.

<sup>[64]</sup> Ibid.

<sup>[65]</sup> Mohammed Alshuwaiter and Emelie Kozak, "The Judiciary in Yemen: The Status Quo, Current Challenges and PostConflict Considerations," November 2019, <https://www.deeproot.consulting/en/publications/the-judiciary-in-yemen-the-status-quo-current-challenges-and-post-conflict-considerations>

<sup>[66]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System, A Preliminary Rule of Law Assessment," International Legal Assistance Consortium, November 2021, <https://ilacnet.org/the-impact-of-the-war-on-yemens-justice-system/>

<sup>[67]</sup> "The Graveyard of Hubris," Yemen Annual Review 2021, Sana'a Center of Strategic Studies, March 3, 2022, <https://sanaacenter.org/publications/the-yemen-review/16768>

head and executive members of the Southern Judges Club.<sup>[68]</sup> The establishment of the PLC helped calm down these tensions with PLC President, Rashad al-Alimi, appointing a new Attorney General, Qaher Mustafa,<sup>[69]</sup> and Judge Sabah al-Alwani, President of the Southern Judges Club, to the Supreme Judicial Council,<sup>[70]</sup> along with several other judges to the Supreme Court. These appointments effectively halted the strikes initiated by the Southern Judges Club.<sup>[71]</sup> By no means, however, has this ensured the judiciary's harmonious, effective or independent functioning.

In areas under the control of the Houthi group, the judicial system is under similar threat of political manipulation. After they took over the capital Sana'a, the Houthis formed a committee, the Justice System, under the leadership of Mohammed Ali al-Houthi, a member of their Supreme Political Council, which presently holds powers exceeding those of the official Supreme Judicial Council. The Houthis have exploited judicial rotation for political polarization, replacing many independent judges with others affiliated with the Houthis or belonging to Hashemite families loyal to the group. Meanwhile, Houthi supervisors (*mushrifeen*) have been granted excessive supervisory powers and taken over roles previously ascribed to the judiciary.<sup>[72]</sup>

The practices of the Specialized Criminal Court (SCC), meanwhile, provide another clear example of judicial politicization. The SCC was used primarily to suppress journalists, prosecute Houthi opponents, and seize their assets. The court has to date conducted show trials that lack the minimum fair trial procedures according to Yemeni law.<sup>[73]</sup> On September 18, 2021, the Houthi authorities executed nine individuals accused by the Specialized Criminal Court of leaking information that led to the killing of the then-head of the Supreme Political Council, Saleh al-Sammad. The United Nations and human rights organizations strongly condemned the ruling.<sup>[74]</sup>

## 4.2. Competence and Credibility

Yemen's war has undermined the competence and credibility of its judiciary. Its infrastructure has suffered a near-total collapse, with many of its courts having ceased operation between 2015-17, particularly in the governorates witnessing

<sup>[68]</sup> Ibid.

<sup>[69]</sup> "Appointment of Judge Qaher Mustafa as the new Attorney General of Yemen [AR]," Al Ayyam, May 25, 2022, <https://www.alayyam.info/news/90PGKA76-IBPUS5-26A5>

<sup>[70]</sup> "Appointing the first Yemeni woman to serve as a member of the Supreme Judicial Council [AR]," August 13, 2022, <https://www-web2.alayyam.info/news/93U202G1-YVWEOF-DD5E>

<sup>[71]</sup> "Southern Judges Club lifting of the Strike in All Courts and Prosecution Offices [AR]," August 9, 2022, <https://www.alayyam.info/news/93PTXTOT-4EH283-FoEA>

<sup>[72]</sup> Mohammed Alshuwaiter and Kozak, "The Judiciary in Yemen: The Status Quo, Current Challenges and PostConflict Considerations" Deep Root, November 25, 2019, <https://www.deeproootconsulting/en/publications/the-judiciary-in-yemen-the-status-quo-current-challenges-and-post-conflict-considerations>

<sup>[73]</sup> Lynn Maalouf, "Yemen: Huthi-run court sentences 30 political opposition figures to death following sham trial," Amnesty International, July 9, 2019, <https://www.amnesty.org/en/latest/press-release/2019/07/yemen-huthi-run-court-sentences-30-political-opposition-figures-to-death-following-sham-trial/>

<sup>[74]</sup> "Secretary-General Strongly Condemns Executions in Yemen," United Nations Secretary General, September 19, 2021, <https://press.un.org/en/2021/sgsm20914.doc.htm>

armed confrontations, like Taiz and Aden. Several judges, prosecutors, and lawyers were subjected to assault, and some were even killed. Additionally, the war led to an increase in crime rates and personal disputes.<sup>[75]</sup>

The judiciary's infrastructure was weak from the outset, with many courts lacking suitable buildings to conduct their work and facing a shortage of basic necessities. The war only exacerbated the already weak infrastructure. Around 47 judicial facilities were partially or completely destroyed. According to a 2019 report from the Houthi-run Ministry of Justice in Sana'a, the estimated cost of the physical damage to judicial buildings was US\$100 million.<sup>[76]</sup> The majority of courts and judicial facilities in all governorates suffer from a shortage of electricity, communication devices, computers, and office supplies. Some courts have lost entire archives. Today, the courts face a significant backlog of cases and an inability to adjudicate them. This is attributed to various reasons, including:

- **High crime rates and personal disputes:** The absence of the state and the security breakdown has led to an increase in crime rates and individual disputes.<sup>[77]</sup>
- **Decline in security situation:** The cessation of court operations during the years of conflict and deteriorating security resulted in the cancellation of sessions. Judges, prosecutors, and lawyers have been threatened, attacked, and sometimes killed, while many litigants are unable to attend court proceedings.<sup>[78]</sup>
- **Shortage of judges and qualified staff:** To secure their safety, some judges were forced to leave the country. The Higher Judicial Institute, meanwhile, stopped admitting new batches of judges during the early years of the war. The number of accepted candidates remains inadequate, and the acceptance process is marred by favoritism, affecting the competence of judges.<sup>[79]</sup> In addition, courts continue to lack qualified administrative staff, which means many judges, already overburdened, also need to perform administrative tasks.
- **Lack of material and financial resources:** Yemen's courts lack the most basic infrastructure for their operation, and suffer from a severe shortage of basic necessities, slowing down the workflow.<sup>[80]</sup>
- **Dire economic situation and impact on salaries:** Like many Yemenis, judges, court staff, and public prosecutors face dire economic challenges due to the significant reduction in the value of the Yemeni currency and salaries amounting to less than a quarter of what they were before the war. Delays in salary payments, along with the deduction of incentives, have greatly hindered the commitment and performance of those working in the judiciary.<sup>[81]</sup>

<sup>[75]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System," ILAC Report, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>

<sup>[76]</sup> Alshuwaiter and Emelie Kozak, "The Judiciary in Yemen: The Status Quo, Current Challenges and PostConflict Considerations." Deep Root, November 25, 2019, <https://www.deeprootconsulting/en/publications/the-judiciary-in-yemen-the-status-quo-current-challenges-and-post-conflict-considerations>

<sup>[77]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System," ILAC Report, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>

<sup>[78]</sup> Ibid.

<sup>[79]</sup> Ibid.

<sup>[80]</sup> Ibid.

<sup>[81]</sup> Ibid.

Even before the war, doubts have been raised about the independence and integrity of Yemen's justice system, a perception that has only worsened since the conflict began. The judiciary does not operate in isolation but collaborates with state authorities. These, however, have not only failed to provide adequate budgets for the judiciary to function properly, but they have also failed to safeguard judges and prosecutors or enforce court rulings. Making matters worse, state authorities sometimes obstruct the implementation of justice following a verdict. The judiciary has thus become a casualty, incapable of fulfilling its tasks, leading to a loss of public confidence in the rule of law.

## 5. The Judiciary's Role in Achieving Transitional Justice

### 5.1. Challenges

Transitional justice is intricately tied with politics.<sup>[82]</sup> The judiciary's role in transitional justice is thus contingent on several factors, political will being a primary determinant. Additionally, the role of state institutions, including the judiciary, in achieving transitional justice will vary based on the local factors and contexts that have shaped them.<sup>[83]</sup>

In Yemen's case, it is unlikely that the judiciary, in its current form, would be able to manage the files of justice and reconciliation in the transitional phase. It is nonetheless crucial that the judiciary be involved. One way could be through the involvement of selected judges in proposed mechanisms of reconciliation or, more specifically, in a transitional justice commission, such as the one recommended in the NDC outcomes and the draft constitution. A transitional justice and national reconciliation commission would need to be an independent body, separate from the formal judiciary. Such a proposition is compelling for several reasons.

Firstly, in its current weak form, the judiciary is unable to handle all pending cases within the regular judicial system, let alone the additional burden of war crimes cases. Secondly, the judiciary has faced political polarization, weakening trust in its neutrality, especially in sensitive political and criminal cases such as transitional justice. The judiciary itself needs reform as part of the transitional justice process to restore confidence in its credibility.

Thirdly, the comprehensive approach to transitional justice relies on the integration of judicial and non-judicial measures. The UN transitional justice guide emphasizes the need for a comprehensive approach that includes truth-seeking, reparations, guarantees of non-recurrence, institutional reforms, and more.<sup>[84]</sup> If the judiciary handles the transitional justice file independently, it may reinforce a vision centered solely on criminal trials and accountability, potentially facing resistance from implicated conflict parties with a vested interest in obstructing justice. Advocates for transitional justice in Yemen aim for a more comprehensive approach that balances both justice and a political settlement.

<sup>[82]</sup> Leslie Vinjamuri and Jack Snyder, "Law and Politics in Transitional Justice," *Annual Review of Political Science*, Vol. 18, 2015, <https://www.annualreviews.org/doi/10.1146/annurev-polisci-122013-110512>, pp. 303-327

<sup>[83]</sup> Noha Aboueldahab, *Transitional Justice and the Prosecution of Political Leaders in the Arab Region: A Comparative Study of Egypt, Libya, Tunisia and Yemen*, (Bloomsbury Publishing, 2017).

<sup>[84]</sup> "Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace," United Nations, July 2023, [https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023\\_07\\_guidance\\_note\\_transitional\\_justice\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf)

Lastly, to gain popular support, the involvement of local civil society in managing transitional justice will prove key.<sup>[85]</sup> Transitional justice, when implemented properly, seeks to have a significant impact on people's lives on a broad scale.<sup>[86]</sup> Its process should thus involve all segments of society, in addition to victims, given that virtually no one in society is immune to both the direct and indirect repercussions and effects of war.

## 5.2. Opportunities

Under the right conditions, there are four crucial roles that the judiciary can play in achieving transitional justice:

***Enhancing the Legitimacy of Transitional Justice:*** Yemen is currently on the top list of failed states globally.<sup>[87]</sup> While the government in Aden relies more on international recognition, Houthi authorities in Sana'a depend on its control over the majority of Yemen's population. Both authorities face a significant legitimacy crisis among the populations they govern. The parliament in Yemen, meanwhile, is no longer empowered to enact new legislation. Therefore, any agreements related to transitional justice, determining the fate of victims, accountability procedures, and compensation, will face fundamental questions about their legitimacy and legality. Yemen is not an exceptional case in this regard, as many post-conflict countries face similar conditions. Public participation and consultations should therefore be expanded to enhance the legitimacy of transitional justice.<sup>[88]</sup> Despite the challenges it is facing, Yemen's judiciary remains an important refuge for many litigants, meriting a level of respect and legitimacy as a legal and judicial institution.<sup>[89]</sup> This makes its presence and participation crucial in enhancing the legitimacy upon which transitional justice relies, along with the legitimacy of the procedures it follows.

***Accountability for Serious Violations:*** Accountability is one of the cornerstones of an effective transitional justice framework. The violations accompanying the war pose a challenge to whichever authority manages the transitional phase. A successful vision for transitional justice cannot exclude those responsible for serious violations, even to a minimal extent. Some propose that the judiciary should be the mechanism for transitional justice accountability through the approval of the proposal presented by the National Commission to Investigate Alleged Violations

<sup>[85]</sup> Leslie Vinjamuri and Jack Snyder, "Law and Politics in Transitional Justice," *Annual Review of Political Science*, Vol. 18, 2015, <https://www.annualreviews.org/doi/10.1146/annurev-polisci-122013-110512>, pp. 303-327

<sup>[86]</sup> "Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace," United Nations, July 2023, [https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023\\_07\\_guidance\\_note\\_transitional\\_justice\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf)

<sup>[87]</sup> "Global Data," *Fragile States Index 2023*, <https://fragilestatesindex.org/global-data/>

<sup>[88]</sup> "Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace," United Nations, July 2023, [https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023\\_07\\_guidance\\_note\\_transitional\\_justice\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/issues/transitionaljustice/sg-guidance-note/2023_07_guidance_note_transitional_justice_en.pdf)

<sup>[89]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System," ILAC Report, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>

of Human Rights (NCIAVHR ) for establishing a human rights court.<sup>[90]</sup> This court could be responsible for investigating serious violations referred by a transitional justice and national reconciliation commission. This proposal aligns with the recommendations of the United Nations.<sup>[91]</sup>

**Expertise:** Judges possess ample knowledge of Yemeni national and customary laws, acquired through extensive work investigating violations, assessing damages, determining compensations, and mediating between adversaries. This expertise is vital for the work of justice and reconciliation committees. Whether transitional justice in Yemen includes the principle of accountability for serious violations – as some activists advocate – or not, judges, as a cadre, have practical experience in resolving complex cases.

**Judicial System Reform:** Last but not least comes the reform of state institutions, including the judiciary, as one of the essential requirements of transitional justice and its outcomes. Accountability itself is not sufficient or possible in the absence of other effective democratic institutions, including an independent judiciary.<sup>[92]</sup> This cannot be achieved without involving the judiciary in the desired reform.

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<sup>[90]</sup> Eighth Report (August 2019 -July 2020), The National Commission to Investigate Alleged Violations to Human Rights, August 2020, <https://www.nciye.org/reports/EighthReport/Eighthreport-en.pdf>, p.17

<sup>[91]</sup> Guidance Note of the Secretary General on Transitional Justice: A Strategic Tool for People, Prevention and Peace," United Nations, July 2023, <https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-secretary-general-transitional-justice-strategic-tool>

<sup>[92]</sup> Noha Aboueldahab, *Transitional Justice and the Prosecution of Political Leaders in the Arab Region: A Comparative Study of Egypt, Libya, Tunisia and Yemen*, (Bloomsbury Publishing, 2017).

## 6. Alternative Justice Mechanisms: Customary Laws

In the absence of solid justice frameworks, there is a growing trend toward greater recognition of legal pluralism globally, with an increasing number of legal scholars advocating for a hybrid legal system that incorporates both formal and informal laws.<sup>[93]</sup> This allows traditional and complementary justice mechanisms used by local communities to settle disputes and address harm caused by violence according to established norms. They include methods like clan or customary courts and community-based dialogue.<sup>[94]</sup> This trend reflects a growing acknowledgment of the value of customary law and the potential benefits it can bring to the justice system, in both normal life or post-conflict. However, the features of customary law do not mean it is without numerous legal and rights-based concerns and challenges, such as the intersections between formal and customary laws, especially in criminal cases, and questions about its compatibility with human rights principles.

Customary law is a broad concept that encompasses a set of traditional rules, customs, and procedures for dispute resolution, including reconciliation, mediation, and arbitration. It can enjoy community acceptance, especially in tribal and rural areas, where it is deeply rooted in the local customs. It offers considerable flexibility in resolving disputes and opens the door for apologies and reconciliation. Moreover, its procedures are characterized by transparency, less complexity, and swift resolution of disputes, often at a lower cost compared to the formal judicial pathway. These attributes have positioned customary law as a preferred mechanism for many disputants, making it a proposed tool for achieving justice and reconciliation in post-conflict settings.<sup>[95]</sup>

In many developing countries, non-state justice systems handle most of the individual disputes, especially in conflict and post-conflict environments, where state institutions are often fragile and governing authority is disputed.<sup>[96]</sup> Yemen is not an exception, its customary law has a significant role in settling conflicts, whether in urban or rural areas, even before the ongoing war, where approximately 80 percent of disputes were informally resolved through this informal system.<sup>[97]</sup> Resorting to arbitration based on customary law is recognized within the Yemeni legal system and its rulings considered equivalent to court of first instance.<sup>[98]</sup> This

<sup>[93]</sup> Gebre Yntiso, "Understanding customary laws in the context of legal pluralism," in *Legal Pluralism in Ethiopia*, edited by Susan Epple and Getachew Assefa, Transcript Culture and Social Practice, 2020, <https://library.oapen.org/bitstream/id/9d5eb60f-f321-461f-9fa2-a94977a8dd7d/9783839450215.pdf>

<sup>[94]</sup> Ibid

<sup>[95]</sup> Geoffrey Swenson, *Legal Pluralism in Theory and Practice*, *International Studies Review* (2018) Vol. 20.3, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3211304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211304), pp 438–462

<sup>[96]</sup> Ibid.

<sup>[97]</sup> Nadwa al-Dawsari, "Tribal Governance and Stability in Yemen," *Carnegie Endowment for International Peace*, April 24, 2012, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3211304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3211304)

<sup>[98]</sup> Mohammed Alshuwaiter, "The Impact of the War on Yemen's Justice System," *ILAC Report*, November 2021, <https://ilacnet.org/wp-content/uploads/2021/12/The-Impact-of-the-War-on-Yemens-Justice-System.pdf>.

reliance on non-official mechanisms has become even more pronounced due to the onset of war, the breakdown of state institutions, and the halt of court activities, compounded by weakened law enforcement authorities.<sup>[99]</sup>

Some observers see the potential of leveraging local customary mechanisms for transitional justice in Yemen. This involves utilizing traditional practices to achieve reconciliation through processes like apology and restitution via compensation. It is useful here to briefly explore a case study of Rwanda adopting alternative methods to the formal judicial system in the pursuit of transitional justice. From this, we can evaluate both the advantages and disadvantages and gauge its suitability for the Yemeni context.

## 6.1. Lessons from Rwanda: *Gacaca Courts*

The examination of how societies recovering from conflict manage the aftermath of severe human rights abuses is relatively new,<sup>[100]</sup> and there have been only a limited number of instances where restorative justice has been applied in post-conflict settings. The most significant of these has been Rwanda's *gacaca* tribunals.<sup>[101]</sup>

The Rwandan government reinstated its traditional community court system known as *gacaca* in 2005 to address the overwhelming number of accused individuals awaiting trial in the national court system. *Gacaca* involved the election of judges at the local level to oversee trials, excluding those accused of planning genocide. These community courts focused on achieving reconciliation by issuing lenient sentences to repentant individuals, and confessing prisoners often returned home without further penalties or were assigned community service. The *gacaca* system successfully processed more than 1.2 million cases nationwide and contributed to reconciliation by allowing victims to learn the truth and perpetrators to confess, express remorse, and seek forgiveness. The *gacaca* courts officially concluded their operations on May 4, 2012.<sup>[102]</sup> When analyzing the *gacaca* case, and drawing lessons, several critical factors need to be taken into account.

First, this system was established by the state and worked under Rwanda's Ministry of Justice.<sup>[103]</sup> The state's new version of *gacaca* bears little resemblance to the customary law practice.<sup>[104]</sup> The new *gacaca* had a codified legal framework – the Genocide Law approved by the Parliament in 1996.<sup>[105]</sup> Three core principles were integrated

<sup>[99]</sup> Ibid.

<sup>[100]</sup> Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Institute for Democracy and Electoral Assistance IDEA, [https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_o.pdf](https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_o.pdf)

<sup>[101]</sup> David Bloomfield, Teresa Barnes and Luc Huyse (eds.), *Reconciliation After Violent Conflict, A Handbook*, International Institute for Democracy and Electoral Assistance, IDEA, 2003, <https://www.idea.int/sites/default/files/publications/reconciliation-after-violent-conflict-handbook.pdf>

<sup>[102]</sup> "The Justice and Reconciliation Process in Rwanda," United Nations, March 2014, <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Justice%202014.pdf>

<sup>[103]</sup> "Justice Compromised The Legacy of Rwanda's Community-Based Gacaca Court," Human Rights Watch, May 31, 2011, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>

<sup>[104]</sup> Ibid.

<sup>[105]</sup> Ibid.

into the genocide law: the decentralization of justice through the establishment of multiple courts across various administrative units; the implementation of plea bargaining to enhance the quantity of evidence and information; and the categorization of offenses based on their nature.<sup>[106]</sup> In other words, the state had modified the traditional *gacaca*, and transformed it into a structured, government-operated judicial system.<sup>[107]</sup>

Second, *gacaca* was not the sole transitional justice mechanism, albeit it handled the largest volume of cases. Alongside it, there existed the national state legal system and the International Criminal Tribunal for Rwanda (ICTR), each with its own mandate. Offenses were classified into four categories: Category 1 encompassed planners, leaders, organizers, and instigators of the genocide, as well as notorious killers and rapists; Category 2 involved individuals who committed homicide; Category 3 comprised those who caused bodily harm without intent to kill; and Category 4 included individuals who engaged in theft or property damage. Capital punishment was mandated for those judged guilty under Category 1, while varying prison terms and restitution were prescribed for the other categories. Additionally, the law introduced the practice of plea-bargaining, allowing courts to reduce sentences for those who confessed to their crimes and implicated their accomplices. *Gacaca* courts did not have the jurisdiction to handle Category 1 crimes, which included planners, organizers, supervisors, and ringleaders, as well as individuals known for committing murder, torture, or rape.<sup>[108]</sup>

Third, transitional justice in Rwanda unfolded in four distinct phases. Phase 1 focused on international efforts, notably supporting the Arusha Peace Agreement (APA) and establishing the International Criminal Tribunal for Rwanda (ICTR).<sup>[109]</sup> Phase 2 was marked by the Rwandan government's mass detention of genocide suspects and limited domestic criminal trials. Phase 3 introduced locally adjudicated accountability mechanisms through the implementation of *gacaca* courts on a national scale. Phase 4 shifted towards seeking justice, involving the transfer of ICTR cases to national jurisdictions, and the creation of the International Residual Mechanism for Criminal Tribunals (IRMCT).<sup>[110]</sup>

Fourth, the end of the war scenario determines the shape of transitional justice post-conflict. As the military victor, the Rwandan Patriotic Front (RPF) had significant leverage in shaping post-genocide Rwanda's justice.<sup>[111]</sup> The biggest

<sup>[106]</sup> Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Institute for Democracy and Electoral Assistance IDEA, [https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_o.pdf](https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_o.pdf)

<sup>[107]</sup> "Justice Compromised The Legacy of Rwanda's Community-Based *Gacaca* Court," Human Rights Watch, May 31, 2011, <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>

<sup>[108]</sup> Ibid

<sup>[109]</sup> Dr. Nicola Palmer and Dr. Robyn Gill-Leslie, "The UN Security Council and Transitional Justice, Rwanda. How International and Domestic Dynamics Shaped the Prosecution of Genocide and the Pursuit of Reconciliation," United Nations University, Centre for Policy Research, August 2020, [https://i.unu.edu/media/cpr.unu.edu/attachment/4843/UNU\\_TJ\\_Rwanda.pdf](https://i.unu.edu/media/cpr.unu.edu/attachment/4843/UNU_TJ_Rwanda.pdf)

<sup>[110]</sup> Ibid.

<sup>[111]</sup> Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Institute for Democracy and Electoral Assistance IDEA, [https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_o.pdf](https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_o.pdf)

criticism of transitional justice in Rwanda often focuses on how the *gacaca* process has bolstered the RPF's power, enhancing its ability to restrict investigations into human rights abuses and international crimes committed by its members before, during, and after the genocide.<sup>[112]</sup>

In the context of Yemen, the benefits of this model include the localization of justice where community can be directly involved. With proper education and assistance, communities can effectively participate in this system. Conflicting testimonies from various participants can counteract biases and ensure fairness. The *gacaca* system also helped expedite the handling of genocide cases and combat impunity by identifying perpetrators.<sup>[113]</sup>

On the other hand, potential drawbacks entailed in trying genocide cases in *gacaca* courts was lessening the gravity of these crimes. There were also inherent doubts about the ability of uneducated individuals in the *gacaca* to handle such serious offenses independently, in addition to concerns about partiality in trials due to familial and social connections, potentially hindering truth-telling. There was also the possibility of *gacaca* trials creating conflicts and tensions within local communities. Lastly, there were also questions regarding *gacaca*'s alignment with international legal standards.<sup>[114]</sup>

This examination of *gacaca* courts within the Rwandan transitional justice framework highlights the state's investment in traditional local mechanisms, formalizing and modernizing them into official channels. The state's intervention, however, could yield unintended consequences. In Yemen, customary law's effectiveness is derived from its autonomy as a deeply rooted social force mechanism, and state interference may compromise its efficacy. Moreover, while customary law may be effective in some local areas, this does not necessarily mean it will work for every society in Yemen. Even if it proves successful at the local level, it may not be the right approach for achieving justice and reconciliation at the national level.

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<sup>[112]</sup> Dr. Nicola Palmer and Dr. Robyn Gill-Leslie, "The UN Security Council and Transitional Justice, Rwanda. How International and Domestic Dynamics Shaped the Prosecution of Genocide and the Pursuit of Reconciliation," United Nations University, Centre for Policy Research, August 2020, [https://i.unu.edu/media/cpr.unu.edu/attachment/4843/UNU\\_TJ\\_Rwanda.pdf](https://i.unu.edu/media/cpr.unu.edu/attachment/4843/UNU_TJ_Rwanda.pdf)

<sup>[113]</sup> Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences*, International Institute for Democracy and Electoral Assistance IDEA, [https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences\\_o.pdf](https://www.idea.int/sites/default/files/publications/traditional-justice-and-reconciliation-after-violent-conflict-learning-from-african-experiences_o.pdf)

<sup>[114]</sup> Ibid.

## 7. Conclusion

The discussions on transitional justice during the NDC marked a significant milestone in raising awareness on transitional justice, particularly given this was the first time it was formally addressed in Yemen. It's important to underscore, however, that the outcomes derived from this historic conference were developed within a pre-war context. Since then, numerous grave violations have been perpetrated, surpassing both in nature and scale what had been addressed in the NDC.

Transitional justice discussions at the NDC also took place under very different political circumstances, at a time when there was only a single governing authority. Yemen today, by contrast, is a state in crisis. Nearly a decade of conflict has effectively disrupted Yemen's judicial system, largely weakening its already fragile infrastructure, intimidating its judges, and further undermining its competence and credibility. Protracted conflict has also resulted in the fracturing of the state among various military-political factions, each with its own sphere of control. This has led to the emergence of conflicting judicial authorities, exacerbating the challenges faced by the judiciary in functioning effectively.

Given these challenges, the judiciary, in its current state, is not equipped to spearhead transitional justice in Yemen, and exploring alternative approaches is required. Still, it is crucial to involve the judiciary in transitional justice endeavors. This could entail the appointment of judges to justice and reconciliation committees and the establishment of a specialized court, similar to the Human Rights Court proposed by the NCI/VHR, to investigate the most serious criminal violations arising from the conflict.

The paper also stresses the importance of considering home-grown mechanisms, such as customary law, arbitration, and community mediations, as well as new bottom-up local initiatives focused on reconciliation. While drawing lessons from the experiences of other nations, specifically the use of local mechanisms and customary law in transitional justice processes in Rwanda, it argues that any consideration of the state resorting to traditional customary mechanisms in Yemen must involve a thorough evaluation of such an approach, carefully weighing the pros and cons, and taking into account Yemen's unique political, security, social, and economic context.

Ultimately, achieving transitional justice in Yemen will require a multifaceted approach that accounts for the complexities of the conflict, the diverse needs of the population, and the principles of transitional justice. The following recommendations seek to provide direction to relevant stakeholders, be they Yemeni or international, related to transitional justice in Yemen.

## 8. Recommendations

1. Prioritize judicial reform and the enhancement of judicial institutions as foundational to transitional justice.
2. Promote the fundamental principles of transitional justice as an integral step in reestablishing the rule of law. This is essential given that the rule of law cannot be fully realized without uncovering the truth, holding perpetrators accountable, compensating victims, reforming institutions, and achieving reconciliation.
3. Allocate financial support and professional development to the judiciary system to bolster its efficiency and capability.
4. Focus on rebuilding the credibility and the independence of the judiciary, restoring public trust in its integrity, and reinforcing the role of institutions upholding the rule of law.
5. Hold comprehensive consultations that involve a diverse range of national stakeholders, including experts, jurists, and victims and their families, in particular, when developing a vision for transitional justice mechanisms. This approach is crucial to ensure that their aspirations and needs are reflected and to contribute to strengthening the legitimacy of the transitional justice process.
6. Explore and evaluate alternative judicial mechanisms that could achieve justice and reconciliation, such as customary law, arbitration, mediation, and community reconciliation committees, ensuring compatibility with formal judicial systems and adherence to human rights standards.
7. Map all local reconciliation initiatives, identifying the opportunities, challenges, and lessons learnt from their experiences, while also exploring avenues to provide support and assistance to strengthen their efforts.

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