

XIX

ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Yemen: Freedom of Expression in Peril



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ARTICLE 19 welcomes any comments, questions or suggestions related to this report.

The picture on the cover is of Yemenite women demonstrating in what has come to be called 'Freedom Square' in Sana'a, Yemen. It was captured by Sarah Richani in August 2007.

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1. INTRODUCTION

1.1. Political context

In Yemen, democracy is a relatively new concept as the country organised the first free legislative elections of its history in April 1993 and its first presidential elections in September 1999, nine years after the reunification of the North and South Yemen. Yemen witnessed in the last few years notable progress in the human rights field, such as the ratification of major international treaties and the development of civil society organizations and NGOs that address human rights and social issues. At the same time, independent and opposition newspapers were created that adopted a critical tone unheard of in the region. These positive developments however were slowed down in the wake of the 11 September 2001 attacks as Yemen, that had aligned itself closely with the USA on its “war on terror”, carried out hundreds of arrests of individuals suspected of being members of *Al Qa’ida*. In this process, the authorities, mainly through the Political Security, harassed, questioned and sometimes detained journalists who covered these arrests. As they were warned to stop reporting on these security issues, journalists started to exert self-censorship for fear of being accused of supporting terrorism. While this wave of arrests slowly ebbed, journalists started to reassert their rights to freedom of expression but faced harassment, physical assaults, arrests and detention by security forces and the judiciary. While the repression peaked in 2005, the attacks against media professionals have continued to be extremely worrying and have occurred on a scale and frequency that give reasons for serious concern, as exemplified for instance by the latest cases of editors in chief prosecuted under terrorism-related charges.

Moreover, the authorities have imposed a media blackout and forbidden access to independent journalists to the northern province of Sa’da where, for the last three years, an armed confrontation has taken place between followers of a Zaidi cleric, Hussein Badr el Din al Huthi, who was killed in 2004 by the government forces, and the army. The clashes led to hundreds of arrests and the army used heavy weaponry, including the air force, to crush the rebellion, reportedly leaving thousands of dead and wounded in their wake. In spite of a ceasefire in 2005, violence, continued throughout 2006. Journalists who tried to cover the events that have led to a humanitarian crisis and the displacement of some 100’000 civilians were harassed and prosecuted under the pretext of endangering “national security”.

1.2. Socio-economic challenges

Yemen is the poorest country in the Arab world and ranks 151 out of 177 countries in the Human Development Index.¹ The exercise of the right to freedom of expression and its corollary, the right to access to information, face challenges in Yemen where 48 percent of the population live under poverty levels² and power is centralized in San'a, Aden and Taiz, leaving three quarters of the 20 million population in rural areas, in remote mountain or desert areas. There are few newspapers reaching the rural areas and fewer inhabitants - many of them poor farmers - able to purchase them or read them. The widespread adult illiteracy rate is estimated to be about 50 percent, about 65 percent of women are illiterate³ and the proportion is even higher in the rural areas, which constitutes a fundamental obstacle to the effective enjoyment of this right.

But the largest challenge of all is the government's failure to respect and protect freedom of expression. Hence for instance, whereas in many other poor regions of the world, poor farmers may access independent radios or community radios, this access is denied to them in Yemen, where the government continues to exercise complete monopoly over the broadcast media, including radio.

In the case of women - and especially rural women - these problems are aggravated by legalized discrimination and by the patriarchal tradition that subordinates them to men. Stereotyped gender roles confine them to the private sphere, thus killing in the bud the formulation of any claim in the social or political field, and preventing this group of citizens to exercising effectively and equally of their right to freedom of expression.

2. THE LEGAL FRAMEWORK

2.1. International obligations and regional norms

The right to freedom of expression is enshrined in Article 19 of the *Universal Declaration of Human Rights* (UDHR). Although the UDHR is not formally binding on States, it is considered as part of international customary law and thus applicable to all States. Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This right is further developed in the *International Covenant on Civil and Political Rights* (ICCPR), one of the two core human rights treaties that elaborate on the basic rights enshrined in the UDHR. Article 19(2) of the ICCPR states:

¹ UNDP Human Development Indicators. Sources.

² Report of the Supreme Council for Motherhood and Childhood (SCMC), a government body.

³ UNDP sources.

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Article 19(3) makes clear that this right can be subject to certain restrictions, *but these shall only be such as are provided by law and are necessary:*

- (a) For respect of the rights or reputations of others;*
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

Yemen is party to the ICCPR, to which it acceded in 1987, and thus is obliged under international law to implement its provisions.

At the regional level, Yemen, as a member of the Arab League, should also respect the Arab Charter on Human Rights adopted by the Council of Ministers of the League of Arab States in 2004. Although Yemen, like most other Arab states, did not yet ratify the Charter, it constitutes the main human rights instrument of the Arab League, an organisation to which Yemen pledged allegiance in Article 6 of its Constitution. Article 32 of the Charter guarantees:

the right to information and freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers.

2.2. Constitutional guarantees

The current Constitution of Yemen, adopted in 1994, explicitly guarantees the right to freedom of expression, along with related rights, in Article 41:

Every citizen has the right to participate in the political, economic, social and cultural life of the country. The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography within the limits of the law.

This provision allows freedom of expression to be limited by law for any reason. This in contrast to international law, which requires that restrictions on freedom of expression are necessary and proportionate to the achievement of a legitimate aim. Article 6 of the Constitution, however, commits Yemen to adhere to the UDHR:

The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and dogma of international law which are generally recognized.

The Constitution also guarantees other rights closely associated with the right to freedom of expression, such as the right of association in the political, professional and union fields, as well as scientific, cultural and other fields (Article 57). However, this provision stipulates that these rights should not be exercised in a way “*contrary to the Constitution*” but “*in a way that serves the goals of the Constitution*” - a vague formulation that can be subject to diverse and potentially arbitrary interpretations.

2.3. National legislation

2.3.1. Press and Publications Law

Despite the constitutional guarantees discussed above, the 1990 Press and Publications Law (No. 25) imposes severe and far-reaching limitations on freedom of the press and provides for the imprisonment of journalists. Article 103 lists a dozen restrictions which media professionals must observe. Among others, they are “*bound to abstain from printing, publishing, circulating or broadcasting:*

- *Critici[sm of] the person of the head of state, or to attribute to him declarations or pictures unless the declarations were made or the picture taken during a public speech. These provisions do not necessarily apply to constructive criticism*
- *Anything which undermines public moral or prejudices the dignity of individuals or the freedom of the individual by smears and defamation,*
- *Anything which leads to the spread of ideas contrary to the principles of the Yemeni Revolution, prejudicial to national unity or distorting the image of the Yemeni, Arab or Islamic heritage”.*

These prohibitions apply to all those employed in “*responsible positions in radio and television journalism, owners and editors-in-chief of newspapers, owners of printing presses and publishing houses and journalists*” (Article 103). Those who violate these prohibitions may be fined, sentenced to a maximum of one year in prison “*without prejudice to any more severe penalty under another law*” (Article 104) and tried before a Press and Publications Prosecutor’s Office, established in 1993. Other penalties provided for by the Law include the closure or suspension of newspapers, the confiscation of copies and the prohibition to practice journalism.

In June 2004, the President publicly supported the removal of the clause that provides for the imprisonment of journalists. Despite this announcement and subsequent discussions around the draft of a new Press and Publications law,

these provisions are still in force and journalists continue to be charged and sentenced to prison terms.⁴

2.3.2. Penal Code

As mentioned above, Article 104 of the Press and Publications Law reserves the right to prosecute media professionals “*without prejudice to any more severe penalty under another law*”. Journalists may be imprisoned under other laws, for instance the Penal Code that limits the exercise of freedom of expression by vague formulations, using such terms as “in the interests of national security” or “within the limits of the law”. The Penal Code lists several speech crimes, some of them - such as apostasy - even sanctioned by the death penalty.⁵ Indeed, as discussed below, the authorities have recently started prosecuting journalists under provisions of the Penal Code before the Special Criminal Court on Terrorism, which constitutes a very worrying development.

2.3.3. Access to Information

Article 3 of the Press and Publications Law proclaims that access to information is one of the rights of Yemeni citizens. This principle is reaffirmed by Article 16, which states that a journalist “has the right to peruse official reports, facts, information and data, and authorities possessing such items shall make it possible for him/her to have cognisance of and to use from them.”

Compliance with these positive principles remains minimal in practice. The absence of implementing legislation means that there is no recognised procedure for requesting access to official records and no deadline for replying to such a request. Moreover, there are no legally defined criteria for deciding whether or not comply with a request, while the requester lacks a guaranteed right of appeal in case the application is not responded to adequately.

The worldwide growth in the number of access to information laws - from a base of thirteen such laws in 1990, there are now over 70 globally - had until recently passed the Arab world by, but Jordan enacted a freedom of information law in 2007 and interest in the subject is now growing throughout the region, including in Yemen. A group of MPs called ‘Yemeni Parliamentarians Against Corruption’ is reported to be working on a legislative proposal.

3. MEDIA MUZZLED AND JOURNALISTS UNDER ATTACK

Freedom of expression should be enjoyed by both individuals and organized sectors of the society such as the media, political parties, associations, trade unions, students, teachers, social workers, writers, artists, etc. Because of its ability to reach out to a vast audience and to shape public opinion, media is one of the most fundamental forms of freedom of expression. It plays a crucial role in creating broad awareness among the citizens of political, economic and social

⁴ For a detailed analysis of the draft, see *Memorandum on the draft Law on Press and Publications of the Republic of Yemen*, Article 19, August 2005.

⁵ Article 259 of the Penal Code provides for the death penalty in case of “apostasy”.

issues, among others. If the right to freedom of expression cannot be exercised in the public domain, then it is meaningless. Press freedom is thus the litmus test of the authorities' will to implement freedom of expression, and democracy.

As mentioned above, the positive developments witnessed since the reunification of the two Yemens in 1990 regarding freedom of expression, in particular among the civil society and in the press, registered a setback after the 11 September 2001 events and the beginning of the "war on terror" in which the country embarked. This worsening situation was reflected in Yemen's receding ranking in the world press freedom ranking: while the press freedom index reached 103 out of 168 in 2002, it gradually slid back to the 140th position in 2006.⁶ The repression reached a peak in 2005 when scores of journalists were harassed, assaulted and detained.

Attacks on media freedom are reflected in both restrictions to the media environment and in the prosecution and physical assaults against journalists.

3.1. Media environment: state monopoly and censorship

The state maintains a total monopoly on radio and TV broadcast and prohibits their private ownership. This monopolization entails particularly severe consequences as 75 percent of the Yemenite live in rural areas and half of the population is illiterate. For this vast majority of citizens, radio or TV broadcast represent their only means to keep themselves informed. The prohibition of private broadcast constitutes double violation: first, it violates the right of individuals to express themselves through private broadcast and impart information and ideas independently from the State. Second, it violates the right of citizens to seek and receive information from a variety of sources of their choice.

Despite the promise of the Minister of Information in June 2007 to allow private broadcast media, no steps had been taken in this direction several months later.

The State also maintains a total monopoly on the only news agency, *Saba*, and prohibits the private sector from establishing other ones.

For the last few years, the printed press in Yemen has been very active and has witnessed a notable increase in the number of publications. While this development has to be welcome, in particular in comparison to the poor state of media freedom in the region, its relevance nationwide is limited to urban areas such as the capital Sana'a, Aden and Taiz where only a quarter of the population lives. The fact that newspapers are practically not distributed in rural areas

⁶ The ranking was as follows: 136 in 2005 135 in 2004, 136 in 2003. See Reporter without Borders.

seriously limits the benefits of the expansion of the printed media. Moreover, deteriorating economic conditions have also affected the operation of independent media.

3.1.1. Cloning the media

On several occasions, the authorities have resorted to “cloning” existing opposition or party-based publications and websites to divert their readership. Government officials and politicians from the ruling party have created new newspapers that mimic the original by adopting similar layout, logo, etc. In July 2005 for instance, the opposition weekly newspaper *Al Shoura* was duplicated with *Sawt Al Shoura* after armed men allegedly linked to the government raided its office and subsequently allowed the pro-government newspaper to occupy the premises. The original newspaper stopped operating for one year in 1999, and *Sawt Al Shoura* carried pro-government articles and editorials well into 2006. The takeover by the government prompted the editor in chief of *Al Shoura*, Abdelkarim Al-Khaiwani, to subsequently start the on-line newspaper *Al Shoura.net*. Another opposition publication, *Al Thawri*, was also cloned but the shadow newspaper stopped its publications several weeks later

The authorities resort to the same trick with news websites. For instance, *newsyemen.net* was duplicated with *yemennews.net*, now no longer available. Such minor changes in the name are hardly perceptible and confusing and can be easily overlooked by the users. These practices are not compatible with the obligation to respect freedom of expression.

3.1.2. Licences withdrawn

The operation of newspapers is subordinated to the granting of licences by the Ministry of Information, which is subject to tough restrictions and conditions. The fact that licences must be renewed every year and can be withdrawn any time constitutes a constant potential threat on the exercise of freedom of expression and seriously hampers the smooth operation of the publication while endangering the job security of journalists. The withdrawal of newspapers licences occurs frequently.

In August 2007, the Ministry of Information granted a dozen licences to various publications. Some requests had been kept pending for several months or years, such as the applications of Nabil Assofi, Naif Hassan and Rashida Al Qaily. However, the Ministry of Information had reportedly rejected over 60 requests to establish newspapers since 2006. In May 2007 for instance, the authorities rejected the request of the NGO Women Journalists without Chains that had sought to create its magazine for many months. The Under Secretary for the Media reportedly stated that the organization had no right to publish a newspaper. The previous year, the Ministry had already rejected more than 50 applications to start new newspapers and magazines.

Addressing the issue of licenses, the UN Special Rapporteur on Freedom of Expression recommended that “licensing procedures should be transparent, non-discriminatory and impartial and that limitations should be directed only at

thwarting cybercrime, with special attention to the most heinous crimes such as paedophilia and trafficking in persons.”⁷

3.1.3. Websites and SMS services filtered and censored

While websites are usually able to operate, they are often filtered by the Ministry of Telecommunications before or during particularly sensitive political or security events, such as the kidnapping of foreigners or the presidential elections. In November 2006 for instance, the *Marib* press website was screened for 24 hours after covering the kidnapping of Italian tourists and was only allowed to operate a few hours after their release.

Electronic media was particularly censored during the last presidential elections in September 2006 that witnessed the re-election of the outgoing former President. The Ministry of Telecommunications screened several websites to prevent them from publishing the results and filtered their content by controlling Internet service providers. *Nasspress.com* website, for instance, was screened for 11 days while other websites such as *Yemeni Council*, *Yemen Voice*, *Hewar* and the *Independent Forum* were screened until after the results of the elections were made public. Some chat forums, such as *mostakela.com*, were also blocked.

After receiving numerous threats, a Yemeni journalist whose name ARTICLE 19 withholds for security reasons decided to suspend the site the *Yemen Mirror* until further notice. "I did not want to sacrifice my life and my family's safety without really making a change, so I compromised. I responded to the threats," he said.

Several SMS news service, such as the news service of Women Journalists without Chains and 'Nas Mobile' were also suspended until after the announcement of the election results. They were subsequently blocked again on May 25, 2007 despite the recommendation of the Parliamentarian Committee on Media and Culture in July 2007 to lift the ban on the SMS news service.

The interference of the government in the electronic media continued in 2007 when two news websites, *Al shoura.net* and *eshtaraki.net*, were screened after covering the conflict in the Sa'ada region between the government and followers of the al-Huthi clan. *Ishtirakia* was still closed by August 2007.

3.1.4. Access to and dissemination of information

Article 14 of the Press and Publications Law guarantees the right of journalist to "obtain information, news, data and statistics from their sources and to publish or not publish them". However, journalists requesting information from the authorities have almost always faced a lack of responsiveness and cooperation. Their requests have rarely been satisfied, even in the case of seemingly innocuous apolitical issues, such as data in the field of education or statistics of Yemenite citizens studying abroad, for instance. Independent journalists have

⁷ E/CN.4/2005/64, 17 December 2004, para. 68.

acknowledged that they would not even dare to approach the Ministries of Finances, Interior and Defence to request information or statistics.

The absence of implementing legislation guaranteeing access to information aggravates matters.

The UN Special Rapporteur on Freedom of Expression has explicitly stressed that “courts, parliaments, including their committees and subcommittees, and other institutions of public interest should be open to the citizen’s request for information”.⁸

Domestic and international electronic media can be accessed without restrictions but all other material arriving by freight or mail is inspected before being allowed to reach consumers or distributors. Newspapers are sometimes confiscated to prevent reaching their audience. In April 2006 for instance, the security forces confiscated the periodical *Al Tugheir*, belonging to the women’s sector of the Joint Meeting Parties (a coalition of opposition parties). The issue criticized corruption in the Shabwa Governorate. A thousand copies of the same newspaper were again confiscated in Aden in September 2006.

As the UN Special Rapporteur on Freedom of Expression has noted, “any obstacle to the free movement of ideas and opinions limits freedom of expression and its beneficial consequences”.⁹

3.2. Media professionals under attack: violence, prosecution and imprisonment

Many journalists are charged with offences listed in Article 103 of the Press and Publications Law, in particular those provisions that refer to the prohibition to:

“criticise the person of the head of state, or to attribute to him declarations or pictures unless the declarations were made or the picture taken during a public speech. These provisions do not necessarily apply to constructive criticism”.

Press articles are not reviewed by a state censorship board before being published. Government’s disapproval with the contents is however reflected in a series of repressive and arbitrary measures and attacks against the journalists *after* publication. As a consequence, journalists cannot usually forecast the consequences of their writing, except in the case of criticism against the President, which represents a “red line” according to several journalists interviewed. Even then, the notion of “constructive criticism” is unclear,

⁸ E/CN.4/2005/64, 17 December 2004, para. 60.

⁹ E/CN.4/2005/64, 17 December 2004, para. 49.

arbitrary and violates the obligations attached to the concept of freedom of expression.

3.2.1. Harassment, threats and assaults of journalists

While the authorities usually allow public demonstrations on a variety of topics, they often clamp down on journalists who cover the events. Freedom of expression is thus often restricted to a limited number of demonstrators, while the media, which plays a crucial role in disseminating information on the event to a large audience, is prevented from operating freely.

In the run-up to the September 2006 presidential elections, several journalists were reportedly harassed, assaulted and prosecuted. In a report assessing the elections proceedings, the EU Election Observation Mission (EOM) concluded that “these incidents challenge the independence of the media to operate without State and political interference and the protection of the freedom of expression for journalists in Yemen, although the Yemeni authorities have made repeated commitments to strengthen media freedoms”.¹⁰

Journalists who covered for instance a sit-in by teachers, protests by employees of a textile factory, a demonstration by soldiers or a rally of the Joint Meeting of Parties (opposition parties) were assaulted by the security forces. They were severely wounded and in some cases arrested while their notes and equipment were confiscated or destroyed. On 17 July 2007 for instance, the security forces severely beat up journalists who were reporting on a peaceful sit-in of the Civil Society Coalition in central Sana’a - a weekly demonstration by journalists and human rights activists who protest the attacks on freedom of the media and the banning of SMS news services and who demand the creation of public mass media.

In several cases, press people have been arrested and pressured into signing a commitment they would not report again on the issue. In September 2005 for instance, Khaled Hammadi, of the *Yemen Times*, had to pledge to stop writing about military topics after he reported on the crash of a military airplane.

On several occasions, the authorities have curtailed the right of individuals to impart and receive information by preventing journalists from having contacts with the outside and by limiting their freedom of movement. In December 2006 for instance, security personnel at Sana’a airport prevented journalist Abdulkarim Al-Khaiwani from boarding a plane to Morocco to attend a panel discussion on press freedom. He was transferred to the Ministry of Interior and released after a few hours.

Media professionals have also received death threats, either directly by representatives of the state or indirectly and anonymously in circumstances that strongly suggest links with the authorities. On 11 August 2007 for instance, the

¹⁰ Report of the EU Election Observation Mission in Yemen.

editing secretary of the private newspaper *Al Neda*, Basheer Al-Sayed, reported to have received death threats from the Security Director of Bani Dhabian Directorate if his newspaper published anything in relation to a case in which the Security Director was involved. In another case, journalist Qaed Al Suaidi, correspondent for several newspapers in Raima Governorate was insulted on 7 August 2007 by the Governor, threatened with death by his son and attacked by the Governor's soldiers while he was conducting a poll press. Al Suaidi said he had been threatened because his report included incidents of corruption in the governorate.

Against a backdrop of physical assault and kidnappings, death threats are taken very seriously. Abductions of press people have occurred on several occasions¹¹. Jamal Amer for instance, editor in chief of the independent *Al Wasat* newspaper, was kidnapped in May 2005 by unidentified gunmen allegedly linked to the authorities and taken to an unknown location where he was subjected to ill-treatment and threatened with death if continued to write article critical of the authorities and the President. While the Ministry of Interior promised in January 2006 to carry out an investigation into the matter, no development was recorded a year later.

In the latest such cases, Abdelkarim Al-Khaiwani, former editor of the on-line *Al Shoura.net* newspaper, was kidnapped by gunmen in Sana'a on 27 August 2007 and taken to village south of the capital where he was severely beaten up. The abductors threatened him and his family with death if he continued to criticize the President or the unity of the country and referred explicitly to a recent article in which he had criticized the government's handling of the issue of prisoners. The abductors threatened to break the hand he uses for writing and stole his personal belongings. The victim recognized one of the kidnappers as one of the security officers who had raided his home in June 2007 at the time of his arrest.

On 19 April 2006, a vehicle with Ministry of Interior number plate attempted to abduct woman journalist Nabila Al Hakimi. By June 2007, the case had not yet been referred to the prosecutor.

In several cases, smear campaigns are organised in pro-government newspapers and the serious accusations levelled against journalists are sometimes formulated in a way that may be interpreted as an incitement to violence. Several journalists who have criticized the authorities have been accused of working with foreign intelligence agencies. In its front page on 15 December 2006 for instance, the official newspaper *Al Thawra* accused Jamal Amer, editor of the weekly independent *Al Wasat* and a CPJ 2006 Award winner, of betraying his country and being a CIA agent after he criticized corruption and the Saudi regime. It was feared that such grave accusations amounted to incitement to commit violent

¹¹ According to the Centre for Training and Protecting Journalist Freedoms' 2006 report, 200 violations and 47 incidents of intimidation and harassment against the press including detentions, seizures and attempted kidnapping of journalists, opinion writers, local correspondents have been recorded.

acts against him. The fears were particularly justified as Amer had already been kidnapped by unidentified gunmen and ill-treated in 2005.

The UN Special Rapporteur on Freedom of Expression also emphasized that “Governments should take all necessary measures to protect journalists, as well as other professional categories at risk, from attacks, be they from officials, law enforcement officers, armed groups or terrorists.”¹² However, the authorities did not take such steps.

3.2.2. Killings

Killings of journalists have also occurred in circumstances that suggest government implication or acquiescence. The concerns about the possible involvement of the authorities are strengthened by their lack of effective response to the violence and in many cases the lack of prosecution of those guilty of such acts.

On 2 July 2006 Abed Al-Osaili, a journalist and technical secretary at *Al-Nahar* newspaper journalist was killed in Sana’a. The Yemeni Journalist Syndicate stated that Al Osaili had been killed for publishing an article that criticized officials in his home district for obstructing a water project underway in the area.

3.2.3. Prosecution and Imprisonment of Journalists

Journalists have been arrested and prosecuted for condemning the widespread corruption, criticizing the judiciary, advocating political reforms or reporting on issues of public interest.¹³ Even press people covering apparently non-political issues such as Hajj agencies that organize pilgrimages to Mecca or the traditional widespread chewing of *qat* leaves have been prosecuted.¹⁴ In the case of a documentary on the use of *qat*, the authorities argued that the documentary was detrimental to the image of the country abroad.

Criticizing Yemen’s relations with “friendly” countries is also criminalized and may be prosecuted. Journalists and newspapers who write and publish articles criticizing Saudi Arabia for example, that has close relations with Yemen, have been banned from working as journalists for certain periods of time, like Jamal Amer, editor in chief of *Al Wasat*, or sentenced to prison terms, like Abdul Wahid Hawash and Abdul Jabar Saad, editor and journalist for the *Al Ehyaa Al Araby*¹⁵.

¹² *Report of the EU Election Observation Mission in Yemen.*, para 64.

¹³ In 2002, the World Bank reduced its assistance to Yemen by 34percent because of the country’s high scores on corruption indicators. Yemen scored 2.6 on Transparency International’s Corruption Perception Index 2006. The scale runs from 0 (high corruption) to 10 (no corruption).

¹⁴ Leaves of a plant widely chewed by many Yemenites and that acts as a stimulant.

¹⁵ In addition to Article 103 of the Yemeni Press and Publications Law No. 25 (1990) which decrees that journalists must ‘abstain’ from publishing “anything which leads to the spread of ideas contrary to the principles of the Yemeni, Arab or Islamic heritage, Saudi Arabia and Yemen have an agreement whereby their respective media are not allowed to insult the neighbouring country.

Journalists, like Abdelkarim Al-Khaiwani, who have reported on the clashes between government forces and followers of the Zaidi Shi'a al Huthi community have also been increasingly targeted and charged, among others, with jeopardizing the unity of the country.

Many journalists have been sentenced to prison terms but the sentence was later suspended on appeal. This situation compels them to apply extreme restraint in their future articles and to practice self-censorship. For the other journalists, the prison terms imposed on their colleagues act as a strong deterrent and also lead them to exercise self-censorship.

Article 103 of the Press and Publications Law states that not only journalists themselves are legally responsible for the articles, but also editors in chief and owners of printing presses and publishing houses. Indeed, a number of editors in chief have been prosecuted and charged with press offences thus reinforcing the claim by a number of stakeholders about the near absence of rule of law.

In February 2006 for instance, the Press and Publications Court cancelled the licenses of three independent newspapers that had reproduced the Danish cartoons and prosecuted and fined their editors in chief who were charged under Article 103 with insulting the Prophet Mohammed. Mohammed Al Asaadi, editor in chief of the English-language weekly *Yemen Observer* was fined and imprisoned for 12 days. Kamal Al Olofi, editor in chief of the independent weekly *Rai Al Al'am* was sentenced to a year in prison but remained free pending his appeal. Akram Sabra, editor-in-chief of *Al Hurriya* and reporter Yahya Al Abed were imprisoned for three weeks and sentenced in December 2006 to a four-month suspended prison sentence and a month-long ban on working as journalists. In May 2006, the Prime Minister overturned the cancellations of the licenses.

The detention and prosecution of press people is often accompanied by the imposition of fines on journalists and a ban from publication on the newspapers for various periods of time.

In some cases, journalists have been repeatedly charged with press offences, which amount to judicial harassment. The opposition newspaper *Al Thawri*, for instance, and/or its editor in chief Khaled Salman, were defendants in more than a dozen civil suits following articles criticizing the president and corruption in the country. For his part, Editor Abdelkarim Al-Khaiwani, has been regularly targeted by the authorities and was arrested and charged in 2004, 2006 and 2007. Al-Khaiwani has spent several months in jail for what he calls "inciting to raise the ceiling of freedoms." According to the journalist who is currently facing trial, these arrests are implemented by orders and not only laws. "They mobilize religion, laws and even the tribe against us. We, on the other hand, only own our dreams. They even want to rob us of this," he added.

The value of independent journalism is not recognized in the government circles and on several occasions, officials have made disparaging comments about independent or opposition journalists who adopt a critical tone and question the government's policies. In May 2007 for instance, the Minister of Interior Rashad Muhammad al-Alimi stated during a press conference that local and international media distorted the image of Yemen.

3.3. Prosecuting journalists before the Special Criminal Court on Terrorism

As mentioned above, Article 104 of the Press and Publications Law provides for the possibility to try journalists for press crimes under another law where they could face a more severe penalty. Until recently, this had not yet been the case. However, in a very dangerous precedent, four journalists have been referred to the Prosecutor's Office in charge of national security and terrorism cases instead of the Press and Publications prosecutor's office. In July 2007, the Ministry of Defence accused Nabil Subaie, managing editor of the independent weekly *Al Shara'a*, Naif Hassan, its editor in chief and correspondent Mahmoud Taha of several charges under Article 126 of the Penal Code, including harming national security and stability, undermining the morale of the army and publishing military secrets. The accusations came after the publication by *Al Shara'a* of a series of articles on the conflict in Sa'ada and on alleged links between the government and volunteer local tribesmen reportedly fighting along the army in this northern region, as well as on corruption cases.

This is the first time a media professional is not brought before the Press and Publications Court but instead before the Special Criminal Court on Terrorism.¹⁶ The Court, established by decree in 1999, is part of the executive and not the judiciary, and does not respect international fair trial guarantees. Among others, the defendants are often detained incommunicado in extended pre-trial detention before being charged and brought to trial, and the Court fails to properly investigate the defendants' allegations of torture. Lawyers are often denied access to their clients and other relevant documents, including evidence used by the Court, and some of them have complained that the process to reach a decision is so fast that it does not allow them to gather relevant evidence to defend the accused. If convicted, the defendants could face the death penalty. The prosecution of cases in relation to the right to freedom of expression before a special court constitutes a grave violation of the provisions of the ICCPR to which Yemen is a party.

¹⁶ The Court has jurisdiction for the following six crimes: the kidnapping of foreigners and aeronautical or marine piracy; sabotage of oil interests or any other economic interests; (hiraba) theft, murder or harassment by armed bandits; forced confiscation of private or public means of transportation by armed groups or by armed individuals; association with gangs that confiscate public or private lands; and any crime against a member of the judiciary system or their families.

Three weeks after the Ministry of Defence lodged the complaint, armed men in civilian clothes in a military jeep broke in the newspaper office and threatened to kill Naif Hassan, saying they had orders from the Ministry of Defence. In the absence of Naif, the armed men broke doors, searched the premises and threatened the staff.

In November 2005, Nabil Sabaie, who was then working as an opposition freelance journalist, had already been physically attacked and stabbed in both shoulders by armed men in broad daylight on a main street of the capital, Sana'a. Three suspects were freed pending the outcome of the trial.

In another worrying precedent, the journalist Abdulkarim Al-Khaiwani, former editor of the newspaper *Al-Shoura* was arrested on 20 June 2007 and accused by the prosecutor of the Special Criminal Court on Terrorism of belonging to a terrorist cell, murdering two soldiers and carrying out terrorist operations, among other charges. The evidence brought against him was based on documents reportedly linked to his journalistic work and seized by the security forces that raided his home. Although he was temporarily released on bail for health reasons, the State appealed this decision and Al-Khaiwani was due to be jailed again after the Court summer recess in October 2007. If convicted, Al-Khaiwani could be sentenced to death.

These judicial proceedings are the latest and most serious in a long series of cases brought against Al-Khaiwani. In September 2004 he had already been sentenced to one year's imprisonment for publication of false news, insulting the president, incitement and causing sectarian discrimination. The accusations came after he criticized the government's handling of the conflict in Sa'da province which, he argued, fostered terrorism. He was released in March 2005 under a presidential amnesty. Unlike Nabil Subae, Naif Hassan, Mahmoud Taha, Abdulkarim Al-Khaiwani is not prosecuted as journalist but as a simple citizen accused of terrorism. Given the past harassment he has been subjected to, there are strong suspicions that the charges are politically motivated.

4. FREEDOM OF EXPRESSION AND THE CIVIL SOCIETY

While press freedom is of paramount importance, freedom of expression for other actors of the society such as political parties, trade unions, students, teachers, social workers, writers, artists or simple citizens should be equally respected. In practice however, the authorities in Yemen have on several occasions restricted their freedom of expression.

4.1. Civil society organizations

Despite their increase in recent years, the number of active civil society organisations (CSOs) is relatively modest for a country of 21 million people.

Those CSOs that are active and have criticized the government have been harassed and threatened by the authorities that have curtailed their freedom of expression on a number of occasions. Because NGOs, just like newspapers, are required to renew their licence annually, their existence and stability may be jeopardized. The authorities have resorted to some of the same tricks as those used against media, such as “cloning”, although on a lesser scale. In 2005 for instance, the authorities withdrew the license attributed six months earlier to the NGO *Women Journalists without Borders* after it reported on riots protesting gas prices and granted it to a pro-government organisation with same name. The original NGO had to change its name and start all over again.

4.2. Public demonstrations

Public demonstrations, either by constituted social entities or by citizens driven by a common claim, represent an important form of freedom of expression. In Yemen, such demonstrations are not rare and have usually been allowed subject to the issuance of the required permit.

However, according to Suad Al Gedsy, General Director of the Women’s Forum for Research and training, “the permission to demonstrate is given and used by the government to show that there is democracy...but the root elements or the perception of equality and democracy are still diseased”.

As mentioned above, it was mainly journalists covering the events that were often targeted by the security forces, assaulted and their equipment confiscated. In several cases however, freedom to express opinions through demonstrations was curtailed by the authorities or the demonstration was not allowed, officially for security reasons. In July 2006 for instance, the authorities, fearing clashes, denied a permit for a demonstration in Sa’ada province after the Israeli invasion of Lebanon the same month.

In another case, activists from the Teachers Union who took part in a strike in March 2006 were subjected to a number of violations during and following a strike to demand a wage increase, including; arrests, unjustified and illegal transfer, dismissal of headmasters who joined in the strike, deduction of salary. In July 2006, security forces intercepted teachers to prevent them from participating in demonstrations called for by the same Union. The Taiz security forces also intercepted teachers arriving from neighbouring districts and ordered them to get off the vehicles.

4.3. Refugees

Somali or Ethiopian refugees in Yemen who exercise their right to freedom of expression may face harassment and violence.¹⁷ On 17 December 2005 for instance, hundreds of Somali refugees, including women and children, who were demonstrating before the UNHCR office in Sana’a to demand their resettlement in third countries were beaten up and forcibly dispersed by security forces that used tear gas, water cannon and live ammunition. One refugee was killed, five

¹⁷ A majority of the 80,000 refugees in Yemen are Somalis.

Somalis were injured and at least one refugee women reported to have been raped by security forces in a nearby house where they had taken shelter from the firing. The authorities arrested 38 refugees, including three children and nine women. Some were released shortly afterwards but others were detained without legal basis until they were released on 4 February 2006 after signing a pledge not to resume protest in front of the UNHCR Office.

During another sit-in by Ethiopian refugees in front of the UNHCR Office in Sana'a in August 2007, the police forces responded with violence, arrested several demonstrators and released them only after they signed statements pledging they would not take part in future sit-ins. Those who refused were reportedly held in custody and subsequently released.

By forcing individuals to waive their right to freedom of expression through peaceful demonstrations, the authorities violate their obligation under the ICCPR to implement this right.

Predictably, the few journalists who dare to investigate or report on refugee issues have also been harassed. On March 19, 2007, Al-Jazeera correspondent Ahmad al-Shalafi was threatened publicly by security forces while working on an investigative report on refugees¹⁸.

4.4. Political parties

Multi-party democracy is premised on the ability of political parties to freely express their views on a whole range of issues and through a diversity of means, including public rallies. This right is particularly important during election campaigns when different political trends can voice their arguments to win over potential voters. In this regard, the presidential elections in September 2006 represented an important opportunity to test the authorities' commitment to allow freedom of expression to dissenting political views.

However, in its report on the election observation mission (EOM), the EU deplored that some 100 opposition supporters and two candidates were arrested during the election campaign period, most of whom were detained pending charges. According to the EU EOM, "many [of these arrests] seemed to be politically motivated. In two cases, the EU EOM was aware that several people were detained in circumstances contrary to Constitutional and legal guarantees of the right to liberty as well as similar provisions in the ICCPR".¹⁹ Many of the arrests were carried out on the basis of provisions of the Penal Code that criminalize insults against the president. The EU EOM concluded "in most cases, there appeared to be little legal basis for an arrest and in no case were the alleged facts of sufficient seriousness to warrant detention in custody while awaiting charge or a hearing."²⁰

¹⁸ Women Journalists Without Chains Semi-Annual Report 2007

¹⁹ *Report of the EU Election Observation Mission in Yemen*

²⁰ *ibid.*

In the context of political elections, the state monopoly on TV broadcast has a particularly detrimental effect as it severely curtails the right to freedom of expression of opposition voices to reach out to citizens in an equal way to those of the ruling party. In this respect, the EU EOM also noted the serious discrepancies between the distribution of time (News programmes) among political entities on Yemen TV in which the incumbent president and the government jointly received more than half of all the time allocated to elections-related programmes. The EU EOM noted “excessive coverage of the incumbent President (...) and members of the government (...) in comparison to that of other political parties(...) and candidates that goes beyond the levels of benefit of coverage that an incumbent can expect.”²¹

4.5. Arts

In spite of some advancements made in other realms, the cultural and economic rights according to Al Gedsji, have been overlooked. The organization which she heads has been working through theatre and cinema, amongst others, to change the mindset that according to her hinders democracy. In previous years, the Women’s Forum for Research and Training has worked with 30,000 school children as part of its programme on civic education where students acted a play about four values including authority, justice, responsibility and privacy. The play was reportedly deemed as a revolution by the Ministry of Education and the possibility of repeating it in the following year is slim.

Meanwhile and according to Al-Gedsji, the laws and policies of the Ministry of Culture have not changed. “We need to liberate the arts”, she said. “While changing the laws that govern the arts is an important phase, you need to change the mindset. Otherwise it is all futile”, she added,

In a few instances where the arts form conveyed a political message critical of the government, the authorities clamped down on the artists to silence them.

In July 2006 for instance, members of the Criminal Investigations Bureau arrested a group of shop keepers, accusing them of selling a cassette by a popular artist, Fahd Al-Qarni. The cassette, that combined traditional folk compositions with humour and sarcasm, criticized the government’s policies. After the soldiers failed to find the cassettes that they were instructed to withdraw from the market, they arrested three workers, locked the shop and threatened to abuse and take the staff by force. For three weeks, the Political Security and Investigations carried out a campaign to prohibit the circulation of the cassette in the market.

²¹ Respectively 37percent for the President and 20percent for the members of the government in comparison to that of other political parties (1percent for the General Peoeple’s Congress and 14 percent to the Joint Meeting Parties). Ibid. p.24

4.6 Freedom of expression and freedom of movement

Article 19 of the ICCPR states explicitly that the right to freedom of expression should be guaranteed *regardless of frontiers*. States should ensure that this freedom can be enjoyed across borders and should not limit this right geographically. This provision not only means that the information itself should travel freely across borders, but that individuals as well should be able to seek and impart information overseas, which implies freedom to travel.

In Yemen however, the authorities have in several occasions prevented journalists, human rights defenders or other individuals from leaving the country to take part in various work-related conferences and seminars. On 9 October 2006 for instance, 'Ali al-Dailami, a human rights activist, was arrested by security forces at the airport in Sana'a on his way to Denmark. A member of a delegation of Yemenite NGOs representatives, he was due to take part in a human rights partnership meeting in Copenhagen. He was released without charge or trial from the Political Security prison in Sana'a on 5 November. For his whole detention, he was held in solitary confinement.

People returning from abroad after taking part in human rights-related activities are in some cases arrested and interrogated. These intimidating practices undermine the right to freedom of expression and may lead to self-censorship. Lawyer and human rights activist Muneer Al Saqqaf for instance, was detained at Sana'a airport on 6 December 2006 and interrogated by the National Security following his participation in a human rights event abroad.

5. WOMEN AND FREEDOM OF EXPRESSION

5.1. Women in the Yemenite society

The previous sections looked at different forms of violations of the right to freedom of expression, irrespective of gender. However, the question of freedom of expression in Yemen cannot limit itself to simply identifying attacks on this right as if all citizens - men and women - were equally exercising it. In the Yemenite context, women and men are not equal in claiming their right to freedom of expression. Consequently, a gender-based approach provides crucial elements to understand the limitations to freedom of expression.

In addition to being one of the poorest countries in the world, as mentioned above, Yemen is ranked among the last in terms of gender inequality in education, political participation, and gender-related development index.²² This gender gap is due to several socio-economic factors, notably a patriarchal society that is reflected in a discriminatory legislation, lack of education and poverty.

²² It ranks 151 out of 171 in the UNDP Human Development Indicators.

In the patriarchal family structure that reproduces traditional customs and gender stereotyping, boys enjoy more advantages than girls who grow with a feeling of inferiority and do not consider themselves able to think as well as boys. In such a traditional and conservative environment, that is captured by the following saying ‘A women’s correct opinion leads to seven crises’ (*Shour al mara al sayeb yedi sabe’ massayeb*), girls’ assertiveness is discouraged and their attempts to express their opinions are hindered. As put by Minister of Labour and Social Affairs Dr. Amat Al Razzak Ali Hummed, “Yemen is still governed by some traditions, that contrary to Islam which provides women full rights, perceive women demanding equal rights as though they are going overboard.” Later, as women, their subordinate role in the family does not prepare them to formulate individual claims in the social sphere and to become an independent actor in the community and the society. According to Khaled Alanesi, Executive Director of the National Organization for Defending Rights and Freedoms (HOOD), “in a tribal, regressive society, the whole tribe decides for a woman”. Indeed, women, it appears, and according to Hooria Mashhour, Deputy Chairperson of the Supreme Council for Women, Women National Committee, are not involved in the decision-making process regarding personal and family life issues, not to speak of community issues. They cannot take decisions related to their personal life, including health, without the consent of the husband or a male relative. If they are outspoken, “it is viewed suspiciously”, said Mashhour who has worked with the National committee on engendering the National Plan, although they had to refrain from using the word ‘gender’, in their work due to “sensitivities”.

After examining the report submitted by Yemen, the Committee on the Elimination of Discrimination against Women emphasized “the link between women's subordination in the family and their ability to participate fully at all levels of society” and thus their ability to exercise, among other, their right to freedom of expression.²³ Cultural norms and conservative interpretation of Sharia strongly discourage women’s participation in the public life and in any activities outside the home that may create suspicions regarding their morality.

This reality is entrenched by the constitution itself and laws such as the Personal Status Law and the Penal Code. In 1994 a series of amendments were made to the Yemen Constitution, two of which effectively “circumsized” the document, as Amal Basha, director of the Arab Sisters Forum for Human Rights and Middle East and North Africa Coordinator for the Coalition for the International Criminal Court (ICC), put it.

In 1994, the article that guaranteed “equal treatment in the eyes of the law for all citizens and assured no discrimination practised due to sex, colour, racial origin, language, occupation, social status, or religious beliefs” was scrupulously lacerated. The part of the article beginning with “sex, colour, racial origin, language, occupation, social status, or religious beliefs” was removed.

²³ Concluding comments of the Committee - CEDAW : Yemen. 23/08/2002 A/57/38, para. 392.

This according to Basha, was the first attack on women after the unification. Another amendment was the “injection” of article 31 that states:

Women are the sisters of men. They have rights and duties, which are guaranteed and assigned by Shari'a and stipulated by law.

According to Basha, the amendments left no room for women. “Why are only women’s rights according to the Shari’a ? Is it because it can be interpreted in a way that is discriminatory against women”, she asked. Why are women ‘sisters of men’? Why does the state perceive us as sisters? We are all citizens; male and female. Being viewed as sisters evokes discrimination in Yemen. The sister serves the brother in a Yemenite family, and the constitution by using the term ‘sister’ emphasized this subordinate role”, she said.

Basha, however was clear in stating that she is not against the Shari’a but that the term “sister” is an elastic word with different schools of Islam interpreting it differently and thus including this elastic word in the constitution, a political document, leaves room for abuse.

Furthermore, Basha pointed out that even the language of the constitution is gender-biased as it only uses the grammatical masculine form

Needless to say and given the discriminatory nature of the constitution, usually considered as the source of all other legislation, it is only logical that other laws including the Personal Status Law are also discriminatory.

Indeed, the Penal Code and the Personal Status Law cement the inferior status of women and discriminates in favour of men in all matters pertaining to marriage, family life, children, personal status, etc. The Personal Status Law stipulates that “a husband has the right to be obeyed by his wife”, that she should allow him to have sexual intercourse and that she cannot go out of the house without his permission,²⁴ thus making it more difficult for a woman to formulate an independent claim, which would amount to an act of insubordination to the traditional set of norms and lead to her marginalization from her own community.

The confinement of women to the home and their lack of emancipation is worsened by the occurrence of very early marriages of girls, often below 15. With the law stipulating that a virgin bride's silence, when asked by the judge, is considered to be a sign of her consent,²⁵ women’s voices are thus silenced both in the private and the social sphere. Girls are thus educated not to have an opinion and to waive the constitutive elements of the right to freedom of expression.

²⁴ Article 40.

²⁵ Article 23 of the Personal Status Law No. 20 of 1992 states stipulates that a woman has to agree to get married but a virgin bride's silence, when asked by the judge, is considered to be a sign of her consent.

In Yemen, two out of three women are illiterate and the rate reaches 80 percent in the rural areas, which represents one of the highest gender gap in the world.²⁶ Even in urban areas, the rate of women illiteracy reaches 40 percent. Educational policies reportedly contribute to the girls drop out.²⁷

In rural areas, some 90 percent of the population suffer from food poverty. Because of the discrimination they face, women are more affected by poverty than men since they lack basic skills and are mostly illiterate.

Participation in the political life of the country, both as voters and as candidates, constitutes a litmus test of the ability of women to exercise their right to freedom of expression and opinion. In Yemen, where an overwhelming majority of women are unaware of their political and social rights, they do not claim them or struggle to fulfil them. The presence of women candidates in Yemen is abysmal and has even decreased over a ten-year period - a phenomenon that reflects their perception that society is not ready to accept their genuine political participation, and their conclusion that men show no readiness to give up their monopoly of the political field. According to Minister of Labour and Social Affairs Dr. Hummed, “it was a government initiative to increase women participation in all fields, unfortunately it still didn’t reach the 15 percent mark.” “It takes time to change...there is a need for more awareness campaigns and education about the importance of women participation”, she added.

But according to Al-Gedsi, “having two women ministers does not solve the problem... the problem is the whole cultural perception. The problem is with the social restrictions that are reinforced by the state.”

As mentioned, several religious and traditional parties consider that Islam does not allow women to take high up positions. Women’s freedom of expression and opinion in the political sphere has also been quashed by threats, tearing off of campaign posters, slander and defamation of women’s honour to pressure them and their families to withdraw their candidacy. As a result, women’s absence from decision-making positions is almost total: Women participation is 0,33 percent in Parliament and 0,6 percent in local councils and 1,8 percent in the Shoura (appointed) councils.²⁸

In the September 2006 presidential elections for instance, the problems hindering the participation of women as candidates was not only attributable to family and community pressures but also to the authorities’ policies and measures. In its final report on the monitoring of the elections, the EU EOM concluded that “while the wider legal framework provided a strong basis for equal participation, there was no attempt to ensure its proper implementation to

²⁶ According to UNICEF figures. Some 40 percent of girls between 6-14 are not enrolled in basic education, and more than 80 percent of females among the 17-19 age group are not enrolled in secondary education

²⁷ Girls represent 38 percent of basic education and 30 percent of secondary education²⁷.

²⁸. National Strategy for Women Development 2006-2015

protect these rights”. It stressed that “problems were also observed in the approach of political parties, the election administration and the authorities towards women as voters, political party members and electoral administrators” and emphasized that while political parties were the “main source of pressure”, civil servants and electoral officials, among others, were also responsible for the low level of participation.²⁹ In other words, the authorities also failed to take appropriate policy and practical measures to ensure women’s effective participation in the electoral process.

Even when women candidates did not withdraw, their freedom of expression and ability to organize election rallies were, as noted by the EU EOM, severely constrained by the “highly restricted opportunities for women to canvass publicly or to show their faces on campaign posters for fear of allegations against their morality, a powerful deterrent to women in the prevailing social context”.³⁰

Moreover, while the number of women voters has substantially increased over the years, it is not considered as evidence of a real political participation and as an enhanced respect for the right to freedom of expression. Quite the contrary, local observers have analysed this trend as an indication of a political mobilization and a political participation constrained by the social and community environment, which do not reflect women’s awareness, will and freedom of choice.

Similarly, freedom of expression in the trade union field can not be tested as women represent a very tiny minority of the syndicates’ members, due to their low participation in important economic sectors.³¹

Under international law, the State - and not individuals in relation to each others - has a duty to respect the right to freedom of expression of the citizens. It could be argued that the authorities cannot be held responsible for socio-economic parameters and traditional cultural values that negatively impact the right to freedom of expression. However, international law explicitly stresses the responsibility of governments to change social patterns that discriminate against women. In particular, Article 5 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), that Yemen has ratified, provides that:

States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

²⁹ Report of the EU EOM.

³⁰ EU Election Observation Mission, Yemen 2006 28 Final Report on the Presidential and Local Council Elections p.28.

³¹ They represent only 15 percent of total syndicate members

After considering the report submitted by Yemen on its implementation of Convention, the Committee on the Elimination of Discrimination against Women urged the State party to “take measures to change stereotypical attitudes and negative cultural norms about the responsibilities and roles of women and men and to design and implement awareness-raising programmes directed at all levels of society”.³²

Similarly, the Human Rights Committee noted “with concern the high rate of illiteracy among women, which clearly hinders the enjoyment of their civil and political rights” and urged the state party to “increase its efforts to change stereotypical attitudes detrimental to women’s rights, and to promote the literacy and education of girls and women.”³³

5.2 Gender-based smear campaigns: “social assassinations”

As mentioned in the previous section, women in Yemen, especially in rural regions, face major socio-economic and cultural obstacles to exercise the right to freedom of expression. In the urban centres, where almost all civil society organizations are concentrated, women have more opportunities to assert their rights, in particular through a number of NGOs and media outlets. Women have taken a public profile as journalists, political opponents or human rights defenders who advocate enhanced respect for women’s rights.

Like their male colleagues, they may also face government criticism through official or quasi-official newspapers that label them as “Zionists”, “apostates” or “foreign agents”. However, as women, they face an additional threat in the form of gender-based insults and defamation deemed to be a form of assassination by HOOD Executive Director Khaled Alanesi.

Women journalists or activists who criticise the government or the official policies expose themselves to government-instigated smear campaigns that aims to undermine their credibility, reputation and professionalism. In a country where the code of honour is crucial for the preservation of the dignity of women, the authorities use the official and quasi-official media to publish gender-based insults, insinuations and defaming articles attacking their morality and questioning their honour. The tactics not only aim to silence the direct targets but also act as a strong deterrent for the already active or would-be journalists.

In June 2006 for instance, Samia al-Aghbari, a journalist working for the opposition weekly *Al Wahdawi*, criticized the President after he decided to stand for elections in 2006 despite his earlier statement he would not do so. A week

³² Concluding comments of the Committee, CEDAW : Yemen. 23/08/2002. A/57/38, para.389

³³ Concluding observations of the Human Rights Committee, CCPR/CO/84/YEM, 9 August 2005, para 8.

later, the quasi-official newspaper *Al Doustour* published an article offending her dignity, alleging that she enjoyed “white flesh” and had immoral relations with Syrian and Egyptian men. Samia was one of the few women journalists attacked in their dignity who took up the case to court.³⁴ Although she won the case, the verdict, which included among others the publication of an apology in the newspaper, was not implemented.

While al-Aghbari had often written on political topics without facing consequences, articles critical of the President are considered to cross the “red line” and journalists are often accused of being “traitors”. Indeed, the editor in chief of *Al Doustour* later told her that people who criticize the President are “traitors” and “Zionists” and, in addition, that the situation in Iraq should not be addressed in newspapers. In September 2006, after reporting in the same newspaper that an opposition candidate was winning in the council elections in a given city, members of the security forces came to her house and threatened to “discipline” her since her father didn’t “teach her”. According to al-Aghbari, her extended family turned against her father for supporting her.

The same newspaper, *Al Doustour*, has in recent months published an article³⁵ accusing Journalist Aniseh Mohammad Othman of being funded by the security apparatus after she had written a number of articles in *Al Wasat* newspaper criticizing the government.

Also that month³⁶, a press release published in *Al Jaysh* newspaper accused Aniseh Othman, Mohammad al-Moqaleh, Rashida Al-Kaily and Abdulkarim Al-Khaiwani of treason conspiring against the state. This followed their participation in a programme regarding the war in Sa’ada province broadcast on *Kanat al-Alam*.

In the very conservative culture of Yemen, those who exercise their right to freedom of expression to promote gender equality and challenge the traditional role of women in society are considered to defy social norms, structures and practices, as well as the supremacy of men. Addressing the issue of the specific vulnerability of women, the Special Representative on human rights defenders emphasized that, “women human rights defenders face greater and different risks because they are women. They are targets because they often defy social norms of ‘femininity’”³⁷.

³⁴ Trying to justify himself, the editor in chief contended that by using the words “white flesh” he had referred to “chicken”, although Samia is a vegetarian and in addition has never travelled outside the country.

³⁵ The article was published on February 19, 2007 and reported in the Women Journalists Without Chains Semi-Annual Report 2007

³⁶ The press release was published on February 6, 2007 and reported in the Women Journalists Without Chains Semi-Annual Report 2007

³⁷ Jilani, H. Special Representative of Secretary General on Human rights defenders. Promotion and Protection of Human Rights Defenders. 2002. (E/CN.4/2002/106)
<http://daccessdds.un.org/doc/UNDOC/GEN/G02/111/22/PDF/G0211122.pdf?OpenElement>

Amal Basha, for instance, was repeatedly insulted in “quasi-official” newspapers like *Akhbar Al Youm*, wrote defaming articles in March 2007 describing her as a “naked woman”. She was said to be working for the CIA and guilty of infidelity and apostasy - a most severe attack as this offence is punishable by death in Yemen. “One day I am a neo-con, the next I’m a Zionist spy, still other claim I am a Shiite, a Lesbian, a secular person... I’m confused now about my identity”, said Amal jokingly. Attacks against Basha made the headlines in 2006 after she held a seminar calling for Yemen to join the ICC. A well-known activist in the region, Amal is one of the few women not wearing the veil, which has also outraged many sectors and led to further insults. According to Samia al-Aghbari, a journalist in *Akhbar al Yom* told her they will continue to write against Amal Basha till she wears the veil.

Vicious smear campaigns demeaning women’s honour and behaviour were also carried out against Rahma Hujeira, an award-winning former journalist and human rights defender who established the Yemeni Female Media Forum in 2004. In her articles, Rahma often criticized the government’s negative administrative performances. In its first issues in May 2005, the quasi-official newspaper *Al Bilad* attacked her moral alleging that she indulged in “red nights with drunken man”. For Rahma, these defaming attacks amounted to “social assassination”. The article also criticized her husband, Hafez el Bukari, the then Secretary General of the Yemen Journalists Syndicate (YJS) for allowing her to take part in such “immoral” practices. Rahma took the issue to court, but by August 2007, the court had not yet issued a verdict.

Recently, women activists have been attacked by another medium. A thoroughly detailed book of about 250 pages entitled *The Feminist Movement in Yemen; its history and reality* by Anwar Kassem Al-Khodari warns against the dangers the Yemenite Feminist movement is imposing on the Yemenite culture and tradition. While the author calls upon improving the status of women as per the Shari’a, he accuses feminists in Yemen of whom he names amongst others, Dr. Raoufa Hassan, Dr. Suad Al-Gedsi, Dr. Khadija Al-Haisemy of using banners such as “the preachers of enlightenment, liberation, realists and rationalist...[to] conceal behind it cancerous incentives and bad intentions of which the least harmful is the perversion of society, its values and traditions in exchange for the values and traditions of ‘the other’! i.e. obliterating identity and purging its cultural traits.”(249)

6. THE JUDICIARY FAILS TO DEFEND FREEDOM OF EXPRESSION

“We have judges but no judiciary.” This is how HOOD Executive Director Khaled Alanesi summed up the status of the judicial institutions. Indeed, violations of freedom of expression are worsened by weak and often corrupt judicial

institutions. The judiciary suffers from a lack of independence and transparency, and judges are poorly trained and often associated with the ruling party. They are occasionally bribed and their social ties sometimes influence their verdict - a phenomenon acknowledged by the authorities.

After examining the report submitted by Yemen on its implementation of the ICCPR in July 2005, the Human Rights Committee reiterated *“its concern about the reported lack of efficiency and independence of the judiciary, despite the existence of constitutional guarantees and the measures taken to reform the judicial branch”*³⁸. The Committee called on Yemen to *“ensure that the judiciary is free from any interference, in particular from the executive branch, in law as well as in practice”*.³⁹

The justice system often fails to effectively investigate cases of violations of the human rights of journalists, such as threats, kidnappings by unknown men and other forms of violence, and to prosecute and punish those responsible for the attacks.

In January 2006, during a meeting with the Committee to Protect Journalists (CPJ), the Prime Minister promised to thoroughly investigate cases of aggressions against journalists and publish the results. However, a year later, the authorities had still failed to take action on some of the most severe cases. For instance, they did not bring to justice those responsible for the attack against journalist Nabil Subaie in November 2006 after he was stabbed and fired at, or the abduction for several hours in December 2005 of Mohammed Sadiq al Odaini, whose case was dismissed allegedly for lack of witnesses. Among others, the authorities also failed to effectively investigate and prosecute those responsible for the abduction and physical assault in May 2005 of Jamal Amer, editor of *Al Wasat* or the booby trapped letter sent to Hajae Al Jahafi, managing editor of *Al Nahar* newspaper, who was wounded in July 2006 when an envelope exploded in his face.

Similarly, soldiers and police officers responsible for physically assaulting journalists interviewing people or covering demonstrations are not charged, which further contributes to a climate of impunity. No investigation was reported to have been held into the violent dispersal of the Ethiopian demonstration before the UNHCR Office in 2005.

Recalling the duty of states to implement the rule of law and respect human rights, the UN Special Rapporteur on Freedom of Expression has urged “national authorities, both civilian and military, and, where applicable, international authorities to conduct inquiries into killings and attacks against media professionals, trade unionists, social workers, students and teachers and artists, wherever they occur, including in war and conflict zones. An end to impunity for

³⁸ Concluding observations of the Human Rights Committee, CCPR/CO/84/YEM, 9 August 2005, para 6.

³⁹ Ibid.

the perpetrators of such acts would reinforce the crucial role that the rule of law must play in all societies”.⁴⁰

Given the inefficiency and lack of independence and credibility of the judiciary, media professionals and other outspoken citizens whose rights have been violated have very little confidence in the judicial institutions of the country.

“Our fundamental problem is that we don’t respect the constitution and laws. There is no rule of law. Attacks on journalists and activists are a result of order, not laws. Even if you have an ideal law, who will implement it?” concluded Al-Khaiwani.

7. CONCLUSIONS

For the last few years, freedom of expression and, above all of the media, has been severely curtailed and journalists have been facing ongoing repression by the authorities. They have been prosecuted, imprisoned or have been physically assaulted by agents suspected to act on their behalf. These practices are facilitated by the existence of the Press and Publications Law that violates Yemen’s international obligations under the ICCPR and criminalizes press offences. The persistence of serious threats to the life and imprisonment of journalists put into question the President’s 2004 announcement to exclude the detention of media people. The severe violations of the right to freedom of expression are further compounded by a weak and often corrupt judiciary that fails to implement constitutional guarantees and redress the wrongs suffered by journalists. As a consequence of the clamp down on their activities, many journalists have started to practice self-censorship.

The recent prosecutions of editors in chief before the Special Criminal Court on Terrorism under terrorism-related charges where they could face the death penalty constitute an extremely worrying precedent that, if not immediately countered, could herald an even more repressive silencing of the media.

While restrictions to freedom of expression mainly affect the media, other sectors of the society have also felt the brunt of government practices.

The ability of women to exercise their right to freedom of expression is limited to a tiny urban minority whose most outspoken figures are often attacked in gender-based slur campaigns in quasi-official newspapers. As for the rural women, socio-economic factors and traditional cultural norms deny them the possibility to express themselves in the social arena. Although the authorities are not “actively” violating their freedom of expression, they carry a substantial

⁴⁰ E/CN.4/2005/64, 17 December 2004, para. 65.

responsibility for not empowering them to exercise this basic right, including through the maintenance of discriminatory laws.

8. RECOMMENDATIONS

Recommendations:

- Immediately cancel judicial procedures initiated against journalists before the Special Criminal Court on Terrorism.
- Immediately release from prison and cancel charges against media professionals and other individuals prosecuted for exercising their right to freedom of expression.
- Carry out effective investigations into threats and attacks against journalists, in particular abductions, and bring those responsible to justice. Effectively conclude investigations into past incidents that have been kept pending for too long.
- Stop carrying out or condoning slur campaigns and defaming article against journalists, in particular gender-based attacks that insult the dignity and honour of women journalists or activists, undermine their credibility and dangerously put them at risk of reprisals by the community.
- Discontinue the state monopoly on broadcast and news agencies and allow private TV, radio stations and news agencies to operate freely.
- Put an end to all restrictive policies and practices that limit freedom of expression, such as withholding or withdrawing licenses, banning journalists from publication, “cloning” of NGOs, newspapers and websites, etc.
- Reform and reinforce the judiciary’s independence to ensure its effectiveness, impartiality and independence.
- Implement the recommendations of the Human Rights Committee to ensure that the future Press and Publications Law fully complies with Article 19 of the ICCPR and includes relevant progressive practices worldwide.
- Implement the recommendations of the CEDAW, in particular those related to discriminatory legislation to empower women to exercise their right to freedom of expression.
- Extend an invitation to the Special Rapporteur on Freedom of Expression to carry out a visit to the country.

