



ACADEMY OF CONSTITUTIONAL LAW

# Freedom of Expression in Yemen: Legal Obligations and Government Transgressions

Policy Paper

Dr. Nabil Abdelsamad Amine Abdel Waseh

Arab Association for Constitutional Law  
Seventh Edition – 2022

This paper is published as part of the outcomes of the seventh edition of the Academy of Constitutional Law, which was held online, between 3 and 20 October 2022, with the participation of 13 researchers from different Arab countries (Tunisia, Lebanon, Yemen, Jordan, Palestine, Morocco, Iraq, Algeria, and Egypt).

This year's edition focused on "constitutionalism, human rights, and civil liberties: 11 years after the Arab uprisings." It included lectures by: Dr. Jinan Limam, Professor of Public Law at the Faculty of Legal, Political and Social Sciences in Tunisia; Dr. Asem Khalil, Professor of Public Law at Birzeit University in Palestine; Dr. Iman Rashwan, Professor of Public Law at the Faculty of Law at Cairo University and a visiting lecturer on Law and Economics at the Faculty of Law at the University of Hamburg; Mr. Aymen Briki, a researcher specializing in Public Law and Political and Geopolitical Sciences, and a Research Fellow at the Max Planck Foundation for International Peace and the Rule of Law; and Mr. Halim Shebaya, Non-resident Fellow at Arab Center Washington DC and Head of Advocacy and Strategic Action at Impunity Watch.

This seventh edition also featured case studies and meetings with a number of high-level guest speakers and experts, including, among others: Ms. Stephanie Williams, Special Adviser on Libya to the Secretary-General (2021-2022), Acting Special Representative and Head of the United Nations Support Mission in Libya (UNSMIL) (2020-2021), and Deputy Special Representative (Political) of UNSMIL (2018-2020); Dr. Salma Mabrouk, member of the Tunisian National Constituent Assembly, member of the constituent committee on rights and liberties and of the legislative committee on social affairs; and Ms. Khadija Rabbah, founding member of the Democratic Association of Moroccan Women and an international expert and trainer in inclusive democratic development and transformational leadership.

The Academy of Constitutional Law is organized annually by the Arab Association of Constitutional Law with the aim of encouraging researchers in Arab countries to dialogue and work with each other and exchange experiences on the most relevant current constitutional issues.

**The opinions in this publication do not necessarily reflect the views of the Arab Association of Constitutional Law.**

# Contents

<b>Executive Summary</b>	<b>1</b>
<b>Introduction</b>	<b>1</b>
<b>Part 1: Legal Framework Governing Freedom of Expression</b>	<b>4</b>
I. Scope of Freedom of Expression	4
II. Regulating Freedom of Expression in Yemen	5
<b>Part 2: Practical Embodiment of Freedom of Expression</b>	<b>8</b>
I. Current Violations	8
II. Poor Guarantees	11
<b>Recommendations</b>	<b>16</b>
<b>Conclusion</b>	<b>19</b>
<b>Endnotes</b>	<b>21</b>
<b>List of References</b>	<b>27</b>

## Executive Summary

Given that the primary purpose of rights and freedoms is to protect the individuality and core identity of humans, it is firmly asserted that they possess the right to openly express their viewpoints and ideas using any means they deem appropriate, be them verbal or otherwise. Hence, in the pursuit of democratic values, states endeavor to broaden the reach of freedom of expression and to provide more opportunities for its practice, considering the dynamic progress of both human society and technology. This objective can be accomplished by enshrining freedom of expression as a fundamental principle in constitutional provisions, enacting appropriate legislation, and adopting a broad legal definition of freedom of expression as a general rule, with limited restrictions in exceptional circumstances.

The 1990 Constitution of Yemeni Unity and subsequent legislation enshrined the principle of freedom of expression, which – despite the setbacks following the 1994 war – remained confined to the boundaries set at that time until 2011. After 2011, there was a resurgence in the promotion of freedom of expression, coupled with widespread aspirations to break free from taboos traditionally imposed by the authorities. Unfortunately, this progress was marred by a distressing setback, characterized by appalling violations, as Yemen descended into a vortex of violence from 2015 until the present day. Freedom of expression can only be effective when legislators reinforce it through two intertwined imperatives: strengthening this freedom through legislation and establishing mechanisms to protect it from the abuse and dominance of the powers that be. Thus, it is impractical to delegate this commitment since it falls under the exclusive competence of legislators, who are entrusted with guaranteeing the compliance of the executive authority with the limits of its functions, as well as ensuring the judiciary's exclusive jurisdiction in matters related thereto.

## Introduction

Yemen has experienced direct ramifications due to the events of 2011, which sparked optimism for a profound transformation in the constitutional system.

These developments presented an opportunity to establish an exemplary model of Arab constitutional rights and freedoms, given the relatively open environment that prevailed prior to 2011 in Yemen, compared to other Arab nations. Political parties also aspired to enhance democratic principles through the advancement of constitutional governance. This became apparent through the extensive deliberations on rights and freedoms and the broad range of possibilities explored during the inclusive national dialogue among various factions in Yemen.<sup>1</sup> As a result, significant progress was made in formulating the 2015 Constitution, which demonstrated a high level of articulation of these rights and the embodiment of civil liberties.<sup>2</sup> Notably, freedom of expression emerged as one of the most cherished fundamental rights, second only to the right to life. It is intricately tied to individuality,<sup>3</sup> as every person possesses an inherent right to express themselves, both as a human being and as a citizen.

The keywords of this paper are freedom, right, opinion, and expression. Since the concept of rights is broader than that of freedom,<sup>4</sup> and expression is the materialization and embodiment of opinion, our discussion will focus on “freedom of expression” as a comprehensive framework for a highly sensitive and complex concept. It is considered a fundamental human right<sup>5</sup> and a pillar of free societies and democratic systems, essential for the flourishing of individual freedom and self-affirmation; the suppression of this freedom puts pressure on the individuals’ personality and violates their human nature, negatively impacting their well-being and their mental health.<sup>6</sup>

The concept of freedom of expression has undergone significant transformations from a broad liberty to a fundamental human right. It has transitioned from being a freedom associated with limitations to a right that imposes affirmative responsibilities on public authorities. This evolution has enabled it to go beyond the mere freedom of thought to become a means of ensuring the effective exercise of other rights and freedoms in practical terms.

The scope of freedom of expression varies depending on the level of awareness of civil society, the level of democracy of the government, and the margin of freedom available. Non-democratic countries often restrict the fundamental right to freedom of expression by imposing increasing limitations and narrowing its practice. This is done by narrowing the scope of constitutional provisions and issuing numerous legislative texts that impose exceptions and restrictions on this freedom.

Alternatively, this is reached through the adoption of narrow judicial interpretations of the protective provisions, as opposed to broad interpretations of the narrow texts or exceptions to freedom of expression. The tripartite relationship between the incident, the text, and the characterization remains subject to the authority, independence, and effectiveness of the judiciary, which has the final say in affirming or limiting this right. Additionally, practical (repressive) practices by the executive bodies of the ruling authority can go beyond the legal debate or the characterization of judicial rulings (whether broad or narrow) in exercising freedom of expression and the exceptional restrictions imposed on it. These practices have the potential to undermine the integrity of the legal framework (including constitutional provisions, international agreements, domestic laws, and judicial precedents) and can even give rise to systematic breaches of freedom of expression. Such actions may involve treating any dissenting viewpoint as a target for attack, in total disregard for the fundamental principles that safeguard this right. This reverses the hierarchy of freedom of expression, whereby restrictions become the prevailing norm, and freedom of expression becomes the exception or even disintegrates entirely in oppressive totalitarian regimes, where no voice rises above that of the ruling authority and its singular direction.<sup>7</sup>

In light of the ongoing conflict, Yemen is presently governed by two distinct authorities. The first is the legitimate authority that assumed power from President Ali Abdullah Saleh following the events of 2011 and enjoys international recognition, and whose provisional capital is Aden. The second is the *de facto* authority affiliated with the Houthi Ansar Allah group, which overthrew the legitimate authority in September 2014 and seized control of the capital, Sana'a, and some surrounding cities. It exercises governmental functions, thereby rendering it subject to international legal obligations and bound by international human rights norms.

The flagrant and unparalleled infringements on freedom of expression in Yemen have raised profound concerns regarding the nature and origins of this phenomenon, as well as the strategies required to effectively address and rectify these violations.

In order to curtail violations and prevent their occurrence, it is necessary to review the constitutional and legislative limits of free expression. This also entails looking at the manifestations and severity of violations, as well as how the competent authorities implement the necessary safeguards to enforce protection therefrom.

Freedom of expression is a vital and wide-ranging topic that cannot be fully covered in this paper due to its multiple dimensions. Therefore, we will not discuss it from a traditional angle (covering its background, philosophy, and evolution), but rather from an analytical and investigative angle to touch upon the legal framework governing freedom of expression (Part 1) and its practical manifestations (Part 2).

## Part 1: Legal Framework Governing Freedom of Expression

Before delving into the laws and regulations governing freedom of expression, we must first identify its scope.

### I. Scope of Freedom of Expression

The right to free expression is linked to the moral rights of persons (both natural and legal<sup>8</sup>) and children<sup>9</sup> and is the apex of these rights<sup>10</sup> and the essence of democratic ideology. It is a fundamental and unchanging right at all times and in all places,<sup>11</sup> upon which many essential and related freedoms and guarantees are based.

It has a broad and relatively positive scope<sup>12</sup> characterized by flexibility: It can be understood in the narrow sense of expressing ideas and opinions, as well as in the broader sense of civil freedom (individual management of private life) and political freedom (participation in the management public affairs). It serves as a protective barrier for several rights and as an indicator of their existence, including freedom of thought,<sup>13</sup> freedom of opinion<sup>14</sup> in receiving and formulating ideas, and freedom of expression in terms of the disclosure, expression, support, modification, development, and dissemination of thoughts and beliefs.

The scope of freedom of expression can be understood through the Yemeni legislators' definition of copyright and dissemination. "Copyright includes all forms of expression, whether written, spoken, drawn, embodied, or otherwise."<sup>15</sup> Article 192 of the Criminal and Penal Code stipulates that, "Dissemination refers to actions such as proclamation, broadcasting, publishing, presenting, affixing, or distributing among individuals without distinction in a public or accessible place, or in a place where the disseminated material can be heard or seen by those present in a public place; including by speech, shouting, writing, drawing, imagery, or any other means of expressing thoughts."

Expression can take various forms, including speech (verbal expression) or action, gestures (expressive movements, gestures, facial expressions<sup>16</sup>), ordinary writing, non-conventional writing (drawing, illustration, caricature), digital-electronic writing (online, social media networks), and practices (protests, gatherings, peaceful events, demonstrations, strikes, public meetings) for individual or collective expression, without geographical restrictions.

The concept of freedom of expression encompasses the fundamental right to articulate opinions, provide critique, and engage with public authorities using various means, including: media outlets<sup>17</sup> such as print publications (press,<sup>18</sup> writings), audio platforms (radio), audio-visual platforms (television,<sup>19</sup> theatre, and cinema), as well as digital and online platforms (online newspapers, social media, and blogs). The emergence of these platforms has marked a significant milestone in human history, enabling enhanced social interaction, peaceful protests<sup>20</sup> (public gatherings, marches, demonstrations, strikes, sit-ins), and social action (trade unions, associations, and belief systems).

## **II. Regulating Freedom of Expression in Yemen**

The Yemeni Constitution was ratified through the unity referendum of 1991 and has been amended twice, after the 1994 war and on February 20, 2001. After the events of 2011, the constitution underwent additional amendments; these were mainly related to its political dimensions,<sup>21</sup> but the majority of its provisions, including those pertaining to the freedom of expression, remained largely unchanged.

Article 6 of the Constitution reads as follows: “The Republic of Yemen confirms its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and the principles of international law which are generally recognized.” Yemen is party to international treaties<sup>22</sup> and has ratified the International Covenant on Civil and Political Rights,<sup>23</sup> and it is bound by the rules and standards of international human rights law (peace and armed conflict),<sup>24</sup> which are part of customary international law and complemented by international humanitarian law and its customary rules.<sup>25</sup> Therefore, Yemen is legally obligated to respect, protect, and enforce the freedom of expression for all individuals within its jurisdiction.<sup>26</sup> This includes ensuring the right to exercise all forms of freedom of expression and providing remedies for those whose rights have been



violated. Yemen is also responsible for investigating and prosecuting perpetrators of violations that amount to war crimes in accordance with international laws.

The International Covenant on Civil and Political Rights allows, under exceptional circumstances (Article 4), for derogation from the obligations stipulated therein to the extent required by the exigencies of the situation (without discrimination) in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed. However, since such a state of emergency was not proclaimed in Yemen.<sup>27</sup> The Secretary-General of the United Nations was not notified of any such emergency, which means it is not possible to exercise any restrictions on freedom of expression, not to mention the rights that cannot be restricted under any circumstances, even during a state of emergency, including the prohibition of torture, cruel, inhuman, or degrading treatment or punishment, and the violation of human dignity.

Article 42 of the constitution establishes freedom of expression, stating that “Every citizen has the right to participate in the [...] life of the country. The state shall guarantee freedom of thought and expression of opinion in speech, writing and photography [...]” Moreover, Article 58 stipulates that “citizens may organize themselves along political, professional, and union lines. They have the right to form associations [...] and national unions [...] The state shall guarantee these rights and shall take the necessary measures to enable citizens to exercise them.”

Yemeni legislators have attempted to enshrine freedom of expression in domestic laws, but these do not yet fully reflect international standards, and this remains a desired outcome that is challenging to accomplish. However, prior to 2015, Yemeni legislators made progress in this regard, particularly with the recommendations of the Human Rights Council and the Universal Periodic Review.<sup>28</sup> Some legislative texts have included guarantees for freedom of expression.

Considering the role of the press in exercising freedom of expression as one of its tools,<sup>29</sup> Article 3 of the Press and Publications Law No. 25 of 1990 stipulates that “freedom of knowledge, thought, press, expression, communication, and access to information is a right granted to all citizens to enable them to express their ideas through speech, writing, illustration, drawing, or any other means of expression. This right is guaranteed to all citizens.” The provisions of this article are aligned with international standards in terms of the text itself, but they differ in terms of the

oversight, which should be entrusted to independent bodies accountable to the public and operating transparently.<sup>30</sup> However, Yemeni legislators assigned this task to the Ministry of Information.<sup>31</sup> The role of the Yemeni Public Corporation for Radio and Television, meanwhile, was defined as follows: “contributing to the expression of citizens’ demands, concerns, and vital issues.”<sup>32</sup> Nevertheless, the corporation remained under the authority of the Ministry of Information. Furthermore, freedom of private press was established in response to international standards, after it was previously monopolized by the state, according to Article 33, which states that “citizens, authorized political parties, public legal persons, and grassroots organizations, creative entities, ministries, and government institutions have the right to establish and own newspapers and journals.”

Yemeni legislators also guaranteed the right to peaceful demonstration and gathering, as well as the non-interference in and non-infringement upon the peaceful exercise of freedom of expression with prior authorization. This includes “the gathering or procession of a number of individuals in a peaceful manner in a public place or in its vicinity, with the intention of expressing an opinion, protesting, or claiming specific demands.”<sup>33</sup> This right is granted to “citizens [...], political parties, grassroots organizations, and trade unions, which all have the freedom to organize peaceful demonstrations and marches [...]” (Article 3).

The legislators did not criminalize certain forms of expression in defamation cases (according to Article 293 of the Penal Code), provided that these constitute practical criticism of a literary or artistic work presented to the public [...], originating from a person with supervisory or directing authority. Furthermore, this encompasses the act of expressing opinions concerning the behavior of a government official in relation to their prescribed responsibilities or expressing grievances pertaining to an individual’s behavior while carrying out their designated tasks, on the condition that this is done sincerely and in the intention of safeguarding one’s own or others’ rights as acknowledged by the law. The law also does not criminalize the publication of a mere account or summary of what transpired in a legally conducted meeting unless there is a specific ban on such publication. The statements made during judicial proceedings by a legal actor such as a judge, lawyer, witness, or party to the case are also protected.

Indeed, the challenge lies not only in the legal framework regulating freedom of expression but also in the violation of that framework in practice

## Part 2: Practical Embodiment of Freedom of Expression

Freedom of expression in Yemen can be assessed by (I) identifying and documenting violations resulting from (II) the inadequate enforcement of guarantees.

### I. Current Violations

The authorities in Yemen have imposed strict restrictions on freedom of expression (coercive environment<sup>34</sup>), which undermined civic spaces. During the war, there were widespread violations of legal and constitutional obligations, as well as international commitments, marking a serious regression in the rights that had been progressing since 1990.<sup>35</sup> These violations vary in severity, starting from instilling fear, panic, and intimidation in the hearts of millions for merely contemplating the exercise of their right to expression. They also included threats against those exercising their rights, the lack of guarantees for the effective exercise of such rights through all means and methods, and even the abuse of those who legitimately practiced their constitutional right to free expression. The reality of these transgressions is evident in numerous violations targeting groups and individuals, including politicians, activists, human rights defenders, lawyers, journalists, public and private sector workers, party supporters, educators, teachers, tribal leaders, religious minorities, non-governmental organization workers, social media activists, and even ordinary civilians and vulnerable groups.

Detainees have been subjected to various documented violations, including blindfolding, hand-cuffing, and beating with wooden boards, metal chains, and electric shocks in sensitive areas of the body. They have also experienced being hung upside down for several days, drowning, deprivation of sleep and light, urination, kicking, slapping, nail extraction, forced nudity in front of other detainees and guards, simulated executions, verbal abuse and humiliation, coerced confessions, forced affixation of signatures and fingerprints while blindfolded, threats of violence against their families, and prolonged solitary confinement, all in violation of the absolute prohibition of torture and cruel, inhuman, or degrading treatment. These violations have occurred in harsh conditions with a glaring lack of medical care, leading to numerous deaths while in detention.<sup>36</sup> All of these individuals have been detained solely for exercising their legitimate professions

or their right to freedom of expression. This of course intimidated and discouraged any other citizen from exercising their right to freedom of expression.<sup>37</sup>

All of these transgressions have been committed as a way to restrict freedom of expression, criticism,<sup>38</sup> opposition, and the right to popular accountability, whether it is criticism of the professional performance of state institutions, rejection of the political performance of ruling authorities, civil transgressions by military and quasi-military leaderships, war profiteering networks, the disastrous economic<sup>39</sup> and deteriorating health situation,<sup>40</sup> disclosure of truths related to the COVID-19 pandemic that has spread across the country,<sup>41</sup> expressing of personal beliefs and positions, and even preventing the mere expression of the suffering endured by millions of Yemeni citizens who are deprived of all their basic political rights (elections, party affiliation, belief, mobility), civil rights (security, health, education, wages), and basic services (electricity, water, gas), as well as preventing employees from demanding their rightful wages and forcing them to work without compensation,<sup>42</sup> not to mention denying them humanitarian aid.<sup>43</sup> Criticizing or addressing any of the practices is prohibited under the pretext of religious sanctity at times and military necessities at other times. Furthermore, mass surveillance (eavesdropping) is practiced to verify the affiliations and orientations of citizens.<sup>44</sup>

Indeed, the violations that have targeted freedom of expression since the beginning of the conflict have manifested themselves through a systematic campaign by the authorities to suppress all forms of dissent, whether visual, auditory, or written. This has included the closure of independent media outlets or those that supposedly oppose the authority's directives, the dismissal of their employees, and the confiscation of their assets. Additionally, writers, activists, and journalists<sup>45</sup> have been targeted through the restriction of freedom of expression, intimidation, arbitrary and unlawful attacks and detention, enforced disappearances, imprisonment, torture, and extrajudicial killings.<sup>46</sup> Special proceedings have been conducted, leading to the issuance of death sentences against many of them.<sup>47</sup>

Media outlets broadcasting in Yemen are either forced to subscribe to the ideology of the authorities or to operate under strict surveillance. The *de facto* authorities in Sana'a have blocked 21 news websites, imposed control over seven TV stations, blocked online news platforms, prevented the publication of 18 newspapers, suspended the operations of 30 newspapers, or forced them to shut down.

Additionally, they have raided and closed the headquarters of 52 human rights and civil society organizations.<sup>48</sup> Furthermore, the legitimate authority has imposed control over seven satellite TV stations and raided the headquarters of seven organizations,<sup>49</sup> in addition to freezing their bank accounts.<sup>50</sup>

The restrictions on freedom of thought (belief, religion, and conscience) have also been tightened through strict control over all domains (intellectual, artistic, and scientific)<sup>51</sup>, and people have been coerced into attending specific events and rituals related to a particular sect. On the other hand, certain sects, such as Judaism and the Baha'i Faith, have been denied the right to freedom of expression and to practice certain religious rituals, due to religious, sectarian, or partisan differences. The Baha'i community<sup>52</sup> has been targeted with continuous persecution, including raids, arrests, and arbitrary detention for extended periods of time. One individual was detained for nearly four years on charges of blasphemy and was sentenced to death after a trial that neither he nor his family were allowed to attend. The ruling included the dissolution of all Baha'i organizations and the confiscation of their properties and institutions.<sup>53</sup>

Furthermore, freedom of expression has been targeted by preventing the establishment of associations and dissolving those that oppose the government's agenda. Public gatherings, union activities, peaceful protests, strikes, and demonstrations for demanding rights have been banned. Spurious charges of espionage are used to silence anyone who expresses their suffering from the deteriorating situation or the violations they may face or witness. Additionally, the freedom of assembly is infringed upon by restricting physical social spaces and monitoring and surveillance of social media platforms.<sup>54</sup> Eavesdropping on conversations, recordings, persecution, and enforced disappearances are tactics employed by the authorities against those who fall into their hands.<sup>55</sup>

The authorities have also used excessive force to suppress women's protests, including the protests of women from the General People's Congress, and have arbitrarily detained 279 women and girls in secret detention facilities for periods ranging from one month to nine months.<sup>56</sup> These women have been subjected to abusive and degrading treatment. Such actions give rise to individual criminal liability for the war crime of attack on human dignity.<sup>57</sup>

The authorities also prevent any possibility of access to or obtaining information,<sup>58</sup> despite it being a multidimensional right<sup>59</sup> that goes beyond receiving information and includes the use and dissemination of such information.<sup>60</sup> The authorities arbitrarily restrict the circulation, transmission, reissue, and censorship of information under the pretext of public security, military secrets, and national defense, which constitutes an attack on freedom of expression. The authorities should ensure non-arbitrary treatment, and the judiciary should strive to strike a balance between these claims and individuals' exercise of this right.<sup>61</sup>

There are very few means for free expression left in Yemen. Many activists, opponents, and critics are forced to silence themselves out of fear of security repercussions and retaliation.<sup>62</sup> This fear has compelled many to leave the country or seek refuge in areas under the control of supportive authorities. Those who remain are subjected to oppressive measures, practicing a form of “self-censorship” as a means of protecting themselves and their loved ones. Yemen has become more akin to a homogeneous state dominated by fear and indoctrination, with no tolerance whatsoever for opposition.<sup>63</sup> The direct consequences of these violations have had numerous negative effects, including the distortion and manipulation of facts, the obscuring of reality, and the deliberate concealment of national and international developments. This leads to erroneous conclusions and a decline in public awareness. The foundations and progress of society are thus undermined, amid a prevailing sense of inequity and grievances, thereby exacerbating instances of violence and fostering a climate of political instability. It is essential to ensure effective safeguards for the freedom of expression, which is currently violated by the authorities.

## **II. Poor Guarantees**

The protection of freedom of expression requires numerous national and international guarantees. International guarantees include United Nations conventions (such as the International Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights) and international mechanisms (such as the United Nations Human Rights Council and its subsidiary body, the Committee on Human Rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on



religious intolerance). Regional committees (such as Islamic, Arab, European, U.S., and African committees) and human rights courts (such as European and U.S. courts) also contribute to these guarantees.

National guarantees for freedom of expression vary and can include constitutional provisions (such as constitutional texts, the principle of the rule of law, the principle of separation of powers, and the principle of equality), legislative measures (such as criminal and media laws; press, publishing, and broadcasting regulations; regulations on public gatherings, demonstrations, and strikes), oversight mechanisms (such as parliamentary oversight, political parties, civil society organizations, media outlets, and public opinion), and judicial safeguards (such as constitutional, administrative, and criminal justice).

It is the responsibility of the authorities to take appropriate measures to implement international human rights standards.<sup>64</sup> With regard to national law, the primary source (the constitution) in all countries should guarantee these rights,<sup>65</sup> as it ensures the alignment of the entire national legal system with international standards. Article 26 of the Vienna Convention on the Law of Treaties (1969) states that, “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” Therefore, a party to human rights treaties cannot justify potential non-compliance with the same based on its national system, including the constitution. The guarantee of freedom of expression in Yemen is based on two pillars: the executive power and the judiciary.

## **1. Executive Power**

Since the executive power encroaches on all other powers, it can guarantee the protection of freedom of expression by respecting the limits of its competencies on the one hand and the independence of the judiciary on the other.

### **The Extent to which the Executive Respects the Limits of its Competencies**

One of the first steps taken by the legislature to regulate rights and freedoms was the issuance of legislation in line with the will of the people – in accordance with constitutional controls and under the oversight of the constitutional judiciary.<sup>67</sup> This is in response to the authoritarianism of the executive power, which uses

the maintenance of public order as a pretext to exercise administrative control, the abusive use of which, in most cases, restricts and violates these rights and freedoms. These abusive practices also constitute a violation to Article 137 of the Constitution, which entrusted the executive with enforcing public state policy and taking the necessary measures to maintain security and protect the rights of citizens.

Punitive texts (Articles 199, 168, and 246) criminalized several acts that may be carried out by a public servant against a suspect, a witness, or an expert, in order to force them to confess to a crime, make statements, or share information in this regard. These acts include torture, use of force, threats, cruelty, breach of honor, infliction of physical pain, arrest, detention, or deprivation of liberty by any means. The victim of such abuses has the right to demand punishment, *diyya* (financial compensation), or remedies, and the public servant is dismissed from their position. Article 256 also criminalized any infringement on the inviolability of private life by eavesdropping, recording or transmitting private or telephone conversations, as well as taking personal photos.

## **Respect of the Independence of the Judiciary by the Executive**

It is a recognized fundamental principle that the judiciary cannot issue fair judgments unless it is independent and detached from the influence or interference of the other powers. Article 149 of the Constitution establishes this principle: “The Judiciary is an autonomous authority in its judicial, financial, and administrative aspects [...]. Judges are independent and not subject to any authority, except the law. No other body may interfere in any way in the affairs and procedures of justice. Such interference shall be considered a crime that must be punished by law. A charge regarding such interference cannot be nullified with the passing of time.” In order to ensure this independence, Article 187 of the Penal Code criminalizes the interference of judges in favor of or to the detriment of one of the litigants, in any form, including orders, requests, demands, and recommendations from anyone, whether an employee or a person of high standing. Article 167 of the Penal Code also punishes public servants by dismissing them from their jobs in the event that they do not inflict the right punishment, refuse to release a detainee, set up a special prison (Article 247), conduct an illegal search (Article 169), use power to disrupt systems, or refuse to execute court decisions (Article 165). Moreover, it is an offense to violate (in writing, verbally, through actions, or by any other means)



a judge's standing, prestige, or authority, or to attempt to influence a judge during a session (Article 185).

The victim, whose right has been violated by the authority needs an independent judiciary that is not biased towards any party, regardless of its position or power; a judiciary that does the victim justice, protects them, and ensures that their rights are respected. This cannot be achieved unless the judiciary is truly independent, in a way that protects judges from any pressure that may be exerted upon them by the authority. An administratively, financially and functionally independent judicial institution (the Supreme Judicial Council) also requires a regulatory framework, and the selection of judges should be done under fair, objective, professional, and procedural conditions, providing all guarantees of appointment, promotion, discipline, etc. In return, judges must not be biased towards any authority or party (in other words, they must practice neutrality in its most basic form) and must be willing to accept the fact that they may be subjected to defamation and blame.

However, authorities in Yemen have not simply resorted to pressure; they even went as far committing violations. Judges in Yemen are subjected to all kinds of assault, intimidation, and arrests on political and security grounds, being forced to serve the personal interests of influential actors. For instance, a judge was forcibly kidnapped for six months without being formally charged of an offense or brought before a court, and they were tortured to obtain confessions. A Supreme Court judge was also kidnapped and murdered. The judiciary has been subjected to many systematic violations, which have forced judges and prosecutors to exercise self-censorship during the performance of their judicial duties in order to avoid harming the interests of power groups. judges' salaries have also been suspended for political motives, providing a fertile ground for corrupt power groups and allowing these groups to target dissenting and honorable judges in order to undermine the independence and integrity of the judiciary.<sup>68</sup> The *de facto* authority in Sana'a has also gone as far as violating the principle of separation of powers and the independence of the judiciary, by appointing judges affiliated with it in a totalitarian fashion, via non-standard procedures, and subjecting judges' work to political control (the justice system).

## 2. Judiciary

The judiciary is relied upon to ensure freedom of expression, as it intervenes directly by investigating violations or actions that may result in violations. There has been a number of considerations in this regard, such as granting Parliament the competence to regulate rights and freedoms in its capacity as the body that expresses the will of the people. However, parliamentary legislation that once expressed the will of the people has come to reflect the will of the ruling authority, especially in totalitarian regimes (single-party rule). This shift raises concerns over rights and freedoms, as freedoms that were once protected **through** legislation now have to be protected **from** legislation. Therefore, a system was established to check the compliance of legislation with the constitution. Constitutional protection for this oversight system was approved by the constitutional judiciary entrusted with monitoring the constitutionality of legislation<sup>69</sup> and its non-violation of constitutional provisions,<sup>70</sup> which form the general framework of the freedom of expression.<sup>71</sup> The constitutional text can also be strengthened through broad interpretations, being the primary guarantor of rights and freedoms.<sup>72</sup>

It is necessary to resort to the administrative judiciary in order to avoid all transgressions resulting from the arbitrary decisions of administrative authorities. Authorities may violate freedom of expression by abusing their powers under the pretext of protecting state security or interests. These abuses may be proactive by withdrawing the license of a magazine or TV channel, blocking a website, stopping a TV program or the circulation of a publication, imposing a penalty on employees or preventing them from sharing certain news on social media or in newspapers, newsletters, television programs; they may also be passive by refraining from taking any of the abovementioned measures.

The ordinary judiciary hears all cases relating to violations of freedom of expression, such as insults, slander, contempt, insult to public institutions, conspiracy, treason, sabotage, and violence. It also examines the violations that must be referred to it first so that they do not remain outside the circle of law, holding violators (authority staff) accountable, and putting an end to these violations with deterrence and injunction, in order to ensure accountability and non-recurrence. Impunity in Yemen fosters conflict and allows for more violations. It is also a result of the unrestrained conflict. Neither the international community nor national parties are willing to hold the perpetrators accountable for their crimes, violations, and abuses

against human rights in general and freedom of expression more specifically. This goes against international human rights law and international humanitarian law, which include the obligation to investigate such crimes, violations, and abuses and hold perpetrators accountable, be it individually or collectively. Perpetrators may be material actors (direct perpetrator, contributor, accessory, or instigator) or moral actors (authority that the order, was informed of it, or is supposed to know of it). The international human rights law and international humanitarian law also require that perpetrators be brought to justice and that victims receive full and effective reparation.

There are usually three different types of judges that look into such violations: judges who support freedom of expression, judges who participate in the violations (affiliated with the totalitarian authority), and passive judges who refrain from condemning the violations presented to them when they could have taken a position that embodies and promotes the freedom of expression.

Finally, a proper democratic structure, coupled with constitutional governance, freedom of expression, and absence of impunity, remains the lifeline of Arab peoples, as bitter past experiences prove that violence, use of force, and tyranny only lay the foundation for more bloodshed and destruction.

## Recommendations

Recommendations can be divided into three categories: political, human rights, and legal.

### **Political Recommendations:**

When an individual assumes a political post or position, they put themselves in the spotlight and become the center of attention of media outlets (press articles, comments on all aspects of their public and private life, actions that are closely related to their morals and personal affairs). The above cannot be considered libel, slander, insult, or contempt from a legal or judicial point of view, and the more the regime is open, the more it is targeted by such justified criticism. Considering the multiple identities in Yemen (sectarian, regional, ideological),

authorities should treat everyone equally and not favor one sect, religion, group, or region over another or allow a particular group to use freedom of expression to insult or undermine the status of other groups. Allowing such behavior would erode the identity component of the state and promote conflict and violence amongst citizens due to the lack of agreement on the elements of identity.

### **Human Rights Recommendations:**

Putting an end to violations of freedom of expression requires investigating (in a rapid, effective, and independent manner) all violations committed in Yemen against this freedom during the period of violence since 2015, in order to guarantee the rights of victims and ensure that the perpetrators do not go unpunished, regardless of their political influence, armed protection, or leadership position. It is also important to investigate discriminatory crimes of all sorts, as well as to adopt a comprehensive policy and take adequate measures for victims of violations of freedom of expression, guaranteeing their right to claim compensation for damages and ensuring compensation or apologies and restitution (transitional justice mechanisms). Finally, those detained arbitrarily and those forcibly disappeared on the grounds of freedom of expression should be released immediately, a list of official detention facilities should be published, all unofficial (secret) detention facilities should be shut down, detainees should be referred to the judiciary, and all fair trial guarantees should be granted.

Avoiding future violations of freedom of expression requires authorities to refrain from protecting perpetrators of violations (military, security, militia, supervisors, etc.) or covering up for them, and bringing all those involved to justice. It is also necessary to issue clear and explicit instructions to all authorities to abide by the law, which completely prohibits arbitrary detention, cruel and degrading treatment, torture, violence, and all other violations of freedom of expression in Yemen, as well as to abide by all other legal provisions. Authorities should also ensure that detainees and prisoners are held in official facilities according, with comprehensive records of all their data updated on a daily basis. The legality of detention should be reviewed immediately by a competent judicial authority, guaranteeing the rights of detainees, including meeting their families and lawyers, and ensuring the right to continuous and sudden monitoring without prior notice, in healthy and humane conditions of detention. Mechanisms to ensure that people

are able to report cases of violations of freedom of expression (arbitrary detention, enforced disappearance, physical or psychological harm) should be established, guaranteeing that reports are investigated independently and impartially by security authorities. Every effort should be made to provide justice to victims and hold perpetrators accountable. It is also important to put an end to harassment, illegal prosecutions, and systematic violations of freedom of expression in a way that enables citizens to peacefully exercise all associated rights, including freedom of thought, belief, opinion, expression, assembly and association. All cases of harassment and persecution against human rights defenders, lawyers, journalists, activists and other representatives of civil society due to their peaceful exercise of freedom of expression should be prohibited. Media incitement and hate speech should be banned. Official media outlets constantly broadcast this type of narrative to promote and consolidate discrimination and favoritism, in a society that considers the media as its only source of information and believes that everything published by the media is an absolute and indisputable political and religious truths. Moreover, hate speech should be banned, especially when it comes to spreading racial or religious hatred that encourages discrimination, hostility, or violence.

### **Legal Recommendations:**

**Legislative:** In any political settlement that results in a new constitution, the legislator should take into account the provisions relating to freedom of expression in the 2015 Draft Constitution<sup>73</sup> as a minimum guarantee for freedom of expression. The legislator should also ensure respect for the hierarchy of international charters and treaties, the constitution, and the law, without any reservations. They should not restrict the various manifestations of freedom of expression with additional texts that detract from this freedom and prevent it from meeting its objectives.

**Judicial:** The political authority should respect the sanctity of the judiciary, as it is the primary guarantor of the freedom of expression and is impartial and independent from the desires and whims of the executive. In that sense, the political authority should not attempt to use the judiciary to settle political scores, undermine its independence as an authority (not only at the functional level), or to control its work. The law and the conscience of judges should be the only authority that the judiciary is subject to. This means that the political authority should not interfere

in judicial affairs by directing, influencing, pressuring, or appointing judges based on affiliation, kinship, and lineage instead of competence and merit. It should also refrain from transferring judges and freezing or restricting their benefits and wages (by paying them their full wages when due),<sup>74</sup> or colluding with corruption networks affected by judicial decisions in order to harm judges personally and the judicial system as a whole through intimidation and physical or moral assault.

**Awareness:** The research network on human rights specialized in monitoring and documenting violations of freedom of expression should be supported and expanded in order to track its work and facilitate its access to the information and data needed to promote transparency and build trust between citizens and the state. There is also a need for cooperation and coordination in providing legal assistance to victims in various aspects (legal aid, legal advice, representation, and support and guidance) during trial stages, from filing a complaint or report to investigation, filing a civil case, following up on the trial, and preparing defenses, responses and appeals. Judicial rulings should be published and made available to experts to read and comment on. The experts can then either praise the judiciary for protecting the right to freedom of expression, and thus restoring trust between people, the judiciary, and the authority, or point out transgressions and imbalances in the rulings that go against legal texts and constitutional principles and fail to meet the requirements of justice. This feedback enriches judicial work and contributes to its advancement in order to achieve its intended purpose.

## Conclusion

To ensure freedom of expression, it should be inviolable and constant efforts should be made to upgrade and preserve this freedom by building on the progress made since 1991 and restoring democracy, in accordance with the outcomes of the national dialogue and the draft constitution. These efforts aim to promote the three principles of prevention, protection, and litigation to ensure freedom of expression and contribute to building a just and peaceful society through respect for the rule of law and the consolidation of fundamental freedoms. Freedom of expression is tightly linked to all other civil and political rights. They cannot be distinguished or separated. A right cannot exist without legal guarantees aligned

with the country's constitution and international standards, in such a way that no procedural or practical restrictions can be placed to limit this right. Supporters and opponents should be treated equally when it comes to the freedom to express different or opposing opinions, plurality of religious and intellectual opinions and sects, and freedom of assembly, and community diversity. Civil society organizations should also be treated equally, whether they support or oppose the government. Authorities should comply with national regulations and their obligations under international law in order to protect freedom of expression and minimize the impact of the armed conflict on its practice.



## Endnotes

- (1) The Comprehensive National Dialogue Conference was held in Sana'a from March 18, 2013, to January 25, 2014, and brought together all components of Yemeni society. It resulted in a comprehensive national dialogue document, which included a comprehensive vision of the modern Yemeni state. Available at <https://www.ndye.net/ndcoutputs>.
- (2) The outcomes of the National Dialogue are still agreed upon by the majority of the national forces as a basic reference that can be built upon in any upcoming political agreements, which strengthens their status as an important point to consider in any relevant studies. <https://2u.pw/3yyp71>.
- (3) Suad al-Sharqawi, *Relativity of Public Freedoms and their Impact on the Legal Framework*, Dar Al Nahda, 1979, p. 72.
- (4) A right is an individual entitlement to a given thing. It is a legal bond, not a political concept. Freedom, on the other hand, is for everyone to enjoy on an equal footing. Freedom falls within the definition of a right. One can choose whether or not to enjoy this freedom. Therefore, freedom is part of the right (every freedom is a right, but not every right is a freedom). Nawal al-Obaidy, *Crimes Against Freedom of Expression*, Dar Al-Hamed Publishing, Amman, 1<sup>st</sup> edition, 2009, p. 30.
- (5) Freedom of expression is based on recognizing the right of every individual to hold opinions and have access to news, ideas and information without restriction. Freedom of expression also means enabling and assisting individuals to understand and be aware of the course of events and facts in order to form their independent opinion based on their personal thinking without subordination, fear, or imitation of anyone. Moreover, freedom of expression recognizes an individual's absolute freedom to express their opinions and thoughts using any means they deem appropriate.
- (6) Mohammad Mashaal, "Artificial Intelligence and its Impact on Freedom of Expression on Social Media," *Journal of Legal and Economic Research*, Issue No. 77, September 2021, p. 440.
- (7) Overseeing the religious authority is the responsibility of the political regime, which happens to overlook it, as the religious authority tends to replace it rather than being attributed to it. Hamdi al-Batran, *Remarks on Freedom of Expression*, General Egyptian Book Organization (GEBO), 2018, p. 8.
- (8) Freedom of expression includes legal persons within the limits permitted by their nature. The Yemeni Constitution granted many rights to political parties, professional and trade unions, , institutions, organizations, and national federations (Article 58).
- (9) Children have the freedom to express themselves in all matters affecting them, without any restriction (Article 12 of the Convention on the Rights of the Child 1989). Children's views are given due consideration according to the child's age and maturity. Article 13/1 ensures children's right to freely 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 the child's choice. Indeed, an oppressed child will not be able to express himself/herself properly when he/she becomes an adult.
- (10) Omar al-Shafi'i, *Freedom of Expression in Theory and Practice*, PhD thesis, Faculty of Law at the University of Tanta, 2000, p. 5.



- (11) Greek philosophers took interest in law, justice, and the values of freedom. A few examples of charters and texts illustrating the above are: the Magna Carta 1215, which was written to prevent tyranny, the English Bill of Rights 1629, Habeas Corpus 1679, the Act of Freedom of Speech within Parliament in England 1689, the Swedish Constitution 1766, and the Declaration of the Rights of Man and of the Citizen in France, August 26, 1789. For more information, see: Abdallah al-Ahmadi, *Human Rights and Public Freedoms in Tunisian Law*, Orbis Impression, Tunisia, 1993, p. 37; Khaled Mustafa Fahmi, *Freedom of Opinion and Expression*, Dar Elfker Egamie, 2<sup>nd</sup> edition, 2012, p. 64 onwards.
- (12) The right to freedom of expression is guaranteed for all people no matter their orientations (politics, religion, thought, sex, gender, status, and ethnicity). It is relative and not absolute, as it is restricted by the limits of the law. Freedom of expression gives a person the right to approve, reject, and criticize, and gives society the right to take necessary protection measures. Khaled Fahmi: Ibid. p. 26
- (13) Freedom of thought is a personal matter, which does not require guarantees or protection. Censorship and protection are fruitless in this case, unlike with freedom of opinion and expression. Nawal al-Obaidy: Ibid. p. 46.
- (14) Freedom of opinion lies within oneself (absolute freedom) and is disclosed by expression. It is what an individual believes and deems right. Freedom of opinion is based on thought and planning. Being free to form an opinion means not having to follow, imitate, or be afraid of anyone. It means complete freedom to announce one's formed opinion in any way they deem appropriate. Abdul Hakim al-Aili, *Public Freedoms in the Islamic Political System*, PhD thesis, Faculty of Law at Ain Shams University, 1974, p. 446.
- (15) According to Article 3/1 of the Intellectual Property Rights Law No. 19 of 1994.
- (16) Jiran Masoud al-Raed, *Modern Linguistic Dictionary*, Volume I, 1<sup>st</sup> edition, Dar El Ilm Lilmalayin, Lebanon, 1981, p. 412.
- (17) Including the freedom to search for and contact sources of information, freedom of knowledge by obtaining information, freedom to form an opinion, impart information, and speak of or discuss any subject. These freedoms are governed by principles, including transparency, pluralism, independence, integrity, and competence.
- (18) Freedom of expression has two sides: freedom of opinion and freedom of the press. Jaafar Abdul Salam, *Legal Framework of Media Activity*, Dar Al Manar, 1<sup>st</sup> edition, p. 101.
- (19) Dissemination of opinions, ideas, news, and facts to help people and encourage them to form the right opinion on public issues, with the aim of faithfully conveying the image, not creating a false image
- (20) The freedom of an unlimited number of individuals to hold organized, peaceful meetings at a specific place and time to discuss ideas and exchange opinions in any of the different ways on a certain topic. Afkar Abdul Samih, *Freedom of Assembly*, Dar Al Nahda, 2002, p. 17; Ismail al-Badri, *Pillars of Government*, Dar Elfikr Elarabi, 1980, p. 198.
- (21) GCC initiative <https://2u.pw/mqKnGx>.

- (22) Yemen is a party to eight of the major international human rights treaties, which remain in force during periods of armed conflict. In June 2013, the Yemeni government approved the International Convention for the Protection of All Persons from Enforced Disappearance and supported joining the Rome Statute of the International Criminal Court. Because of the war, Parliament did not ratify the two conventions nor the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- (23) The Universal Declaration is a moral undertaking that does not rise to the level of legal obligation, in contrast to the International Covenant that is binding to the signatory and ratifying countries.
- (24) The Human Rights Committee referred to many rights that, by their nature, do not allow for restriction. These rights include human treatment and dignity, hostage taking, kidnapping, detention in a secret location, protection of minorities, deportation, forced relocation, propaganda for war and racial or religious hatred, incitement to discrimination, hostility, violence, fairness, legal detention, litigation, and fair trial. Human Rights Committee: General Comment No. 29 on Article 4/2001, States of Emergency, Paragraph 13/15 <https://2u.pw/aj4uaa>
- (25) According to the Human Rights Committee, General Comment No. 36 on Article 6, Right to Life, Paragraph 64 <https://2u.pw/Q4kPpH>
- (26) “The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression.” Paragraph 7 of General Comment No. 34 on Article 19: Freedoms of opinion (CCPR/CC/34) dated 09/12/2011 <https://2u.pw/kvuG7A>
- (27) The Yemeni Constitution conferred to the President of the Republic the right to declare a state of emergency in Article 119/17 and regulated its provisions in Article 121. There is no special legislation for it in Yemen.
- (28) Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Yemen, Session 27, 2014
- (29) Two-dimensional freedom: In addition to being considered one of the constitutional forms of expression, freedom of the press is considered one of the forms of freedom of industry and commerce and is subject to the conditions for establishing press institutions.
- (30) Camden Principles on Freedom of Expression and Equality, April 2009, Principle a/5/1, p. 4 <https://2u.pw/wQbpHA>
- (31) According to Article 2 of its bylaws, “promoting freedom of the press and the right of expression.”
- (32) According to Article 5/2 of its Law No. 32 of 2003.
- (33) Article 2/5 of the Law No. 29 of 2003 on the Organization of Demonstrations and Marches.
- (34) Report of the High Commissioner for Human Rights, Session 42, 2019, Paragraph 396, p. 135.
- (35) The Committee on the Elimination of Racial Discrimination, in its 78<sup>th</sup> session from (14 February to 11 March 2011), welcomed the respect for the protesters’ right to expression, p. 1. For more information: <https://2u.pw/apP2Md-> <https://2u.pw/nt3cSC>
- (36) Report of the United Nations High Commissioner for Human Rights, Session 39, 2018, paragraphs 66, 76, pp. 13, 14. Session 42, 2019, paragraphs 367, 389, 415, 418, 421, 423, pp. 124, 133, 143, 144, 145, 147. Session 45, 2020, paragraphs 169, 349, 170, pp. 54, 55, 102.
- (37) Report of the High Commissioner for Human Rights, Session 42, 2019, Paragraph 396, p. 132.

- (38) The importance of criticism seems to be that it is a necessary means to understand and correct mistakes and draw attention to the different aspects of a specific matter or topic, and then reveal new and correct ideas. Criticism requires sincerity of intention, clarity of purpose, and rejection of aggressive language, incitement, or insulting and humiliating expressions.
- (39) Human Rights Watch report: “Millions of Yemenis continue to face the largest humanitarian crisis in the world, with more than half the population facing acute levels of food insecurity. [...] and the collapse of its currency has led to skyrocketing food and other commodity prices and reduced households’ purchasing power. Millions of people cannot afford to meet their basic needs.” Available at: <https://2u.pw/n2Th7v>
- (40) Efforts to prevent the spread of COVID-19 and respond to other urgent health needs have been severely hampered by cumbersome restrictions and obstacles imposed by the authorities on international aid agencies and humanitarian organizations. Since May, the Houthis have blocked 262 WHO containers in Al Hudaydah port as well as a large shipment of personal protective equipment (PPE) for the response against COVID-19. <https://2u.pw/WfH7Tg>.
- (41) In June 2021, Human Rights Watch reported that the de facto authorities withheld information about the risks and impact of COVID-19 and undermined international efforts to provide vaccines in areas under their control. This harmed the health care system in the country.” Ibid.
- (42) Human Rights Watch <https://2u.pw/WfH7Tg>.
- (43) The de facto authorities prevented aid agencies from reaching civilians in need, in order to divert aid to their supporters and fighters: <https://2u.pw/WfH7Tg>.
- (44) “Investigations by Human Rights Watch and other rights groups have yielded mounting evidence of widespread arbitrary detention, enforced disappearance, ill-treatment, and torture in detention by parties to the conflict.” Ibid.
- (45) A professional journalist is every person who devotes himself/herself to researching, collecting, selecting, and processing news, or presenting the news to or for the account of a publication, journal, news agency, audio communication service, or media via the Internet, and takes this activity as their regular profession and a major source of their income. The journalists most at risk of violations are those who report on violations of freedom of expression and criticize the authorities.
- (46) Report of the High Commissioner for Human Rights, Session 46, 2017, Paragraph 68, p. 18.
- (47) On April 11, 2020, the Specialized Criminal Court in Sana’a issued a death sentence against four journalists (Akram Al Walidi, Abdul-Khaliq Omran, Harith Hameed, and Tawfiq Al Mansouri) on charges of espionage, spreading rumors, fabricating news, and publishing hostile statements. They are part of a total of 10 journalists. They were imprisoned in 2015, brought to trial in December 2018, and the first court session was held on December 9, 2019. Their lawyers were allowed to attend the first session only, after which they were prevented from attending the sessions.
- (48) Report of the High Commissioner for Human Rights, Session 42, 2019, Paragraphs 383, 384 p. 131.
- (49) Report of the High Commissioner for Human Rights, Session 36, 2017, Paragraph 69, p. 18.
- (50) Report of the High Commissioner for Human Rights, Session 39, 2018, Paragraph 85, p. 15.
- (51) Appointing a religious controller (cultural supervisor) to validate educational research in academic institutions, under the pretext of preserving the faith component of identity.

- (52) Under the pretext that the Baha'i Faith is Satanic and is opposed to Islam. Abdul-Malik al-Houthi: Speech (March 23, 2018). High Commissioner's Report, vol. 39, 2018, Paragraph 77, p. 14.
- (53) Report of the High Commissioner for Human Rights, Session 45, 2020, Paragraph 308, p. 91.
- (54) Report of the High Commissioner for Human Rights, Session 39, 2018, Paragraph 377, p. 129.
- (55) Report of the High Commissioner for Human Rights, Session 36, 2017, Paragraph 61, p. 17.
- (56) Report of the High Commissioner for Human Rights, Session 45, 2020, Paragraph 206, p. 64.
- (57) Report of the High Commissioner for Human Rights, Session 42, 2019, Paragraphs 397, 402, 410, pp. 135, 141 and onwards.
- (58) An individual's right to access sufficient information from the ruling authority (freedom of information flow) about the public interests that concern them and that they wish to know about (administrative transparency). This right should not, however, be exercised in a way that affects (gray area) private or public interests (important economic secrets, national defense, state security, national sovereignty, judicial investigation, professional secrecy, inviolability of private life). The right of reply should be guaranteed as an absolute and general right (legal defense) for everyone affected. The public authority and those in charge of public affairs also have the right to correct false information. This right was approved by UNESCO and ratified in the Records of the General Conference, Session 20, Paris September 22, 1978. Duaib Hussein Saber, *Legal Framework of the Freedom to Access Information: Comparative Studies*, Dar Al Nahda, 1<sup>st</sup> edition, 2014, p. 49; Mohammad Momen, "Right of Reply and Protecting Others from the Consequences of Publishing," *Journal of Moroccan Law*, Faculty of Law at the University of Marrakesh, Issue 33, 2000, p. 103; Khaled Sultan, *Criminal Liability for Press Offenses: Comparative Study*, Dar Al Nahda, 1<sup>st</sup> edition, 2002, p. 266.
- (59) A negative right that obliges authorities to respond to requests for information, and a positive one obligating some agencies to automatically disclose periodic information to the public even if such information is not requested. It is also an absolute right whenever information relates to public affairs and a restricted one when it relates to personal or private information.
- (60) Any material that can be transmitted and leads to increasing the recipient's knowledge, regardless of its type, form, or means. In France, when a request is addressed to an administrative authority that does not have the necessary jurisdiction, the authority to which the request was mistakenly submitted is required to refer it to the Administrative Documents Review Committee. The latter notifies the applicant of the matter so that they can follow up on their request with the competent administrative authority, in accordance with Article 20 of Law 2000-321 of April 12, 2000. Mustafa Chehade, *Rights of Citizens in Dealing with the Administration*, *Journal of Law, Kuwait*, Volume 29, Issue 4, 2005, p. 203.
- (61) The U.S. administration prevented The New York Times and The Washington Post from publishing a study prepared by the Ministry of Defense entitled *The Pentagon Papers: History of U.S. Decision-Making in Vietnam* on the grounds that it would cause irreparable injury to the defense interests of the United States. However, the Supreme Court issued its ruling on July 30, 1971: "The government could not, through prior restraint, block publication, and the two decisions to stop publishing that were in effect should be lifted, because the government failed to prove that publication would result in direct, immediate, and irreparable harm to national security." Rodney A. Samulla: *Free Speech in an Open Society*, translated by Kamal Abdel Raouf, The Egyptian Publishing Association, 1995-1 edition, p. 369
- (62) Report of the High Commissioner for Human Rights, Session 36, 2017, Paragraph 69, p. 18.

- (63) Report of the High Commissioner for Human Rights, Session 42, 2019, Paragraph 383, p. 131.
- (64) The protection and promotion of Human rights is the first responsibility of Governments. Vienna Declaration and Program of Action I.1 <https://2u.pw/4oGgdD>.
- (65) Compliance with requirements for preparation and issuing is insufficient. Legislation must be objectively compatible with the principles and texts of the Constitution in terms of its purposes and spirit, through the proportionality exemplified by the connection between the purpose of the legislation and its setting, the degree of consistency between the legal and factual circumstances that led to its issuance, and through constitutional proportionality, that is, the compatibility between the text as a tool of state regulation and the rights and freedoms protected by it. Georgy Sari, *Review of Proportionality by the Constitutional Judge*, Journal of Legal Research, Mansoura University, Issue 66, 2018, p. 28.
- (66) No contradiction between the lower-ranking law and the higher-ranking law.
- (67) Whereby individuals are subject to themselves, and their representatives cannot oppress them by limiting their rights. Wafaa Zaafrican al-Andalusi: Guide for the Legislative Power to Implement Article 49 of the Constitution, p. 9, <https://2u.pw/6BC12r>.
- (68) Report of the High Commissioner for Human Rights, Session 45, 2020, Paragraphs 357, 358, 360, and 361, pp. 104 and 105.
- (69) To prevent the legislative authority from infringing on rights and freedoms when enacting legislation, constitutions have established a specialized judiciary to monitor the conformity of legislation and its compliance with the provisions of the constitution. This allows the citizen to execute *a posteriori* control whenever the legislative or regulatory text on which the outcome of the dispute depends violates their rights or freedoms guaranteed by the constitution. The right to plead is granted to the individual litigant, whoever they may be, on the occasion of any lawsuit brought before the judiciary, to dispute any legislative or regulatory text in force, the provisions of which apply to the lawsuit, if the plea is serious, according to the discretion of the court, or according to the discretion of the Supreme Court in some legislations. This falls within the competence of the circuit court or the Constitutional Court to adjudicate, suspending the work of all other judicial authorities on the case until the plea is adjudicated.
- (70) The nature of the role of the constitutional judge is determined based on the choice by which they regulate freedom of expression. A judge's role is restricted by the literal interpretation of the list of rights, which makes the possibility of enriching this list by increasing or adding new dimensions very difficult. As for the open list in which the legislator puts some rights or legal principles, the judge can expand or modernize this list by adopting a broader interpretation.
- (71) The constitutional judge exercises their new role in the constitutionalization mechanism that allows them to recognize new dimensions of the rights and freedoms enshrined in the constitution or to recognize the basic characteristic of some rights and freedoms enshrined in legislative rules. This elevates these rights and freedoms from legislative to constitutional, which prevents the ordinary legislator from manipulating them or restricting their actions in the future. Affan Younes, *Freedom of Expression and its Limits*, PhD thesis, Setif University, 2021, p. 43.
- (72) Wafaa al-Andalusi: Ibid. p. XIII.
- (73) Available at <https://2u.pw/iinL8K>.
- (74) A judge cannot not rule when they are hungry or bereaved, so how can a sane person deprive a judge of their only source of income?.



## List of References

### I. General References

- (1) Ismail al-Badri, *Pillars of Government*, Dar Elfikr Elarabi, 1980.
- (2) Afkar Abdul Samih, *Freedom of Assembly*, Dar Al Nahda, 2002.
- (3) Jaafar Abdul Salam, *Legal Framework of Media Activity*, Dar Al Manar, 1<sup>st</sup> edition, p. 101.
- (4) Georgy Sari, *Review of Proportionality by the Constitutional Judge*, Journal of Legal Research, Mansoura University, Issue 66, 2018, p. 28.
- (5) Jiran Masoud al-Raed, *Modern Linguistic Dictionary*, Volume I, 1<sup>st</sup> edition, Dar El Ilm Lilmalayin, Lebanon, 1981.
- (6) Hamdi al-Batran, *Remarks on the Freedom of Expression*, General Egyptian Book Organization (GEBO), 2018.
- (7) Khaled Sultan, *Criminal Liability for Press Offenses: Comparative Study*, Dar Al Nahda, 1<sup>st</sup> edition, 2002.
- (8) Khaled Mustafa Fahmi, *Freedom of Opinion and Expression*, Dar Elfker Egamie, 2<sup>nd</sup> edition, 2012.
- (9) Duaib Hussein Saber, *Legal Framework of the Freedom to Access Information: Comparative Studies*, Dar Al Nahda, 1<sup>st</sup> edition, 2014.
- (10) Rodney A. Samulla: *Free Speech in an Open Society*, translated by Kamal Abdel Raouf, The Egyptian Publishing Association, 1<sup>st</sup> edition, 1995.
- (11) Suad al-Sharqawi, *Relativity of Public Freedoms and their Impact on the Legal Framework*, Dar Al Nahda, 1979.
- (12) Abdul Hakim al-Aili, *Public Freedoms in the Islamic Political System*, PhD thesis, Faculty of Law at Ain Shams University, 1974.
- (13) Abdallah al-Ahmadi, *Human Rights and Public Freedoms in Tunisian Law*, Orbis Impression, Tunisia, 1993.
- (14) Affan Younes, *Freedom of Expression and its Limits*, PhD thesis, Setif University, 2021.
- (15) Omar al-Shafi'i, *Freedom of Expression in Theory and Practice*, PhD thesis, Faculty of Law at the University of Tanta, 2000.
- (16) Mohammad Mashaal, "Artificial Intelligence and its Impact on Freedom of Expression on Social Media," Journal of Legal and Economic Research, Issue No. 77, September 2021, p. 440.
- (17) Mohammad Momen, "Right of Reply and Protecting Others from the Consequences of Publishing," Journal of Moroccan Law, Faculty of Law at the University of Marrakesh, Issue 33, 2000, p. 103.
- (18) Mustafa Chehade, *Rights of Citizens in Dealing with the Administration*, Journal of Law, Kuwait, Volume 29, Issue 4, 2005, p. 203.
- (19) Nawal al-Obaidy, *Crimes Against Freedom of Expression*, Dar Al-Hamed Publishing, Amman, 1<sup>st</sup> edition, 2009.
- (20) Wafaa Zafaran al-Andalusi: Guide for the Legislative Power to Implement Article 49 of the Constitution, p. 9, <https://2u.pw/6BC12r>.

## II. Documents

- (1) Vienna Declaration and Program of Action I.1.
- (2) Report of the High Commissioner for Human Rights, Session 27, 2014, Session 36, 2017, Session 39, 2018, Session 42, 2019, Session 45, 2020 <https://2u.pw/zYr94q>.
- (3) Report available at: <https://2u.pw/WfH7Tg>, Human Rights Watch: <https://2u.pw/n2Th7v>.
- (4) Report of Committee on the Elimination of Racial Discrimination, Session 78, 2011, <https://2u.pw/apP2Md> - <https://2u.pw/nt3cSC>.
- (5) Human Rights Committee: General Comment No. 29 on Article 4/2001, States of Emergency <https://2u.pw/aj4uaa>.
- (6) Human Rights Committee: General comment No. 34 on Article 19: Freedoms of opinion (CCPR/CC/34) <https://2u.pw/kvuG7A>.
- (7) Human Rights Committee: General Comment No. 36 on Article 6, Right to Life <https://2u.pw/Q4kPpH>.
- (8) Camden Principles on Freedom of Expression and Equality, April 2009 <https://2u.pw/wQbpHA>.
- (9) GCC Initiative <https://2u.pw/mqKnGx>.
- (10) The 2015 Draft Yemeni Constitution <https://2u.pw/iinL8K>.
- (11) National Dialogue Conference Outcomes Document <https://www.ndye.net/ndcoutputs>.



# The Arab Association of Constitutional Law

The Arab Association of Constitutional Law (AACL) is the first regional network of constitutional experts in the Arab region. Established in 2013, AACL's main objective is to contribute to good governance and democratic transition by promoting intra-regional networking and exchange of expertise. It also aims to provide objective, grounded and forward-thinking analysis of the region's constitutional frameworks and to apply its expertise to legal and constitutional reform efforts in the Middle East and North Africa.

AACL brings together leading legal scholars, judges, lawyers, parliamentarians, and civil society activists from various Arab states, specialized in constitutional law, electoral systems, peace-building processes and human rights. AACL members are prominent experts in constitution-building in the region and have participated in the negotiations and drafting of the constitutions in the Arab region and abroad, including in Morocco, Algeria, Tunisia, Libya, Egypt, Iraq and Yemen. The organization has become a reliable source of expertise in constitutional reform efforts.

AACL organizes and participates in a large number of activities, including regional or international conferences and panels with renowned experts, decision-makers, and prominent universities and institutions in the Arab region. Moreover, AACL issues academic publications on constitutional developments in the Arab region, including books, policy papers, studies, research papers and articles.

AACL seeks to strengthen the capacities of researchers in the field of constitutional law in the Arab region through its annual Constitutional Law Academy, established in 2015, or through its working groups that bring together senior researchers and specialists to discuss constitutional developments in countries that are undergoing constitutional transitions and to collaborate on joint research projects.

To learn more about AACL's activities and projects, please visit its website: [aacl-mena.org](http://aacl-mena.org) or social media accounts on Facebook, LinkedIn, Twitter and Academia [academia.edu](http://academia.edu).





## المنظمة العربية للقانون الدستوري

The Arab Association of Constitutional Law

For more information about AACL's  
publications and activities, you can find us on:

