

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right to education and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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(Please use this reference in your reply)

25 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right to education and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 45/10, 45/3, 44/3 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged insufficiency and inadequacy of the mechanisms implemented by the Government of the Republic of Yemen to provide redress and full and effective reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed during the armed conflict in Yemen, in line with the scale and severity of the harm done; and to effectively investigate and prosecute the violations.**

According to the information received:

Context

In 2014, an armed conflict broke out between the Government of the Republic of Yemen and the Ansar Allah movement (or the Houthi movement, the de facto authority in Sana'a and large parts of northern Yemen). On 21 September 2014, Ansar Allah expanded its territorial hold and took control of the capital, Sana'a. On 26 March 2015, a coalition of nine States led by the Kingdom of Saudi Arabia and the United Arab Emirates (henceforth, the Saudi/UAE-led coalition), intervened in the conflict at the request and in support of the Government of the Republic of Yemen. The coalition launched an air raid against Ansar Allah (Operation Decisive Storm), which initiated the outbreak of a full-blown armed conflict.

In the following years, the Saudi/UAE-led coalition operated in Yemen with the Government's consent. Since late 2015, the coalition, in particular the United Arab Emirates (UAE), actively trained, funded, and armed various groups, leading to the proliferation of coalition-backed militias. Yemen's military and armed forces have actively taken part in the operations of the coalition, notably by contributing intelligence to identify targets for airstrikes. Ansar Allah has carried out attacks in various parts of Yemen, using tanks, trucks, mines and various pieces of heavy and light artillery, and has established control over Sana'a and large parts of northern Yemen.

Violations of International Human Rights Law and International Humanitarian Law

Reports indicate that the Government of the Republic of Yemen and the Saudi/UAE-led coalition and Ansar Allah have committed serious violations of international human rights law (IHRL) and international humanitarian law (IHL) in Yemen.

The coalition has reportedly killed and injured thousands of civilians in indiscriminate and disproportionate air strikes. In addition, the Government of the Republic of Yemen and the Saudi/UAE-led coalition carried out indiscriminate ground shelling, recruited child soldiers, arbitrarily detained, forcibly disappeared and tortured people, attacked schools and healthcare facilities, and used starvation as a weapon of war, imposing import restrictions that are not permitted under the arms embargo called for by Security Council Resolution 2216 [articles 14-17].

Ansar Allah carried out indiscriminate ground shelling, used anti-personnel landmines and laid anti-vehicle landmines indiscriminately, attacked schools and healthcare facilities, used starvation as a weapon of war, recruited and used child soldiers, arbitrarily detained, and tortured people, perpetrated acts tantamount to enforced disappearance, and subjected people to sexual violence.

Civilians have reported the direct and indirect physical, psychological, social, and economic costs they bore as a result of warring parties' attacks. They also reported the struggle to cope with harm and material losses without assistance or reparations, and that they felt that warring parties in Yemen were more likely to repeat their wrongs than to remedy them.

The Government of the Republic of Yemen, the members of the Saudi/UAE-led coalition and Ansar Allah as non-State actor party to the conflict have made limited and inadequate efforts to address the harm caused to civilians and have failed to provide reparations for the serious violations of human rights and humanitarian law committed in Yemen.

Insufficient redress mechanisms for victims

National Commission to Investigate Alleged Violations to Human Rights (NCIAVHR)

In September 2012, the Government of the Republic of Yemen created the National Commission to Investigate Alleged Violations to Human Rights (NCIAVHR) through Presidential Decree No. 140. Its mandate was to focus on events of the year 2011 that saw large-scale demonstrations and brutal repression in a number of Yemeni cities. The Commission was non-operational during its initial years. Since 2015, after its mandate was amended to respond to the onset of the armed conflict, NCIAVHR has issued several reports on violations committed during the conflict and has recommended that reparations be provided by Yemen and compensations be offered by the Saudi/UAE-led coalition. By August 2022, NCIAVHR claimed it had monitored and documented 23,332 alleged violations. NCIAVHR has

observers present in Ansar Allah-controlled areas of Yemen but there is no formal cooperation.

However, NCIHVHR does not have the authority to compel actors in the conflict to implement the recommendations and fulfill their responsibilities, nor does it have the mandate or resources to provide reparations or assistance itself. Thus, NCIHVHR's recommendations have frequently been disregarded by the Governments of Yemen and the coalition States.

Furthermore, despite the fact that NCIHVHR has a mandate to investigate all alleged IHRL and IHL violations occurred in Yemen since 2011 and to refer cases to the Yemeni courts for criminal investigation and prosecution, the latter has demonstrated a lack of capacity, credibility and willingness to make progress on these cases, partly because it considers that conditions for fair trial are not met in the absence of a dedicated jurisdiction and adequate protection mechanism for victims and witnesses.

With regard to the Commission's working methods and procedures, reports indicate that NCIHVHR's selection, investigation and reporting processes on cases have not been transparent. The Commission also lacks a system to refer victims and witnesses to psycho-social support. The Commission's credibility has also been criticized due to the process of selection of its commissioners, who are appointed and can be dismissed by the Government of Yemen, and its source of funding which originates almost exclusively from Saudi Arabia, with technical cooperation from OHCHR under an annual resolution of the Human Rights Council. Another concern is the fact that, since August 2022, one of the female members of the Commission is also serving on the Supreme Judiciary Council despite the conflict of interest this may create. These shortcomings have reportedly hampered the work of the Commission, tarnished its credibility, and prevented it from developing a comprehensive mapping of civilian damage caused by violations of international law by parties to the conflict, which is pending.

Joint Incidents Assessment Team (JIAT)

In 2016, the Saudi/UAE-led coalition established the Joint Incidents Assessment Team (JIAT) to investigate and assess "claims and accidents" arising from coalition operations in Yemen and to produce reports and recommendations. Although the JIAT announced the establishment of a "Reparations Committee" where victims and families can submit their claims, it did not provide further information on how they can contact the committee or how the later might contact them. As a result, many victims reported not knowing where to present their claims.

By September 2021, JIAT concluded that "accidents" occurred in around 40 cases that resulted in civilians' death or property destruction. In some cases, JIAT has suggested that the Saudi/UAE-led coalition should provide monetary "assistance" to victims. However, JIAT has regularly failed to establish any wrongdoing on the part of members of the Saudi/UAE-led coalition in its public reports, and often rather emphasized the role of Yemeni intelligence services providing faulty information for airstrikes which resulted in numerous civilian casualties.

In only a small fraction of cases, JIAT recommended further action, such as the delivery of an apology to victims or that perpetrators are held accountable and punished.

Reports indicate that the investigations carried out by JIAT were not transparent or thorough and did not include many types of crimes allegedly perpetrated by the Saudi/UAE-led coalition. Analysis of JIAT's findings carried out by civil society reveal mayor inconsistencies with the findings of human rights organizations and the United Nations Group of Eminent Experts on Yemen (UNGEE) regarding the type and scale of violations committed by the Saudi/UAE-led coalition.

Joint Committee

In 2018, the Government of Yemen and the Saudi/UAE-led coalition established the Joint Committee to Grant Voluntary Humanitarian Assistance to Those Harmed in Yemen (“Joint Committee”) to distribute “voluntary aid”, which could correspond to *ex gratia* payments, to Yemenis affected by “collateral damage” resulting from coalition operations that involved “unintended errors”. However, there is not enough available information about the nature and composition of the Joint Committee. In addition, the procedures through which it makes decisions and distributes payments to victims are reportedly opaque. Victims pointed out that individuals with some form of influence, such as links to Government officials or select regions, were more likely to receive assistance.

In 2019, the Joint Committee announced it had provided financial compensation to civilian victims of six Saudi/UAE-led coalition airstrikes, which represents only a small fraction of victims of airstrikes. However, the sums granted to victims were reportedly not proportionate to the harm suffered or sufficient to address victims’ needs. In addition, some civilians received lesser compensation than what was indicated in official documents, and it is unclear where the balance of funds ended up. Furthermore, the Joint Committee has been criticized for ignoring types of violations other than airstrikes.

In addition, the compensation provided by the Joint Committee was reportedly not tied to a recognition of responsibility for the violations committed against victims. Instead, victims who accepted such payments were forced to sign receipts categorizing the airstrikes that injured them as “errors”. Moreover, the compensation did not include an expression of apologies or acknowledgment of the harm done.

Victims have also expressed dissatisfaction that compensation was not accompanied by other expected forms of reparation and of measures to address the harm suffered, such as truth-seeking and accountability or simply revising tactics and reinforcing internal accountability mechanisms within the armed forces involved in the causation of harm and “errors”.

National courts

Reports also indicate a lack of capacity, credibility, and willingness of the judicial system in Yemen to pursue and enforce compensation claims submitted by victims or to handle the immense number of credible reparation claims.

In 2020, at the recommendation of the NCI/VHR, the Government of Yemen announced its intention to establish a specialized tribunal to prosecute human rights and international humanitarian law violations resulting from the ongoing conflict. To date, this tribunal has not been constituted although the discussions are still ongoing, at slow pace.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern regarding the alleged inadequacy of the mechanisms implemented by the Government of the Republic of Yemen to provide redress and full and effective reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed during the conflict, in line with the scale and severity of the harm done; and to effectively investigate and prosecute the violations.

In this regard, we note with concern the alleged insufficiency and inadequacy of reparation measures, particularly the compensation proposed within the framework of the Joint Committee to Grant Voluntary Humanitarian Assistance to Those Harmed in Yemen. Even though they might offer victims tangible benefits, financial compensations provided by the Joint Committee to victims of particular military operations do not constitute full reparation, as they are not tied to a recognition of responsibility, do not involve apologies or acknowledgment of harm either, or include other forms of reparation such as rehabilitation. Moreover, the sum provided as compensation is not proportionate to the extent and scope of the damage done.

We recall that under international law, reparations should endeavor to restore, to the greatest extent possible, the injured party to their situation before the violation. Reparations must be comprehensive, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Full, adequate and effective reparation may require a combination of several measures and should be promptly delivered and proportional to the gravity of the violation and the harm suffered.

We also note with concern the reported lack of capacity, credibility, and willingness of the judicial system in Yemen to pursue compensation claims, which constitutes a serious impediment to victims' access to reparations. Individuals should be able to seek remedies from the actor responsible for the human rights violations endured through the country's domestic courts. The State in whose territory the violation occurred has an obligation to ensure that victims can exercise their right to redress. Third States participating in the conflict alongside the Government of Yemen also carry a responsibility and must contribute to alleviating the harm they cause.

We welcome the creation of the National Commission to Investigate Alleged Violations to Human Rights in 2012. However, we note with concern the process of appointment of its commissioners, the lack of transparency in its operations, and the sources of funding of the Committee, all of which appears to undermine the

independence, effectiveness and legitimacy of the institution. In addition, the Commission's limited authority to enforce reparation recommendations and to provide reparations itself, prevent victims from accessing their rights to reparation. We recall the duty of States to adopt effective measures to investigate and establish the truth about gross human rights violations and to preserve this information and to transmit it to current and future generations.

In addition, we note with concern the lack of progress in establishing a domestic jurisdiction to prosecute human rights violations resulting from the conflict. We recall that international law establishes the duty of States to undertake impartial, thorough, prompt independent and effective, investigations into gross human rights violations and to prosecute and punish the perpetrators, which is central to fulfilling victims' rights to justice and ensuring non-repetition.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the obligation of States to adopt measures to ensure justice, truth, reparation and guarantees of non-recurrence of past human rights violations, as guaranteed by various international human rights instruments.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights and humanitarian law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the measures adopted by your Excellency's Government to provide access to remedy and reparation for civilian victims of human rights violations in the context of the conflict in Yemen.
3. Please indicate if any measures have been adopted to ensure that compensations granted within the Joint Committee to Grant Voluntary Humanitarian Assistance to Those Harmed in Yemen are proportional to the gravity of the violation and the harm suffered, and don't prevent victims' access to other forms of reparation, such as restitution, rehabilitation, satisfaction, and guarantees of non-repetition.
4. Please provide more detailed information on the measures adopted to ensure that civilian victims have effective legal remedies before the courts in Yemen to pursue compensation cases.
5. Please provide information about the measures adopted by the courts in Yemen to ensure prompt, impartial and effective investigation and prosecution of the serious violations of human rights and humanitarian law committed in the context of the armed conflict in Yemen.

6. Please provide more detailed information about the processes and operations of the coalition's Joint Incident Assessment Team and the Joint Committee, and indicate if any measures have been adopted to ensure the independency, impartiality and transparency of their investigations and decision-making process.
7. Please provide more detailed information about the process and operations of the NCI/VHR and the Joint Committee; on the measures adopted to ensure the independency, impartiality and transparency of their investigations and decision-making process; and on the mechanisms in place to guarantee the independence and impartiality of their members.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that a letter of similar content will be sent to the Government of the Kingdom of Saudi Arabia, to the Government of the United Arab Emirates, and to the de facto authorities in Sana'a / Ansar Allah as a non-State actor.

Please accept, Excellency, the assurances of our highest consideration.

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Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Farida Shaheed
Special Rapporteur on the right to education

Morris Tidball-Binz
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Annex

Reference to international human rights and humanitarian law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to Article 2 of the International Covenant on Civil and Political Rights, ratified by Yemen in 1987, which establishes that States must undertake measures to ensure that persons whose rights or freedoms are violated shall have an effective remedy. In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to have equal access to an effective judicial remedy and receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms (paragraphs 10, 11, 12 and 15).

In this regard, we would like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to article 2 of ICCPR. As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

Furthermore, in its General Comment No. 31, the Human Rights Committee established that States must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party. Moreover, States must protect these rights not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. They must take appropriate measures or exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities (paragraph 8 and 10).

We would also like to recall the duty of States, as established in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005, to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19).

Concerning the obligation to prosecute persons allegedly responsible for grave breaches of International Humanitarian Law, we would like to recall article 146 of the Geneva Convention (IV), ratified the 16 July 1970, according to which the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave

breaches of the Convention defined in article 147. In addition, each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a 'prima facie' case. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 12, 1949.

We would like to recall the right of victims of human rights violations to receive full reparation for the harm suffered. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms (paragraph 11). Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families (paragraph 10). Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (paragraphs 15 and 18). With regards to measures of satisfaction, these should include measures aimed at acknowledging the violations suffered by victims and the responsibility of the perpetrators, and at restoring the dignity of victims, including through a public apology, a public declaration restoring the dignity and rights of victims, and an accurate account of the violations they endured (paragraph 22).

In addition, we would like to refer to the inalienable right of victims of human rights violations to know the truth about past events. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity asserts the right of victims to know the truth concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 2). Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate (principle 4).

As a result, commissions of inquiry, including truth commissions, must be established through procedures that ensure their independence, impartiality and competence (principle 7). To this end, the terms of reference of commissions of inquiry, including commissions that are international in character, should respect the following guidelines:

- (a) They shall be constituted in accordance with criteria making clear to the public the competence and impartiality of their members, including expertise within their membership in the field of human rights and, if relevant, of humanitarian law. They shall also be constituted in accordance with conditions ensuring their independence, in particular

by the irremovability of their members during their terms of office except on grounds of incapacity or behaviour rendering them unfit to discharge their duties and pursuant to procedures ensuring fair, impartial and independent determinations;

- (b) Their members shall enjoy whatever privileges and immunities are necessary for their protection, including in the period following their mission, especially in respect of any defamation proceedings or other civil or criminal action brought against them on the basis of facts or opinions contained in the commissions' reports;
- (c) In determining membership, concerted efforts should be made to ensure adequate representation of women as well as of other appropriate groups whose members have been especially vulnerable to human rights violations.

We draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. Furthermore, the absolute and non-derogable prohibition of enforced disappearances (articles 2 and 7) has attained the status of jus cogens and is prohibited under customary international humanitarian law (Rule 98). The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 19, which states that, victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation. We would like to also make reference to the Working Group's study on Enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5) and the General Comment on the Right to the Truth in Relation to Enforced Disappearances ([A/HRC/16/48](#)). Moreover, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, established that establishing the fate and whereabouts of the disappeared is a form of reparation (section IX).