

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

Ref.: AL ARE 2/2023
(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 received concerning the **alleged insufficiency and inadequacy of the mechanisms implemented by the Saudi/UAE-led coalition to provide redress and full and effective reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed by the coalition during the armed conflict in Yemen, in line with the scale and severity of the harm done; and to effectively investigate the violations and establish the respective responsibilities**

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.

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 get back on their feet 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

Joint Incidents Assessment Team

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 and how to present their claims. The JIAT only publishes occasional statements on series of incidents through the Saudi Press Agency and there is no repository of all its statements, no way to search them or identify any follow up and, finally, no address to send queries, information, or complaints.

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 reveals major 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” 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 additional 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.

The methodology used by JIAT and the Joint Committee to select and adjudicate cases remains unclear. In June 2019, the Coalition announced it had received 145 allegations related to Saudi/UAE-led coalition airstrikes for consideration, most of which had been referred by the National Commission to Investigate Alleged Violations to Human Rights of Yemen (NCIAVR). However, JIAT accepted to consider only 18 airstrike cases out of the 145 allegations received from victims and human rights organizations, and the Joint Committee provided compensation in 6 of those 18 cases. No details were provided on how cases were selected by these institutions. By that time, human rights organizations and the UNGEE had documented hundreds of coalition airstrikes, many of which appeared unlawful.

While we do not wish to prejudge the accuracy of these allegations, the alleged insufficiency and inadequacy of the mechanisms implemented by the Saudi/UAE-led coalition to provide redress and full and effective reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed by the Saudi/UAE-led coalition during the conflict, in line with the scale and severity of the harm done; and to effectively investigate the violations and establish the corresponding responsibilities. We recall the international legal obligations of the United Arab Emirates to adopt effective measures in this fields in light of its direct and active involvement in the conflict as lead member of the coalition.

We welcome the creation of the JIAT in 2016, and the Joint Committee in 2018. However, we express concern at the alleged insufficiency and inadequacy of reparation measures addressed to victims of serious violations of human rights and humanitarian law committed by the Saudi/UAE-led coalition. We note in particular the shortcomings of the compensation scheme proposed within the framework of the Joint Committee. Even though they might offer victims some tangible benefits, financial compensation provided by the Joint Committee to victims of 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, 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 transparency in the investigations and selection of cases to be considered by the Joint Committee and the JIAT, which undermines their legitimacy and effectiveness, as well as the alleged reluctance of these institutions to recognize the wrongdoings and acknowledge the responsibility of member States of the Saudi/UAE-led coalition with regards to the

gross human rights violations and serious violations of international humanitarian law committed by its forces during the conflict, instead referring to mistakes or refusing to qualify the facts. We recall that international law establishes the duty of States to adopt effective measures to establish the truth about gross human rights violations; to undertake impartial, thorough, prompt independent and effective investigations into these violations and to prosecute and hold perpetrators accountable. These measures are 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 serious violations of human rights and humanitarian law committed by the Saudi/UAE-led coalition in the context of the conflict in Yemen.
3. Please indicate what measures have been adopted to ensure that the compensation provided to victims is proportional to the gravity of the violation and the harm suffered, and does not curtail victims' access to other forms of reparation, such as restitution, rehabilitation, satisfaction, and guarantees of non-repetition.
4. Please provide more detailed information about the process and operations of the JIAT 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.
5. Please indicate the steps taken by your Excellency's Government aimed at holding accountable UAE and other nationals of States of the coalition, including superior officials, who engaged directly or indirectly in serious violations of human rights or international humanitarian law in the context of the armed conflict. If no one has been held accountable so far, please indicate why.

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 Yemen, the Government of the Kingdom of Saudi Arabia, and to the de facto authorities in Sana'a / Ansar Allah as a non-state actor.

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

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights and humanitarian law

In connection with the 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 recall that, as established by 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, in cases of gross violations of international human rights law, and of serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate, prosecute, and punish those responsible. Moreover, in these cases, States should, in accordance with international law, cooperate with one another. Where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice (paragraphs 4 and 5). As established in the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, states have the duty 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).

The Human Rights Council clarified, in its resolution 12/11 on Human rights and transitional justice, that States have a responsibility to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law that constitute crimes in order to end impunity and prevent reoccurrence (paragraph 7).

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 by the United Arab Emirates on 10 May 1972, 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 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:

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.

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;

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).