

## Mandate of the Special Rapporteur in the field of cultural rights

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur in the field of cultural rights, pursuant to Human Rights Council resolution 28/9.

In this connection, I would like to bring to the attention of your Excellency's Government, as the leading member of the Coalition Forces of eleven countries, information I have received concerning the **alleged destruction of and damage to many cultural heritage sites of religious, historical and cultural importance in Yemen** since March 2015, to the extent where it seriously impacts the human rights, and cultural rights in particular, of Yemenis for years to come.

As you know, the issue of destruction of cultural heritage is a priority issue for my mandate, and was highlighted in my first report to the Human Rights Council at its 31st session in March. This selection of priorities was endorsed by a cross-regional joint statement delivered by Cyprus on behalf of an unprecedented coalition of 145 countries from around the world, including Saudi Arabia. The statement called on states to offer their full support to the Special Rapporteur in undertaking activities aimed at responding to the detrimental impact on cultural rights of the destruction of cultural heritage. It also affirmed that "parties to armed conflicts must refrain from any unlawful military use or targeting of cultural property, in full respect of their obligations under international humanitarian law."

According to the information received:

The military campaign launched in March 2015 by a coalition of eleven countries (Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Senegal, Sudan, Turkey, the United Arab Emirates, under the leadership of Saudi Arabia), has been using force in Yemen since then, both by sending troops and through airstrikes. The human rights situation has deteriorated rapidly in the country, due to the armed conflict and the actions of all parties involved, including non-state armed groups.

Numerous residential buildings and many aspects of civilian infrastructure, such as markets, hospitals, schools, factories, roads and public services including power and water supplies, have been partially or fully destroyed by the coalition's airstrikes since the beginning of the hostilities last year, killing over 9,000 civilians, injuring more than 20,000 others and forcibly displacing thousands of people. These airstrikes, combined with the coalition's land, air and sea blockade,

have had grave consequences for the human rights and humanitarian situation in various parts of the country.

More particularly and in relation to my mandate, the military coalition is reportedly responsible for the destruction of over 500 schools, as well as 39 universities and vocational institutes. The information received from various sources also lists between 50 and 65 sites of religious, historic and cultural significance, including mosques, castles, museums, archaeological sites and historic buildings, which have been partially damaged or fully destroyed, mainly through airstrikes by the military coalition, although some of the sites were destroyed by other actors, including the Popular Committees affiliated with Al Houthis and the Islamic State in Yemen. Twenty-seven of these sites were recognized as national or international heritage sites. The majority of destructions also caused civilians casualties.

Despite the repeated appeals by the United Nations High Commissioner for Human Rights to all parties involved that attacks resulting in civilian casualties be promptly investigated and that international human rights and international humanitarian law be scrupulously respected during the conduct of hostilities in the country , and the calls by UNESCO for all parties to respect and protect cultural heritage in Yemen , it is alleged that the country's cultural heritage is being continuously destroyed by the coalition.

According to the information received, these cultural heritage sites were never identified by the coalition as military objectives, except for the old city of Saada. No justification of military necessity was articulated by the coalition to support their targeted destruction. Reportedly, there was no substantiated evidence of military objectives in or around the historic, religious and cultural heritage sites that were destroyed.

#### *Old city of Saada*

From 29 March 2015 to 11 May 2015, repeated coalition airstrikes on the old city of Saada destroyed a large part of its ancient civilian infrastructure. Founded in the 9th century, Saada is one of the oldest cities in Yemen, one which has been continuously inhabited in the same way for centuries. The city was being reviewed by UNESCO for designation as a World Heritage Site due to its important historical, urban and spiritual achievements and its architecture representative of the regional style.

On 8 May 2015, the official spokesman of the coalition, Brigadier General Ahmed Alassiri, announced that the entire city of Saada was a military target, as a stronghold of the Houthis. While many coalition airstrikes were reportedly directed at legitimate military targets in the city, other attacks have destroyed civilian infrastructures. Mosques in the ancient city were destroyed, the most

prominent of which was the Mosque Imam Al-Hadi, dating from 897 AD, targeted by coalition airstrikes on 9 May 2015.

### *Sanaa's World Heritage Site*

Between May and September 2015, the old city of Sanaa, listed as a UNESCO World Heritage Site since 1986, was also partially damaged as a consequence of airstrikes, shelling and explosions. Sanaa is an ancient fortified city and features many architectural structures dating back 1400 years. Prior to the conflict, Old Sanaa was also a vibrant, living city.

On 11 May 2015, a coalition airstrike struck and partially damaged the buildings of the National Museum, established in Sanaa in 1971, and the Almawrooth Museum, established in 2004. Both housed historical and cultural artefacts from different eras.

The airstrikes have damaged and caused the collapse of several ancient houses within the Heritage city. On 5 June 2015, the Al-Hajr palace (stone palace), a historical monument typical of Yemeni architecture, was severely damaged by a coalition airstrikes, just as the Ottoman era Al-Owrdhi historical compound was, four days later, on 9 June 2015. Other buildings destroyed include the complex of traditional houses in the Al-Qasimi neighbourhood. On 18 June, airstrikes partially destroyed the domed mosque of al-Mahdi, dating from 1164 AD. On 17 September 2015, a further airstrike targeted a renowned urban garden in the historic city of Sanaa called Almiqshama, causing the death of its owner and 11 of his family members and injuring other civilians as well as completely destroying the house located on the property and several neighbouring houses. No apparent legitimate military target was in the vicinity.

### *World Heritage site of Zabid*

The historic town of Zabid, an outstanding archaeological and historical site proclaimed a World Heritage Site in 1993, also suffered from the coalition's airstrikes. Known for its residential architecture and military fort, it has regional historic and cultural significance as the former capital of Yemen between the 13th and 15th centuries, and as an important Islamic academic centre for centuries. On 12 May 2015, coalition airstrikes targeted a market area of the historic town of Zabid, killing at least 60 people and wounding more than 20 others. The airstrike caused extensive damage to the surrounding area.

### *Historical sites in the Maarib province*

On 31 May 2015, coalition airstrikes targeted and destroyed parts of the Maarib Dam, considered a wonder of technical engineering. Maarib, prosperous at the end of the 1st Millennium B.C. thanks to its dam and irrigation system, was the largest ancient city in South Arabia and is considered one of the most significant historic

sites on the Arabian Peninsula. The ancient city was partly damaged by coalition airstrikes on 13 June 2015.

On 1 July 2015, coalition airstrikes targeted the historical city of Baraqish, located in the Majzar district of the Maarib province. Also dating back to the 1st Millennium B.C., the ancient city of Baraqish has been continuously inhabited since then. It was known to the Greeks and Romans, was the capital of the Minean Kingdom in about 400 B.C., and later became a religious centre housing the Temple of Nikrah. The airstrikes caused damage and destruction to the walls of the ancient city as well as the ancient Temple.

In the same region, on 19 January 2016, the historical monuments in Sirwah, located 35 kilometres west of Maarib, were severely damaged by coalition airstrikes and shelling. Some of the large stones, bearing writings dating back to the 1st Millennium B.C. and information about events and ways of life from over 3000 years ago, were damaged. The area around the archaeological site had reportedly no military presence given the flat lands on which it sits and their exposure to sight.

#### *Destructions of historical fortified sites*

On 21 May 2015, coalition airstrikes also destroyed the Alqahira Citadel overlooking Taiz city. Dating from the pre-Islamic period, it played an important military and political role throughout the long history of the Taiz region. This rare architectural masterpiece was being restored, developed and maintained as a heritage site where visitors could come and explore the parks, the library, theatre and museum, and the buildings of the Citadel.

On 15 February 2016, a series of coalition airstrikes destroyed large parts of the historic town of Kawkaban, in the north-western part of Yemen. Dating from the 7th century B.C., the city contained a fortified citadel, several old mosques and an old market in the center. These airstrikes caused the complete destruction of the Alqishla fort and six residential homes, as well as partial destruction and damage to more than 80 other residential homes.

#### *Destructions of educational and cultural institutions*

Since March 2015, schools and educational institutions in Aden, Dhale, Hajjah, Ibb and Sanaa have been either partially or completely destroyed by airstrikes as well as by shelling and other forms of ground-fire.

On 21 May 2015, coalition operations struck the Dhamar Regional Museum, completely destroying the building and its collections. Located in Hirran, north of Dhamar city, it had several exhibition halls housing its pre-622 AD collection with over 100 inscriptions, decorated artefacts from Islamic archaeology and regional traditional jewels and handicrafts. The most important piece was the

wooden pulpit (minbar) from the Great Mosque of Dhamar city, dating back to the 10th Century A.D. The Museum was not a military objective nor are there credible reports it was being used for military operations.

On 22 June 2015, another museum, the Ataq Museum in Shabwa, was partially damaged as a result of a coalition airstrike. The museum housed important relics from the ancient city of Shabwa, the capital of the kingdom of Hadhramaut, as well as items discovered at the archaeological sites of the ancient Qataban and Osan kingdom.

The same day, the historical Alabdali Palace, encompassing several buildings, the most prominent of which being the Aden Museum, was also hit by coalition's airstrikes and partially damaged.

I am expressing grave concerns at the extent of the destruction of historic, religious and cultural heritage sites in Yemen allegedly caused by the military engagement of the coalition, in violation of international human rights standards and international humanitarian law. I am also deeply concerned at what appears to be either indiscriminate attacks (due to what some have alleged to consist of poor or no distinction being made between legitimate military targets and civilian infrastructure) or systematic targeting and destruction of cultural heritage in Yemen, in violation of international humanitarian law. I am gravely concerned that these destructions prevent people in Yemen, in the present and in the future, from exercising their human right to enjoy and access cultural heritage, including places of worship, and undermine the enjoyment of many other human rights, including freedom of thought, conscience and religion and the right to education. This is also an inestimable loss to the heritage of the entire Gulf region, and indeed to the "cultural heritage of all [hu]mankind"<sup>1</sup>.

I acknowledge the public engagement of 31 January 2016 by the Spokesman of the Coalition Forces to establish a multi-national team to evaluate the military targeting mechanisms and attacks taking place in civilian areas, which we understand as including the destruction of cultural heritage sites, and would like to stress that any investigation should be conducted in accordance with international standards, including principles of independence and impartiality.

While I do not wish to prejudge the accuracy of these allegations, I wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention.

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

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<sup>1</sup> In the terms of the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, paraphrased.

It is my responsibility, under the mandates provided by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please explain the circumstances surrounding the destruction of and damage to sites of religious, historical and cultural significance cited above, and whether and how the uses of force resulting in such outcomes were compatible with the human rights and international humanitarian law standards mentioned in the Annex.
3. Please explain how the coalition has distinguished between civilian and military targets, complied with the principle of proportionality and taken all feasible precautions to avoid, and in any event to minimise, the impact of violence on civilians, in the incidents enumerated in this communication. What actions, if any, are being taken to immediately stop strikes aimed at or resulting in destruction of in particular historical, religious and cultural heritage sites?
4. Please provide information about the composition, mandate and timeframe for the establishment of the multi-national team to investigate the military targeting mechanisms and incidents taking place in civilian areas, including about the incidents referred to above which resulted in destruction of cultural heritage sites, and how these will ensure prompt, thorough, effective, independent and impartial investigations.

I would appreciate a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken as a matter of urgent priority to halt the alleged violations of international humanitarian law and human rights law, to protect places of historic, cultural and religious significance that may be threatened and to prevent re-occurrence of these violations. In the event that the investigations yield evidence that the allegations are correct,

In light of the serious implications of these cases, and the risk of ongoing and irreversible damage to Yemen's rich cultural heritage, I am considering expressing these concerns publicly in the near future. If a press release is issued, it will indicate that I have been in contact with your Excellency's Government to clarify the issues in question.

Please, kindly note that a similar letter will be sent to the Government of Yemen for information.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Karima Bennoune  
Special Rapporteur in the field of cultural rights

## **Annex**

### **Reference to international human rights law and international humanitarian law**

In connection with the above concerns, I would like to stress that, as stated by the Human Rights Council in resolution 9/9, both international human rights law and international humanitarian law apply to situations of armed conflict and provide complementary and mutually reinforcing protection. All human rights require protection equally and the protection provided by human rights law continues in armed conflicts, taking into account when international humanitarian law applies as *lex specialis*. Effective measures to guarantee and monitor the implementation of human rights should be taken with respect to civilian populations in situations of armed conflict and effective protection against violations of their human rights should be provided, in accordance with international human rights law and applicable international humanitarian law. I would also like to recall that international human rights are subject only to derogations taken in accordance with international human rights law.

Therefore, I wish first to start by referring your Excellency's Government to article 27 of the Universal Declaration of Human Rights (UDHR) which protect the right of everyone to take part in cultural life.

In its General Comment n°21, the Committee on Economic, Social and Cultural Rights recalled that the right of everyone to take part in cultural life is intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values. (E/C.12/GC/21, para. 2). This was reaffirmed by the former Special Rapporteur in the field of cultural rights in her first report (A/HRC/14/36, para. 9).

In the same General Comment, the Committee on Economic, Social and Cultural Rights also recalled that States have the obligation to respect and protect cultural heritage in all its forms, in times of war and peace and natural disasters. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para. 50).

I would also like to recall the report of the former Special Rapporteur in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage. As cultural heritage represents values linked with the cultural identity of individuals and groups, access and enjoyment of cultural heritage also imply that States acknowledge, respect and protect the diversity of cultural heritages. States have a duty not to destroy, damage or alter cultural heritage, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, in particular paras.78 and 80 a and b).



In her work, the first Special Rapporteur in the field of cultural rights established how the right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life as guaranteed by both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.

The obligation to preserve and safeguard cultural heritage was also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy heritage, “whether or not it is inscribed on a list maintained by UNESCO or another international organization” (Section VI). The UNESCO Declaration also stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, Saudi Arabia acceded on 6 June 2002, and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (Section IV).

Furthermore, I would like to draw your attention to the principles enshrined in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Saudi Arabia acceded on 20 January 1971, which are considered customary international law. In accordance with Article 4 of the Convention, States parties must respect cultural property situated within their own territory as well as within the territory of other States parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property (paragraph 1). States shall also refrain from any act directed by way of reprisals against cultural property (paragraph 4).

The Hague Convention also specifies that the obligations mentioned in article 4 paragraph 1 may be waived only in cases where military necessity imperatively requires such a waiver (article 4, paragraph 2). In addition, article 6 a) and b) of the 1999 Second Protocol to the Hague Convention<sup>2</sup> narrows the military necessity waiver, which may only be invoked to direct an act of hostility against cultural property or to use cultural property for military action when and for as long as: 1) the cultural property in question has, by its function, been made into a military objective; and (2) there is no feasible alternative to obtain a similar military advantage to that offered by attacking that objective. Furthermore, the Second Protocol further requires that the existence of such necessity be established at a certain level of command and that in case of an attack, an effective advance warning be given whenever circumstances permit (article 6 c) and d)).

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<sup>2</sup> Parties to the 1999 Second Protocol to the Hague Convention are Bahrain (acceded 26/08/2008), Egypt (ratified 3/08/2005), Jordan (acceded 5/5/2009), Morocco (ratified 5/12/2013), Qatar (ratified 4/9/2000) and Saudi Arabia (acceded 6/11/2007).

I would also like to stress that, in accordance with Article 53 of the Additional Protocol I to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts (1977), it is prohibited: (a) to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; and (c) to make such objects the object of reprisals.

Furthermore, the Statute of the International Criminal Court stresses that intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes or historic monuments is a war crime in both international and non-international armed conflicts, “provided they are not military objectives”(ICC Statute, Article 8(2)(b)(ix) and (e)(iv) (cited in Vol. II, Ch. 12, § 19).