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## **AMNESTY INTERNATIONAL CALLS ON UN HUMAN RIGHTS COUNCIL TO ESTABLISH AN INDEPENDENT, IMPARTIAL, INTERNATIONAL INVESTIGATION INTO HUMAN RIGHTS VIOLATIONS AND ABUSES COMMITTED BY ALL PARTIES TO THE CONFLICT IN YEMEN**

The current conflict in Yemen, which began in March 2015, has killed at least 5,021 civilians and injured at least 8,588.<sup>1</sup> The conflict has caused three million people to flee their homes.<sup>2</sup> Yemen is now home to the world's largest humanitarian crisis, with at least seven million people on the brink of famine<sup>3</sup> and hundreds of thousands suffering from cholera.<sup>4</sup> Since the conflict began, Amnesty International and other organizations have documented serious violations of international humanitarian law and violations and abuses of human rights law committed by all parties to the conflict with absolute impunity.

Since August 2015, the Office of the High Commissioner for Human Rights (OHCHR) has called for an international inquiry on Yemen, and Amnesty International and other organizations have echoed this call. To date, however, it has gone unheeded.

In response to international pressure, the Yemeni government established the National Commission to Investigate Alleged Violations of Human Rights (the Commission) in September 2015 to investigate alleged violations committed by all sides. This Commission was granted legitimacy by a resolution tabled by Saudi Arabia (on behalf of the Arab Group), a party to the conflict, which was adopted in September 2015 by the Human Rights Council (30<sup>th</sup> session). Meanwhile, in January 2016, the Saudi Arabia-led coalition vowed to investigate the conduct of its own forces and set up its own investigative mechanism. Amnesty International considers these mechanisms lack the necessary capacity, impartiality

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<sup>1</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR), *Press briefing notes on Yemen*, 21 July 2017, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21899&LangID=E>.

<sup>2</sup> Task Force on Population Movement, *TfPM 15<sup>th</sup> Report*, June 2017, available at

<http://reliefweb.int/report/yemen/yemen-task-force-population-movement-tfpm-15th-report-dashboard-june-2017>

<sup>3</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Crisis Overview*, available at

<http://www.unocha.org/yemen/about-ocha-yemen>.

<sup>4</sup> World Health Organization (WHO), *The life and death struggle against cholera in Yemen*, July 2017, available at <http://www.who.int/features/2017/yemen-cholera-photos/en/>.

and independence to carry out their work credibly.

In the absence of existing independent, impartial and effective investigations, international action is urgently needed to ensure accountability for crimes under international law and other serious violations and abuses of international humanitarian and human rights law, and press the warring parties to comply with international humanitarian and human rights law. Amnesty International therefore calls on the Human Rights Council to establish an effective, independent and impartial mechanism capable of conducting credible investigations into abuses and violations by all sides, at its thirty-sixth session (11-29 September). As noted by the Deputy High Commissioner for Human Rights in March 2017, the creation of such an international investigation would not exclude the continued work of the National Commission. Rather, the two investigations should be complementary.

## **VIOLATIONS AND ABUSES OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW IN YEMEN**

All parties to the conflict have committed war crimes and other serious violations of international human rights law. The Saudi Arabia-led coalition (SLC) has conducted scores of unlawful air strikes, some of which may amount to war crimes. These have resulted in the deaths of thousands of civilians and the destruction of schools, hospitals, markets, and homes. As recently as 8 August 2017, the International Committee of the Red Cross (ICRC) expressed alarm at the continued pattern<sup>5</sup> of air strikes, which continue to kill and injure civilians. The Huthi armed group and forces loyal to former president Ali Abdullah Saleh have fired weapons indiscriminately into populated areas in Yemen and southern Saudi Arabia and used explosive weapons with wide-area effects in cities like Ta'iz.

All sides have harassed, arbitrarily detained and forcibly disappeared activists, critics and journalists. The Huthis and allied forces have persecuted, detained and harassed members of the Baha'i community.<sup>67</sup> Huthi-Saleh forces, forces affiliated with the Yemeni government of President Abd Rabbu Mansour Hadi (Hadi), and the United Arab Emirates (UAE)-backed Yemeni forces have consistently denied family members access to their detained loved ones, and information about their fate and whereabouts.

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<sup>5</sup> The International Committee of the Red Cross (ICRC), *Yemen: Airstrikes against civilians are an alarming trend*, 8 August 2017, available at <https://www.icrc.org/en/document/yemen-airstrikes-against-civilians-are-alarming-trend>.

<sup>6</sup> Amnesty International, *'Yemen: 'Where is my father?': Detention and disappearance in Huthi-controlled Yemen* (Index MDE 31/4006/2016), 18 May 2016, available at <https://www.amnesty.org/en/documents/mde31/4006/2016/en/>.

<sup>7</sup> Amnesty International, *Yemen Baha'i community faces persecution at hands of Huthi-Saleh authorities*, 28 April 2017, available at <https://www.amnesty.org/en/latest/news/2017/04/yemen-bahai-community-faces-persecution-at-hands-of-huthi-saleh-authorities/>.

Amnesty International has documented<sup>8</sup> the fact that anti-Huthi forces allied with Yemeni President Hadi and the SLC, are leading a campaign of harassment and intimidation against hospital staff in Yemen's southern city of Ta'iz and have endangered civilians by setting up military positions near medical facilities.

Several parties to the conflict are recruiting child soldiers,<sup>9</sup> and internationally-banned weapons have been employed by both sides. The SLC has used at least seven types of cluster munitions,<sup>10</sup> and Huthi-Saleh forces have laid antipersonnel landmines in a number of Yemeni governorates.<sup>11</sup>

## ACCOUNTABILITY MEASURES TAKEN TO DATE

Holding all parties to the conflict accountable for serious violations of international humanitarian law and violations and abuses of international human rights law is essential as a means to deter future violations, promote respect for the law, and provide justice, truth and reparation for victims and their families.

States are responsible for violations of international humanitarian law by their own forces and must make full reparation for loss or injury caused.<sup>12</sup> All states have an obligation to investigate alleged war crimes perpetrated by their nationals and armed forces on their territory, and if there is sufficient evidence, to prosecute those suspected of criminal responsibility in accordance with international fair-trial standards.<sup>13</sup> Further, under the principle of universal jurisdiction, all states have a right to investigate and, where enough admissible evidence is gathered, prosecute war crimes.<sup>14</sup> While non-state armed groups do not have the same legal obligation to prosecute their forces, they are nonetheless responsible for ensuring compliance with international humanitarian and human rights law, and have a responsibility when they conduct trials to do so in accordance with international fair trial standards.

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<sup>8</sup> Amnesty International, *Yemen: Hospitals and medical workers under attack by anti-Huthi forces in Ta'iz*, 23 November 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/yemen-hospitals-and-medical-workers-under-attack-by-anti-huthi-forces-in-taiz/>.

<sup>9</sup> Amnesty International, *Yemen: Huthi forces recruiting child soldiers for front-line combat*, 28 February 2017, available at <https://www.amnesty.org/en/latest/news/2017/02/yemen-huthi-forces-recruiting-child-soldiers-for-front-line-combat/>.

<sup>10</sup> Amnesty International, *Yemen: Saudi Arabia-led coalition uses banned Brazilian cluster munitions on residential areas*, 9 March 2017, available at <https://www.amnesty.org/en/latest/news/2017/03/yemen-saudi-arabia-led-coalition-uses-banned-brazilian-cluster-munitions-on-residential-areas/>.

<sup>11</sup> Human Rights Watch, *Yemen: Houthi-Saleh forces using landmines*, 20 April 2017, available at <https://www.hrw.org/news/2017/04/20/yemen-houthi-saleh-forces-using-landmines>.

<sup>12</sup> ICRC Customary IHL Study, Rule 150.

<sup>13</sup> ICRC Customary IHL Study, Rule 158.

<sup>14</sup> See for example ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p.3, where the majority of the court confirmed the right of all states to exercise universal jurisdiction. Amnesty International, *Universal jurisdiction: The duty of states to enact and implement legislation*, (Index: IOR 53/003/2001), September 2001. In certain circumstances, such as torture, the states have the obligation to prosecute or extradite to a jurisdiction willing to prosecute.

## **JOINT INCIDENTS ASSESSMENT TEAM (JIAT)**

Since its creation, the SLC's investigative mechanism, the Joint Incidents Assessment Team (JIAT), published a series of legal conclusions in August,<sup>15</sup> October,<sup>16</sup> and December<sup>17</sup> 2016, and February<sup>18</sup> and April<sup>19</sup> 2017.

Based on a review of its publicly available conclusions, Amnesty International is concerned that the JIAT's investigations lack the necessary transparency, independence and impartiality for them to be considered both effective and credible.<sup>20</sup>

The JIAT has investigated 25 incidents to date, and has absolved the coalition of responsibility in all but seven of those incidents. Out of those seven incidents, the JIAT recommended reparations to victims in six of those cases and recommended action be taken against perpetrators in two of those cases. Despite these recommendations, Amnesty International is not aware of any progress made to provide remedies to victims nor ensure prosecution of those suspected of responsibility for crimes under international law. Furthermore, it remains unclear if the coalition members revised their rules of engagement since the JIAT issued its recommendations.

## **THE YEMENI NATIONAL COMMISSION**

Based on an analysis of three reports of the Commission, we are concerned that the Commission lacks the independence, impartiality and practical authority<sup>21</sup> necessary to carry out its work effectively and credibly. Additionally, President Hadi established the Commission by decree and retains control of its work (he appoints and fires its members,

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<sup>15</sup> Saudi Press Agency, Joint Incidents Assessment Team (JIAT) on Yemen Responds to Claims on Coalition Forces' Violations in Decisive Storm Operations, 5 August 2016, [www.spa.gov.sa/1524799](http://www.spa.gov.sa/1524799).

<sup>16</sup> Saudi Press Agency, Press Statement by the Joint Incidents Assessment Team (JIAT) on the Great Hall Incident in Sana'a, 15 October 2016, [www.spa.gov.sa/1548647](http://www.spa.gov.sa/1548647).

<sup>17</sup> Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement, 6 December 2016, [www.spa.gov.sa/1567351](http://www.spa.gov.sa/1567351), and Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement 1 Riyadh, 6 December 2016, [www.spa.gov.sa/1567371](http://www.spa.gov.sa/1567371).

<sup>18</sup> Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement, 23 February 2017, [www.spa.gov.sa/1595489](http://www.spa.gov.sa/1595489), and Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement 23 February 2017, [www.spa.gov.sa/1595491](http://www.spa.gov.sa/1595491), and Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement 23 February 2017, [www.spa.gov.sa/1595497](http://www.spa.gov.sa/1595497).

<sup>19</sup> Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement, 2 April 2017, [www.spa.gov.sa/1611008](http://www.spa.gov.sa/1611008), and Saudi Press Agency, Official Spokesman of Joint Incidents Assessment Team (JIAT) Issues Statement, 2 April 2017 [www.spa.gov.sa/1610999](http://www.spa.gov.sa/1610999).

<sup>20</sup> Amnesty International, *Yemen: Amnesty International Response to the Saudi Arabia-led coalition's investigations* (MDE 31/5494/2017), 16 January 2017, available at <https://www.amnesty.org/en/documents/mde31/5494/2017/en/>.

<sup>21</sup> While the Commission's internal regulations state that it is empowered to subpoena witnesses and obtain relevant documents and other evidence, the Commission's lack of effectiveness to investigate is exacerbated by the different parties to the conflict not complying with its requests or recommendations. This in turn hampers its investigations, rendering it ineffective.

allocates the commission its budget, and – along with the judiciary – receives all its reports). This puts in doubt the Commission’s impartiality and independence, especially considering an apparent failure by the Commission to investigate and report comprehensively on violations committed by government forces, particularly in Aden.<sup>22</sup>

Amnesty International has the following concrete concerns about these reports:

- The Presidential decree establishing the mandate of Commission violates the principles of **independence** and **impartiality**, and leads to a perception that the Commission is not independent since its members are appointed by President Hadi and can be removed at will by him; the commission is mandated to report directly to the President and no checks and balances (such as security of funding, transparency and accountability, and security of tenure) have been put in place to prevent political interference. There is no information publicly available on the **process and criteria for the selection of the nine members of the Commission**.
- Given the territorial divisions in Yemen and the financial restraints facing many Yemenis, the positioning of the Commission’s headquarters in Aden presents **major challenges for many individuals seeking to communicate with it**. This precludes it receiving individual testimonies and complaints from across the country, thus hampering its effectiveness.
- The Commission does not seem to take a consistent and impartial approach to **investigating all parties** to the conflict thoroughly. To date, it has not investigated a single incident involving Hadi or UAE-aligned forces in Aden, where the Commission is based, even though these are covered under its mandate. This is despite the fact Amnesty International and other organizations have documented a campaign of arbitrary detention and enforced disappearances spearheaded by these forces in Aden since summer 2016.
- The Commission continues to **fail to take adequate steps to protect its sources** by redacting/withholding the names of witnesses and areas in which they reside, especially in Huthi/Saleh controlled territories. This puts them at great risk of reprisals from the Huthis.
- We have concerns regarding the Commission’s standard of proof and methodology especially as this has not been made public. We are concerned by factual and legal

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<sup>22</sup> In its August 2017 report for example, out of 51 incidents reported on, 36 are attributed to the Huthi/Saleh forces, eight to the Saudi Arabia-led coalition, five to Hadi-aligned forces (three of which focus on incidents that occurred in 2013, other 2 incidents occurred in Ta’iz) and two to the USA. The majority of these violations focus on Huthi/Saleh violations and demonstrate a geographical confinement in their investigations. Moreover, the Commission does not investigate a single incident of alleged violations by security apparatuses or armed groups in Aden.

discrepancies that arise in reports relating certain incidents documented by both the Commission and Amnesty International. In many instances, the Commission does not appear to have carefully examined and applied relevant provisions of international law, especially international humanitarian law. The Commission appears to have based its conclusions in the majority of cases on witness testimony alone, and provides no indication that it has attempted to corroborate information about the identity of the perpetrators.

### **NEED FOR INTERNATIONAL INDEPENDENT INVESTIGATION IN YEMEN**

Based on the public information available to date, a credible investigation that is independent, effective and transparent will be achieved only through the establishment of an independent international inquiry preferably by the UN Human Rights Council (“the Council”).

The inquiry should be mandated to establish the facts and circumstances, and collect and preserve evidence of, and clarify responsibility for, alleged violations and abuses of international human rights law and violations of international humanitarian law, with a view to ending impunity and providing accountability.

As its activities would not be allied to one of the parties to the conflict and overseen by it, as is the case with both JIAT and the National Commission, an international inquiry mandated by the Council would have the capacity objectively and impartially to investigate violations and abuses committed by all parties to the conflict. This is essential to ensuring the credibility of any inquiry and thereby increasing pressure on all parties to comply with international humanitarian and human rights law.