

Amnesty International

Joint NGO Letter

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Human Rights Council: Create an international investigating mechanism for Yemen

To Permanent Representatives of Member and Observer States of the UN Human Rights Council

Geneva, 23 February 2016,

Excellencies,

We, the under-signed non-governmental organizations, write to reiterate the calls made by a group of international, regional and national civil society organizations¹ prior to, and during, the 30th regular session of the UN Human Rights Council (HRC) to create an international mechanism to investigate alleged serious violations of international humanitarian law and violations and abuses of international human rights law committed by all parties to the conflict in Yemen.

On 2 October 2015, the Council adopted HRC resolution 30/18² on “Technical assistance and capacity-building for Yemen in the field of human rights,” which requested the UN High Commissioner for Human Rights “to provide technical assistance and to work with the Government of Yemen, as required, in the field of capacity-building, and to identify additional areas of assistance to enable Yemen to fulfil its human rights obligations.” The resolution “specifically request[ed] the Office of the High Commissioner to assist the national independent commission of inquiry in meeting its work in accordance with international obligations.”

Since then, the fighting, as well as serious violations of international law, have continued unabated. The campaign of air strikes that was launched on 26 March 2015 by a Saudi-led coalition against the Houthi and affiliated forces has continued to hit civilian objects and infrastructure, including health facilities run by Doctors Without Borders (MSF).³ On 5 January 2016, the Office of the UN High Commissioner for Human Rights (OHCHR) stated that the ongoing armed conflict in Yemen “continued to take a terrible toll on civilians, with at least 81 civilians reportedly killed and 109 injured in December.” According to OHCHR, this raised “the number of civilian casualties recorded between 26 March and 31 December 2015 to 8,119 people, including 2,795 killed and 5,324 wounded.”

Human Rights Watch and Amnesty International have documented 61 airstrikes between March 2015 and January 2016 that appear to have been unlawful – in that they deliberately targeted civilian objects, disproportionately harmed civilians and civilian objects in relation to the expected military gain from the strike, or failed to distinguish between these and military objectives, resulting in over 700 civilian deaths.⁴ Human Rights Watch and Amnesty International have also documented the coalition’s use of at least six different types of cluster munitions in at least 17 attacks in five of Yemen’s 21 governorates between March 2015 and January 2016.⁵ The latest attack documented by both organizations took place in Sana’a on 6 January, killing a sixteen-year-old boy and wounding at least six other civilians.⁶ Cluster munitions are indiscriminate weapons

1 See letters to Member and Observer States of the UN Human Rights Council, dated 19 August 2015 (www.hrw.org/sites/default/files/supporting_resources/create_commission_of_inquiry_for_yemen_hrc_statement.pdf) and 25 September 2015 (www.hrw.org/news/2015/09/25/un-human-rights-council-joint-ngo-letter-yemen-resolution).

2 Available at: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/18

3 www.msf.org/article/yemen-health-facilities-under-attack-msf-wants-answers

4 Human Rights watch has documented a total of 36 airstrikes, which have resulted in over 500 civilian casualties. Amnesty International has documented 30 airstrikes, which have resulted in more than 350 civilian casualties. Of the total 66 airstrikes documented by Amnesty International and Human Rights Watch, five were documented by both organisations.

5 www.hrw.org/news/2016/02/14/technical-briefing-note-cluster-munition-use-yemen

6 www.amnesty.org/en/documents/mde31/3208/2016/en/ and www.hrw.org/news/2016/01/07/yemen-coalition-drops-cluster-bombs-capital-0

and pose long-term dangers to civilians.

The OHCHR has reported that it “had also received alarming information on the alleged use of cluster bombs by coalition forces in Hajjah Governorate. During a field visit to the village of Al-Odair, in Haradh District, an OHCHR team found remnants of 29 cluster submunitions near banana plantations. According to witnesses, several other villages in the same area have also been affected.” The OHCHR team also documented the use of cluster submunitions in several other districts, including Hairan and Bakel Al-Meer.⁷

On 8 May 2015, Brig. Gen. al-Assiri, the military spokesman for the coalition, declared the entire cities of Saada and Marran, another Houthi stronghold, to be military targets.⁸ In an interview with [Reuters](#) on 1 February 2016, al-Assiri spoke about Saudi civilian casualties from Houthi and pro-Saleh forces’ firing across the border.⁹ He said: “Now our rules of engagement are: you are close to the border, you are killed.” Treating an entire area as the object of military attack violates the laws-of-war prohibition on attacks that treat distinct military objectives in a city, town or area as a single military objective. Doing so unlawfully denies civilians protection from attack.

Since the adoption of HRC resolution 30/18, the Houthi armed group and forces allied to it have continued to repeatedly violate international humanitarian law and commit abuses of international human rights law, including by firing weapons indiscriminately into civilian populated areas, deploying within densely-populated residential areas, recruiting children, and laying anti-personnel landmines. Throughout the conflict, both anti-Houthi and Houthi armed groups have been operating in the midst of residential neighbourhoods, launching attacks from or near homes, schools and hospitals, and endangering civilians in those areas by exposing them to the risk of retaliatory attacks. Reported attacks by both sides routinely failed to distinguish between fighters and civilians and appeared to be directed frequently at neighbourhoods because they are under the *de facto* control of the other side or because fighters are based or operate from there, rather than at specific military objectives.¹⁰ All non-state armed groups have also violated the neutrality of healthcare centers and healthcare and humanitarian aid workers. In Taizz, Amnesty International documented frequent attacks on medical staff and property by fighters on both sides.¹¹ On 23 October 2015, OHCHR expressed concern about the deteriorating health situation in Taizz and “the near collapse of the health system as result of indiscriminate shelling by members of the Popular Committees affiliated with the Houthis, which targeted residential areas in Taizz that led to the partial destruction of civilian homes, shops, a clinic and a school.”¹² The lives of thousands of civilians in Taizz have been further endangered by the Houthi armed group and forces allied to it who have been blocking the entry of crucial medical supplies and food over the past three months, in violation of international humanitarian law.¹³

On 8 January 2016, UN Secretary-General Ban Ki-moon expressed his deep concern about “the intensification of coalition airstrikes and ground fighting and shelling in Yemen, despite repeated calls for a renewed cessation of hostilities.” He raised particular concerns about “reports of intense airstrikes in residential areas and on civilian buildings in Sana’a, including the Chamber of Commerce, a wedding hall and a centre for the blind. He also has received troubling reports of the use of cluster munitions in attacks on Sana’a on 6 January in several locations.” Mr. Ban warned that “the use of cluster munitions in populated areas may amount to a war crime due to their indiscriminate nature.” He reminded all parties “of the utmost necessity to respect their obligations under international human rights law and international humanitarian law.”¹⁴

In addition to the ongoing deterioration of situation on the ground, in early January 2016 the Yemeni Government failed to act in good faith to uphold the spirit and purpose of HRC resolution 30/18. By declaring the representative of OHCHR in the country “*persona non grata*,” it threatened the ability of OHCHR to implement HRC resolution 30/18. Furthermore, by publicly questioning the independence of staff members of OHCHR on the ground, the Yemeni Government compromised the safety of these staff, as High Commissioner Zeid Ra’ad Al-Hussein warned in a statement.¹⁵ The Yemeni Government’s decision was reversed after High Commissioner Zeid declared that “the States who make up the Human Rights Council clearly believe [his]

7 Full press briefing note: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16923&LangID=E

8 www.youtube.com/watch?v=I38aLG9l_ec

9 <http://www.reuters.com/article/us-yemen-security-saudi-idUSKCN0VA36T> www.reuters.com/article/us-yemen-security-saudi-idUSKCN0VA36T

10 www.amnesty.org/en/documents/mde31/2291/2015/en/

11 www.amnesty.org/en/documents/mde31/2291/2015/en/

12 See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16642&LangID=E

13 www.amnesty.org/en/latest/news/2016/02/yemen-huthi-forces-block-vital-hospital-supplies-fuelling-humanitarian-crisis-in-taiz/

14 See www.un.org/sg/statements/index.asp?nid=9372

15 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16932&LangID=E

Office has an essential role to play in ensuring that Yemen's national independent commission of inquiry functions effectively and impartially" and warned that "expelling the leader of [his] existing team in Yemen sends a very negative message [...] just as we embark on a process that was designed to help Yemen carry out this important inquiry, the outcome of which will be very important for the Government's future credibility."¹⁶

As of today, according to the information gathered by our organizations, members of the national independent commission appointed by Presidential Decree No. 13 (2015) have not carried out any substantive work. The commission is reported to have hired 30 field staff members, all based in and around Aden, to conduct investigation into alleged violations committed since 2011, as per its mandate. However, the commissioners have yet to share any information about the commission's structure, work methods and work plan. This raises significant concern about the commission's ability to deliver on its responsibility to investigate violations committed by all sides in an expeditious, impartial, thorough and independent manner and to meet the basic benchmarks set out by successive resolutions adopted by the Human Rights Council on Yemen.

On 22 January, the Panel of Experts on Yemen established pursuant to UN Security Council resolution 2140 (2014) presented its final report prepared in accordance with UN Security Council resolution 2204 (2015).¹⁷ The Panel of Experts recommended considering the establishment of "an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Yemen by all parties and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable." In February, the Saudi-led coalition announced its intention to create a commission in relation to the conflict in Yemen; however, the coalition's spokesman stated that the commission's mandate would be limited to reviewing the rules of engagement of the coalition and making recommendations to minimize civilian casualties. He made clear that the commission's mandate would not include investigating individual cases and providing victims with effective remedies.¹⁸

The victims of violations committed by all parties to the conflict cannot afford to wait until a national inquiry mechanism is effectively functioning and able to deliver accountability. The Human Rights Council should act to fulfill its mandate to promote accountability and establish an international mechanism to investigate alleged serious violations of international humanitarian law and violations and abuses of international human rights law committed by all parties to the conflict in Yemen.

The inquiry should establish the facts, collect and conserve information related to violations and abuses with a view to ensuring that those responsible are brought to justice in fair trials, and with relevant assistance from OHCHR, assist the Yemeni national independent commission of inquiry in carrying out its duties, once it has been fully operationalized.

We thank you for your attention to these pressing issues and are available to provide your delegation with further information as required.

Sincerely,

Amnesty International
Cairo Institute for Human Rights Studies
CIVICUS: World Alliance for Citizen Participation
Human Rights Watch
International Federation for Human Rights (FIDH)

¹⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16932&LangID=E

¹⁷ United Nations Security Council Panel of Experts, *Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)*, S/AC.56/2016/PE/OC. 1 (22 January 2016).

¹⁸

<http://www.spa.gov.sa/viewstory.php?lang=ar&newsid=1461334>www.spa.gov.sa/viewstory.php?lang=ar&newsid=1461334