



Mwatana for Human Rights

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Mwatana for Human Rights is an independent Yemeni organization dedicated to defending and protecting human rights by carrying out accurate and objective field investigations and research, providing legal support to victims, pursuing accountability and redress, conducting advocacy, raising awareness, and building capacity within and outside Yemen.

<https://mwatana.org/en>

The **Smith Family Human Rights Clinic at Columbia Law School** works in partnership with civil society organizations and communities to advance human rights around the world and educates the next generation of social justice advocates. The Clinic conducts fact-finding, legal and policy analysis, litigation, trainings, and advocacy. Organization website:

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I. Summary

Mwatana Organization for Human Rights (Mwatana) and the Columbia Law School Smith Family Human Rights Clinic (Clinic) jointly submit this report to inform the examination of Saudi Arabia during its Universal Periodic Review.

In March 2015, Saudi Arabia, together with the United Arab Emirates (UAE), led a military coalition of States to intervene in the armed conflict in Yemen on behalf of Yemen's internationally-recognized government under President Hadi. Nearly nine years after the beginning of the conflict in September 2014, Yemen is the world's worst humanitarian crisis,¹ and the UN estimates that the war has claimed over 377,000 lives.² While the truce that began on 2 April 2022 and formally ended 2 October 2022 has led to the continuing de-escalation of hostilities and progress toward peace,³ violence continued during the majority of this cycle's reporting period. Much of this violence and related human rights abuses can be attributed to Saudi Arabia. Throughout the conflict, the Saudi/UAE-led coalition carried out operations resulting in a widespread and systematic pattern of serious IHL and gross IHRL violations.⁴ These violations include, but are not limited to, indiscriminate and disproportionate airstrikes resulting in civilian casualties and the destruction of civilian objects, restriction of essential humanitarian aid, starvation as a method of warfare, arbitrary detentions, and attacks on migrants. Over the course of the conflict, Saudi Arabia and its coalition partners have actively worked to thwart accountability, while failing to hold perpetrators accountable for their actions, take steps to prevent future harm, and provide those harmed with remedy and reparations.

¹ "Yemen Crisis Explained," UN High Commissioner for Refugees (Mar. 24, 2023) <https://www.unrefugees.org/news/yemen-crisis-explained/>.

² T. Hanna et al., "Assessing the Impact of the War in Yemen: Pathways for Recovery," UN Development Programme, 44 (2021), https://www.undp.org/sites/g/files/zskgke326/files/2022-10/Impact%20of%20War%20Report%203%20-%20QR_0.pdf.

³ Briefing to the United Nations Security Council by the Special Envoy for Yemen Hans Grundberg, Office of the Special Envoy of the Secretary General for Yemen (Jan. 16, 2023), <https://osesgy.unmissions.org/briefing-united-nations-security-council-special-envoy-yemen-hans-grundberg-9>.

⁴ "Returned to Zero": The Case for Reparations to Civilians in Yemen, Mwatana for Human Rights and the Allard K. Lowenstein International Human Rights Clinic at Yale Law School, 73 (June 28, 2022), <https://mwatana.org/wp-content/uploads/2022/06/Returned-To-Zero-Report-2022-En-1.pdf>.

II. Airstrikes: Civilian Casualties and Attacks on Civilian Objects

During the period between January 2019 and December 2022, Mwatana documented 143 unlawful airstrikes against civilians and civilian objects.⁵ Several of these cases may amount to violations of the rights to life, health, education, and an adequate standard of living. Moreover, due to Mwatana's limited capacity, as well as security challenges accessing different areas of the country, this number represents just a small portion of potentially unlawful airstrikes that occurred during the reporting period.

While military hostilities have largely ceased since the formal truce went into effect in April 2022, and even after its formal end in October 2022, Saudi Arabia has yet to investigate these violations in a credible manner or provide adequate information about investigations they have already conducted.

Civilian casualties and the right to life

As a party to the armed conflict in Yemen, Saudi Arabia has a human rights obligation to respect the right to life for all those in Yemen.⁶ “International humanitarian law requires all parties to a conflict to distinguish between military objectives and civilian objects...and to take all feasible precautions to minimized civilian harm.”⁷ These obligations exist wherever Saudi forces exercise “effective control of the activities that caused the damages and consequent violations of human rights.”⁸

The findings of Mwatana and other human rights organizations strongly suggest that Saudi Arabia has violated its human rights obligations regarding the right to life in carrying out airstrikes in Yemen.⁹ Specific examples investigated by Mwatana that raise significant legal concerns include:

- In late January 2022, the Coalition carried out three attacks in Yemen, killing at least 80 civilians, including three children, and injuring 156 others, including two children. One strike carried out on 20 January targeted critical infrastructure; it hit and destroyed a

⁵ Between March 2015 and August 2021, Mwatana has documented approximately 579 Saudi/UAE-led coalition airstrikes in Yemen that caused civilian harm, including the killing and injuring of thousands of civilians across 19 Yemeni governorates. “Starvation Makers,” Mwatana for Human Rights, 127 (Sept. 1, 2021), <https://mwatana.org/en/starvation-makers/>.

⁶ Common Article 3 of the Four Geneva Conventions (ratified by Saudi Arabia on May 18, 1963); Additional Protocol II to the Four Geneva Conventions (ratified by Saudi Arabia on August 21, 1987).

⁷ “A Country Falling Apart: Human Rights Situation in Yemen 2021,” Mwatana for Human Rights, 46 (Nov. 2022), <https://mwatana.org/en/falling-apart/>.

⁸ I/A Court H.R., *The Environment and Human Rights*, Advisory Opinion OC-23/17, Series A No. 23 (Nov. 15, 2017), <https://www.corteidh.or.cr/cf/jurisprudencia2/overview.cfm?doc=1886&lang=en>; Mwatana has noted that the Saudi/UAE-backed coalition has “near exclusive control over airpower in the conflict.” “I ripped the IV out and started running: Attacks on Civilian Healthcare in Yemen,” Mwatana for Human Rights, 33 (Mar. 18, 2020), <https://mwatana.org/en/i-ripped-iv-out-of-my-arm/>.

⁹ In 2021 alone, Mwatana documented at least 24 air attacks carried out by the Saudi/UAE-led coalition in eight Yemeni governorates. These attacks killed at least 28 civilians, including eight children and two women, and injured at least 46 civilians. “A Country Falling Apart: Human Rights Situation in Yemen 2021,” Mwatana for Human Rights, 46 (Nov. 2022), <https://mwatana.org/en/falling-apart/>.

telecommunication building in Hodeida, causing a near total internet blackout for five days. The attack killed five civilians, including three children, and injured 20 others. The next day, on 21 January, the coalition appears to have used a Raytheon-made laser-guided missile to target a detention facility in Saada.¹⁰ Medical workers from hospitals receiving casualties reported to Mwatana for Human Rights that they treated 162 injured individuals and that 82 people were killed.¹¹

- On 24 December 2021, the Coalition dropped four bombs targeting a complex containing the Construction and Installation branch of the General Telecommunications Corporation in the Al-Mahawit Governorate. The first bomb struck and decimated a warehouse; the second bomb hit another warehouse without exploding; the third and fourth bombs struck a guesthouse and guardhouse, respectively. The attack killed three civilians, including one child, and injured seven others.¹²
- On 12 July 2020, the Coalition launched an airstrike in the Al-Jasham Village of the Washha District, Haja Governorate that killed nine civilians, including six children, and injured four civilians. The estimated 250-500 Kg missile targeted a house, collapsing it while inhabitants were inside. A witness interviewed regarding the attack graphically stated, “We carried the victims who had been killed and put them on sheets. We only found the head and the shoulder of the 19-year-old girl but we didn’t find the rest.”¹³

Attacks on civilian objects and the right to health, education, and adequate standard of living

Under international humanitarian law it is illegal to attack, destroy, or remove or render useless objects essential to the survival of civilians, including agricultural areas to produce foodstuffs, crops, and drinking water installations and supplies.¹⁴ International human rights law further guarantees individuals the right to an adequate standard of living for their health and well-being, including food, housing, and medical care as well as a right to education.¹⁵

Investigations by Mwatana and other organizations found that Saudi-led airstrikes in Yemen have not only caused heavy losses of civilian life but have also resulted in devastating damage to vital civilian infrastructure across the country. These findings indicate serious violations of IHL and IHRL.¹⁶ As of 2021, only half of Yemen’s health facilities were operational,¹⁷ and in the period

¹⁰ An investigation conducted by the Saudi/UAE-led coalition stating that the attack was on a military facility, but neither Mwatana for Human Rights nor Human Rights Watch has found any evidence to support this claim. “Yemen: Latest Round of Saudi-UAE-Led Attacks Targets Civilians,” Human Rights Watch (Apr. 18, 2022), <https://www.hrw.org/news/2022/04/18/yemen-latest-round-saudi-uae-led-attacks-targets-civilians>.

¹¹ *Id.*

¹² “A Country Falling Apart: Human Rights Situation in Yemen 2021,” *supra* note 7, at 47.

¹³ “Not a Single Body in One Piece,” Mwatana for Human Rights and PAX, 26 (Dec. 2022), <https://mwatana.org/wp-content/uploads/2022/12/Not-a-single-body-in-one-piece-En.pdf>.

¹⁴ Additional Protocol II to the Geneva Conventions.

¹⁵ G.A. Res. 217 (III) A Universal Declaration of Human Rights (Dec. 10, 1948), arts. 25-26.

¹⁶ “I ripped the IV out and started running: Attacks on Civilian Healthcare in Yemen,” *supra* note 8, at 9.

¹⁷ Health Sector in Yemen – Policy Note,” The World Bank (Sept. 14, 2021), <http://www.worldbank.org/en/country/yemen/publication/health-sector-in-yemen-policy-note>.

between September 2021 and August 2022, Mwatana documented five attacks on medical facilities and staff by the Saudi/UAE-led coalition.¹⁸ Furthermore, nearly 3,000 schools have been destroyed, damaged, or used for non-educational purposes since 2021,¹⁹ and in the period between January 2019 and December 2022, Mwatana documented seven Saudi/UAE-led Coalition attacks on schools.²⁰ More than 80 percent of the country’s population now struggles with access to food and adequate health services.²¹ Finally, due to damage to Yemen’s water infrastructure, the system operates at less than 5% efficiency, limiting people’s access to water and sanitation.²²

- On 8 March 2020, the Saudi/UAE-led coalition dropped two bombs on the Darb al-Ashraf primary school in the Majzar district, Ma’rib Governorate. The attack resulted in the complete demolition of the school. A witness described that the “school was one of the best schools in the Majzar district. Today, it has become a pile of rubble.”²³

¹⁸ “Urgent and Necessary Need to Establish an Accountability mechanism for Yemen,” Mwatana for Human Rights (Sept. 29, 2022), <https://mwatana.org/en/sep2022/>.

¹⁹ “Humanitarian Needs Overview Yemen,” UN Office for the Coordination of Humanitarian Affairs [hereinafter “UNOCHA”] (Dec. 2022), <https://reliefweb.int/report/yemen/yemen-humanitarian-needs-overview-2022-april-2022>.

²⁰ Interviews and field visits conducted by Mwatana for Human Rights between 12 May to 26 March 2022.

²¹ “Not a Single Body in One Piece,” *supra* note 13, at 12.

²² *Id.*

²³ “Tragedy without Justice,” Mwatana for Human Rights, 89 (Sept. 29, 2021), <https://mwatana.org/en/a-tragedy-without-justice/>.

III. Restrictions on Humanitarian Aid

Investigations by Mwatana and other human rights organizations indicate that, during the reporting period, Saudi Arabia acted to restrict access to humanitarian relief in Yemen by imposing impediments on Yemen's seaports, airports, and land borders. While these restrictions have reduced since the beginning of a U.N.-brokered in April 2022, they have not fully ceased, and Saudi Arabia has failed to take accountability for any restriction it has imposed.

From January 2019 to August 2022, Mwatana documented at least three incidents of denial of humanitarian aid by the Saudi/UAE-led Coalition.²⁴ These impediments amount to violations of the right to life, food, and health, and likely violate IHL and IHRL. In some cases, they may amount to war crimes. They impact the over 23.4 million Yemenis—approximately two-thirds of the country's population—who depend on humanitarian assistance to survive.²⁵

Key restrictions include:

- The Saudi/UAE-led Coalition closed Yemen's main airport, Sana'a airport, in 2016 to commercial and humanitarian flights.²⁶ This closure precluded civilians for accessing life-saving healthcare unavailable within the country.²⁷ Since the truce, the airport has reopened and 97 flights have transported approximately 50,000 passengers between Sana'a and Amman, but the amount of incoming and outgoing flights remain limited.²⁸
- From March to June 2021, the Coalition restricted the entrance of 13 shipping vessels, carrying more than 350,000 metric tons of fuel derivatives into Hudaydah port.²⁹ Furthermore, on 27 June 2021, a shipping vessel with nearly 9,000 metric tons of petroleum gas was denied entry.³⁰ These resources are necessary for various functions within the health and service sectors.³¹
- On 21 March 2021, two Coalition airstrikes hit the Salif Grains Port in the Hudaydah Governorate. The strike not only injured five employees but also damaged the workers' accommodations and a warehouse of the Yemen International Food Industries Co. Ltd.³²

²⁴ Interviews and field visits conducted by Mwatana for Human Rights between January 2019 to August 2022.

²⁵ "Humanitarian Needs Overview Yemen," *supra* note 19.

²⁶ *Id.*

²⁷ A/HRC/39/43, annex II, paras. 25–30.

²⁸ Briefing to the United Nations Security Council by the Special Envoy for Yemen Hans Grundberg, *supra* note 3.

²⁹ A/HRC/48/20, Situation of human rights in Yemen, including violations and abuses since September 2014, Report of the Group of Eminent International and Regional Experts on Yemen [hereinafter "GEE Report"], 6 (Sept. 13, 2021).

³⁰ *Id.*

³¹ "A Country Falling Apart: Human Rights Situation in Yemen 2021," *supra* note 7, at 64.

³² GEE Report, *supra* note 29, at 7.

IV. Starvation as a Method of Warfare

Mwatana, U.N. bodies, and non-governmental organizations have documented Saudi/UAE-led coalition airstrikes and artillery attacks that destroyed or damaged civilian objects essential for meeting the food and water needs of civilians in Yemen.³³ With nearly exclusive control over airpower in the conflict, coalition airstrikes struck agricultural facilities, water infrastructure, fishing equipment, and transportation networks, in many cases with no apparent military target in the vicinity.³⁴

The starvation of civilians as a method of warfare is expressly prohibited by international humanitarian law.³⁵ Further, the UN Security Council has outlined that whether in international or non-international armed conflict, the use of starvation of civilians as a method of warfare may constitute a war crime.³⁶ Similarly, while Saudi Arabia is not party to the Rome Statute of the ICC, Article 8 defines the intentional use of starvation of civilians as a war crime over which the ICC has jurisdiction to prosecute.³⁷

Examples constituting such violations include:

- On 14 October 2021, Saudi/UAE-led Coalition fighter jets perpetrated a two-strike air attack in the Al-Jubah district, Marib Governorate. The first strike targeted the Al-Jubah water project's Hajr Tamra well, and the second strike targeted the Matna area's water pipeline at the location of a communal water tank. These strikes prevented the sub-districts of Wasit, Al-Massial, Aba As-Syyid, Al-Thera'a, and Al-Khaneq from benefiting from the water project.³⁸
- On 4 July 2019, the Saudi/UAE-led Coalition carried out an airstrike on the 374,000 m² Al-Taweel Farm, located in Bani Adhabi village, Al-Jar area, Abs District, Hajjah Governorate. The attack destroyed the farm's water pump, irrigation network and beehives—integral parts of a farm that was a source of food and income to approximately 172 individuals. Mwatana did not identify any military targets in or near the farm during the attack, and, according to witnesses, everyone at the farm during the time of the attack was a civilian.³⁹

³³ "Starvation Makers," *supra* note 5, at 126.

³⁴ *Id.*

³⁵ Additional Protocol II to the Four Geneva Conventions provides that it is "prohibited to attack, destroy, remove or render useless...objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas...crops, livestock, drinking water installations and supplies and irrigation works." Additional Protocol II to the Geneva Conventions, *supra* note 14, art. 14.

³⁶ S.C. Res. 2417 (May 18, 2018).

³⁷ A/CONF.183/9, Rome Statute of the International Criminal Court (last amended 2010), art. 8(2)(b)(xxv) (July 17, 1998).

³⁸ "A Country Falling Apart: Human Rights Situation in Yemen 2021," *supra* note 7, 48.

³⁹ "Starvation Makers," *supra* note 5, at 139-144.

V. Detention

International Humanitarian Law (IHL) and International Human Rights Law (IHRL) prohibit arbitrary detention. The International Covenant on Civil and Political Rights secures the right to liberty and states that no one shall be subject to arbitrary arrest or detention.⁴⁰ Similarly, the International Convention on the Rights of the Child, to which Saudi Arabia is also party, provides that no child be deprived of liberty unlawfully or arbitrarily.⁴¹

Examples constituting such violations include:

- Since June 2019 Coalition forces tortured and forcibly disappeared at least five detainees for three to five months while illegally transferring them from Yemen to Saudi Arabia without providing information on their whereabouts. Some of the disappeared were demonstrators protesting the presence of Saudi forces in al-Ghaydah, al-Mahrah Governorate.⁴²

VI. Attacks on Migrants

Mwatana and other human rights organizations have investigated and documented attacks by Saudi forces against migrants in Yemen. In the period between January 2019 and December 2022, Mwatana documented 17 incidents using live ammunition, 12 ground attacks, and one incident of torture perpetrated against African migrants by Saudi Border Guards.⁴³ In that same time, the Saudi/UAE-led Coalition carried out three air attacks impacting African migrants.⁴⁴ These assaults potentially amount to violations of IHL and IHRL.

IHL mandates the protection and humane treatment of civilians in all circumstances without distinction based on race, color, religion or faith, sex, birthplace, wealth, or other similar criteria.⁴⁵ Similarly, IHRL mandates that all migrants, regardless of their status, are entitled to the same human rights as any other individual.⁴⁶

Examples constituting such violations include:

⁴⁰ 999 U.N.T.S. 171, International Covenant on Civil and Political Rights [hereinafter “ICCPR”], art. 9 (Dec. 16, 1966).

⁴¹ G.A. Res. 44/25, Convention on the Rights of the Child [hereinafter “CRC”], art. 37(b) (Nov. 20, 1989). See also, ICCPR stating that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

⁴² “Yemen: Saudi Forces Torture, ‘Disappear’ Yemenis,” Human Rights Watch (Mar. 25, 2020), <https://www.hrw.org/news/2020/03/25/yemen-saudi-forces-torture-disappear-yemenis>.

⁴³ Interviews and field visits conducted by Mwatana for Human Rights between 5 April 2020 to 12 December 2022.

⁴⁴ *Id.*

⁴⁵ Common Article 3 of the Geneva Conventions, *supra* note 8.

⁴⁶ “International Standards governing migration policy,” UN Office of the High Commissioner for Human Rights (2023), <https://www.ohchr.org/en/migration/international-standards-governing-migration-policy>.

- On 12 May 2022, bodies belonging to Yemeni and Ethiopian migrants were found near a Saudi informal detention facility in the Shuwayra area, Al-Dayer Governorate, Jazan region of Saudi Arabia. Of the seven Yemeni bodies found within the group, two were subject to gunshot wounds and five appeared to be victims of torture. A doctor who examined the bodies of the Yemeni citizens stated that the individuals had been subjected to “extremely severe external violence using a hard tool” and “injury with electric current.” Saudi Arabia has failed to prevent abuses against migrants in its territory and to conduct credible investigations into these abuses.⁴⁷
- On 30 December 2021, Saudi border guards shot at two Somali refugees, an adult and a 17-year-old child, in the Al Khalis area, Munabeh district, Saa'da governorate.⁴⁸ The victims were shot at from the “55-observation” site, where Saudi border guards were stationed in Saudi Arabian territory, and were subsequently taken to the Saudi Peace Hospital.⁴⁹ An eyewitness told Mwatana, “The child was shot in his face. The bullet was an explosive type that led to facial lacerations on the left cheek.”⁵⁰
- On 16 February 2021, Saudi border guards shot and seriously injured two Ethiopian migrants, an adult and a 15-year-old child, in the Al-Raqu area of the Munabeh district of the Sa'ada Governorate. The migrants were crossing the Saudi border for a work opportunity and were seriously injured.⁵¹ A health worker told Mwatana, “The victims were taken for treatment to the Saudi Al-Salam Hospital in Sa'ada. They received treatment for three days. Then they were arrested by the Ansar Allah group for being smuggled migrants.”⁵²
- Mwatana has documented two additional incidents of five African migrants who were fired at by Saudi border guards while they were attempting to cross the border between Saa'da and Saudi Arabia.⁵³

VII. Accountability

Saudi Arabia should be held accountable for derogations of its obligations under IHL and IHRL. International human rights law requires states to ensure, secure, or guarantee the effective enjoyment of human rights. This obligation—both enshrined in international human rights

⁴⁷ “A Group of Migrants’ Bodies Found Near an Informal Detention Facility in Saudi Territory,” Mwatana for Human Rights (Sept. 19, 2022) <https://mwatana.org/en/migrants-bodies/>.

⁴⁸ Interviews and field visits conducted by Mwatana for Human Rights on 18 January 2022.

⁴⁹ *Id.*

⁵⁰ Interview conducted by Mwatana for Human Rights with an eyewitness, on January 18, 2021.

⁵¹ “A Country Falling Apart: Human Rights Situation in Yemen 2021,” *supra* note 7, at 107.

⁵² Interview conducted by Mwatana for Human Rights with a health worker, on March 10-11, 2021.

⁵³ Interviews and field visits conducted by Mwatana for Human Rights on 9 February 2021 and 19 January 2022.

treaties⁵⁴ and international jurisprudence—is considered an obligation of customary international law.⁵⁵

In addition to their substantive obligations, states also have procedural human rights obligations. The Human Rights Committee⁵⁶ and the CESCR⁵⁷ have articulated that States must not only take legislative or other measures to give effect to rights but must also (1) investigate human rights violations; (2) provide effective remedies for human rights violations, (3) bring perpetrators of certain violations to justice, and (4) provide reparation for victims.⁵⁸

The requirement that states must be held accountable for derogations from their human rights obligations exists not only within a state’s sovereign territory, but under certain conditions, also extraterritorially, such as in geographical areas where states exercise effective control.⁵⁹ Given the control Saudi Arabia exercises over coalition military operations, the participation of its own military forces in such operations, and the degree of control it exercises over entry into Yemen’s air and seaports, Saudi Arabia should be held responsible for violations related to its actions. This extends to violations resulting in harm in Yemeni territory.

Saudi Arabia’s failure to investigate their apparent violations of IHL and IHRL

The first step toward accountability for human rights abuses is investigations of alleged violations. Investigations into alleged violations of IHRL and IHL should be independent, impartial, prompt, thorough, effective, credible, and transparent.⁶⁰ Saudi Arabia and other Coalition states have failed to take adequate measures to fulfil this legal obligation regarding abuses inflicted on people in Yemen. The following analysis focuses specifically on the inadequacy of accountability efforts on the part of Saudi Arabia.

In a purported effort to create an investigative mechanism, the Saudi/UAE-led Coalition created the Joint Incidents Assessment Team (JIAT). The mandate of the JIAT is to “investigate facts,

⁵⁴ See ICCPR, art. 2; ICESCR, art. 2; CERD, art. 2; CRC, art. 2.

⁵⁵ “The Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioners’ Guide, Revised Edition” [hereinafter “Practitioners’ Guide”], International Commission of Jurists, 19 (2018) <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>

⁵⁶ U.N. Doc. CCPR/C/74/CRP.4/Rev.6, Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, (2004).

⁵⁷ UN Doc HRI/GEN/1/Rev.6, Committee on Economic, Social and Cultural Rights: General Comment No. 7 on Forced Evictions and the Rights to Adequate Housing, 45 (1997).

⁵⁸ Practitioners’ Guide, *supra* note 55, at 21-22.

⁵⁹ Legal Consequences of a Wall in the Occupied Palestinian Territory (Advisory Opinion), (2004) ICJ 136, para 109; Human Rights Committee, General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/74/CRP.4/Rev.6 (2004), para 10; Case of Al-Skeini and Others v the United Kingdom, ECtHR App. No. 55721/07

⁶⁰ General Comment 36, para. 28 on ICCPR, art. 6 (2018).

collect evidence, and produce reports and recommendations” on Coalition attacks in Yemen.⁶¹ However, Human Rights Watch (HRW) has concluded that the JIAT’s investigations have failed to meet international standards on transparency, impartiality, and independence by conducting investigations without a transparent methodology or through law-of-wars analysis, producing inaccurate conclusions.⁶² JIAT has also not seriously investigated or addressed certain violations of international law, including the potential use by the Saudi/UAE-led Coalition of widely banned cluster munitions in Yemen. Furthermore, many apparent violations of the laws of war committed by the Saudi/UAE-led Coalition show evidence of individual criminal violations which the JIAT has failed to investigate; this failure is in itself a violation of the laws of war.⁶³

The Saudi/UAE-led Coalition, along with the internationally-recognized government of Yemen, also established the Joint Committee to Grant Voluntary Humanitarian Assistance to Those Harmed in Yemen (Joint Committee) to disperse “aid” to those affected by the Coalition’s operations.⁶⁴ Like the JIAT, the Joint Committee has failed to uphold international legal standards regarding transparency and impartiality in investigations.

Failure to hold Saudi Arabia accountable for violations in Yemen

After conducting investigations into alleged Saudi/UAE-led Coalition violations of IHL and IHRL that meet international standards, Saudi Arabia has an international legal obligation to hold those responsible to account. Like its investigative efforts, Saudi Arabia has similarly failed to sufficiently hold accountable through appropriate legal proceedings those responsible for Saudi/UAE-led Coalition violations of IHL and IHRL against civilians in Yemen.

In its 2021 Accountability Update, the GEE reported that the JIAT had completed a total of 200 investigations since its establishment in 2016.⁶⁵ Of the 18 investigations occurring in that reporting cycle, only eight airstrike cases were reported to be adjudicated by Saudi Arabia’s military court. Of the eight cases, the first instance of a military trial had been completed in only one case, with another two cases said to be nearing completion and an additional case said to have been referred to military prosecutors. With regards to each of these cases, the GEE noted the generality of offenses prosecuted in Saudi Arabia’s 1947 Military Penal Code, which does not appear to explicitly cover internationally-recognized war crimes.⁶⁶ The GEE requested further information

⁶¹ “Hiding Behind the Coalition,” Human Rights Watch (Aug. 24, 2018), <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ “Mechanism to disburse aid to those affected by Coalition military operations in Yemen established,” Saba Net, (Aug. 30, 2018), <https://www.sabanew.net/viewstory/37824>.

⁶⁵ “Coalition response to the Group of Eminent Expert’s third official report,” para. 24 (Oct. 7, 2020), www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx.

⁶⁶ *Id.* Article 29 within Chapter 4 of Saudi Arabia’s Military Penal Code, for instance, lists several categories of offences such as military misuse, misuse in military administration, violation of military regulations and instructions, but makes no specific references to violations of international humanitarian law and/or international human rights law.

on the nature of the JIAT referrals and the nature and status of the national proceedings, but it failed to receive any response by 31 July 2021, just a few months before its October 2021 dissolution. Generally, the GEE expressed concern “that coalition members, in particular Saudi Arabia..., are not acting with appropriate speed, diligence or transparency in pursuing investigations and prosecutions and that the prosecutions may not reflect the seriousness of the international humanitarian law violations potentially involved.”⁶⁷ The group also stressed the importance of investigating violations other than those related to airstrikes, given that there are reasonable grounds to believe that the Saudi/UAE-led Coalition have committed violations related to arbitrary detention, torture including sexual violence, and the recruitment and use in hostilities of children.⁶⁸

Further, in an additional two cases recommended by the JIAT for “accountability action,” the GEE noted that the individuals identified for potential prosecution were only those holding junior-level positions.⁶⁹ The individuals’ relevant fault in these cases was characterized as a derogation of the rules of engagement instead of a potential breach of IHL, specifically the obligation to respect principles of distinction, proportionality, and precautions in an attack.⁷⁰

Mwatana for Human Rights also found that as of 2021, the JIAT has recommended the provision of assistance to victims of only 40 airstrikes, out of approximately 200 incidents on which the JIAT has commented.⁷¹

Saudi Arabia’s role in the disbandment of the GEE and the need for future accountability:

In September 2017, the UN Human Rights Council (HRC) established a Group of Eminent Experts (GEE) to investigate alleged violations of international law perpetrated by all parties to the conflict and to provide general recommendations on improving the human rights situation.⁷² In October 2021 the resolution to renew the GEE was rejected after 21 states voted against it.⁷³ Saudi Arabia and other states, using threats and incentives, succeeded in convincing enough states to vote against the measure.⁷⁴ The resulting void in accountability infrastructure has led to increased civilian attacks in Yemen, further embedding impunity for violators and making the possibility of achieving justice and redress seem unattainable.⁷⁵

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ “Returned to Zero,” *supra* note 4, at 83.

⁷² A/HRC/RES/36/31, Human Rights, technical assistance and capacity-building in Yemen (Oct. 3, 2017).

⁷³ New members of the Council and existing member states who voted against the resolution are Bahrain, Bangladesh, Bolivia, Burkina Faso, China, Cuba, Eritrea, Gabon, India, Indonesia, Libya, Mauritania, Pakistan, Philippines, Russian Federation, Senegal, Somalia, Sudan, Togo, Uzbekistan, and Venezuela. “UN Human Rights Council Member States’ abject failure to renew Yemen investigation is a wake-up call,” Global Centre for the Responsibility to Protect (Oct. 13, 2021), <https://www.globalr2p.org/publications/un-human-rights-council-member-states-abject-failure-to-renew-yemen-investigation-is-a-wake-up-call/>.

⁷⁴ “Returned to Zero,” *supra* note 4, at 39.

⁷⁵ “A Dark Year Despite the Truce,” Mwatana for Human Rights (Jan. 5, 2023), <https://mwatana.org/en/annualbreif2022/>.

Grave concerns related to the administration of justice in Yemen and the politicization of the judicial system⁷⁶ limit the possibility that the investigations carried out by bodies established by the warring parties, including the Yemeni government-constituted National Commission of Inquiry and the Coalition’s Joint Incident Assessment Team can result in meaningful justice for victims in the short or medium term.⁷⁷ Saudi Arabia’s domestic justice system also fails to present a viable route for pursuing accountability for IHL and IHRL violations and abuses committed during the conflict in Yemen, due to the absence of laws penalizing international crimes, the judiciary’s lack of independence and/or the failure to comply with fair trial standards in criminal proceedings to date. The need for an internationally criminally-focused mechanism remains of high importance.

Individuals’ Legal Right to Remedy and Reparation

State and non-state armed groups have the legal obligation to provide remedy⁷⁸ and reparations⁷⁹ to civilians who have suffered harm in conflict. The Permanent Court of International Justice has stated that the right to reparations stems from two fundamental international legal principles: that an international wrong generates an obligation for the wrongdoer to make reparation and that the reparation must eradicate the consequences of the illegal act.⁸⁰

The principle that international law violations create an obligation to remedy is supported in both IHL and IHRL.

⁷⁶ GEE, “Situation of human rights in Yemen, including violations and abuses since September 2014,” UN Doc. A/HRC/45/6 (September 28, 2020), para. 93, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

⁷⁷ OHCHR, “Implementation of technical assistance provided to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen,” UN Doc. A/HRC/45/57 (September 2, 2020), para. 18, <https://undocs.org/en/A/HRC/45/57>; Mwatana for Human Rights, “UN Human Rights Council: Prioritize Yemen Accountability and Redress,” (September 29, 2020), <https://mwatana.org/en/prioritize-yemen-accountability-and-redress/>.

⁷⁸ The term remedy is used to refer to procedural remedies for violations

⁷⁹ The term reparation refers to the obligation to provide restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. Human Rights Committee, General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para 16.

⁸⁰ *Factory at Chorzów* (Germany v. Poland), Judgment, 1928 P.C.I.J. ser. A No. 17, at para. 73 (Sep. 13). See also Kristine Beckerlie and Ali Jameel, “The Urgency of Reparations for Civilians in Yemen,” Mwatana for Human Rights (July 13, 2022), <https://mwatana.org/en/reparations-for-civilians/>.

Saudi Arabia, along with other states in the Saudi/UAE-led Coalition, has the obligation to provide reparations to civilian victims of their international wrongs in Yemen. To date, they have not met these obligations.⁸¹

For example:

- In the summer of 2019, the Saudi/UAE-led Coalition dropped a bomb on a four-story apartment building in Sana'a. The attack killed eight civilians, including five children and one woman, wounded at least 77 others, and damaged or destroyed five apartment buildings. A statement was subsequently issued claiming that the bomb "deviated" away from its "legitimate military target." Mwatana interviewed three individuals affected by the airstrike, none of whom have received payments or any form of accountability from the Coalition or internationally-recognized government.⁸²
- A 58-year-old taxi driver "Kareem" said he and his daughter were injured in the strike and that his "family had to flee and were displaced to a relative's home." He stated that "there is no justice...but compensation for what was damaged is most important."⁸³ Another victim, "Abdullah," said four of his children were killed in the strike and acknowledged that "[c]riminal accountability is important but...who will compensate us for the loss of my children and house?"⁸⁴

⁸¹ "Returned to Zero," *supra* note 4.

⁸² "Returned to Zero," *supra* note 1, at 78.

⁸³ *Id.* at 97.

⁸⁴ *Id.*

VIII. Recommendations

- Saudi Arabia, both acting on its own and in coalition operations, should analyze current rules of military engagement and ensure that all operational processes and procedures conform to IHL and IHRL standards.
- Saudi Arabia should improve intelligence gathering to effectively distinguish between military objectives and civilian objects and to take all feasible precautions to minimize civilian harm.
- Saudi Arabia should ensure unimpeded access to humanitarian aid for all individuals impacted by the conflict in Yemen. In doing so, it should guarantee unrestricted access to airports, seaports, land borders, and roadways to promote individuals' rights to life, food, water, and access to medical care.
- Saudi Arabia should ensure it does not target civilian objects essential for meeting the food and water needs of people in Yemen, including agricultural facilities, water infrastructure, fishing equipment, and transportation networks.
- Saudi Arabia should end the use of explosive weapons with wide area effects in populated areas to better protect civilians.
- Saudi Arabia should immediately cease the unlawful detention, torture, and disappearance of individuals.
- Saudi Arabia should stop all attacks on migrants and ensure the protection and humane treatment of civilians in all circumstances without distinction based on race, color, religion or faith, sex, birthplace, wealth, or other similar criteria.
- Saudi Arabia should investigate all the incidents in this report, as well as all other attacks alleged to have violated the laws of war, in a credible, impartial, and transparent manner. Further, Saudi Arabia should ensure all such investigations give sufficient consideration to information on incidents gathered by external monitoring groups, including the UN and non-governmental organizations.
- Saudi Arabia should ensure that public information is made immediately available regarding cases under investigation and referred for prosecution by the JIAT, as well as any other accountability measures taken by the government to date. Further, Saudi Arabia should ensure that investigations and prosecutions are conducted with appropriate speed, diligence, and transparency and that they reflect the seriousness of the potential IHL and IHRL crimes involved.
- Saudi Arabia should provide effective remedies and reparation for violations and international crimes to all victims in Yemen, including those who have suffered physical and mental harm due to unlawful airstrikes, restrictions on access to humanitarian aid, unlawful detention, and harm related to migrant status.
- Saudi Arabia should support, cooperate fully with UN entities, the International Criminal Court, and other criminal investigators, where appropriate, so that allegations of unlawful conduct, including international crimes, by all parties to the conflict can be properly investigated, documented, and the perpetrators thereof brought to account.
- Saudi Arabia should support efforts to end hostilities, reach a sustainable and inclusive peace and ensure accountability and redress for serious violations and crimes.

I. Questions

- In their response to the UPR Report,⁸⁵ Saudi Arabia stated that a fund has been established to support “voluntary” humanitarian assistance to persons “adversely affected by ongoing military operations in Yemen.” What are the processes for determining who is to be a recipient of this funding? How many individuals have received assistance from this fund?
- In their response to the UPR Report,⁸⁶ Saudi Arabia stated that a committee has been established to “draw lessons” from military operations so they may be “incorporated into the rules of engagement.” What “lessons” have been drawn by this committee? Where it has been established that the rules of engagement may have been violated, what steps have been taken by Saudi Arabia to ensure accountability?
- The JIAT concluded that “some inadvertent errors had been committed” during military operations carried out by the Saudi/UAE-led coalition in Yemen. What recommendations did the JIAT make in holding that responsible parties should be held accountable? How does the JIAT plan to redress the damage caused by such errors?
- Credible reports have indicated that Saudi Arabia used threats or incentives at the HRC to push for the disbandment of the GEE. What commitments is Saudi Arabia willing to make to support future international accountability mechanisms or proceedings?
- Following commitments made in Saudi Arabia’s 2018 national submission,
 - What mechanisms and procedures have been implemented to prevent targeting civilians, or engaging in indiscriminate or disproportionate attacks on civilians, in military operations?
 - How has the KSA investigated allegations regarding the targeting of civilians, and how do those investigations compare to international standards for credible, fair, and independent investigations?

⁸⁵ Addendum: Outcome of the review; Universal Periodic Review: Third Cycle, Saudi Arabia, February 26, 2019. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/054/17/PDF/G1905417.pdf?OpenElement>.

⁸⁶ *Ibid.*