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**Human Rights Council****Forty-eighth session**

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Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General****Accountability update****Group of Eminent International and Regional Experts on Yemen***Summary*

The present conference room paper, submitted as a supplement to the report of the Group of Eminent International and Regional Experts on Yemen on the situation of human rights in Yemen, including violations and abuses, since September 2014 (A/HRC/48/20), evaluates the actions of parties to the conflict in Yemen in the accountability sphere during the current reporting period (1 July 2020 – 30 June 2021) and elaborates further upon necessary action at both the domestic and international levels. The relatively minor developments seen this year have by no means been adequate or sufficient to quell the prevailing “pandemic of impunity” in Yemen. Nor has there been substantive progress in relation to the provision of redress to victims. Urgent remedial action is required if victims are to regain any hope that their rights to truth, justice and reparation will be realized.

It remains vital for the international community to help bridge the accountability gap through taking specific initiatives such as referring the situation in Yemen to the International Criminal Court; expanding the list of persons subject to sanctions under Security Council resolution 2140; and establishing an international criminal justice-focused investigative mechanism.

No sustainable peace can be achieved in Yemen in the absence of accountability. Notwithstanding the ongoing conflict, concrete steps can be taken now to maximize Yemen’s preparedness for such a peace. These steps include enhancing the inclusivity of the peace process; integrating a principled approach to accountability in discussions of any peace agreement; creating and preserving the space for discussions of transitional justice, including prioritizing consultations with victims; and strengthening the capacities of Yemeni civil society.

## I. Introduction

1. For four years now, the Group of Eminent International and Regional Experts on Yemen has been reporting on serious violations of international human rights law and international humanitarian law committed by the parties to the conflict in Yemen since September 2014. Some of these violations may amount to crimes under international law. Repeated calls have been made for relevant authorities to conduct prompt investigations, compliant with international standards, into alleged violations and to prosecute those responsible. The Group has underlined the importance of victims' right to an effective remedy and associated rights to truth, justice and reparation. The primary obligations in this field remain with the parties to the conflict. However, given the vast accountability gap in Yemen, the Group has urged the international community to take specific steps to ensure accountability.

2. While there have been some relatively minor developments during the current reporting period, they have been by no means adequate or sufficient to quell the "pandemic of impunity" the Group of Eminent Experts has referred to previously. Nor have there been substantive developments in relation to the provision of redress to victims. Urgent remedial action is required if victims are to regain any hope that their rights to truth, justice and reparation will be realized.

3. In this conference room paper, submitted as a supplement to its report on the situation of human rights in Yemen, including violations and abuses since September 2014 (A/HRC/48/20), the Group of Eminent Experts details the steps taken (or not taken) by authorities over the last year to ensure accountability, and elaborates upon further necessary action at both the domestic and international levels. Pursuant to the request by the Human Rights Council for the Group to explore and report on recommended approaches and practical mechanisms of accountability to secure truth, justice and redress for victims,<sup>1</sup> the Group has identified several specific actions that might be taken at this point in time. Yemen remains in a state of armed conflict, but there are ongoing efforts to encourage an end to hostilities and the commencement of a process aimed at achieving a sustainable peace.

4. No sustainable peace can be achieved in Yemen in the absence of accountability. The bitter and festering wounds arising from violations committed, exacerbated by the passage of time, must be acknowledged and addressed if the people of Yemen are to truly enjoy lasting peace. There can be no excuses for failure to take meaningful steps to ensure accountability.

## II. Accountability Updates

### A. Criminal Justice Accountability

5. As the Group of Eminent Experts has previously outlined, States have a duty to investigate and where appropriate, prosecute, serious violations of international human rights law and international humanitarian law that constitute crimes under national or international law. This duty attaches in particular to genocide,<sup>2</sup> war crimes,<sup>3</sup> crimes against humanity,<sup>4</sup> and other gross violations of human rights, including summary or extrajudicial killings, torture

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<sup>1</sup> A/HRC/RES/45/15, para. 17 (d), referring also to coordination with relevant mandates of the special procedures of the Human Rights Council.

<sup>2</sup> Genocide Convention, arts. 1 and 4.

<sup>3</sup> Under customary international humanitarian law governing non-international armed conflicts, States are under an obligation to investigate all allegations of war crimes committed by their armed forces or nationals, as well as those allegedly committed on their territory. Where there is sufficient evidence, they have the duty to prosecute those responsible. See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (ICRC/Cambridge, 2005), (hereinafter *ICRC Study on Customary International Humanitarian Law*) rule 158.

<sup>4</sup> While there is not yet a treaty specifically focused on crimes against humanity, this category of crime features in the Rome Statute and is recognized as one of "the most serious crimes of concern to the international community as a whole" which "must not go unpunished": preamble to the Rome Statute.

or other forms of cruel, inhuman or degrading treatment, slavery, enforced disappearance, rape and other forms of sexual violence.<sup>5</sup> While this responsibility attaches to States, as the Group has previously discussed, the same obligation can be considered as attaching to the de facto authorities in Yemen.<sup>6</sup> In the context of the conflict in Yemen, other States that are party to the conflict (e.g. members of the coalition) have similar duties with respect to violations committed in the course of their operations. Undertaking these investigations and prosecutions is central to fulfilling victims' rights to justice, and ensuring the non-repetition of violations.

6. Regrettably, during this reporting period, the Group of Eminent Experts has seen little evidence that the prevailing culture of impunity is diminishing.

7. During the course of its investigations this year, the Group of Eminent Experts again witnessed how victims continue to face enormous hurdles in their quest for justice. The poor infrastructure and the security context pose considerable challenges, and the atmosphere of intimidation dissuades many would-be complainants from approaching authorities. Those who tenaciously persist in seeking to register their complaints and have appropriate action taken often face obstruction from officials. Lawyers and human rights organizations assisting victims in gaining redress have faced harassment and intimidation. Amongst many victims, there remains a sense of hopelessness that justice will be achieved. As one shelling survivor stated previously to the Group: "we are in a time of war, there is no investigation and civilians are targeted by all parties".

## 1. Government of Yemen

8. The National Commission of Inquiry (NCOI), the body established by the Government of Yemen to investigate all alleged international human rights law and international humanitarian law violations perpetrated in Yemen since January 2011,<sup>7</sup> has continued to monitor and to document a large number of violations,<sup>8</sup> notwithstanding the restrictive coronavirus (COVID-19) environment and the security challenges faced by its personnel, particularly its field researchers. In addition to reiterating the importance of the NCOI acting in an impartial manner in assessing the conduct of all parties (and receiving cooperation from all relevant authorities in Yemen, including the de facto authorities),<sup>9</sup> the

<sup>5</sup> In some cases, the duty arises by virtue of treaty obligations to criminalize offences and establish and exercise jurisdiction in the circumstances outlined: e.g. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, arts. 4-7; Convention for the Protection of All Persons from Enforced Disappearance, arts. 6-11. However, the duty to investigate and prosecute has been regarded as attaching more broadly to violations amounting to crimes under national or international law: see e.g. Human Rights Committee General Comment No. 31, The Nature of the General Obligations on States Parties to the Covenant (2004), para.18. See too, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 (16 December 2005) principle 4; and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E.CN.4/2005/102/Add.1 (2005), principle 19.

<sup>6</sup> The Group of Eminent Experts has previously considered the applicability of duties under international human rights law to de facto authorities: A/HRC/42/CRP.1, para. 82 as well as the applicability of international humanitarian law obligations: *ibid.* para. 870.

<sup>7</sup> The NCOI was established following the amendment by President Hadi on 7 September 2015 of Presidential Decree No. 140 of 22 September 2012 (as amended by Decree No. 13 of 2015, Decree No 50 of 2017 and Decree No.30 of 2019)). The Group of Eminent Experts has previously expressed some concerns about whether the NCOI conducts its investigations in accordance with international human rights standards, in particular raising issues concerning transparency, independence (e.g. in selection of cases), effectiveness, thoroughness and credibility of the NCOI: see A/HRC/42/CRP.1, paras. 879-886.

<sup>8</sup> An updated figure of the numbers of cases monitored and documented was not available to the Group of Eminent Experts at the time of preparation of this paper, as the Ninth Report of the NCOI (covering the period 1 August 2020 to 31 July 2021) had not yet been published.

<sup>9</sup> In their response to the Group of Eminent Experts of July 2021, the de facto authorities confirm they have no communication with the NCOI, describing it as "illegal and biased": Letter of de facto authorities to the Group of Eminent Experts in response to the list of issues, 14 July 2021, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)

Group of Eminent Experts underlines the critical need for NCOI conclusions to be appropriately followed up by the Government of Yemen - both in relation to holding individuals to account and providing redress to victims.

9. According to information received, the NCOI has not referred further cases of violations to the Attorney General for potential prosecution during this reporting period.<sup>10</sup> The NCOI has, however, referred more than 1000 case files to the Attorney General since 2019.<sup>11</sup> In mid-2020, the Group of Eminent Experts was informed that 19 cases had progressed to the trial stage at the Specialized Criminal Court in Aden. Regrettably, there appears to have been no further progress in relation to these cases. The delays have been attributed to the combined impact of the COVID-19 pandemic, and a series of judicial strikes, the most long-lasting of which has involved a protest against the allegedly unlawful appointment of the Attorney General.<sup>12</sup> No additional criminal proceedings are understood to have been commenced.

10. The Group of Eminent Experts continues to note limited completion of criminal justice investigations. An example is the case of the photojournalist assassinated in Aden in June 2020 in which there appears to have been no substantial progress in the investigation.<sup>13</sup> Even in cases in which arrest warrants are issued, the completion, or even commencement, of a trial is often beset by serious difficulties. The Group previously investigated, for instance, summary executions at the Al-Taweed mosque in Mathad village in Al-Azariq district, Al-Dhale' Governorate in June 2019,<sup>14</sup> allegedly by armed men who had been travelling in a truck bearing the logo of the Security Belt Forces.<sup>15</sup> Despite the issuance of arrest warrants in mid-2019, requests from the police to the Commander of the Security Belt Forces and to the leadership of the southern transitional council (STC), the accused have not been handed over to police.<sup>16</sup> In February 2021, members of the STC-affiliated Security Belt Forces stormed the court building and surrounded the house of the Al-Azariq Prosecutor protesting the criminal charges.<sup>17</sup> The Al-Azariq District Prosecutor formally complained to the Al Dhale' Governorate Prosecutor of the threats, intimidation and harassment, indicating that his office would not attend court hearings or pursue the case further until arrests were made.<sup>18</sup>

11. In the military court system, an (in-absentia) trial of Abdulmalik Al-Houthi and other leading Houthi leaders has continued in the Ma'rib military court during the reporting period. The Group of Eminent Experts has confirmed that the nature of the charges extend beyond the carrying out of the military coup to include, for instance, the killing and injuring of civilians and the use of landmines.<sup>19</sup> Due in part to the closed nature of military trials, the Group has not been able to independently verify the full nature of the proceedings.

12. A written request to the Government of Yemen for further information concerning the status of the criminal justice investigations and any prosecutions had not elicited a response at the time of preparation of this paper in late July 2021. While appreciating the difficulties of conducting thorough criminal justice investigations and proceedings during the ongoing

<sup>10</sup> Cases investigated by the NCOI are to be referred to the national judiciary "so that perpetrators of human rights violations are brought to justice and the victims receive reparations": National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Yemen, 8 November 2018, para. 43.

<sup>11</sup> See A/HRC/45/CRP.7, para. 368.

<sup>12</sup> In January 2021, President Hadi appointed former Deputy Interior Minister, Ahmed Saleh al-Musai, as Attorney General by decree. The appointment has been criticized by the Southern Judges Club as being in violation of the constitution and the Law on Judicial Authority: see <https://debrief.net/en/news-22514.html>. It is understood this appointment is currently the subject of legal proceedings before the Constitutional Chamber of the Supreme Court.

<sup>13</sup> See A/HRC/48/20, para. 57; A/HRC/45/CRP.7, para. 108.

<sup>14</sup> For further details of the case, see A/HRC/45/CRP.7, paras. 101-102.

<sup>15</sup> As to the nature of the Security Belt Forces, see A/HRC/45/CRP.7, Annex 1, p. 130. Following the withdrawal of the United Arab Emirates ground troops in mid to late 2019, the Security Belt Forces came under the operational command of the southern transitional council.

<sup>16</sup> Confidential sources on file.

<sup>17</sup> Confidential sources on file.

<sup>18</sup> Confidential documentation on file.

<sup>19</sup> Confidential documentation on file.

conflict, the Group of Eminent Experts reiterates the importance of authorities taking all feasible actions in this regard.

13. In September 2020, at the interactive dialogue with the Group of Eminent Experts at the forty-fifth session of the Human Rights Council, the Government of Yemen announced its intention to establish a specialized court to prosecute human rights violations.<sup>20</sup> Preliminary discussions between relevant officials took place in late 2020.<sup>21</sup> As of 31 July 2021, however, no formal legislative action to establish such a court had been taken, nor had any timeframe been announced for the institution's establishment. While welcoming the expressed commitment of the Government of Yemen to ensure accountability, the Group notes that such an initiative alone will not relieve the need to address deep-seated weaknesses in the justice system. The Group has previously highlighted,<sup>22</sup> for example, compromised levels of judicial independence, politicization of the justice sector,<sup>23</sup> corruption and frequent violations of fair trial rights, gender bias and specific capacity issues.<sup>24</sup> In addition to addressing these issues, the reform of relevant legal frameworks to allow for the prosecution of international crimes, and to bolster victim and witness security and support, is also required. The Group encourages the international community to work together with the Government of Yemen to explore further collaboration and cooperation to support accountability initiatives in Yemen.

## 2. Coalition

14. There have been some, albeit limited, developments with respect to holding individuals accountable within the ranks of the coalition. The Joint Incidents Assessment Team (JIAT) has completed a further 18 investigations during this reporting period (bringing the total to more than 200 investigations since its establishment in 2016). In its October 2020 response to the Group of Eminent Experts' third official report, the coalition confirmed that all files relating to airstrikes recommended by JIAT for military prosecution had been transferred to the concerned coalition countries for them "to enforce all accountability statutory procedures, according to the laws and regulations of each country member of the coalition."<sup>25</sup> The United Nations Panel of Experts on Yemen was informed that eight airstrike cases were being adjudicated by Saudi Arabia's military court.<sup>26</sup> Four of these cases concern airstrikes that the Group has previously investigated. As noted last year, from an examination of JIAT press releases and press conferences, in these four airstrike cases, JIAT's conclusions appear to relate primarily to failures to take necessary steps, including following relevant procedures, to minimize damage to civilians/civilian objects. In each case, in addition to legal proceedings, JIAT recommended that monies be paid to families of victims and/or relevant persons in respect of material damage. In some cases, recommendations were also made to review the coalition rules of engagement.<sup>27</sup>

15. From recent JIAT statements, it would appear that JIAT has recommended "accountability action" in a further two cases. The first case involved a series of airstrikes in

<sup>20</sup> Statement of the Representative of the Government of Yemen, interactive dialogue on the report of the Group of Eminent Experts, Human Rights Council, 29 September 2020. The NCOI previously proposed a dedicated court to deal with the cases referred by the NCOI to the Attorney General in late 2017: copy of proposal on file.

<sup>21</sup> NCOI press releases detail meetings on the court proposal between the Chair of the NCOI and the Chair of the Supreme Judicial Council in early September 2020: see <https://www.nciye.org/?p=1077>, as well as a meeting between the Chair of the NCOI, the Chair of the Supreme Judicial Council and the Attorney General on 24 September 2020: see <https://www.nciye.org/?p=1101>

<sup>22</sup> See A/HRC/45/CRP.7, paras. 382-388.

<sup>23</sup> Yemen also currently faces the challenges of a dual governance system that prevents effective cooperation between relevant agencies, including law enforcement.

<sup>24</sup> The joint meeting of the Chair of the NCOI, Chair of the Supreme Judicial Council and the Attorney General recognized the need for international assistance in rehabilitating the judicial cadre and to harmonize national legislation with international human rights treaties and conventions: see [nciye.org/?p=1101](https://www.nciye.org/?p=1101)

<sup>25</sup> Coalition response to the Group of Eminent Expert's third official report, 7 October 2020, para. 24, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)

<sup>26</sup> Final report of the Panel of Experts, S/2021/79, para. 122.

<sup>27</sup> See A/HRC/45/CRP.7, paras. 373-374.

the Hayjah area, Maslub District, Jawf Governorate on 15 February 2020, examined by the Group of Eminent Experts last year. The airstrikes followed the downing of a Saudi fighter jet, allegedly by the Houthis.<sup>28</sup> In this case, while justifying the airstrikes as a response to amassed Houthi fighters at the scene, JIAT recommended action be taken against the air-controller for breaching rules of engagement in so far as there was “inaccuracy in the assessment of the possibility of entering the non-military environment” in the bombings of legitimate military targets.<sup>29</sup> The second case involved an airstrike in Khabb wa ash Sha’af District, Jawf Governorate on 6 August 2020 that reportedly caused the death of nine children and the injury of seven others.<sup>30</sup> JIAT concluded that the airstrike was focused on a number of legitimate military targets, but that a truck carrying civilians had entered between the military targets by the time of the bombing. JIAT recommended action against the targeting officer for breaching the rules of engagement due to inaccuracies in undertaking the necessary re-evaluation of a situation given the time lapse between the initial targeting decision and the operation carried out due to the re-fuelling of the plane.<sup>31</sup> In both cases, financial assistance was also recommended.

16. In both these cases, the individuals identified for potential prosecution appear to hold relatively junior positions. The relevant fault is characterized as a failure to follow the rules of engagement. No explicit reference is made to any potential breach of international humanitarian law. There is no acknowledgment in either statement, for instance, that identified “inaccuracies” in the risk-assessments of potential damage to civilians and civilian buildings may amount to violations of international humanitarian law, specifically the requirement to respect principles of distinction, proportionality, and precautions in attack.

17. There also appear to be significant discrepancies between JIAT’s investigations of the impact of such incidents and that of the Group of Eminent Experts. In the case of the February 2020 Hayjah airstrike, for instance, the Group concluded that some 32 people (including 19 children) had died and a further 21 people (including 12 children) had been injured as a result of the airstrike, with two houses and one car also damaged. By way of contrast, JIAT concluded that only damage to one building was attributable to the airstrike. It considered it likely that the loss of life or injury and other damage to property was linked to the preceding downing of the aircraft. No reference is made in the summary to JIAT having conducted interviews with victims and witnesses from the area.<sup>32</sup>

18. In terms of prosecutions, the United Nations Panel of Experts on Yemen was informed in October 2020 that of the eight referred cases being adjudicated by Saudi Arabia, the first instance military trial of only one case (the airstrike on the Abs Hospital, 5 August 2016) had been completed. Another two cases were said to be nearing completion (the airstrike on the bus in Dhayan, 9 August 2018, and the wedding in Bani Qays, 22 April 2018).<sup>33</sup> The Panel was also informed that an additional case had been referred to military prosecutors.<sup>34</sup> While it awaits receipt of the details of charges brought against relevant personnel, the Group of Eminent Experts notes the generality of the offences appearing in Saudi Arabia’s 1947 Military Penal Code. This Code does not appear to have explicit coverage of internationally

<sup>28</sup> The case was investigated by the Group of Eminent Experts in 2020: A/HRC/45/6, para. 30 and A/HRC/45/CRP.7, para. 72.

<sup>29</sup> [www.spa.gov.sa/2161522](http://www.spa.gov.sa/2161522)

<sup>30</sup> The airstrike had been raised with concern by the UN Resident Coordinator: see Statement by Resident Coordinator and Humanitarian Coordinator for Yemen, “Women and Children Killed and Injured in Khabb wa ash Sha’af District in Al Jawf Governorate”, 7 August 2020.

<sup>31</sup> [www.spa.gov.sa/2182313](http://www.spa.gov.sa/2182313)

<sup>32</sup> In the relevant press release, the spokesperson for the coalition referred to the investigation involving inter alia reviewing documentation, visiting the operations’ centre, interviewing those involved in carrying out the air mission, satellite and reconnaissance images, video recordings, information from the Panel of Experts, open sources, and rules of engagement. No reference is made to interviewing victims or witnesses from Jawf: [www.spa.gov.sa/2161522](http://www.spa.gov.sa/2161522)

<sup>33</sup> Final report of the Panel of Experts, S/2021/79, para. 122.

<sup>34</sup> *Ibid.*

recognized war crimes, with instead an emphasis placed on military offences such as failure to obey orders, and neglect in the performance of duties.<sup>35</sup>

19. The Group of Eminent Experts requested further information on these cases, as well as any other cases subsequently referred to national authorities. In particular, the Group sought details of the nature of the JIAT referrals, and the nature and status of the national proceedings: e.g. the nature of the charges, the rank/office of the persons charged, and the outcome of any proceedings (for example, convictions for offences, the imposition of punishment and/or disciplinary penalties). As of 31 July 2021, the Group had not received any response. Nor do the details or the outcomes of the courts martial appear to have been made public. The proceedings thus remain cloaked in some secrecy.<sup>36</sup>

20. While a lack of transparency concerning these cases inhibits the Group of Eminent Experts' inquiries, the Group remains concerned that coalition members, in particular Saudi Arabia in this instance, 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.

21. Furthermore, while the Group of Eminent Experts agrees with the importance of investigating alleged violations relating to airstrikes, this is not the only subject-matter requiring attention. Over the last four years, the Group has identified other types of violations there are reasonable grounds to believe have been committed by coalition forces or forces backed by members of the coalition, including with respect to arbitrary detention, torture including sexual violence, and the recruitment and use in hostilities of children.

22. In some instances, in their responses to the Group of Eminent Experts, the coalition and/or individual States have simply refuted allegations made, without proffering any details of any completed investigations. The coalition in its October 2020 response, for instance, denied that children were trained as soldiers in Saudi Arabia and returned to Yemen to participate in combat operations.<sup>37</sup> No evidence of any investigation carried out into these serious allegations was provided. Similarly, the United Arab Emirates has unequivocally rejected allegations of detention-related violations against its personnel, denying that the United Arab Emirates has ever exercised effective control over places of detention or detainees in Yemen.<sup>38</sup> The Group is concerned that such blanket denials undermine the coalition's claimed commitment to proper accountability.

<sup>35</sup> 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. In their 2019 report, the United Nations Panel of Experts noted information provided to them that legal procedures might be based on art. 130: Final report of the Panel of Experts, S/2019/83, para. 140, footnote 121. Art. 130 provides the procedure for fixing the penalty in the case of an offence for which there is no provision in the "disciplinary or terrorization" penalties. (unofficial translation).

<sup>36</sup> The Group of Eminent Experts has previously noted that the use of military justice should be restricted to specifically military offences committed by military personnel, to the exclusion of serious human rights violations that should be dealt with through civilian courts: see A/HRC/45/CRP.7, para. 390, and footnote 593.

<sup>37</sup> Coalition response to the Group of Eminent Experts' third official report, 7 October 2020, para. 22, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx). The allegation was described as "unsubstantiated".

<sup>38</sup> United Arab Emirates' response to the Group of Eminent Experts' third official report, 6 April 2021, para. 11, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx). Note, allegations against the United Arab Emirates have also been raised in other United Nations human rights fora: see for instance the letter of 14 July 2020 addressed to the United Arab Emirates from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, concerning an alleged enforced disappearance, arbitrary detention and torture of a man held at unofficial detention facilities reportedly under the control of United Arab Emirates forces at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25364>

23. During this reporting period, JIAT concluded its investigation into only two non-airstrike related incidents. Both concerned allegations against the coalition naval forces: with one case dating from March 2018,<sup>39</sup> and the other from October 2016.<sup>40</sup> Looking at the press statement detailing JIAT's conclusions, the Group of Eminent Experts has concerns that the investigations do not appear to be comprehensive. The case in October 2016, for instance, concerned the detention by coalition naval forces of 12 individuals (nine men and three children) on fishing boats in waters off Eritrea.<sup>41</sup> While providing the rationale for the interception and arrest of some persons, and the details of some of the detention transfers,<sup>42</sup> the JIAT investigation does not address allegations with respect to the incommunicado detention and ill-treatment of detainees, nor respond to allegations that eight persons were allegedly missing for lengthy periods, after having last been seen in Saudi custody.<sup>43</sup>

24. The Group of Eminent Experts underlines the obligation of members of the coalition to investigate the full range of violations alleged against their security forces; for investigations to meet international standards with respect to independence and impartiality, effectiveness, thoroughness, credibility and transparency; and for substantiated violations to be followed up by appropriate action, including prosecutions.

### 3. De facto authorities<sup>44</sup>

25. The de facto authorities have been vocal about the need for action against coalition personnel, but less willing to admit to potential violations by their own personnel, let alone take action against responsible individuals.

26. In their May 2021 response to the third official report of the Group of Eminent Experts, the de facto authorities stressed the need to pursue "international criminal accountability" of the "US-Saudi-Emirati" coalition States' presidents, leaders and members of armed forces, in addition to militias, armed groups, and mercenaries from other countries before national and international courts.<sup>45</sup> In July 2021, the Group was informed of criminal investigations instituted against those responsible for particular airstrikes. Specific mention was made of court proceedings sentencing [in absentia] the coalition's leadership and mercenaries in respect of the airstrikes targeting the Great Hall and the children in Dhayan.<sup>46</sup>

27. The de facto authorities have not, however, shown the same vigour in responding to alleged violations by their personnel. Many allegations have been simply denied, without a showing of relevant investigations. This is the case, for instance, in relation to allegations of the recruitment of children and their use in hostilities, and breaches of fair trial rights.<sup>47</sup> On many topics, the de facto authorities describe findings of the Group of Eminent Experts as based on sources variously described as "unsubstantiated", "unconfirmed", "unreliable" or "hostile". In a media interview broadcast in May 2021, the foreign affairs minister of the de facto authorities, Hisham Sharif, accepted that "everyone should be held accountable for what

<sup>39</sup> [www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2144714](http://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2144714)

<sup>40</sup> Ibid.

<sup>41</sup> Ibid. This case was said to have been brought to the attention of JIAT by a Human Rights Watch report: see [www.hrw.org/news/2019/08/21/yemen-coalition-warships-attack-fishing-boats](http://www.hrw.org/news/2019/08/21/yemen-coalition-warships-attack-fishing-boats)

<sup>42</sup> JIAT concluded that the detentions were justified responses to activities being engaged in, namely reporting on coalition movements, and arms smuggling, and that those detained were taken firstly to the coalition authority in Jazan, with four of the 12 later transferred to Government of Yemen authorities.

<sup>43</sup> See too A/HRC/42/CRP.1, para. 600.

<sup>44</sup> The term "de facto authorities" is used only to refer to the authorities based in Sana'a, where Ansar Allah as a political movement is the main actor, supported by an armed group referred to as the "Houthis".

<sup>45</sup> De facto authorities' response to the Group of Eminent Experts' third official report, 25 May 2021, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)

<sup>46</sup> Letter from the de facto authorities to the Group of Eminent Experts in response to the list of issues, 14 July 2021, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx). The references appear to be to the airstrikes involving the Great Hall in Sana'a (8 October 2016), and the bus in Dhayan, Sa'dah (9 August 2018).

<sup>47</sup> De facto authorities' response to the Group of Eminent Experts' third official report, 25 May 2021, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)



they have done in the last six years”, while maintaining that the United Nations needed to “prove it” [the alleged violations].<sup>48</sup>

28. In July 2021, the de facto authorities informed the Group of Eminent Experts of their intention to establish an independent national investigation committee. They reported that the allegations in the Group’s reports had been referred to relevant authorities, despite their critique of the sources and methods of the Group.<sup>49</sup> Little specific action, however, has been apparent. Investigations tend to be exceptional (e.g. the Ministry of Interior’s preliminary investigation into the incident at the migrant detention facility in March 2021 in Sana’a),<sup>50</sup> rather than the norm. The continuing failure by the de facto authorities to undertake appropriate investigations, notwithstanding several years of consistent reporting by the Group, indicates either an alarming neglect or a wilful blindness as to the seriousness of violations being committed by their personnel.

#### 4. Conclusion

29. The Group of Eminent Experts remains concerned at the prevailing impunity in Yemen. Only limited steps have been taken to hold accountable those responsible for serious violations of international human rights law and international humanitarian law, some of which may amount to international crimes. While the ongoing conflict and the complexity of proceedings provides a partial explanation for some delays, the Group is concerned at evidence of a more deep-seated reluctance to undertake investigations and prosecutions.

## B. Non-Criminal Justice Accountability

30. Accountability extends beyond the criminal justice field.<sup>51</sup> It needs, in particular, to be understood against the background of victims’ right to an effective remedy, and associated rights to truth, justice and reparation.<sup>52</sup> While many aspects of a comprehensive response may need to await a post-conflict period, it is urgent that authorities, on the basis of consultations with victims, take steps to alleviate the harm currently being experienced by victims.<sup>53</sup> There is a pressing need to provide, for instance, medical aid, psycho-social support, assistance with employment, housing, food and other material assistance.<sup>54</sup> As one interlocutor said to the Group of Eminent Experts in describing victims of an airstrike:

<sup>48</sup> Interview with Hisham Sharif, Conflict Zone by Deutsche Welle, conducted by Tim Sebastian, Broadcast 26 May 2021, available at: [www.dw.com/en/houthi-backed-foreign-minister-we-are-not-the-ones-making-a-mess-of-yemen/av-57204988](http://www.dw.com/en/houthi-backed-foreign-minister-we-are-not-the-ones-making-a-mess-of-yemen/av-57204988)

<sup>49</sup> Letter from the de facto authorities to the Group of Eminent Experts in response to the list of issues, 14 July 2021, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx). The de facto authorities criticize, in particular, the lack of further identifying information in the Group’s report.

<sup>50</sup> For details of the case, see A/HRC/48/20, para. 51.

<sup>51</sup> Accountability has been described as a “broad process that addresses the political, legal and moral responsibility of individuals and institutions for past violations of human rights and dignity”: Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka (2011) iv. This includes a wide range of potential processes outside the criminal justice field, in respect of individuals or institutions bearing responsibility for violations, as well as a range of responses to victims. In the following discussion, the Group of Eminent Experts is focusing on the issue of reparations for victims.

<sup>52</sup> See further A/HRC/45/CRP.7, paras. 403-405; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; OHCHR, Rule of Law Tools for Post-Conflict States: Reparations Programmes (2008); and Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence (2014).

<sup>53</sup> The Group of Eminent Experts uses the term “victim” in the sense outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation, principle 8.

<sup>54</sup> The Group of Eminent Experts acknowledges the important assistance being currently provided through the UN and national and international NGOs in addition to bilateral programmes.

This was a very poor family which barely had any food to eat. They did not receive any help from anyone after the incident apart from some food products from [a humanitarian organization] which lasted them only a month.

Many victims in Yemen are struggling to deal not only with the physical effects of violations, but also the significant psychological impact. Many have lost their livelihoods, and the ability to provide basic necessities for themselves and their families. Available information concerning the fate or whereabouts of disappeared relatives can and must be shared in accordance with victims' right to truth. Acknowledgment of violations that have occurred can be provided. Changes to procedures already identified as necessary can be instituted to minimize the likelihood of a repetition of violations.<sup>55</sup>

## 1. Government of Yemen

31. It would appear that the Government of Yemen has no active programme of either interim relief or longer-term reparations for those who have suffered the effects of violations during the current conflict. The NCOI does not appear to be developing detailed recommendations regarding reparations,<sup>56</sup> nor is there a mechanism within the Government of Yemen for considering any such recommendations. Instead, reparations appear to be regarded as a topic best left in entirety until after the end of the conflict.

## 2. Coalition

32. In response to the Group of Eminent Expert's third official report, the coalition referred to its establishment of a Joint Committee that considers granting voluntary aid to those affected in Yemen by "collateral damage resulting from military operations shrouded by unintended errors".<sup>57</sup> In 2020, the United Nations Panel of Experts on Yemen was informed that compensation had been paid to the victims of six airstrike incidents.<sup>58</sup> These six appear to be the same six incidents identified by the coalition in June 2019.<sup>59</sup> In a statement at that time, the coalition referred to voluntary financial support having been provided in 113 cases related to six incidents, totalling over 2 million Saudi riyals.<sup>60</sup> These six airstrikes, however, are only a fraction of the 18 cases referred for "accountability action" or in which "technical" error had been conceded, notwithstanding that financial assistance was recommended in a majority of these cases. Further, the six cases include only one of the seven cases investigated by the Group in which JIAT made recommendations for financial payments prior to mid-2019.<sup>61</sup> The criteria for including or excluding cases for payments, even amongst cases in which JIAT has recommended financial assistance, is unclear.

33. Similarly, the process for the identification of beneficiaries in these cases is opaque. It is understood that the NCOI has provided some assistance to the Joint Committee in identifying names of victims of specified airstrikes. Victims' associations have also provided listings to authorities. However, the Group of Eminent Experts has confirmed that there are victims of 'eligible' airstrikes who have not received any payments.<sup>62</sup> These included victims

<sup>55</sup> Changes might include, for instance, necessary changes to rules of engagement, changes to personnel, regularizing of detention arrangements, and introducing robust complaint procedures.

<sup>56</sup> The Eighth Report of the NCOI, for instance, makes no reference to reparations or compensation, with the only reference to redress appearing in a recommendation directed towards the international community: Eighth Report: The work of the National Commission to Investigate Alleged Violations to Human Rights in Yemen (2020).

<sup>57</sup> Coalition response to the Group of Eminent Expert's third official report, 7 October 2020, para. 24, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)

<sup>58</sup> Final report of the Panel of Experts, S/2021/79, para. 124.

<sup>59</sup> [www.sabanew.net/viewstory/50870](http://www.sabanew.net/viewstory/50870). The six airstrikes identified were: the strikes on the wedding tent in Al Raqa Bani Qays village in Hajjah, the water well in Bayt Sa'adan village, Abs hospital in Abs city; the Al Sham water filling facility in Abs city; a residential compound in Al Mokha directorate, Ta'izz; and a house in Dar Sabr (Dar Al Nasr) in Ta'izz.

<sup>60</sup> The figure quoted was 2.593 million Saudi riyals (just under \$700,000): *ibid*.

<sup>61</sup> The one case from the Group of Eminent Experts' previous investigations included in this list was the airstrike on the wedding in Bani Qays. For details of the 18 cases either referred to military prosecutors, or in which technical error was conceded: see A/HRC/45/CRP.7, paras. 373, 377.

<sup>62</sup> Confidential sources on file.

who sustained serious injuries – including, for instance, life-threatening injuries, the severing of limbs and other permanent disabilities. Some victims have needed ongoing medical treatment for several years, without receiving any form of financial assistance.

34. From documentation reviewed by the Group of Eminent Experts, the intended quantum is, for example, 40,000 Saudi riyals (approximately US\$10,000) for the family of a deceased, although some families report receiving lesser amounts.<sup>63</sup> Lower amounts are understood to be stipulated for persons injured. Wording on the receipts for payments varies – with some describing the payments as “voluntary” humanitarian assistance for “unintended mistakes” of the coalition’s military operations. The Group has received information concerning victims receiving different amounts of money for similar impairments. The scheme is not well-publicized, and the lack of transparent procedures has left many victims unaware of how to submit claims or follow-up their cases. One interlocutor told the Group that victims in Houthi-controlled areas fear that speaking about receipt of funds might lead to their being accused of being supporters of the coalition and being subjected to arrest and detention. There is little evidence that gender or age considerations have been taken into account in the design of the scheme or its implementation. Overall, there appears to have been little consultation with victim groups. While welcoming the initiative to provide some payment to victims, the Group considers that the scheme remains inappropriately selective and inadequate for addressing the harm caused to victims and providing redress.

35. The Group of Eminent Experts requested further information on the nature, composition and mandate of the Joint Committee. It also sought specifics in relation to the nature of the payments made thus far, including the numbers of beneficiaries (segregated by gender and age), the quantum of the payments and the process for the payments (including identification of victims, assessment of assistance, and the process for designing the scheme and disbursing funds). The Group also requested information on the extent to which victims have been involved in the process and what means have been used to publicize the available assistance. As of the time of drafting this paper, no further information had been provided.

### 3. De facto authorities

36. As with investigation and prosecution initiatives, the de facto authorities have been generally less responsive to victims’ rights to redress. In their suggested “comprehensive solution to end the war”, the de facto authorities proposed that coalition countries provide compensation to persons affected by the conflict, but did not address any responsibility of the de facto authorities to make redress to victims.<sup>64</sup> On one occasion during the reporting period, the de facto authorities’ Ministry of Interior stated that funds were to be provided to those wounded and the families of those killed in the incident at the migrant detention facility.<sup>65</sup> The Group of Eminent Experts does not have information as to whether funds have been allocated for compensation or been disbursed.<sup>66</sup>

<sup>63</sup> Confidential sources and documentation on file.

<sup>64</sup> “Document suggesting a comprehensive solution to end the war against the Yemeni Republic” (April 2020). In the segment entitled “Reconstruction and compensation”, the de facto authorities called upon coalition countries to commit to reconstruction as well as compensation for those affected by the conflict. The document also called upon coalition countries to make reparation and referred to money to compensate a range of persons affected by the conflict (not restricted to those who have suffered human rights or humanitarian law violations). The document also called for the establishment of a Joint Higher Committee under the auspices of the United Nations to implement reconstruction and compensation, in a similar manner to the mechanism for Kuwait administered by the United Nations (after Iraq’s invasion and occupation of Kuwait in 1990-1991).

<sup>65</sup> This case is detailed in the Group of Eminent Experts official report: A/HRC/48/20, para. 51. The statement by the de facto authorities’ Ministry of Interior can be found at: [www.ansarollah.com/archives/421005](http://www.ansarollah.com/archives/421005)

<sup>66</sup> In relation to an attack on a petrol station located inside a military compound, the head of the Supreme Revolutionary Committee, Mohamed Ali al-Houthi indicated on twitter that if investigation proved civilian deaths, the Ministry of Defence would be obliged to pay compensation: [https://twitter.com/Moh\\_Alhouthi/status/1401617157021122566?s=20](https://twitter.com/Moh_Alhouthi/status/1401617157021122566?s=20)

#### 4. Conclusion

37. Notwithstanding the difficulties posed by the ongoing conflict, authorities are in a position to provide some level of redress for victims now. Authorities can broaden and make more transparent interim relief programmes for funds and necessary services to alleviate the current suffering of victims. Authorities can also take other actions, such as providing information to the families of disappeared persons on the fate or whereabouts of their relatives.<sup>67</sup> Necessary changes to procedures or personnel can be instituted to prevent the repetition of violations. Authorities can commit to and commence work on a more comprehensive policy and package of measures regarding the fulfilment of the right to reparation of victims of serious human rights and humanitarian law violations. All schemes – whether of an interim or comprehensive nature – must be designed in collaboration with victims and be designed and implemented in a gender and age-sensitive manner.<sup>68</sup>

#### C. International Initiatives

38. Last year, the Group of Eminent Experts recommended concrete action that the international community could take to help bridge the accountability gap in Yemen. These recommendations are not intended to minimize or divert attention from the primary responsibility of parties to the conflict to address violations. However, they do reflect the Group's conclusions that the Yemeni justice system at present lacks the means and capacity to conduct independent and credible investigations, and conduct trials of those responsible for serious violations in a manner consistent with international human rights standards. The Group remains convinced that international action will be necessary to supplement national efforts, and reiterates its call for greater and immediate international action and support.

39. In 2020, the Group of Eminent Experts identified five specific actions that could be taken by the international community.<sup>69</sup> First, it recommended that the Security Council refer the situation in Yemen to the International Criminal Court without delay. Second, it urged the Security Council to expand the list of persons subject to sanctions under resolution 2140 (2014) on the basis of violations of international human rights law or international humanitarian law. Third, the Group recommended the establishment of an independent international criminal justice-focused investigative mechanism for Yemen similar to those established for Syria and Myanmar. Fourth, it called upon third States to use all potential forms of jurisdiction (including universal jurisdiction) to investigate and prosecute war crimes committed in Yemen in their domestic courts. Fifth, as a longer-term initiative, the Group recommended the international community and the Yemeni authorities engage in a dialogue about the creation of a special tribunal such as a “hybrid” tribunal to help facilitate the prosecution of those most responsible for international crimes in Yemen.

40. In 2020-2021, the Group of Eminent Experts has seen some preliminary signs of a greater willingness in the international community to discuss accountability issues. However, these glimmers of hope need to be translated into concrete actions.

41. The Group of Eminent Experts was invited to brief the Sub-Committee on Human Rights of the European Parliament in early December 2020 and in July 2021. On 11 February 2021, the European Parliament passed resolution 2021/2539 (RSP) on the humanitarian and political situation in Yemen. That resolution, inter alia, urged the European Union and its member States to use all the tools at their disposal to hold perpetrators of severe violations to account, noting the possibility of applying the principle of universal jurisdiction to investigate and prosecute perpetrators.<sup>70</sup> It also called for the European Union Global Human

<sup>67</sup> The Group of Eminent Experts has previously recommended the establishment of a national register for missing persons: see A/HRC/39/43, para. 111(h).

<sup>68</sup> See Dyan Mazurana and Khristopher Carlson, *Children and Reparations: Past Lessons and New Directions*, Innocenti Working Papers (UNICEF, 2010).

<sup>69</sup> See A/HRC/45/6, para. 99; A/HRC/45/CRP.7, paras 392-402. The sixth recommendation concerning ensuring peace negotiations integrate respect for accountability is dealt with separately under Section III below.

<sup>70</sup> European Parliament resolution of 11 February 2021 on the humanitarian and political situation in Yemen (2021/2539 (RSP)), para. 25.

Rights Sanctions Regime to be deployed in order to impose targeted sanctions and for the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy and member States to support the gathering of evidence with a view to using them in future prosecutions, and to consider the establishment of an independent commission to oversee the process. The resolution affirmed that victims of atrocity crimes should be supported in accessing justice. In addition, the resolution called upon the European Union and Member States to take “resolute action” towards a referral by the United Nations Security Council of the situation in Yemen to the International Criminal Court, and an expansion of the list of persons subject to Security Council sanctions.<sup>71</sup>

### 1. Security Council action: referral to the International Criminal Court and expanding the sanctions list

42. In December 2020, the Group of Eminent Experts had its first opportunity to address members of the Security Council in an Arria-formula meeting.<sup>72</sup> The meeting was co-hosted by Belgium, the Dominican Republic, Estonia and Germany, and co-sponsored by Ireland (as an incoming member). The Group was appreciative of the opportunity to provide a briefing on its findings and stands ready to regularly brief the Council, including during its formal meetings discussing the situation in Yemen.

43. It has been pleasing to see the Security Council resume references to the need to ensure accountability in its resolutions on Yemen. In the preamble of resolution 2564 (of 25 February 2021), for instance, the Security Council reaffirmed “the need for all parties to comply with their obligations under international law, including international humanitarian law and international human rights law as applicable” and underlined “the need to ensure accountability for violations of international humanitarian law and violations and abuses of human rights in Yemen.”

44. Calls have also been made for the Security Council to consider having a focused discussion on the issue of accountability for international humanitarian law and human rights violations in the agenda for the Security Council’s monthly meeting on Yemen.<sup>73</sup> This discussion could encompass mechanisms of accountability to secure justice and redress for victims. It might also include hearing from relevant Yemeni stakeholders. Issues of accountability must be further integrated into Security Council deliberations on Yemen.

45. On 25 February 2021, the Security Council listed Sultan Saleh Aida Aida Zabin as subject to the sanctions regime, explicitly using the international human rights and international humanitarian law criteria provided for under Security Council resolution 2140 as one of the categories of acts threatening the peace, security and stability of Yemen for the first time. Sultan Zabin was Director of the de facto authorities’ Criminal Investigations Department in Sana’a, and his designation was linked to his “prominent role in a policy of intimidation and use of systematic arrest, detention, torture, sexual violence and rape against politically active women”.<sup>74</sup> The effect of this listing was limited in a temporal sense. Zabin’s death was announced in April 2021, with some media reports attributing the death to COVID-19.<sup>75</sup>

<sup>71</sup> Ibid, para. 27. This was not the first resolution addressing the issue of accountability, having repeatedly urged the international community to take steps to ensure that perpetrators of violations are prosecuted in accordance with international law in order to achieve a lasting settlement of the conflict (e.g. in resolutions 2017/2727 (RSP), 2017/2849 (RSP)) and in 2018, making reference to referral of the situation to the International Criminal Court and universal jurisdiction as well as the expansion of the Group of Eminent Expert’s mandate (resolution 2018/2853 (RSP)).

<sup>72</sup> Press Release, UN Group of Eminent International and Regional Experts on Yemen Briefs the UN Security Council Urging an end to impunity, an expansion of sanctions, and the referral by the UN Security Council of the situation in Yemen to the International Criminal Court, 3 December 2020.

<sup>73</sup> Final report of the Panel of Experts, S/2021/79, para. 159(a). See also Marta Abrantes Mendes, *A Passage to Justice: Selected Yemeni Civil Society Views for Transitional Justice and Long-Term Accountability in Yemen* (Open Society Foundations, 2021), p. 42.

<sup>74</sup> Information as per the United Nations Security Council Consolidated List, available at: <https://scsanctions.un.org>

<sup>75</sup> [www.arabnews.com/node/1838106/middle-east](http://www.arabnews.com/node/1838106/middle-east)

46. The Group of Eminent Experts encourages the Security Council to consider further designations under its sanctions regime based on violations of human rights and humanitarian law grounds, including broadening the scope of designated persons beyond those belonging only to the de facto authorities in order to recognize the serious nature of ongoing violations by all parties to the conflict.

47. As of 31 July 2021, the Group of Eminent Experts has seen no evidence of the Security Council inclining towards referring the situation in Yemen to the International Criminal Court. Yet, there is no principled reason for the Security Council not to do so. Were the Security Council to use its powers in this case, it would be making a significant contribution to defeating impunity in Yemen.<sup>76</sup>

48. The coalition has taken particular issue with this recommendation, stating in its comments to the Group of Eminent Experts:

Referral to the ICC is the Group's priority, but not that of the Yemeni people, who are more focussed on ending the conflict, next steps of reconciliation and healing; and getting justice done nationally in accordance with Yemeni means and remedies, which will be applied after achieving peace in Yemen.<sup>77</sup>

49. Respectfully, the Group of Eminent Experts suggests that this response mischaracterizes the nature and intent of a referral to the International Criminal Court. Such a referral does not usurp or prevent national action, but allows an additional forum for pursuing accountability. Indeed, the International Criminal Court is limited to "complementary jurisdiction".<sup>78</sup> A case is inadmissible before the International Criminal Court if the case is being investigated or prosecuted by a State with jurisdiction, unless that State is unwilling or unable genuinely to carry out the investigation or prosecution.<sup>79</sup> Should Yemen (or other States) demonstrate that they are willing and able to investigate and prosecute relevant cases, the International Criminal Court would be precluded from acting. Secondly, the International Criminal Court would only ever be able to handle a small number of cases arising from the conflict in Yemen. It has neither the resources, nor the mandate, to be the primary mechanism for prosecution of all cases arising in the Yemeni context. The response of judicial authorities in Yemen and other relevant States will thus remain central.

50. Referral to the International Criminal Court would, however, underline the importance of accountability within the Yemeni context and demonstrate the international community's recognition that international crimes have been and are being committed in Yemen and must be addressed. As noted in the preamble of the Rome Statute, the international community has an interest in ensuring that international crimes do not go unpunished. If the situation in Yemen were to be referred to the International Criminal Court, the International Criminal Court's investigation would also have the advantage of being able to consider the actions of all parties involved in the conflict on the territory of Yemen. Its focused investigation might also significantly contribute to the understanding of violations committed and so assist national accountability initiatives. Under the Rome Statute, the

<sup>76</sup> For an example of the Security Council affirming the contribution of the International Criminal Court to the fight against impunity: see S/RES/2150 (2014), preamble.

<sup>77</sup> Coalition response to the Group of Expert's third official report, 7 October 2020, para. 15, available at: [www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx)

<sup>78</sup> Rome Statute, art. 1.

<sup>79</sup> Rome Statute, art. 17(1). A case is also inadmissible if, after investigation, such a State decides not to prosecute the case unless that decision arises from the unwillingness or inability to prosecute: art. 17(2). Unwillingness is to be determined by considering if (a) national proceedings are intended to shield the person from criminal responsibility, (b) whether there has been an unjustified delay in the proceedings that is inconsistent with an intent to bring the person to justice, or (c) whether the proceedings have not been conducted independently or impartially and in a manner consistent with bringing the person to justice. Inability is to be determined by considering whether due to the total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out proceedings: art. 17(3).

International Criminal Court is obliged to permit views and concerns of victims to be presented and considered.<sup>80</sup>

51. Further, efforts can be focused on reconciliation and healing while simultaneously pursuing justice. Indeed, what the Group of Eminent Experts has heard during the course of its investigations over the last four years is the desire for an integrated approach to pursuing these goals. Justice is a prerequisite for long-lasting peace and should not be postponed, overlooked or set aside in the name of other policy goals.

## **2. Establishment of a criminal justice-focused investigative mechanism**

52. The Group of Eminent Experts continues to support the establishment of an independent criminal justice-focused investigative mechanism for Yemen, with a mandate similar to that of the mechanisms for Myanmar and Syria. Such a body could collect, consolidate, preserve and analyse evidence of serious violations of international humanitarian law, international human rights law and international crimes, and prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals. In the last year, this proposal has gained little traction. In part, this may reflect the significant resource limitations during the COVID-19 pandemic and the liquidity crisis of the United Nations. There may also be confusion as to the respective roles of the Group of Eminent Experts and such a body.

53. The Group of Eminent Experts continues to play its role in collecting, preserving and analysing information relating to violations and potential crimes and preparing a confidential list of alleged perpetrators. However, this is not a substitute for a mechanism focused on the collection and analysis of evidence and the preparation of case files for potential use in criminal justice investigations and proceedings – nationally or internationally. The two types of investigations use, at least in part, different methodologies and require some distinct staff profiles. The Group, for instance, is focused on corroborating and analysing a range of incidents to demonstrate the patterns of violations. It makes a public report concerning its findings. An independent criminal justice-focused investigative mechanism builds up a crimes-matrix and gathers supporting evidence to demonstrate the commission of a crime by a particular individual(s). While material collected by the Group would be useful for that purpose, a criminal justice-focused mechanism would delve further into, for example, linkage evidence. The differences in practice are reflected in the continued work of both the Independent International Commission of Inquiry on the Syrian Arab Republic and the International, Impartial and Independent Mechanism for Syria.

54. Nor is such an investigative mechanism inherently tied to notions of international justice. The mechanisms for Syria and Myanmar, for instance, have been deliberately designed so that their files might be shared also with regional and national authorities (including third States), provided certain protections can be guaranteed. Creation of such a body would not require Security Council action, but instead could be created by the General Assembly and/or the Human Rights Council.<sup>81</sup> In light of the potential utility of such a body to practically support future prosecutions, at the international, regional or national levels, the Group of Eminent Experts encourages serious consideration to be given to the establishment of such a body.

## **3. Third State prosecutions**

55. The Group of Eminent Experts continues to encourage States with potential jurisdiction over international crimes – whether on the basis of nationality of the perpetrator or victim, or universal jurisdiction – to actively pursue investigations, and where appropriate prosecutions of responsible individuals. Non-governmental organizations and law firms have been active in several countries in filing complaints before national courts or with law

<sup>80</sup> Rome Statute, art. 68(3).

<sup>81</sup> The International, Impartial and Independent Mechanism for Syria was established pursuant to General Assembly resolution 71/248, A/RES/71/248 (adopted 21 December 2016). The Independent Investigative Mechanism for Myanmar was established pursuant to Human Rights Council resolution 39/2, A/HRC/RES/39/2 (adopted 27 September 2019).

enforcement authorities in an attempt to enliven this jurisdiction or stimulate investigation of cases by relevant authorities: for example, with Yemeni-related complaints filed in Argentina, France, Italy and the United Kingdom.<sup>82</sup> The individuals against whom such complaints have been filed vary from political and military commanders to those engaged in arms sales to parties to the conflict. Cooperation between States (for example in sharing investigative material, or in other forms of mutual legal assistance) can significantly bolster the prospects of such prosecutions. The Group continues to encourage third States to actively use their institutional networks to share relevant information and use their own domestic courts in relevant cases to conduct prosecutions.

#### 4. Longer-term hybrid initiative

56. The Group of Eminent Experts raised last year the longer-term prospect of the international community collaborating with the Yemeni authorities – giving the example of a “hybrid tribunal”. At the same time, it noted that discussion about this type of cooperation would need to take place, in particular to assess the level of interest and commitment at a national level, and responses from the international community.<sup>83</sup> In the view of the Group, there remains utility in further discussions of such an initiative.

#### 5. Third State arms transfers and other support to parties to the conflict

57. For the last four years, the Group of Eminent Experts has expressed significant concern about the continued arms transfers to parties to the conflict in Yemen, notwithstanding the documented serious violations of international humanitarian law and human rights law occurring. It has highlighted its belief that such States are failing in their responsibilities to ensure respect for international humanitarian law,<sup>84</sup> and that some States may be violating their obligations under the Arms Trade Treaty.<sup>85</sup> Furthermore, such support may amount to aiding and assisting the commission of internationally wrongful acts in contravention of international law.<sup>86</sup>

58. Notwithstanding the strong recommendations by the Group of Eminent Experts in previous reports with respect to arms sales, third States, including Canada,<sup>87</sup> France,<sup>88</sup> Iran

<sup>82</sup> See for instance, Trial International, *Universal Jurisdiction Annual Report 2020*, and *Universal Jurisdiction Annual Report 2021*.

<sup>83</sup> See A/HRC/45/CRP.7, paras. 396-397. The Group of Eminent Experts also noted the need for conducive conditions within Yemen including a united governance system.

<sup>84</sup> This obligation is set out in common article 1 to the four Geneva Conventions of 1949, and is regarded as applicable in non-international armed conflict under customary international humanitarian law: *ICRC Study on Customary International Humanitarian Law*, rule 144.

<sup>85</sup> The Arms Trade Treaty (ATT) prohibits the transfer of conventional arms or related items if the State party has knowledge that they would be used in the commission of certain international crimes: art. 6(3). The ATT further requires, in other cases, States to consider the importing States’ respect for international humanitarian law before authorizing the export of arms: art. 7 ATT. Among relevant State Parties to the ATT are the United Kingdom of Great Britain and Northern Ireland, France and Canada. European Union members are also bound by the terms of the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

<sup>86</sup> International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, art. 16, and the commentary thereto.

<sup>87</sup> See A/HRC/45/CRP.7, para. 414, footnote 630 regarding Canada’s announcement in April 2020 that following a renegotiation of its arms transfer contract with Saudi Arabia, it would be proceeding with case-by-case examinations of export permit licenses to Saudi Arabia to ensure compliance with Canadian law and its obligations under the ATT. In 2020, Saudi Arabia received approximately \$1.3 billion (Can\$) in Canadian military exports (accounting for approximately 67 per cent of the total value of non-U.S. military exports): Government of Canada, 2020 Report on Exports of Military Goods from Canada, p. 6.

<sup>88</sup> French arms exports in general declined in 2020 (by 41 per cent), with the Ministry of Defence attributing this decline to the global health crisis and the absence of major contracts. However, its biggest client was Saudi Arabia, with orders received in 2020 worth some €703.9 million: See: [www.defense.gouv.fr/actualites/articles/rapport-au-parlement-2021-sur-les-exportations-d-armement-de-la-france](http://www.defense.gouv.fr/actualites/articles/rapport-au-parlement-2021-sur-les-exportations-d-armement-de-la-france)



(Islamic Republic of),<sup>89</sup> and the United Kingdom of Great Britain and Northern Ireland,<sup>90</sup> continued their support of parties to the conflict, including through arms transfers.<sup>91</sup> In early February 2021, the United States of America announced that it would end its support for what it has called “offensive operations” in the Yemeni conflict, including arms sales, while reserving the right to assist Saudi Arabia to defend its sovereignty and territorial integrity.<sup>92</sup> This has left some ambiguity concerning the precise ambit of halted activity.<sup>93</sup> The United States of America has announced its intention to proceed with the sale of military equipment to the United Arab Emirates.<sup>94</sup> Italy, having in January 2020 revoked licenses for the export of missiles to Saudi Arabia and the United Arab Emirates,<sup>95</sup> more recently announced a loosening of other restrictions on arms and equipment sales.<sup>96</sup> In some positive developments, Germany extended its ban on exporting arms to Saudi Arabia until the end of 2021,<sup>97</sup> and in March 2021, the Belgian Council of State again suspended some specific export licenses.<sup>98</sup> The Group reiterates its grave concern about the way in which arms sales are contributing to a perpetuation of the conflict and violations, and calls again for third States to cease providing arms and other military support to parties to the conflict.

### III. Accountability as Part of the Preparedness for Peace

59. It is crucial that there be an end to hostilities in Yemen. Equally, it is imperative to ensure that any peace is sustainable. For this, peace must be based on respect for human rights, including the core principles of accountability and respect for victims’ rights to truth, justice and reparation. Yemen at present remains mired in conflict. There are ongoing efforts, including through initiatives of the United Nations Secretary-General’s Special Envoy for Yemen, to encourage the parties to the conflict to agree to a comprehensive ceasefire and reach a negotiated agreement for peace. Even at this stage, there is a need for the parties, the Yemeni community and the international community to be ready for any peace process. With this in mind, the Group of Eminent Experts offers some reflections on what can be done now to build this ‘peace preparedness’, integrate human rights and accountability into the peace process and maximize the prospects for future transitional justice processes.

60. In offering these perspectives, the Group of Eminent Experts underlines that comprehensive transitional justice initiatives must be shaped and owned by the Yemeni community. They must be underpinned by proper consultations with victims, who must be empowered to play a key role during the conceptualization, design and implementation phases of any initiatives. Many aspects of any comprehensive transitional justice package

<sup>89</sup> See Final report of the Panel of Experts, S/2021/79, p. 2 and paras. 76, 84-85.

<sup>90</sup> See A/HRC/45/CRP.7, footnote 630, as to the United Kingdom’s resumption of consideration of arms export licenses to Saudi Arabia in early July 2020, after concluding that past international humanitarian law violations by Saudi Arabia had been “isolated incidents”. According to figures released by the Department of International Trade, for instance, the value of military export licenses to Saudi Arabia during 2020 was over £1.4 billion: See: Department of International Trade, Strategic Export Controls: Country Pivot Report, 1st January 2020 – 31st December 2020, July 2021, p. 527.

<sup>91</sup> Other States transferring arms or equipment include Australia, China, Spain and South Africa.

<sup>92</sup> [www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/](https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/)

<sup>93</sup> As to attempts by some members of the US Congress to have the parameters of the policy further clarified, see <https://theintercept.com/2021/05/27/yemen-biden-support-congress-letter/>. The US is understood to be proceeding with sales of a Terminal High Altitude Area Defence (THAAD) ballistic missile system and Blackhawk helicopters to Saudi Arabia: [www.janes.com/defence-news/news-detail/sikorsky-contracted-to-deliver-25-black-hawk-helos-to-saudi-arabia](http://www.janes.com/defence-news/news-detail/sikorsky-contracted-to-deliver-25-black-hawk-helos-to-saudi-arabia)

<sup>94</sup> The US administration has confirmed its intention to proceed with the sale of F35 Joint Strike Fighter aircraft, armed drones and other defence equipment to the United Arab Emirates: see [www.navair.navy.mil/news/Air-Air-Missiles-Program-Office-hits-new-milestone/Thu-04222021-0913](http://www.navair.navy.mil/news/Air-Air-Missiles-Program-Office-hits-new-milestone/Thu-04222021-0913); <https://nycfpa.org/?p=5065>

<sup>95</sup> [www.middleeasteye.net/saudi-uae-coalition-arms-sales-country-breakdown](http://www.middleeasteye.net/saudi-uae-coalition-arms-sales-country-breakdown)

<sup>96</sup> [www.euronews.com/2021/07/06/us-italy-arms-saudi-emirates](http://www.euronews.com/2021/07/06/us-italy-arms-saudi-emirates)

<sup>97</sup> [www.middleeasteye.net/saudi-uae-coalition-arms-sales-country-breakdown](http://www.middleeasteye.net/saudi-uae-coalition-arms-sales-country-breakdown)

<sup>98</sup> [www.esu.ulg.ac.be/belgian-council-of-state-suspends-export-licences-for-arms-to-saudi-arabia/](http://www.esu.ulg.ac.be/belgian-council-of-state-suspends-export-licences-for-arms-to-saudi-arabia/) and [www.raadvst-consetat.be/arr.php?nr=249991](http://www.raadvst-consetat.be/arr.php?nr=249991)

will need to await Yemen's entering into a transitional phase. However, steps can be taken now to help ensure that the peace process itself serves to support current and future accountability and transitional justice measures.

61. There are four areas in particular that the Group of Eminent Experts would highlight as potential areas for action:

### 1. Enhancing the inclusivity of the peace process

62. During the reporting period, there have been a variety of initiatives aimed at bringing an end to the conflict. Proposals have been put forward, for instance, by the United Nations Special Envoy on Yemen as well as individual States.<sup>99</sup> None have yet been accepted by all parties to the conflict.

63. In relation to the international peace negotiations facilitated by the United Nations Special Envoy, the emphasis has been on gathering together representatives from the Government of Yemen and the de facto authorities. From 2015 onwards, the Security Council has urged the parties to the conflict to engage in a dialogue with a view to ending the conflict. In Security Council resolution 2216 (2015), for instance, the Security Council called for the parties to resume and accelerate "inclusive United Nations-brokered negotiations, including on issues relating to governance, to continue the political transition in order to reach a consensus solution" and called on the parties "to agree on the conditions leading to an expeditious cessation of violence, in accordance with the United Nations Charter and relevant Security Council resolutions, including this resolution and resolution 2201 (2015)" (para. 5).

64. The Council, in that resolution, demanded that "all Yemeni parties adhere to resolving their differences through dialogue and consultation...and stresses that all parties should take concrete steps to agree and implement a consensus-based political solution to Yemen's crisis" (para. 6).

65. The Security Council, then and now, requested the Secretary-General to "intensify his good offices role in order to enable a resumption of a peaceful, inclusive, orderly and Yemeni-led political transition process that meets the legitimate demands and aspirations of the Yemeni people, including women, for peaceful change and meaningful political, economic and social reform, as set out in the Gulf Cooperation Council Initiative and Implementation Mechanism and the outcomes of the comprehensive National Dialogue Conference."<sup>100</sup>

66. The United Nations Special Envoy (as the representative of the Secretary-General) has a very particular role in enabling an inclusive political transition process. The Group of Eminent Experts welcomes the steps taken by the Special Envoy to incorporate underrepresented groups, but would call upon the Special Envoy to intensify action to ensure that the voices of underrepresented groups (including women, youth, members of minorities, and other marginalized groups) and civil society (including victims' associations) can be heard. While accepting that a peace process must be sufficiently contained to be manageable, the Group would encourage the Special Envoy to explore further modalities to ensure that such voices are afforded equal opportunity to influence the potential outcome of any peace agreement.

67. To take one example of the current exclusion of certain groups amidst the present emphasis on the 'two-party-negotiations', the Group of Eminent Experts has noted with concern that less than a handful of women were amongst the delegates at the United Nations-led talks in Kuwait in 2016 and in Sweden in 2018.<sup>101</sup> The Group has previously expressed concern as to the lack of any women appointed as Cabinet members in the government

<sup>99</sup> A/HRC/48/20, para. 15.

<sup>100</sup> S/RES/2216, para. 13. For a more recent expression of support for the UN Special Envoy in supporting the Yemeni transition process and an inclusive Yemeni-led and Yemeni-owned political process, with the full, effective and meaningful participation of women: see S/RES/2564 (2021), preamble.

<sup>101</sup> International Crisis Group, *The Case for More Inclusive – and More Effective – Peacemaking in Yemen*, Middle East Report No 221, 18 March 2021, p. 7.

formed in December 2020.<sup>102</sup> The United Nations Special Envoy's Office formed a Women's Technical Advisory Group in 2018, and in mid-2021, held a five-day meeting in Amman with women drawn from six Yemeni political parties.<sup>103</sup> At the same time, concerns have been raised about perceived limits on the ability of these select initiatives to have a meaningful influence on proceedings.<sup>104</sup> In his final briefing to the Security Council on 15 June 2021, United Nations Special Envoy Martin Griffiths recognized the need for an inclusive political process if Yemen is to move away from the cycle of violence and conflict which engulfs it. He also stated that the political settlement must "guarantee the interests and rights of those most affected by the conflict, and not only those who perpetuate and lead in the conflict", and that engagements with Yemeni civil society, women, local leaders and movements and youths had not been "as frequent as they should have been".<sup>105</sup> The Security Council has also heard directly from a representative of Yemeni civil society, Najiba Al Naggar, regarding the exclusion of women from formal, meaningful roles in the United Nations-led peace process, calling on the United Nations and Yemeni authorities to do more to ensure women's direct participation as set out in Security Council resolution 1325 (2000).<sup>106</sup>

68. The Group of Eminent Experts echoes this call for a more inclusive peace process and encourages in particular greater engagement with underrepresented groups and those who have lived experience of violations. Whether through stronger pressure on parties to broaden the representation of their delegations, or through establishing further modalities (e.g. having a clear role for under-represented groups and civil society in discussions, or establishing official consultations as part of and contributing to the negotiations, or holding additional high-level (virtual or in person) workshops involving a broader range of interlocutors),<sup>107</sup> the Group considers it vital that steps be taken to address the evident imbalances.

## 2. Integrating a principled approach to accountability in discussions of any peace agreements

69. The issue of accountability has been disappointingly absent from much of the discussion of a future Yemen peace process. The Group of Eminent Experts encourages consideration to be given to the adoption of an explicit principled commitment to accountability at an early stage of any peace process discussions. Accountability and respect for human rights could, for instance, be mentioned as amongst the fundamental principles to be taken into account in an agreement such as a 'key principles' document or 'framework agreement' preceding or accompanying peace talks. There are precedents in other processes that might be useful. In Nepal, for instance, the commitment that violations would be investigated and action taken was included as part of the 12 Point Agreement (of 2005) that preceded and helped shape the Comprehensive Peace Agreement (of 2006).<sup>108</sup> The shape of

<sup>102</sup> Address by Kamel Jendoubi, Chairperson of the Group of Eminent Experts on Yemen, to the Human Rights Council, 25 February 2021.

<sup>103</sup> <https://hi-in.facebook.com/OSESGY/posts/our-office-concluded-yesterday-a-5-day-meeting-in-amman-with-women-from-6-yemeni/4007266326021969/>

<sup>104</sup> International Crisis Group, *The Case for More Inclusive – and More Effective – Peacemaking in Yemen*, Middle East Report No 221, 18 March 2021, p 9.

<sup>105</sup> Briefing to United Nations Security Council by the Special Envoy for Yemen – Martin Griffiths, 15 June 2021, available at: <https://osesgy.unmissions.org/briefing-united-nations-security-council-special-envoy-yemen-%E2%80%93-martin-griffiths-4>

<sup>106</sup> Najiba Al Naggar, founding member and Programmes Manager of SOS Centre for Youth Capabilities Development, addressed the Security Council during its monthly consideration of Yemen on 15 June 2021: S/PV.8797.

<sup>107</sup> As to the range of modalities that might be considered, see for instance, Thania Paffenholz, *Inclusivity in Peace Processes* (United Nations University, Centre for Policy Research, 2015). The Group of Eminent Experts welcomes the Office of the Special Envoy for Yemen's use of technological tools to interact with a broader range of persons: see <https://osesgy.unmissions.org/cutting-edge-tech-service-inclusive-peace-yemen>

<sup>108</sup> Art 7.1.3 of the Comprehensive Peace Agreement (Nepal) of 2006 provided for instance: "Both sides express the commitment that impartial investigation and action would be carried according to law against people responsible creating obstructions to the exercise of the rights envisaged in the letter of agreement and ensure that impunity will not be tolerated. Apart from this, they also ensure the right of the victims of conflict and torture and the family of disappeared to obtain relief."

any integrated approach to transitional justice will necessarily require more detailed consideration and deliberation after any peace agreement. However, inclusion of an appropriate in-principle commitment would be of clear benefit, since the way in which accountability and impunity are treated in any peace agreement will “often set the terms of the debate and shape the mechanisms which follow”.<sup>109</sup>

70. One topic that requires particular vigilance is amnesties. While international humanitarian law encourages authorities to grant the broadest possible amnesty to persons who have participated in armed conflict at the end of hostilities, this does not apply to the commission of war crimes.<sup>110</sup> Similarly, from the international human rights perspective, amnesties are not permitted if they: prevent prosecution of individuals who may be criminally responsible for genocide, crimes against humanity or gross violations of human rights, including gender-specific violations; interfere with victims’ right to an effective remedy, including reparations; or restrict victims’ and societies’ right to know the truth about violations of human rights and humanitarian law.<sup>111</sup> United Nations mediators are precluded from endorsing “peace agreements that provide for amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, including sexual and gender-based violence”.<sup>112</sup> In the context of Yemen, with its experience of a blanket amnesty having been provided for President Saleh and his associates as part of the Gulf Cooperation Council (GCC) Initiative, particular care is needed to avoid an amnesty covering these type of crimes and violations as part of any resolution of the current conflict.

### **3. Creating and preserving space for discussions on transitional justice, prioritizing consultations with victims**

71. Whether as part of the initial peace agreement or a subsequent national compact, it will be vital to create and preserve space for discussion about transitional justice. “Transitional justice” refers to the range of processes and mechanisms introduced in order to address a legacy of large-scale violations of human rights, in order to “ensure accountability, serve justice and achieve reconciliation”.<sup>113</sup> It is focused on restoring, protecting and promoting the human rights of individuals and communities whose rights have been violated during a conflict. More broadly, it is part of a process of rebuilding trust, the rule of law and respect for human rights in a State ravaged by conflict. Transitional justice can thus be considered “a transformative process contributing to the reconstruction of the fabric of society torn apart by conflict”.<sup>114</sup> It is not separate from, but inextricably linked to, ensuring a sustainable peace for Yemen and preventing the repetition of the mass violations Yemen has witnessed in recent years.

72. It will be for the people of Yemen to decide upon the particular shape of transitional justice responses that are appropriate for the Yemeni context and that respond to the particular experiences, including the multiple conflicts that Yemen has faced. The Group of Eminent Experts does not therefore presume to prescribe a particular set of mechanisms for adoption.

73. The Group of Eminent Experts does, however, note the importance of a proper process. To be effective, the transitional justice dialogue, design process and implementation must itself be based on human rights principles – including non-discrimination and equality.

<sup>109</sup> Astrid Jamar and Christine Bell, *Transitional Justice and Peace Negotiations with a Gender Lens* (UN Women, 2018), p. 20.

<sup>110</sup> Art. 6(5) Additional Protocol II to the Geneva Conventions (applying also to persons deprived of their liberty for reasons related to the armed conflict). See ICRC, *Commentary on the Additional Protocols* (1987), para. 4617; and *ICRC Study on Customary International Humanitarian Law*, rule 159.

<sup>111</sup> OHCHR Rule of Law Tools for Post-Conflict States: Amnesties (2009), p. 11. The tool outlines the relevant legal provisions supporting this approach. See too the Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-recurrence’s recent discussion of the incompatibility of amnesties with international human rights norms in his recent report: A/HRC/48/60, paras. 26-33.

<sup>112</sup> UN Guidance for Effective Mediation (2012), p. 17.

<sup>113</sup> Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (2010), p. 2.

<sup>114</sup> Transitional Justice and accountability: a roadmap for sustainable peace in South Sudan: Conference room paper of the Commission on Human Rights in South Sudan, A/HRC/45/CRP.4, para. 15.

All relevant groups must be included in the discussion, including those often marginalized in public policy discussions in Yemen such as women, youth, minorities, migrants, and displaced persons. Victims and victims' associations must be central in the process: not as passive recipients or bystanders, but as actively engaged rights-holders, centrally involved in the debate, design and implementation of measures.

74. As the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has stressed,<sup>115</sup> it is important for transitional justice to be viewed in a holistic fashion: to seek an appropriate combination of mechanisms that can provide variously for truth-seeking, criminal justice accountability, reparations and institutional reform. Rather than being able to trade one objective over another, measures should be mutually reinforcing in addressing past violations and preventing their recurrence.

75. Yemen is no stranger to embarking upon discussions of transitional justice. In 2011, part of the mandate of the National Dialogue Conference (NDC) was “[t]aking steps aimed at achieving national reconciliation and transitional justice, and measures to ensure that violations of human rights and humanitarian law do not occur in the future”.<sup>116</sup> The NDC took place from March 2013 to January 2014.<sup>117</sup> It was deliberately designed to be more inclusive than previous processes in Yemen. Of the 565 delegates, 50 per cent of places were guaranteed for representatives of the southern population, 30 per cent for women, and 20 per cent for youth.<sup>118</sup> A Working Group was established on Issues of National Dimensions, National Reconciliation and Transitional Justice. Transitional justice proved to be one of the thorniest issues, with disagreement on fundamental issues as to, for instance, the span of years/conflict periods that should be the focus of any truth commission, or the extent to which the NDC could re-open the issue of amnesties. In the Outcomes Document, there was a lengthy summary of the decisions made in principle, with significant detail on the topic of truth seeking, reparations and institutional change, but notably less in relation to prosecutions.

76. A draft transitional justice law, originally written in 2012, was modified in 2014 to bring it into line with the conclusions of the NDC.<sup>119</sup> As the United Nations High Commissioner for Human Rights noted at the time, the final draft did not comply with international norms and standards, in particular by not including any provisions on accountability. It sought to strengthen immunities for high officials and establish a mandate for a transitional justice commission.<sup>120</sup> Some broader consultations on the transitional justice law were undertaken, albeit in a limited fashion.<sup>121</sup> All legislative initiatives, however, came to a halt once conflict resumed and governmental institutions suspended their work.

77. To recall the NDC in this context is not to suggest that the NDC process was perfect and should be replicated without modification. It is acknowledged that the context has

<sup>115</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/21/46, paras. 21-2.

<sup>116</sup> Agreement on the implementation mechanism for the transition process in Yemen in accordance with the initiative of the Gulf Cooperation Council, art. 21(f).

<sup>117</sup> A technical preparatory committee process, supported by the United Nations, took place from June to December 2012: <https://osesgy.unmissions.org/national-dialogue-conference>

<sup>118</sup> Situation of human rights in Yemen: Report of the United Nations High Commissioner for Human Rights, A/HRC/24/34, para. 6. 120 seats were reserved for those unaffiliated with political parties, including 40 for civil society representatives: Elizabeth Murray and Susan Stigant (eds.), *National Dialogues in Peacebuilding and Transitions: Creativity and Adaptive Thinking* (Peaceworks, 2021) p. 92. Some note that representation did not equate with influence: see e.g. Marta Abrantes Mendes, *A Passage to Justice: Transitional Justice and Long-Term Accountability in Yemen* (Open Society Foundations, 2021), pp. 16-17.

<sup>119</sup> Situation of human rights in Yemen: Report of the United Nations High Commissioner for Human Rights, A/HRC/30/31, para. 79.

<sup>120</sup> Ibid.

<sup>121</sup> Through a joint project, OHCHR and the United Nations Development Programme, for example, provided support to different stakeholders in the area of the transitional justice, including by facilitating consultation workshops on the draft transitional justice law, convening representatives of the Government, the Parliament, political parties, national dialogue members, lawyers, victims' associations and tribal communities, as well as representatives of minorities and religious communities: *ibid.*, para. 86.

significantly changed in Yemen since the NDC took place. However, the NDC offers an important point of reference and a source of lessons. Amongst these lessons are that an inclusive process can be successfully undertaken in Yemen, though it is vital to have supporting procedures that enable meaningful participation and influence. It is also important to recognize that in Yemen, there have been a succession of conflicts, each carrying with them a legacy of unmet aspirations for truth, justice and reparations, requiring careful deliberation. After another nearly seven years of conflict, and the further fracturing of communities, the situation is necessarily more complex than in 2011.

78. Any such national dialogue will also need to be accompanied by appropriate consultations, particularly with victims. As the United Nations Secretary-General stated “the most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out.”<sup>122</sup> Consultations are not only required by international human rights law (arising out of the right to take part in the conduct of public affairs), but are intrinsically linked to ensuring transitional justice programmes reflect the experiences, needs and entitlements of those who have been affected by conflict and the attendant violations. Consultations assist in shaping appropriate initiatives – for example, defining the role for victims in processes, or identifying appropriate means of truth-telling and reparations, as well as playing an important role in empowering victims, restoring dignity, and engendering support for transitional justice mechanisms.<sup>123</sup> For the consultations to be effective, victims must be empowered through access to relevant information and capacity building. The process itself must be participatory with specific attention to ensuring a conducive environment (including with respect to the safety of participants). Any consultation must also be meaningful – so that inputs feed into decision-making.

#### **4. Strengthening capacities of Yemeni civil society**

79. The Group of Eminent Experts supports the strengthening of all relevant actors within Yemen to undertake work to support accountability and future transitional justice initiatives. In its previous reports, the Group highlighted the work of the NCOI and areas requiring strengthening in its operation. It has also noted systemic weaknesses in the justice system and the technical assistance needs within the Attorney General’s Office, for instance, in relation to handling international crimes.

80. In this paper, the Group of Eminent Experts draws particular attention to the desirability of further targeted initiatives to strengthen civil society organizations in this accountability and transitional justice space. Civil society organizations play a critical role in accountability and transitional justice initiatives. In Yemen, as in many other contexts, they are often the first port of call for victims who look to them to provide support, referrals, to listen to their stories and help to amplify their voice. In the current environment in Yemen, it is civil society organizations that are regularly monitoring violations and collecting information that may be crucial for later criminal prosecutions and reparations programmes. In the course of its operations, the Group has been assisted by many non-governmental organizations and witnessed their powerful advocacy on necessary changes. From the work of organizations dedicated to monitoring violations or to obtaining information on the fate/whereabouts of the disappeared, to the efforts of local groups formed in response to the devastating experience of an airstrike advocating for compensation, to humanitarian-focused organizations assisting men, women and children access the basic necessities of life in the precarious situation of ongoing conflict and displacement, all these national and international non-government organizations are playing a key role in seeking to combat and address violations in Yemen.

81. The Group of Eminent Experts strongly supports stakeholders, including the international community, to provide targeted support to strengthen the technical capacities of such organizations. Some of the priority areas that the Group would identify in this space

<sup>122</sup> Report of the Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, para. 16.

<sup>123</sup> As to the various contributions of consultations in this area, see Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/71/567, paras. 5-6.

include initiatives to strengthen civil society involvement in documenting and investigating violations, preserving evidence (including chain of custody issues), investigating sexual and gender-based violence and integrating gender more broadly into investigations, analysing violations of economic, social and cultural rights, including the right to a safe, clean, healthy and sustainable environment, and protecting victims and witnesses. Support for building a broader network of victims' associations will also be critical to allow for the voices of those most affected by this conflict to be heard.

82. As has been noted above, it is vital that civil society organizations, in particular those representing victims and marginalized groups, are empowered to play a central role in ongoing discussions about the peace process, as well as the design and implementation of transitional justice and accountability measures. Prior to the conflict, particularly around the NDC process, specific programmes aimed to build knowledge and capacity within civil society on issues of transitional justice, accountability and good governance. A recent survey of attitudes towards transitional justice in Yemen from key civil society members has highlighted, for example, the ongoing need to promote legal awareness and technical knowledge in Yemen concerning potential options to pursue criminal accountability.<sup>124</sup> Capacity-building programmes might also usefully include comparative approaches to truth-seeking and reparations, and mechanisms for promoting reconciliation. Peer-based programmes might usefully share comparative experiences of civil society in influencing peace processes and transitional justice discussions.

#### IV. Recommendations

83. **To all parties to the conflict:**

(a) **Work to end impunity and ensure full accountability for violations of international human rights law, international humanitarian law, and crimes under international law by pursuing all credible allegations of such violations and crimes through prompt, effective and thorough, credible, independent and impartial gender-sensitive investigations, and bringing perpetrators to account in line with international human rights norms and standards;**

(b) **Include a specific focus on the investigation, prosecution and punishment of direct perpetrators and their superiors for acts of gender-based violence and grave violations against children; specifically ensure investigations are conducted into the allegations raised in the reports of the Group of Eminent Experts;**

(c) **As a matter of urgency, review the nature and scope of existing assistance schemes, including financial assistance; and on the basis of consultations with victims, broaden the provision of immediate assistance, for example to include ongoing medical assistance and psychosocial support; and develop further programmes to support and rehabilitate victims as well as effective mechanisms to provide victims with the truth about violations (including the fate and whereabouts of those who have been disappeared);**

(d) **Commence work on a comprehensive policy and package of measures regarding the fulfilment of the right to reparation of victims of serious human rights and humanitarian law violations and abuses, ensuring all reparations schemes are designed in collaboration with victims and are designed and implemented in a gender-sensitive manner;**

(e) **Ensure that survivors, especially in cases of sexual violence and torture, have unrestricted access to free, confidential and gender sensitive medical support, including psychological and psychosocial support or mental healthcare as needed.**

84. **To the United Nations and the international community:**

<sup>124</sup> Marta Abrantes Mendes, *A Passage to Justice: Selected Yemeni Civil Society Views for Transitional Justice and Long-Term Accountability in Yemen* (Open Society Foundations, 2021), p.11.

- (a) Promote and support all efforts, notably by the Special Envoy of the Secretary-General for Yemen, to reach a cessation of hostilities and achieve a sustainable and inclusive peace;
- (b) Take steps to encourage greater inclusivity in the peace process so as to ensure the full involvement of underrepresented groups such as women, minority groups and youth;
- (c) Actively support the integration of human rights and the issue of accountability into negotiations of any peace process, and avoiding any steps which would undermine respect for human rights and accountability (e.g. the granting of blanket amnesties, or shrinking the space for consultations on accountability issues, in particular, consultations with victims);
- (d) Support initiatives to undertake necessary mapping and needs assessments of victims with a view to informing immediate relief as well as longer-term reparations programmes;
- (e) Support targeted programmes to advance the strengthening of civil society, including victims' associations, with a view to maximizing their contribution to accountability initiatives and ensuring their effective engagement in any peace process and evolving discussions on transitional justice;
- (f) Take all reasonable measures to ensure respect for international humanitarian law and international human rights law by all parties to the conflict; in particular, by third states ceasing to provide arms and military support to the parties and using all potential forms of domestic jurisdiction to investigate and prosecute war crimes committed in Yemen; and for the United Nations Verification and Inspection Mechanism for Yemen to strengthen monitoring, surveillance, prevention and enforcement measures to counter the ongoing flow of arms;
- (g) For the Security Council to integrate the accountability aspect of the Yemen conflict more fully into its agenda and ensure there is no impunity for the most serious crimes by, inter alia, referring the situation in Yemen to the International Criminal Court, and expanding the list of persons subject to Security Council sanctions;
- (h) For the Human Rights Council and/or the General Assembly to consider the creation of an independent international criminal justice-focused investigative mechanism for Yemen that would operate alongside the Group of Eminent Experts.

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