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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Implementation of technical assistance provided to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report provides an overview of the technical and capacity-building assistance that the Office of the United Nations High Commissioner for Human Rights has provided to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen since the adoption, on 11 October 2021, of Human Rights Council resolution 48/21.

In the present report, the High Commissioner provides updates on the mandate, composition, secretariat and resources of the National Commission of Inquiry, on the progress achieved by it and on the continued challenges it faces in implementing its mandate. Furthermore, the High Commissioner makes recommendations to be implemented by all stakeholders.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 48/21, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide substantive capacity-building and technical assistance to the Government of Yemen and technical and logistical support to the National Commission of Inquiry to enable it to continue to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, in line with international standards. Also in that resolution, the Council requested the High Commissioner to present a written report on the implementation of that technical assistance to the Council at its fifty-first session.
2. In the present report, the High Commissioner provides updates on the mandate and composition of the National Commission of Inquiry, which started its work in October 2015, and also provides an overview of the technical and capacity-building assistance that the Office of the United Nations High Commissioner for Human Rights (OHCHR) provided to the National Commission of Inquiry between September 2021 and August 2022. A number of the activities that were planned for the reporting period were still pending implementation, due to obstacles encountered in recruitment and the planning of events in or out of country.
3. The present report should be read in conjunction with the previous reports of the High Commissioner to the Human Rights Council on the situation of human rights in Yemen,¹ which included information on the technical and capacity-building assistance provided by OHCHR to the National Commission of Inquiry.

II. National Commission of Inquiry

A. Mandate

4. The National Commission of Inquiry was established under Presidential Decree No. 140 of 2012, pursuant to which it is mandated to investigate all alleged violations of international human rights law and international humanitarian law that have taken place since 2011, to investigate individual and group complaints received and to identify the perpetrators. It is also empowered to subpoena and hear the testimony of any person and to obtain relevant documents and other evidence. Revisions to its mandate were introduced in Presidential Decrees No. 13 of 2015, No. 66 and No. 97 of 2016, No. 50 of 2017 and No. 30 of 2019. There were no changes during the reporting period.
5. When it was first established in 2012, the mandate of the National Commission of Inquiry was to investigate alleged violations of international law that had taken place in 2011 only, but revisions to its mandate extended the period of time to cover all alleged violations that have taken place since 2011.
6. The National Commission of Inquiry reports directly to the President of Yemen and the Supreme Judicial Council.² As at 7 April 2022, the President, Abderrabu Hadi, had transferred his power to an eight-member Presidential Leadership Council composed of a Chair, Rashad Mohammed Al-Alimi, and seven vice-chairs. It is understood that the National Commission now reports to the new Council.

B. Composition

7. The National Commission of Inquiry is composed of nine commissioners, currently five men and four women.³ Four commissioners are from northern governorates and five, including the Chair, are from southern governorates. Four of the commissioners are judges,

¹ [A/HRC/33/38](#), [A/HRC/36/33](#), [A/HRC/39/43](#), [A/HRC/42/33](#), [A/HRC/45/57](#) and [A/HRC/48/48](#).

² Presidential Decree No. 50 of 2017, art. 4.

³ Ahmed Saeed al-Maflehi, Hussein Omer al-Mashdaly, Gehad Abdulrasool al-Dengi, Nasser Qasem al-Awdhali, Hezam Mohammed Ali, Sabah Ahmed al-Wani, Eshrak Fadhil Thabit, Dheyha Khaled Muhirez and Mohammed Hussein Tolyan.

three are lawyers and two are university professors. After the two-year term of the current commissioners ended on 23 August 2021, their appointment was extended for two years without any changes under Presidential Decree No. 9 of 28 September 2021. There has been some criticism regarding the profile of the commissioners, including on the overrepresentation of persons associated with the judiciary and of persons with strong credentials as civil society activists.

8. On 4 August 2022, the Chair of the Presidential Leadership Council issued Decree No. 21, pursuant to which the entire membership of the Supreme Judicial Council was reshuffled and a female judge, Sabah Ahmed al-Wani, was appointed for the first time in the history of the Council. Ms. al-Wani is also a member of the National Commission of Inquiry. At the time of submission of the present report, there was no indication of when she would leave the National Commission to avoid any conflict of interest.

C. Secretariat

9. The secretariat of the National Commission of Inquiry is headed by an acting General Secretary, Mashdal al-Mashdali, based in Aden. It has one sub-office in Ta'izz. The planned opening of a second sub-office in Ma'rib remains pending.

10. The investigative team consists of nine assistant investigators, all of whom are men. There are plans to recruit women but the proclaimed aim of improving the participation of women in the investigative team of the secretariat remains a work in progress. The 41 field monitors (9 of whom are women) and five volunteers (two of whom are women) have no contract but receive reimbursement for expenditure; there are also two criminal experts and three military experts (all of whom are men). Seven of the assistant investigators are based in Aden and two in Ta'izz. They supervise the work of the field monitors and report to the commissioners, who sign off on each case file before the Chair of the National Commission of Inquiry gives final approval prior to transferral to the judiciary. Field monitors are deployed in 19 of the 21 governorates and the capital municipality in the country. The three governorates of Raymah, Mahrah and Socotra archipelago are covered from neighbouring governorates.

11. The secretariat is composed of 28 staff members, 9 of whom are women. The support staff carry out various functions, including management of the database, communications, information technology support and administration.

D. Resources

12. In accordance with international standards, commissions of inquiry should be provided with transparent funding to ensure that their independence is never in doubt.⁴ Article 6 of Presidential Decree No. 140 of 2012 concerning the financial regulations of the National Commission of Inquiry states that funding to support the activities of the National Commission will be provided by the Government of Yemen, by other Governments and international human rights bodies and, in the form of grants, by foreign entities.

13. As in previous years, the National Commission of Inquiry did not publish information about its funding during the reporting period. A project funded by the Netherlands to provide capacity-building and information technology hardware and software ended in 2021. Aside from Saudi Arabia, no other country has announced plans to provide financial support to the National Commission.

⁴ Updated set of principles for the protection and promotion of human rights through action to combat impunity, principle 11 (a).

E. Progress achieved and challenges facing the National Commission of Inquiry

14. Operating in a constantly evolving political and security environment that often creates new challenges to the discharge of its mandate, the National Commission of Inquiry remains steadfast in building its credibility and improving its legitimacy. This was particularly salient during the reporting period, when the judiciary in most areas under the control of the Government was on strike or was prevented from working. Prosecutors' offices were closed entirely until August 2021. During much of the reporting period, the National Commission was the only institution promoting accountability and access to justice that was functional in areas under the control of the Government of Yemen. Another positive development during the reporting period was the beginning, on 2 April 2022, of a two-month truce mediated among all parties by the Special Envoy of the Secretary-General for Yemen. The truce was renewed with the same provisions on 2 June and 2 August. Since the beginning of the truce, in April, the National Commission has issued monthly statements to report on the casualties registered, although no formal monitoring mechanism for potential violations, or breaches of the truce, was agreed among the parties.

15. During the reporting period, the de facto authorities in Sana'a continued to deny the National Commission of Inquiry formal access to the areas they control or to respond to its correspondence. Despite this, the presence and activities of the National Commission's field monitors in areas controlled by the de facto authorities remain tolerated. However, the de facto authorities have detained a male field monitor since 14 July 2017 without trial.

16. The investigative team of the National Commission of Inquiry has continued to document and investigate many cases in Yemen throughout the reporting period, despite numerous challenges, including limited Internet access, regular electricity outages, transportation difficulties, fearful sources and threats and attempted intimidation.

17. The National Commission of Inquiry issued its ninth periodic report on 8 September 2021. As in previous years, it covers violations of international humanitarian law and international human rights law, providing examples for each of the categories and clustering them by perpetrators, who are at times identified by their names and units.

18. As in previous years, cases do not include a detailed analysis of the exact nature of the violations and which international human rights law or international humanitarian law was specifically violated. This is an area where the National Commission of Inquiry will benefit from the advice of a legal expert whose employment is funded pursuant to Human Rights Council resolution 48/21. Furthermore, the National Commission does not publish all information in terms of mapping and identifying forces on the ground and chains of command. The decision to withhold such information may be reasonable given the volatile environment in which it operates.

19. The annual report could benefit from providing an overview of the main military and security trends and developments on the ground and providing updates on cases covered in past reports, or during the reporting period.

20. As a result of the almost complete paralysis of the judiciary during the reporting period, no progress was made in advancing discussions on the establishment of a dedicated court to review cases submitted by the National Commission of Inquiry to the Attorney General's Office over the years. In June 2022, shortly after Qaher Mustafa Ali was appointed as the new Attorney General, the National Commission met with him and initiated discussions on issues of common interest. The new Attorney General was the first Chair of the National Commission, between 2012 and 2017, and is familiar with its mandate and the discussions regarding accountability.

21. Engagement with civil society is an important element of the outreach activities of the National Commission of Inquiry and it has continued to hold both public and private meetings and hearings with human rights defenders, victims and witnesses in Aden and during its numerous field visits. In 2022, the National Commission continued its engagement with the International Center for Transitional Justice for online training activities. From 20 to 25 March 2022, three commissioners (two women and one man) attended a regional event

organized by the Center on transitional justice in fragile contexts, held in Istanbul, Türkiye. At the time of reporting, the Center and the National Commission were finalizing the preparation of a training session on transitional justice for all field monitors that was to take place in Beirut in September. The National Commission also cooperates with Geneva Call, a non-governmental organization, by exchanging information about incidents and perpetrators and discussing accountability issues in the security sector, especially in areas in which Geneva Call operates.

22. OHCHR and the National Commission of Inquiry have had preliminary discussions on how best to address the substantial capacity-building gaps that exist in the Yemeni judiciary to ensure accountability. The recent appointments of a new Attorney General, a new Chair of the Supreme Court and other members of the Supreme Judiciary Council, and the truce offer opportunities to strengthen and broaden discussions and ensure that accountability is prioritized in any peace process. OHCHR and the National Commission agreed to undertake needs assessments and encourage the country's international partners to provide support and resources to rebuild the rule of law in Yemen.

III. Technical assistance provided by the Office of the United Nations High Commissioner for Human Rights

23. Pursuant to Human Rights Council resolutions 36/31, 39/16, 39/21, 42/21, 42/31, 45/15, 45/26 and 48/21, OHCHR has continued to provide technical and capacity-building assistance to the National Commission of Inquiry. OHCHR has based such assistance on an ongoing dialogue to ensure that the activities offered meet the expressed needs of the commissioners, assistant investigators, field monitors and support staff.

24. In implementing the mandate given to it by the Human Rights Council, OHCHR has been guided by the principles of independence, impartiality, objectivity, credibility and professionalism.

25. OHCHR funded the travel to Geneva of all nine commissioners of the National Commission of Inquiry from 13 to 21 September 2021. In addition to meetings and briefings with diplomats and civil society organizations, the commissioners held a formal meeting with the three members of the Group of Eminent International and Regional Experts to discuss ways of cooperating. Those discussions remained inconclusive after the mandate of the Group was not renewed by the Human Rights Council at its forty-eighth session.

26. During their mission to Geneva, the members of the National Commission of Inquiry also held several meetings with OHCHR staff members working on transitional justice and accountability and heard briefings relating to the experience of other countries. As it is an issue of great interest to the National Commission, there was agreement to incorporate activities related to transitional justice into the 2022 programme of activities. However, events in Yemen and also in Tunisia, a destination that had been selected for a possible training event, did not allow the planned activities to be held.

27. Between October 2021 and July 2022, OHCHR developed and implemented several agreed activities to enhance the investigative and substantive capacity of the National Commission of Inquiry. During the reporting period, as in 2021, the coronavirus disease (COVID-19) pandemic and lack of funds resulted in a low implementation rate of the activities. Nonetheless, several activities and recruitments in progress will allow for the implementation of additional activities before the end of September 2022.

28. From 1 to 4 November 2021, OHCHR facilitated a consultative meeting in Aden for 38 field monitors to enhance knowledge of violations of international human rights law, in particular in relation to conventions to which Yemen is a State party.

29. From 20 to 23 March 2022, OHCHR facilitated a consultative meeting in Aden for 38 field monitors to enhance knowledge of international humanitarian law and monitoring and their application to the Yemeni context. The training sessions were delivered by the commissioners.

30. Since 1 July 2022, two national consultants have been providing substantive guidance and support to the National Commission of Inquiry on military affairs and international law. A consultant on international law will deliver a training session to the assistant investigators in Aden in September.

31. A human rights officer will be deployed temporarily to Aden in September and October 2022 to deliver training on the gender-sensitive documentation of violations of human rights and international humanitarian law. The training will be aimed at National Commission of Inquiry field monitors and assistant investigators. Time allowing, the nine commissioners will also receive training.

32. In September 2022, an international consultant will spend two weeks in Aden to assess the needs of the National Commission of Inquiry with the aim of developing an integrated monitoring and tracking system for case files submitted to the Attorney General's Office.

33. As a result of OHCHR advocacy, the Facility on Justice in Conflict and Transition commissioned a study on ways to support the National Commission of Inquiry in designing a mental health and psychosocial support referral system. This had been identified as a service that the National Commission was interested in but lacked the experience and funding to implement.

34. As in 2021, the balance of funds allocated for the National Commission of Inquiry will be used for the travel of the commissioners to Geneva to attend part of the fifty-first session of the Human Rights Council.

35. OHCHR stands ready to continue to provide substantive technical assistance and advice to the National Commission of Inquiry, including to strengthen its capacity to investigate and report on allegations of human rights violations and abuses committed by all parties to the conflict in Yemen, in line with international standards and with a view to putting in place the foundations for a human rights-based transition to peace and reconciliation.

IV. Conclusions and recommendations

36. **The United Nations-mediated truce that began on 2 April 2022 is a fragile achievement but one that has already brought relief and given some hope to many Yemenis. The National Commission of Inquiry, together with the Yemeni judiciary, must be ready to take action and respond to the expectations regarding access to justice and accountability. The international community should support those in Yemen who do not want another amnesty to be offered for the sake of political expediency, as was the case in 2012.**

37. **The National Commission of Inquiry, despite its structural challenges, is one of the few mechanisms (especially considering its fact-finding work) to address impunity in Yemen. The National Commission should continue to strive to gain stronger legitimacy and recognition for its human rights monitoring work, and as a respected monitor and provider of accurate information and evidence for criminal investigations. It is therefore critical for the National Commission to ensure that it is structurally and functionally independent, impartial and transparent when assessing the conduct of all parties to the conflict. In addition, it is essential for the National Commission to be effective in its investigations and for its findings to be backed by comprehensive legal analyses that are grounded in international law.**

38. **OHCHR remains committed to providing technical assistance and advice to the National Commission of Inquiry. OHCHR welcomes the progress made by the National Commission, such as the regular field visits made throughout Yemen, the consultations held with civil society groups and the improved reporting on different types of human rights violations and abuses and violations of international humanitarian law by all parties to the conflict.**

39. **With a view to strengthening the effectiveness and impact of the National Commission of Inquiry, the Office of the High Commissioner makes the recommendations set out below.**

40. **All parties to the conflict should:**

(a) **Fully cooperate with the National Commission of Inquiry so that it can safely, independently and effectively fulfil its mandate, notably by granting it access to all areas of Yemen, including all places of deprivation of liberty, and by providing it with all relevant information that it may request, including information related to the identity of alleged perpetrators;**

(b) **Implement all the recommendations made in the previous reports of the High Commissioner and the Group of Eminent International and Regional Experts to the Human Rights Council and in the reports of the Panel of Experts on Yemen to the Security Council to effectively pursue accountability for human rights abuses and violations and violations of international humanitarian law by all parties to the conflict.**

41. **The Government of Yemen should:**

(a) **Consider strengthening the mandate of the National Commission of Inquiry to ensure that it can effectively fulfil its role as an independent and transparent mechanism and propose measures to fully ensure the rights of victims, including to truth, justice and reparation, and to prevent further violations and abuses;**

(b) **Provide the National Commission of Inquiry with sufficient financial resources to hire all its staff on proper contracts, enable it to expand its outreach efforts and increase its accessibility, including by opening sub-offices throughout Yemen;**

(c) **Consider publishing the budget of the National Commission;**

(d) **Take adequate and effective measures to protect victims and witnesses who cooperate with the National Commission of Inquiry from any form of intimidation or reprisal, and provide safe spaces where they can have privacy to speak with the commissioners and investigative staff of the National Commission;**

(e) **Provide the Office of the Attorney General with sufficient financial resources to enable it to carry out investigations and prosecutions in respect of cases referred to it by the National Commission of Inquiry;**

(f) **Ensure the realization of the rights of victims to truth, justice and reparation, including through the initiation of a public debate on the development of a broader transitional justice framework that defines how the cases documented by the National Commission of Inquiry should be brought to justice, and contribute to the prevention of the recurrence of serious human rights violations, building on the outcomes of the National Dialogue Conference;**

(g) **Be prepared to incorporate issues of accountability and justice into concrete proposals should the truce evolve into a political dialogue.**

42. **The Attorney General of Yemen should:**

(a) **Systematically, promptly and effectively act upon the reports and cases received from the National Commission of Inquiry, irrespective of who the alleged perpetrators are;**

(b) **Ensure prompt, impartial and effective investigation into and prosecution of all cases of human rights violations and abuses and of violations of international humanitarian law in line with international standards, and determine clear, objective and transparent criteria for the prioritization of cases while the armed conflict is still under way;**

(c) **Ensure that all trials, whether in civilian or military courts, are held in line with international norms and fair trial standards, and cooperate in particular with the Supreme Judicial Council and the Judicial Inspectorate to maintain the highest standards;**

(d) **Ensure unfettered access by the staff of the National Commission of Inquiry to all places of deprivation of liberty, allowing confidential meetings with all detained persons, and pay attention to the recommendations related to detainees and conditions of detention contained in the reports of the National Commission.**

43. **The Supreme Judicial Council should:**

(a) **Give due consideration to the proposal submitted in 2017 by the National Commission of Inquiry to establish a specialized court with nationwide jurisdiction regarding conflict-related gross human rights violations and serious violations of international humanitarian law and contribute to reflections on how such a court could best assist in the realization of victims' rights to truth, justice and reparation and in an overall transitional justice process that contributes to the prevention of future violations and to reconciliation within communities;**

(b) **Ensure that all cases transmitted by the National Commission of Inquiry and brought before a court are processed and prosecuted when circumstances allow to ensure the safety of victims and witnesses and in respect of the highest standards of integrity and independence, thereby serving as an effective deterrent and as an effective avenue for justice for victims.**

44. **The National Commission of Inquiry should:**

(a) **Continue to investigate all alleged human rights violations and abuses and violations of international humanitarian law by all parties to the conflict with the same consistency and meticulousness, in compliance with international norms and standards and in line with the principles of objectivity, transparency, impartiality and professionalism;**

(b) **Take all feasible measures to protect victims and witnesses who contact the commissioners and other staff, with special attention to women, children, persons with disabilities and members of other vulnerable groups, including non-Yemenis;**

(c) **Continue to strengthen its engagement with civil society, including in the areas of transitional justice and accountability, and establish a permanent mechanism to interact with human rights defenders;**

(d) **Continue developing a communications strategy to enhance its visibility throughout Yemen and disseminate information about its mandate and role;**

(e) **Preserve its integrity and independence by continuing to adhere strictly to norms and standards of international law when issuing public statements about incidents;**

(f) **Expedite the launching of a simpler complaint mechanism through a mobile telephone-based application and website for victims and their relatives, as well as witnesses;**

(g) **Establish sub-offices throughout Yemen to facilitate access to it and the reporting of cases;**

(h) **Establish a follow-up mechanism with periodic meetings with the Office of the Attorney General in relation to the files submitted to the Attorney General.**
