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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, prepared pursuant to Human Rights Council resolution 51/39, contains 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. It covers the period from 7 October 2022 to July 2023.

In the present report, the United Nations High Commissioner for Human Rights 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. The High Commissioner concludes with recommendations to all relevant stakeholders.

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\* 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 51/39, adopted on 7 October 2022, 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 all requisite 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, and in line with international standards. The Council also requested the High Commissioner to present a report on the implementation of that technical assistance at its fifty-fourth session.
2. In the present report, the High Commissioner provides an update on the mandate and composition of the National Commission of Inquiry, which commenced its work in October 2015, and 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 between September 2022 and July 2023.
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,<sup>1</sup> which included information on the technical and capacity-building assistance provided by OHCHR to the National Commission of Inquiry.
4. The report was prepared with the full cooperation of the secretariat of the National Commission of Inquiry, the General Secretary of which was formally appointed during the reporting period.

## **II. National Commission of Inquiry**

### **A. Mandate**

5. The National Commission of Inquiry was established by 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.
6. 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.
7. The National Commission of Inquiry reports directly to the President of Yemen and the Supreme Judicial Council.<sup>2</sup> 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.

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<sup>1</sup> [A/HRC/33/38](#), [A/HRC/36/33](#), [A/HRC/39/43](#), [A/HRC/42/33](#), [A/HRC/45/57](#), [A/HRC/48/48](#) and [A/HRC/51/62](#).

<sup>2</sup> Presidential Decree No. 50 of 2017, art. 4.

## B. Composition

8. The National Commission of Inquiry is composed of a General Secretary and nine commissioners, currently five men and four women.<sup>3</sup> Four commissioners are from northern governorates and five, including the Chair, are from southern governorates. Four of the commissioners are judges, 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.

9. 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, more than a year after her appointment, she remains a member of the National Commission, which may raise concerns in respect of a potential conflict of interest. The term of the nine commissioners was renewed on 23 August 2023.

## C. Secretariat

10. The secretariat of the National Commission of Inquiry is headed by the General Secretary (male), based in Aden. It has a sub-office in Ta'izz and another in Ma'rib, which was opened in May 2023.

11. 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 investigative team comprises 44 field monitors (of whom 9 are women), including 2 new recruits in Hadramawt and Sana'a, respectively; six volunteers (of whom three are women) who have no contract but receive reimbursement for expenditure; and two criminal and three military experts (all of whom are men). An additional 10 field monitors are currently being recruited to ensure coverage of all governorates. 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 remain covered from neighbouring governorates, pending the recruitment and deployment of new staff members.

12. Furthermore, 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

13. In accordance with international standards, commissions of inquiry should be provided with transparent and sustainable funding to ensure that their independence is never in doubt.<sup>4</sup> 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.

<sup>3</sup> Ahmed Saeed al-Maflehi, Hussein Omer al-Mashdaly, Gehad Abdulrasool al-Dengi, Nasser Qasem al-Awdhali, Hezam Mohammed Ali, Sabah Ahmed al-Wani, Eshrak Fadhl Thabit, Dheya Khaled Muhirez, Mohammed Hussein Tolyan and Mashdl Mohammed Omer.

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

14. 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 Kingdom of the Netherlands, implemented by the International Center for Transitional Justice, provided capacity-building support on transitional justice to the National Commission. Activities implemented in the reporting period included a workshop in Amman from 12 to 14 January 2023 for the commissioners, as well as participants from the Ministry of Justice, the Office of the Attorney General and the Judicial Inspectorate, and another workshop in Amman from 20 to 25 July 2023 for field monitors and assistant investigators on using technology and open sources to document and investigate human rights violations and on mental health and psychosocial support. The latter activity was delivered by the University of California, Berkeley, United States of America.

## **E. Context, progress achieved and challenges facing the National Commission of Inquiry**

15. During the reporting period, the National Commission of Inquiry operated in a relatively calmer environment, despite the absence of a formal truce after its expiration on 2 October 2022. The parties to the conflict continued to adhere to most of the provisions of the truce, which led to a significant reduction in hostilities and civilian casualties. The truce also allowed the reopening of Sana'a airport to commercial traffic with Amman. Most recently, in June 2023, there were flights between Sana'a and Saudi Arabia to transport pilgrims taking part in the hajj. Unrestricted import of fuel products to Hudaydah resumed during the truce and the Government of Yemen authorized the unimpeded operation of Hudaydah port, resulting in the transfer of much of the import business from Aden to Hudaydah. The only provision of the truce that was not implemented was the reopening of roads to Ta'izz to end the effective siege of this large city, which is only accessible by mountain roads.

16. The Government of Yemen was negatively affected by attacks, attributed to the de facto authorities, on two crude oil export facilities on the southern shores of the country in October 2022, after the truce had expired. That happened presumably because neither the Government of Yemen nor the coalition agreed to the new demand of the de facto authorities that the salaries of all public sector employees, including those serving in armed forces, be paid by the Government of Yemen. As a result, there have been no exports of oil and gas from Yemen since.

17. In April 2023, delegations of Saudi and Omani officials visited Sana'a to discuss ways to end the nine-year-old war in Yemen. Negotiations in Sana'a were followed by the exchange of 869 prisoners between the Government of Yemen and the de facto authorities. The operation was facilitated by the Office of the Special Envoy of the Secretary-General for Yemen and the International Committee of the Red Cross. Despite those positive developments, skirmishes on the front lines did not stop, nor did the increases in civilian victims of landmines and explosive remnants of war in areas close to the front lines. Air strikes and cross-border attacks by the coalition and the de facto authorities have, however, ended since April 2022, and discussions for more exchanges of prisoners are under way.

18. During the reporting period, the de facto authorities in Sana'a continued to deny the National Commission of Inquiry formal access to the areas that they control or to respond to its correspondence, including the request made to assign a liaison officer. Despite that, the presence and activities of the National Commission's field monitors in areas controlled by the de facto authorities continue. One field monitor has been detained by the de facto authorities since 14 July 2017 without trial. By contrast, the National Commission maintained close relations and cooperation with relevant officials and institutions of the Government of Yemen and, through a liaison officer, with the Arab Coalition to Support Legitimacy in Yemen. The National Commission and the Joint Incident Assessment Team of the coalition have an ongoing dialogue; however, more efforts are needed to promote transparency and promptness in offering reparations to civilian victims of attacks by the coalition. That is something that the National Commission has limited engagement on, mostly transmitting information on incidents and victims and responding to follow-up queries.

19. 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.

20. The National Commission of Inquiry issued its eleventh periodic report on 29 August 2022, covering the period 1 August 2022 to 31 July 2023. As in previous years, it covers violations of international humanitarian law and international human rights law, providing examples of each of the broad categories and clustering them by perpetrators.

21. 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. A legal expert was provided by OHCHR, pursuant to Human Rights Council resolution 51/39, to support the National Commission of Inquiry to develop capacity on those matters, but this initiative had limited success. Moreover, the provision of the second expert in military matters did not result in a significant improvement in the analysis. Furthermore, the National Commission does not publish all information in terms of mapping violations (incidents) and identifying forces on the ground and chains of command, due to the highly volatile security environment in Yemen.

22. There was no progress during the reporting period in terms of transmitting more case files to the Office of the Attorney General, in which a dedicated team is in place to review the files submitted by the National Commission of Inquiry. Similarly, limited progress was made in advancing discussions on the establishment of a dedicated court to adjudicate cases involving grave violations of international human rights and humanitarian law, despite growing interest in transitional justice among Yemeni and international actors, and in view of the need for any peace process to acknowledge and respond to the calls for accountability.

23. The National Commission of Inquiry was represented throughout a three-day conference on justice and the rule of law to promote and protect human rights, which was organized by OHCHR and the Ministry of Legal Affairs and Human Rights in Aden, from 11 to 13 December 2022, to coincide with International Human Rights Day. The conference was sponsored by the Office of the Presidential Leadership Council and attended by more than 100 persons, of whom approximately a third were women, from the Ministry of Legal Affairs and Human Rights, the Supreme Judicial Council, the Ministry of Justice, the Office of the Attorney General, the Supreme Court and the Bar Association. During the various meetings of the conference, discussions were held on a number of subjects related to human rights and the rule of law, the role of women and their access to justice as both judges and litigants, as well as the role of various Yemeni institutions in promoting the rule of law, accountability and transitional justice. A follow-up event will take place before the end of 2023 to address the substantial capacity gaps that exist in the Yemeni judiciary so as to ensure access to justice, fair trials and criminal accountability for victims of human rights violations.

24. Another development related to accountability during the reporting period was the meeting, from 6 to 9 March 2023, of the 50 members of the Consultation and Reconciliation Commission, a body created in April 2022 by and reporting to the Presidential Leadership Council. During the closed meeting, the Commission reportedly adopted the following three documents: (a) principles for reconciliation among political components of the Government of Yemen; (b) a general framework for the unified political vision for a comprehensive peace process; and (c) operating by-laws. The documents have not been made public and are awaiting endorsement by the Presidential Leadership Council. At this stage, it remains uncertain whether accountability processes are referred to as part of the framework and whether the National Commission of Inquiry will be given a formal role in informing the discussions of the Consultation and Reconciliation Commission.

25. Engagement with civil society is an important element of the outreach activities of the National Commission of Inquiry and, as in previous years, it continued to hold public and private meetings and hearings with human rights defenders, victims and witnesses in Aden and during its numerous field visits. At various meetings held inside and outside Yemen, OHCHR also encouraged its interlocutors from civil society to acquaint themselves better with the work of the National Commission and its commissioners to develop a better understanding of their achievements and also the challenges that they are facing. That was

the case in particular at the closed meeting for civil society on accountability that was organized in Amman by the Open Society Foundations on 15 November 2022 and at the second Yemen International Forum, organized by the Sana'a Center for Strategic Studies in The Hague, with support from the Kingdom of the Netherlands, from 12 to 15 June 2023. Unfortunately, no member of the National Commission was able to attend the second event, at which accountability and transitional justice were discussed during multiple sessions, due to difficulties in obtaining a visa.

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

26. Pursuant to Human Rights Council resolutions 36/31, 39/16, 39/21, 42/21, 42/31, 45/15, 45/26, 48/21 and 51/39, 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.

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

28. For the previous reporting period, which ended in October 2022, OHCHR funded the travel to Geneva, from 18 to 24 September 2022, of all members of the National Commission of Inquiry and its acting General Secretary. During that period, they held meetings and briefings with diplomats and civil society organizations centred on their work and their newly released tenth periodic report, in particular.

29. During their visit to Geneva, the members of the National Commission of Inquiry also had several meetings with OHCHR staff members working on transitional justice and accountability, as well as those from the Middle East and North Africa region.

30. A gender and human rights officer was temporarily deployed to Aden, from 10 September to 31 October 2022. During that time, she delivered training on gender-sensitive documentation of violations of international human rights and humanitarian law to nine assistant investigators (all of whom were men), on 17 and 18 October 2022, after having consulted them about their learning needs, and offered individual follow-up to queries.

31. From 13 to 25 October 2022, an international consultant was in Aden to assess the needs of the National Commission of Inquiry in developing an integrated monitoring and tracking system of case files submitted to the Office of the Attorney General. According to the consultant, the Office lacked information technology infrastructure and was equipped with only a few laptops operating without backup systems or a generator. Such equipment is essential for such a key rule of law institution to function.

32. OHCHR facilitated a consultative meeting in Aden for 38 field monitors in the first quarter of 2023, from 13 to 15 March, to enhance knowledge of international humanitarian law and monitoring and how it applies in the context of Yemen.

33. A second consultative meeting for all field monitors took place from 29 July to 2 August 2023 in Aden and was facilitated by the commissioners and a legal expert. At the request of the National Commission of Inquiry, the event combined the quarterly meetings for the second and third quarters.

34. Between 4 April and 5 October 2023, two national consultants are providing substantive guidance and support to the National Commission of Inquiry on military affairs and international law, respectively. Since the two consultants were selected by the National Commission, it is hoped that they will contribute to further improvements in the quality of the case analysis in the next report. OHCHR plans to organize more training during the remainder of the reporting period within existing resources and in close consultation with the commissioners and will report on these activities in the next report for the Human Rights Council on the National Commission.

35. As in previous years, OHCHR will organize and fund the travel of the nine commissioners and the General Secretary to attend part of the fifty-fourth session of the Human Rights Council in Geneva, with a possible visit to Cairo on the way back to conduct outreach with the large Yemeni community in the city.

36. OHCHR stands ready to continue to provide substantive technical assistance and advice to the National Commission of Inquiry, including strengthening 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**

37. The United Nations-mediated truce that began on 2 April 2022 was not extended after 2 October 2022. However, its main provisions are being adhered to by all parties to the conflict, except for the much-needed easing of access to Ta'izz. This has provided a welcome respite for the population of Yemen and specific benefits in terms of international travel from and to Sana'a, including for medical reasons, the supply of fuel and other products and a sense of hope that the conflict may have entered a final stage, with direct talks between the de facto authorities and Saudi Arabia as a possible precursor to talks among Yemeni parties to the conflict.

38. The role and responsibility of the National Commission of Inquiry are more important than ever to respond to the high expectations among Yemenis 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.

39. 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. It is therefore critical for the Government of Yemen to ensure that it is structurally and functionally independent, impartial and transparent in 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 grounded in international law.

40. 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.

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

42. All parties to the conflict should:

(a) Cooperate fully 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.

43. **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 contribute to the prevention of 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 of Inquiry;

(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, including by establishing a witness protection mechanism and providing 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 its investigations and prosecutions with regard to cases referred to it by the National Commission of Inquiry and procure the information technology infrastructure required for its work to handle and preserve the confidentiality of the case files received from the National Commission;

(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 and the conference held in Aden in December 2022;

(g) Address issues of accountability and justice, with specific proposals to be developed together with the Consultation and Reconciliation Commission and victims' representatives.

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

(a) Act systematically, promptly and effectively 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 in the reports of the National Commission.

45. **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, ensure the safety of victims and witnesses and ensure that the highest standards of integrity and independence are respected, thereby ensuring that the judicial process serves as an effective deterrent and as an effective avenue for justice for victims.

46. The National Commission of Inquiry should:

(a) Continue to develop capacity to thoroughly investigate all alleged human rights violations and abuses and violations of international humanitarian law by all parties to the conflict, in accordance with international norms and standards and the principles of objectivity, transparency and impartiality;

(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; this may involve contributing to the development of temporary measures pending adoption of a witness protection law once parliament resumes its work;

(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) Develop and implement a more effective communications strategy to enhance its visibility throughout Yemen and disseminate information about its mandate and role;

(e) Preserve its integrity and independence through strict adherence to norms and standards of international law;

(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 more sub-offices throughout Yemen to facilitate access 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 that Office.

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