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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

Pursuant to Human Rights Council resolution 39/21, the present report provides an overview of the technical assistance and capacity-building which the Office of the United Nations High Commissioner for Human Rights has been providing since March 2016 to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, and in line with international standards. In her report, the United Nations High Commissioner for Human Rights describes the mandate of the National Commission and the difficulties it has faced in implementing it. She concludes with a set of recommendations, calling upon all stakeholders to implement the recommendations made in previous reports of the High Commissioner and of the Group of Eminent International and Regional Experts on Yemen to the Human Rights Council.

* The present report was submitted after the deadline in order to reflect recent developments.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 39/21, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide substantive capacity-building and technical support to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen to ensure that it continues to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, and in line with international standards, and to present a written report on the implementation of technical assistance at its forty-second session.

2. In her report the High Commissioner describes the mandate of the National Commission, which started its work in October 2015, and provides an overview of the technical assistance and capacity-building provided by her Office between March 2016 and September 2019 pursuant to Council resolution 33/16. The report focuses on the mandate of the Commission on the basis of international standards pertaining to commissions of inquiry.¹

3. The report should be read in conjunction with previous reports of the High Commissioner to the Human Rights Council on the situation of human rights in Yemen,² which included information on technical assistance and capacity-building provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to the National Commission.

II. National Commission of Inquiry

A. Mandate

4. The National Commission was established pursuant to Presidential Decree No. 140 of 2012, amended by Presidential Decrees No. 13 of 2015, Nos. 66 and 97 of 2016 and No. 50 of 2017. It is mandated “to investigate all alleged violations of human rights and international humanitarian law since the year 2011”.³ The internal regulations of the Commission specify that it is “to investigate individual and group complaints received, and identify perpetrators”. It is also empowered to “subpoena any person to listen to their testimony” and “to obtain relevant documents and other evidence”.⁴

5. Presidential Decree No. 50 of 2017 describes the methodology of the National Commission and extended the term of its mandate to two years from the date of the issuance of the decree, with a possibility for renewal by presidential decree.

B. Composition

6. The National Commission is currently composed of nine members, six men and three women; four members are from Northern governorates and five, including the Chair, are from Southern governorates. Five of the members are judges, three are lawyers and one is a university professor.

¹ See 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) and *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law* (New York and Geneva, United Nations, 2015).

² A/HRC/33/38, A/HRC/36/33 and A/HRC/39/43.

³ Presidential Decree No. 140 of 2012, art. 3.

⁴ *Ibid.*, chap. 3, art. 4 (6).

7. The presidential decrees and the internal regulations of the National Commission do not describe the process and criteria for the selection of the commissioners. In May 2016, the President of Yemen appointed four new commissioners following the resignation of three commissioners and the death of another.

C. Secretariat

8. According to the information received from the National Commission, its Secretariat consists of 29 staff members, including 8 women, with different functions, namely human rights monitors, investigators, communications officers and administrative staff.⁵ However, there was a lack of capacity in international humanitarian law among the staff. The headquarters of the Commission is in Aden, while 39 field monitors, including 10 women, are deployed in 20 governorates.

D. Resources

9. International standards recommend that a commission of inquiry “shall be provided with transparent funding to ensure that its independence is never in doubt”.⁶ Article 6 of the 2017 financial regulations of the National Commission states that funding will be provided by “the Government of Yemen, voluntary contributions from other Governments and grants from international human rights foreign bodies”. There is no external oversight over the financial transactions of the Commission.

E. Progress achieved by the National Commission and challenges

10. The National Commission has been facing considerable challenges since its establishment, including security and political constraints that have significantly impeded its ability to safely and freely conduct comprehensive investigations in accordance with its mandate.

11. The National Commission has been unable to access parts of the territory of Yemen. In particular, the de facto authorities have been unwilling to cooperate with it and to provide it access to the areas they control, on the grounds that it comprises members appointed by the Government of Yemen. Moreover, given the volatile environment, the interaction of members and staff of the Commission with victims and witnesses has been complicated by the difficulties in establishing solid protection mechanisms.

12. As noted, the National Commission is mandated to investigate and publish comprehensive reports on allegations of violations and abuses committed by all parties to the conflict in Yemen. Over the years, the Commission has strengthened the quality of its reporting. Between August 2016 and March 2019, it produced six reports, which are available in Arabic on its website (www.nciye.org). These reports have thus far documented more than 17,000 human rights violations and abuses perpetrated by the various parties to the conflict in Yemen. As illustrated in its sixth public report,⁷ published in March 2019, the Commission has increased its efforts to reflect violations and abuses committed by all parties and to attribute incidents, including to Houthi-Saleh forces, Arab coalition forces and drone warfare.

13. In its sixth report, the National Commission described its methodology, explaining that it considers the standard of proof to be met when it has obtained and corroborated a reliable body of information sufficient for it to conclude that there are reasonable grounds to believe that an incident has occurred as described and that violations were committed by the warring party identified. However, given the lack of access to the whole territory of

⁵ The National Commission shared with OHCHR a list of 29 Secretariat staff members and 39 field monitors appointed by the commissioners.

⁶ Updated set of principles, principle 11 (a).

⁷ Available in English at www.nciye.org/wp-content/uploads/2019/03/Sixth-Report-NCIAVHR.pdf.

Yemen, the Commission noted that it has been a challenge for it to corroborate some information.

14. Given the highly volatile environment, victims and witnesses who cooperate with the National Commission are particularly exposed, including to reprisals by parties to the conflict. The Commission must be guided by the “do no harm” principle and, in accordance with relevant international practice, an effective mechanism to protect victims and witnesses who come into contact with it must be put in place.

15. Under treaty and customary international law, States have the primary responsibility to investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law and to provide effective remedies to victims, including reparations. Under the presidential decrees that established the National Commission, it has the responsibility to investigate allegations of violations and abuses committed by all parties in Yemen and to submit its reports and cases to the Attorney-General to complete investigations and prosecution. However, while the Commission has submitted investigation files to the public prosecution and the judiciary, OHCHR has not been informed about any initiated or completed court cases following such submissions.

16. The deployment of field monitors in 20 governorates is key to increase the accessibility of the National Commission, but further efforts are required in that regard and to improve its outreach. For instance, the establishment of sub-offices in suburban areas would further facilitate access to the Commission and reporting of cases. While the conflict and its negative impact on infrastructure limits resort to the media, such as local radio broadcasting, it would be important for the Commission to develop a communication strategy to enhance its visibility throughout Yemen and disseminate information about its mandate and role. The Commission could also expand information contained on its website, Facebook page and Twitter account. OHCHR notes that in its sixth report, the Commission reported that it had engaged with civil society actors and had received from them factual information about human rights violations that assisted it in discharging its mandate effectively. It is important that the Commission pursue its engagement with civil society actors to enhance its outreach.

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

17. Pursuant to Human Rights Council resolutions 36/31, 39/16 and 39/21, OHCHR has continued to provide technical assistance and capacity-building to the National Commission. In consultation with OHCHR, the Commission identified priority areas for the technical assistance it requires. OHCHR conducted various training activities for the members and staff of the Commission in Ethiopia, Jordan, Lebanon, Malaysia, Qatar, Switzerland and Yemen, which are described in this section of the report.

18. In accordance with its usual methodology, in performing the mandate assigned by the Human Rights Council in its resolution 39/21 OHCHR has been guided by the principles of independence, impartiality, objectivity, credibility and professionalism. To assess the needs of the National Commission and develop customized capacity-building activities, in 2016 OHCHR sent questionnaires and surveys to the commissioners, staff members of the Secretariat and field monitors. OHCHR also held regular collaborative and performance consultations with the Chair and members of the Commission to define the purpose of capacity-building activities. OHCHR used training methodologies, publications and techniques it has developed, such as *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice*; *Who's Responsible? Attributing Individual Responsibility for Violations of International Human Rights and Humanitarian Law in United Nations Commissions of Inquiry, Fact-Finding Missions and other Investigations*; and *A Practitioner's Toolkit on Women's Access to Justice Programming*.

19. Moreover, adherence to the standards of objectivity, transparency, impartiality and professionalism has been at the core of the capacity-building provided by OHCHR to strengthen the National Commission, its functioning and credibility. Presidential Decree No. 50 of 2017 indeed provides that the methodology of the Commission is based on the

international investigation standards that are used by similar commissions and in accordance with these principles.⁸

20. Between March 2016 and September 2019, OHCHR developed and implemented 20 activities to enhance the investigative capacity of the National Commission. These activities essentially focused on international human rights law, international humanitarian law and international criminal law, including the elements of genocide, crimes against humanity and war crimes, as well as on the methodologies for human rights monitoring, investigations and reporting. All activities reflected a gender-sensitive approach.

21. From 7 to 10 March 2016, in Geneva, OHCHR organized a first training workshop for the commissioners on the international human rights protection mechanisms. On that occasion, OHCHR provided the commissioners with material in Arabic and English relating to international humanitarian law and the methodology for human rights investigations, including with regard to independence, professionalism and adherence to international fair trial standards, and engaged in discussion on these subjects.

22. On 12 May 2016, in Amman, OHCHR organized a seminar for the National Commission to discuss the improvement of information exchange between the Commission and OHCHR. Cooperation between the Commission and OHCHR noticeably improved following the meeting.

23. From 2 to 6 June 2016, also in Amman, OHCHR organized a training workshop for 23 field monitors of the Commission to strengthen their skills in human rights and gender-sensitive monitoring and reporting in accordance with international standards. This offered an opportunity to discuss major challenges faced by the monitors in their daily work and to brainstorm on solutions.

24. On 28 and 29 August 2016, in Addis Ababa, OHCHR organized a training workshop to strengthen the skills of the commissioners to conduct comprehensive and impartial inquiries and to report on human rights violations.

25. On 21 and 22 February 2017, in Doha, OHCHR organized a training workshop for the commissioners on best practices of commissions of inquiry in gathering and compiling information on possible violations of human rights and international humanitarian law.

26. On 7 and 8 July 2017, in Beirut, OHCHR organized a training workshop titled "Human rights database: collection, protection and archiving of information for the National Commission", focusing on means to record, preserve and secure information and physical evidence.

27. From 27 to 30 November 2017, in Kuala Lumpur, OHCHR conducted a training workshop on human rights monitoring, which included a visit to a prison, for 29 human rights monitors of the National Commission, including 5 women. The workshop aimed at building their capacity in monitoring and documenting human rights violations, including in prisons and detention centres.

28. From 16 to 19 December 2017, also in Kuala Lumpur, OHCHR conducted a workshop for the investigators of the National Commission on the methodology for monitoring and documenting human rights violations. The workshop deepened participants' knowledge of international criminal law, including the elements of the crime of genocide, crimes against humanity and war crimes. The training included sessions on conducting interviews and on information gathering, with a special focus on the methodology applied regarding areas with limited access.

29. From 22 to 24 January 2018, in Addis Ababa, OHCHR conducted a follow-up workshop for the commissioners on documenting human rights violations and report writing.

30. On 25 January 2018, OHCHR organized a study visit to the Ethiopian Human Rights Commission at which best practices in dealing with earlier human rights violations in the country were shared.

⁸ Article 2 (2).

31. From 15 to 22 February 2018, in Aden, OHCHR conducted a working visit to the National Commission and provided it with further expertise to develop its methods of investigation in line with international standards.
32. From 3 to 5 March 2018, in Amman, OHCHR organized a workshop for the commissioners on protecting human rights and the rule of law in the context of countering terrorism. It showcased best practices of law enforcement activity in countering terrorism, including with regard to conducting arrests, detentions and interviews of terrorist suspects in full compliance with international human rights law.
33. From 12 to 14 March 2018, in Beirut, OHCHR conducted a training workshop on investigation methodology for human rights violations for 14 investigators of the Commission, including 2 women. This included sessions on investigations into sexual violence and in prisons and detention facilities.
34. From 3 to 5 April 2018, also in Beirut, OHCHR conducted a workshop for the administrative staff of the National Commission on best practices in archiving, information protection and financial aspects.
35. From 17 to 20 July 2018, in Amman, OHCHR organized a seminar for the commissioners on international humanitarian law in the context of the conflict in Yemen.
36. From 14 to 16 August 2018, also in Amman, OHCHR organized a workshop for 17 field monitors of the National Commission, including 8 women, on human rights monitoring guidelines in line with international standards.
37. From 17 to 19 February 2019, in Aden, OHCHR facilitated a retreat for 38 field monitors and investigators, including 10 women, to enhance the professional relationship between the commissioners and the field monitors and investigators. Participants subsequently reported that the retreat had significantly contributed to enhancing effective working relationships within the National Commission.
38. From 22 to 24 March 2019, in Amman, OHCHR conducted an advanced training, attended by 32 field monitors, including 8 women, on interactive techniques for monitoring and documenting violations of international human rights and humanitarian law in Yemen.
39. From 30 April to 7 May 2019, in Addis Ababa, OHCHR organized, in cooperation with the Operational Satellite Applications Programme (UNOSAT), a training workshop for the commissioners to strengthen their technical capacity in the use of geospatial information technology, with a focus on cloud-based and geospatial data systems for decision-making related to accessing and analysing human rights violations.
40. Following a request by the National Commission, OHCHR purchased 30 solar charging system units for the field monitors, which it delivered to the Commission in Aden in June 2019.
41. More broadly, OHCHR delivered technical assistance to the National Commission through regular feedback and advice to improve its performance. It further supported the Commission in developing methodologies, manuals and tools, providing it with a range of supplementary material on international human rights law and humanitarian law, human rights monitoring and administrative and financial matters.
42. The technical assistance provided by OHCHR has included increasing understanding by the National Commission of the concept of accountability, as guided by relevant international norms. OHCHR focused on the rights of victims of human rights violations under international law, including the rights to truth, justice and reparation, for example through institutional guarantees of non-recurrence. It has advised that there should be accountability for human rights violations and abuses, which require redress regardless of whether they were committed by a State or non-State actors. Furthermore, OHCHR has provided expertise to the Commission on transitional justice and how accountability should go beyond the investigation and prosecution of serious crimes, consisting of a broader process that addresses the political, legal and moral responsibility of individuals and institutions for past and ongoing violations.

43. OHCHR has not advocated for the National Commission to follow a standard “one-size-fits-all” approach. Instead, the Office has assisted the Commission to recognize the need for accountability processes to be responsive and tailored to local circumstances, defined on the basis of broad and inclusive national consultations involving the extensive participation of the population, including victims of human rights violations and abuses and reflecting their needs and aspirations. OHCHR provided guidelines to ensure that any national process in these respects would meet international standards.

44. The High Commissioner expresses the readiness of OHCHR to continue providing substantive technical assistance and advice to the National Commission, including to strengthen its capacity to investigate and report on allegations of violations and abuses committed by all parties to the conflict in Yemen, in line with international standards.

IV. Conclusions and recommendations

45. **The conflict has turned Yemen into the world's worst humanitarian crisis, with the population trapped in a relentless armed conflict and other forms of violence, which entail serious human rights violations and abuses and violations of international humanitarian law.**

46. OHCHR takes note of the National Commission’s willingness to continue enhancing the capacity of its members and staff, including in cooperation with OHCHR. It also acknowledges progress in the work of the Commission, such as improved reporting on different types of human rights violations and abuses by all parties to the conflict.

47. With a view to strengthening the effectiveness and impact of the National Commission, the High Commissioner the following recommendations.

48. All parties to the conflict should:

(a) Cooperate fully with the National Commission so that it can safely and effectively fulfil its mandate, notably by granting it access to all areas of Yemen, including all places of deprivation of liberty, and providing it with all relevant information it may request;

(b) Implement all the recommendations made in the previous reports of OHCHR and of the Group of Eminent International and Regional Experts to the Human Rights Council so as to effectively pursue accountability for human rights abuses and violations and violations of international humanitarian law by all parties to the conflict.

49. The Government of Yemen should consider revising the mandate of the National Commission to ensure that it can safely and effectively fulfil its role as an independent mechanism.

50. The Attorney-General of Yemen should systematically and promptly act upon the reports and cases received from the National Commission, whoever the alleged perpetrators are.

51. The National Commission should:

(a) Investigate all alleged violations and abuses by all parties to the conflict with the same consistency and thoroughness, in line with the principles of objectivity, transparency, impartiality and professionalism;

(b) Recruit additional staff with expertise in international humanitarian law;

(c) Take all feasible measures to protect victims and witnesses who come in contact with its members and staff;

(d) **Expand its outreach and accessibility, including by opening sub-offices in suburban areas, strengthening its engagement with civil society actors and enhancing its communication strategy.**
