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Technical assistance and capacity-building

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 August 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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YEMEN: A CASE FOR THE INTERNATIONAL CRIMINAL COURT*

BACKGROUND

The transition process after the coup d'état of 2015 in Yemen prompted the fully-fledged civil war that continues to these days. The armed conflict further fuels the sectarian divide in the region and destabilises the war-torn Middle East. The Houthi forces allied with the former president Ali Abdullah Saleh are fighting the forces loyal to the government of Abdrabbuh Mansur Hadi. It is clear that the Islamic Republic of Iran provides political, financial and military support to Houthis. The Iranian Quds Forces serve as military advisers arming and training the Houthi militia. The Saudi-led coalition in support of President Hadi conducts a multinational military intervention against Houthis.

HUMANITARIAN CATASTROPHE

Since January 2017, military operations, including bombing by air and sea, as well as ground fighting, have intensified along Yemen's western coast. As of 30 April 2017, official sources point to 8,053 conflict related civilian deaths and over 45,000 injuries – figures that are considered to significantly undercount the true extent of the casualties, considering the diminished reporting capacity at health facilities and people's difficulties accessing healthcare.¹ The number of vulnerable persons in need of humanitarian aid and protection continuously increases. The UN Office for the Coordination of Humanitarian Affairs reports a nearly 20 per cent increase since late 2014. 18.8 million Yemenis from a total population of 27.4 million are in need of humanitarian assistance or protection; half of the population effected by the armed conflict are children under the age of 18 (estimated 9.6 million).² To date, 3.2 million Yemenis are displaced, and the number of children forcibly recruited for combat and maimed by conflict-related violence has dramatically increased throughout 2016. Humanitarian needs are growing daily in key sectors such as food insecurity, sanitation, water, nutrition, health, shelter and education. Yemeni people are dying of famine and curable deceases. Yemen is in the grip of a fast spreading cholera outbreak of unprecedented scale: as of 28 June, a total of 254,871 suspected cases, with 1,439 associated deaths (0.6% CFR) were reported from 286 districts (20 Governorates), an additional 280,358 cases are projected from the high risk districts in the coming six months till end of 2017.³

GRAVE BREACHES OF INTERNATIONAL LAW

Heinous human rights abuses in Yemen are part of the widespread and systematic attacks. The parties to the conflict are well-aware of their role in Yemen's civilian carnage. Such grave violations of the provisions of 1948 Geneva Conventions are considered crimes against humanity and war crimes as defined by the Rome Statute of the International Criminal Court. The perpetrators that violate the provisions of international human rights law and international humanitarian law should be brought to justice. The following large-scale human rights violations should be investigated in a prompt, thorough and independent manner:

Crimes against humanity

Murders

Extermination

Enslavement

Forcible transfer

Imprisonment and severe deprivation of liberty in violation of international law

1 Periodic Monitoring Review, January – April 2017, Yemen Humanitarian Response Team, UN OCHA, April 2017.

2 2017 Yemen Humanitarian Needs Overview, UN OCHA, November 2016.

3 Integrated Response Plan: Yemen cholera outbreak, World Health Organization, Yemen WASH Cluster, Yemen Health Cluster, 29 June 2017.

Torture, rape and sexual violence
 Persecution
 Enforced disappearance
 Inhuman acts intentionally causing great harm to health

War crimes

Killings
 Torture and inhuman treatment
 Willful causing of great suffering and serious injury to health
 Willfully depriving protected persons of the right to a fair trial
 Unlawful deportation and confinement
 Hostage-taking
 Intentionally directing attacks against civilian populations and objects which are not military objectives, against personnel, materials and vehicles of humanitarian assistance and peace keeping missions
 Attacking and bombarding towns and villages that are undefended and not military objectives
 Intentionally directing attacks against buildings dedicated to religion, art, education, historic monuments and hospitals
 Torture, inhuman and degrading treatment
 Rape, sexual slavery, and other sexual violence
 Use of human shields and intentionally using starvation of civilians as a method of warfare
 Conscripting and enlisting children under the age of 15 years into armed forces or using them to actively participate in armed hostilities
 Pillaging, destroying and seizing property when it is not imperatively demanded by the necessities of war

RESPONSE OF THE INTERNATIONAL COMMUNITY THROUGH THE UNITED NATIONS

The measures undertaken by the international community through the United Nations decision-making bodies to address widespread and massive violations of international humanitarian law perpetrated in Yemen are widely assessed as impact failure. The UN General Assembly adopted zero number of resolutions in regards to the situation in Yemen. The Special Envoy to Yemen, Ismael Ould Cheikh Ahmed, facilitated the UN-brokered peace talks, but its failure resulted in the escalation of hostilities and increase of civilian casualties. The UN Human Rights Council (HRC) has issued numerous press statements to express serious concerns at the deteriorating situation and support of the implementation of an unconditional humanitarian pause by all parties, condemned and called parties for action or cessation of hostilities. In 2015, the UN Human Rights Council requested the Office of the UN High Commissioner for Human Rights to provide Yemen with technical assistance and capacity building in the field of human rights and to assist a national commission of inquiry. The UN Security Council (UNSC) passed various political resolutions criticising the Houthis, imposed arms embargo on the Houthis and forces loyal to former president Saleh. The SC evoked Chapter VII of the UN Charter and endorsed sanctions against those threatening the peace, security or stability of Yemen under Article 41 of the Charter, i.e. the assets freeze and travel bans in 2014-2015.

REFERRAL TO THE INTERNATIONAL CRIMINAL COURT

The situation of Yemen should be referred to the International Criminal Court (ICC) by the UNSC under Chapter VII of the UN Charter. There is reasonable basis to initiate an investigation concerning crimes against humanity and war crimes.

Under the principle of complementarity, the Yemeni Government has the primary responsibility to try perpetrators of crimes. However, the Yemeni criminal justice system does not conduct investigations and trials of the alleged perpetrators for grave violations of 1948 Geneva conventions. On June 22, Yemen's president Abdu Rabbu Mansour Hadi, took a tentative step toward providing Yemenis whose loved ones have been forcibly disappeared or arbitrarily detained the answers and accountability they seek: he issued Decree No. 115, which establishes a committee to investigate reports of abuse (including crimes committed by the Coalition), make recommendations, and develop means to address similar issues in the future.⁴ However, a committee is neither a martial court nor a civilian court of law. Large-scale serious crimes should be thoroughly investigated and perpetrators tried by qualified and impartial judges within judicial proceedings in compliance with international law.

Moreover, trials by Yemeni courts against perpetrators for the violations of international humanitarian law committed by the armed forces of foreign states are unlikely. States involved directly or indirectly in Yemen's armed conflict have not recognised the ICC jurisdiction by ratifying the Rome statute. It means that the ICC prosecution cannot initiate an investigation based on the existing reasonable basis. Therefore, the international community must take bolder actions under Chapter VII of the UN Charter and the UN Security Council should refer the situation of Yemen to the ICC Office of Prosecution.

RECOMMENDATIONS

- All parties to the conflict should ensure compliance with international humanitarian law, particularly concerning the protection of civilians and civilian objects;
- Human Rights Council should urgently endorse an international independent investigation into alleged crimes against humanity and war crimes in Yemen;
- The situation in Yemen should be referred to the International Criminal Court;
- Civilians should be provided with access to basics as food, shelter, water and ability to return to their place of origin.

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association- UK, The Brussels Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), Alliance to Renew Co-operation among Humankind, General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.

⁴"US, Gulf Allies, Must Own Up to Their Role in Yemen's Human Rights Abuses", Kristine Beckerle, 29 June, 2017 at: <http://progressive.org/dispatches/united-states-gulf-allies-must-own-up-to-their-role-in-yemen/>