

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

**Claim No: CO/3579/2020**

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

**BETWEEN:**

**THE QUEEN on the application of  
CAMPAIGN AGAINST ARMS TRADE**

**Claimant**

**And**

**SECRETARY OF STATE FOR INTERNATIONAL TRADE**

**Defendant**

**And**

**Mwatana for Human Rights**

**Intervenor**

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**FIRST WITNESS STATEMENT OF RADHYA ALMUTAWAKEL**

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I, RADHYA ALMUTAWAKEL, of Dairi Street, Sana'a, Yemen, WILL SAY AS FOLLOWS:

1. I am the chair and co-founder of Mwatana for Human Rights (“**Mwatana**”), and I make this statement to introduce evidence that is relevant to the issues to be determined by the Court in this case.
2. The exhibits to this statement, marked RA1, are located at Tab C in a paginated bundle named the “**Mwatana Intervention Bundle**” and page

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

numbers are referenced as follows: ~~[MIB/Tab/page]~~ [Hearing Bundle Supplementary(HBS)/page]. Other documents referred to which appear in the Claimant's Core Bundle or Supplementary Bundle are referenced as either [HBS/page] or [Hearing Bundle Core(HBC)/page] ~~[CB/tab/page]~~ or ~~[SB/tab/page]~~ respectively; references to paragraphs in the Claimant's Amended Statement of Facts and Grounds are in the format [ASFG/§-- at HBC/page] and to paragraphs in the Defendant's Summary Grounds of Defence in the format [SGD/§-- at HBC/page]. This statement and bundle wholly replaces the application made for permission to intervene. In summary, I exhibit:

- i. evidence of relevant Saudi/UAE-led coalition ("**the Coalition**") airstrikes occurring in 2020 that caused grave civilian harm ~~[MIB/C/464-540]~~ HBS/2026-2099]
- ii. a letter and submission of evidence sent jointly by Mwatana and the Global Legal Action Network ("**GLAN**") directly to the Defendant on 11 August 2019 ("**the August 2019 Letter**") ~~[MIB/C/86-436]~~ HBS/1648-1690] and relevant subsequent correspondence ~~[MIB/C/437-443]~~ HBS/1999-2005], which are necessary in order to understand the patterns of violations of international humanitarian law by the Saudi/UAE-led Coalition which Mwatana has observed and which I set out in this statement; and
- iii. particular examples of deficiencies in the investigations and legal assessments of the Joint Incident Assessment Team ("**JIAT**") ~~[MIB/C/444-463]~~ HBS/2006-2025], and a limited number of additional short-form incident reports which are also necessary in order to understand those patterns ~~[MIB/C/541-547]~~ HBS/2099-2109].

3. In this statement, I:

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- i. set out some background information about Mwatana and its role and methods in documenting the conflict in Yemen; and
  - ii. provide an overview of the evidence contained in the Mwatana Intervention Bundle and its significance for the case currently before the Court.
4. Save where otherwise stated, the facts and matters set out in this witness statement derive from information that has been documented by Mwatana or is apparent to me from the documents to which I refer.

### **About Mwatana**

5. Founded in 2007, Mwatana is based in Sana'a, Yemen, and is one of the largest human rights organisations in the country. It employs a significant number of women and men, including field researchers and lawyers, across 21 out of 22 governorates in Yemen. Its staff conduct on-the-ground research and document and investigate alleged violations of international human rights law and international humanitarian law ("IHL"). This work includes field visits to the sites of such incidents. Mwatana documents violations by all parties to the conflict in Yemen. Its core values, as set out in its code of conduct, are independence, accuracy, objectivity and integrity [~~MIB/C/548~~HBS/2110].
6. Mwatana publishes regular English and Arabic reports and conducts advocacy in a range of human rights-related areas.<sup>1</sup> In addition, Mwatana has made numerous submissions to various United Nations bodies concerning international law violations taking place in Yemen, and in 2017 I briefed the United Nations Security Council, becoming the first Yemeni civil society

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<sup>1</sup> See, for example [~~SB/38; SB/41~~HBS/1488-1634]. All reports are available at [www.mwatana.org/en](http://www.mwatana.org/en).

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

representative to do so.<sup>2</sup> I and other Mwatana colleagues have actively participated in sessions of the UN Human Rights Council, including taking part in side events, advocating first for the establishment, then the strengthening, of the mandate of the United Nations' Group of Eminent Experts (the "UNGEE") in documenting violations by all parties to the conflict in Yemen. I have addressed the United States Congress House Committee on Foreign Affairs, (Subcommittee on the Middle East, North Africa and International Terrorism), including in March 2019,<sup>3</sup> and in May 2019 I was invited to meet with the then-Foreign Secretary, Jeremy Hunt, to discuss Britain's potential role in ending the conflict. In August 2018, Mwatana was awarded the Roger N. Baldwin Medal of Liberty for its work in documenting and reporting on international law violations by all parties to the conflict.<sup>4</sup> On 18 February 2021, along with Campaign Against Arms Trade, Mwatana was nominated for the 2021 Nobel Peace Prize.<sup>5</sup>

7. Mwatana operates on a strict policy of non-reliance on any material which it has not itself verified through its own researchers. Mwatana researchers are trained to follow a prescribed process when conducting field investigations, which requires, amongst other things:
  - i. recording specific details about each individual interviewee such as name, location, contact details, occupation and age;

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<sup>2</sup> Sarah Knuckey, Just Security, *Yemeni Human Rights Activist Radhya al-Mutawakel's Speech to the UN Security Council*, 31 May 2017, available at <https://www.justsecurity.org/41570/yemeni-human-rights-activist-radhya-al-mutawakels-speech-security-council/>.

<sup>3</sup> House Hearing, 116<sup>th</sup> Congress, *The Humanitarian Crisis in Yemen: Addressing Current Political and Humanitarian Challenges*, 6 March 2019, available at <https://www.congress.gov/event/116th-congress/house-event/LC64383/text?s=1&r=13>.

<sup>4</sup> Human Rights First, *Human Rights First Awards Prestigious Baldwin Medal of Liberty to Yemen's Mwatana Organization for Human Rights*, 2 August 2018, available at <https://www.humanrightsfirst.org/press-release/human-rights-first-awards-prestigious-baldwin-medal-liberty-yemen-s-mwatana>.

<sup>5</sup> Mwatana, *Quaker Organisations announce Nobel Prize nominations*, 18 February 2021, available at <https://mwatana.org/en/nobel-prize-nominations/>.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- ii. informing interviewees of the purpose of the interview, and only proceeding with the interview if the individual provides their informed consent;
  - iii. asking a standardised set of questions which cover what took place, the identity of those harmed and whether any military target may have been present;
  - iv. where possible, in relation to each incident, separately interviewing more than one interviewee;
  - v. analysing the scene of an attack and taking photographs or videos where security permits, including of any weapons remnants found at the site;
  - vi. collecting other relevant documentary evidence (for example, medical records or death certificates); and
  - vii. recording any observations about the scene or interviewees, for example any overt or suspected military targets or affiliations.
8. Mwatana includes individuals in its civilian casualty count where researchers are able to interview a person with direct knowledge of how a specific attack impacted a specific person (for example, a witness who was with the person at the time of the attack, a relative, a health worker at the facility where the person was treated in the aftermath of an attack, or survivors themselves). In only counting these directly verified casualties, Mwatana likely undercounts the true number of civilians harmed in documented attacks. Mwatana only counts people as civilians in instances where Mwatana finds no credible indication of any association with an armed group or armed force.
9. Thus, whenever Mwatana states that an attack took place, that statement is founded on a full and standardised investigation. In some cases, for example where a warring party blocks access to a site, Mwatana may not be able to

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

visit the site of attack and is required to base its analysis on interviews with victims and witnesses and other relevant information collected and analysed directly by Mwatana researchers. In this statement, where I refer to an attack that is not based on Mwatana's own fact-finding process, I make that explicit.

10. Mwatana's published reports, which constitute only a portion of the overall attacks that Mwatana has documented, contain varying degrees of detail. The level of detail can be dependent on the capacity of the research team, security considerations, and the purpose of a given publication. Many contain summaries and quotes from interviewees, using different methods to anonymise the interviewees depending on the context and the risk to them. For example, a witness may be identified simply as "a woman," despite Mwatana having full details on file, where there are particular concerns about the safety of the interviewee. Quotes in published reports represent only a selected portion of a standardised interview held on file by Mwatana. In Mwatana's reporting, the existence of military targets is made clear if any are identified or suspected.
11. Between March 2015 and the date of this statement, Mwatana has documented approximately 575 airstrikes by the Coalition that have caused civilian harm, including killing and injuring civilians and damaging and destroying civilian property, across most Yemeni governorates. These documented Saudi/UAE-led Coalition airstrikes have repeatedly struck medical facilities,<sup>6</sup> educational facilities,<sup>7</sup> civilian homes, vital civilian infrastructure, marketplaces, fishing boats, farms, and water points.<sup>8</sup> The number of airstrikes Mwatana has investigated and documented, and the

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<sup>6</sup> Mwatana, *I Ripped the IV Out and Started Running*, March 2020, available at: <https://mwatana.org/en/i-ripped-iv-out-of-my-arm/>.

<sup>7</sup> Mwatana, *Undermining The Future*, August 2020, available at: <https://mwatana.org/en/undermining-future/>.

<sup>8</sup> These attacks are particularised below and in Exhibit RA1 to this statement [HBS/1645-2124].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

number of airstrikes on which Mwatana has published summaries of information, is limited only by Mwatana's capacity as an organisation. The number is not an exhaustive statement of the number of airstrikes that have occurred in Yemen, nor of the overall numbers of airstrikes that are reported to have caused civilian harm. In 2020, the COVID-19 pandemic imposed limitations on Mwatana's work, for example, limiting staff movement for certain periods.

12. Mwatana's position on the ground in Yemen enables it to have access to first-hand information and evidence in respect of incidents and alleged violations of IHL by the Saudi/UAE-led Coalition. This level of access is not always available to others documenting violations of IHL in the Yemeni conflict (see, for example, [SB/50/1019/§7HBS/511]).
13. In the previous judicial review between the parties to the proceedings ("**the First Proceedings**"), the Defendant's evidence indicated that Mwatana's summary reports are considered by the Ministry of Defence ("**MOD**") as part of its analysis of events in Yemen, on which the Defendant relied in those proceedings, and continues to rely.<sup>9</sup>

#### **Previous Correspondence with the Defendant**

14. On 20 June 2019, the Court of Appeal handed down judgment in the First Proceedings. The Court of Appeal's Order of the same date ("**the CoA Order**") required the Defendant to retake licensing decisions in respect of Saudi Arabia on the correct legal basis.

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<sup>9</sup> See para. 58 of the Witness Statement of Peter Watkins of the Ministry of Defence of 5 August 2016 in the First Proceedings.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

15. On 11 August 2019, in reaction to the news that a new decision was to be taken, Mwatana and GLAN sent the August 2019 Letter to bring to the Defendant's attention information that was considered to be directly relevant to the Defendant's decision-making [~~MIH/C/86-128~~HBS/1648-1690]. In the letter, Mwatana and GLAN outlined concerns in respect of the conduct of Saudi Arabia in the war in Yemen and enclosed a significant volume of evidence relating to airstrikes conducted by the Coalition in Yemen [~~MIH/C/129-436~~HBS/1691-1998]. The submission provided extensive, granular detail on 13 attacks, and summary detail of 35 further attacks in a "long-list", based in significant part on Mwatana's reporting.<sup>10</sup> In particular, the letter and enclosures highlighted:
- i. what were considered to be serious contradictions between what was documented in the submission and the findings of the Saudi/UAE-led Coalition's Joint Incident Assessment Team ("JIAT"), upon which the Defendant had relied for the purposes of her Criterion 2(c) assessments; and
  - ii. that the material submitted demonstrated "*a certain pattern of violations*", which, per §2.13 of the User Guide, was a relevant factor for the Defendant's decision-making in retaking the decision.
16. In addition to evidence gathered by Mwatana, the August 2019 Letter enclosed information published by reputable NGOs and the United Nations, along with private digital evidence gathered by GLAN.
17. Following the Defendant's retaken decision on 7 July 2020, on 20 August 2020 Mwatana and GLAN sent a further letter to the Defendant setting out

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<sup>10</sup> Given the extent of the evidence held by Mwatana, and to avoid placing unmanageable volumes of evidence before the Defendant, Mwatana and GLAN presented a limited number of incidents in detail and provided a "long list" of a number of others which we submitted give rise to scrutiny and analysis by the Defendant.



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

several concerns in respect of the new decision and requesting clarification in respect of aspects of the procedure undertaken [~~MIB/C/437-439~~HBS/1999-2001]. On 11 December 2020, the Defendant responded, providing limited clarification on the amended procedure and stating that it was not possible to provide further details for reasons of national security [~~MIB/C/440-443~~HBS/2002-2005].

18. The August 2019 Letter and subsequent correspondence are exhibited to this statement because they are required in order to understand the patterns I describe in this statement.

**Evidence of Relevant Saudi/UAE-led Coalition Airstrikes Occurring in 2020 That Caused Grave Civilian Harm**

19. The evidence submitted by the Claimant to the Court in the proceedings makes only limited reference to airstrikes occurring in 2020. So that the Court has an up to date picture of events taking place in Yemen, I exhibit to this witness statement evidence of the following 13 further incidents occurring in 2020 that are relevant to the Court's assessment of the issues:<sup>11</sup>

20. As to those incidents:
  - i. On 14 February 2020, at about 11:45 p.m., the Coalition hit civilian homes in the area of Al-Saidah village, Al Maslub district, Al Jawf governorate in 4 consecutive strikes. Mwatana documented 32 civilians killed in the attack, including 19 children (14 of them under

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<sup>11</sup> Given the short time available for submission of Mwatana's intervention (and the volume of evidence held by Mwatana), it has not been possible for Mwatana to produce detailed summaries of all of the above incidents. For each of incidents (i), (ii), (iii), (vi), (viii), (ix) and (xiii) above, the attached exhibit contains a detailed summary of information about the incident [~~MIB/C/464-536~~HBS/2026-2095]. For the remainder of the incidents, I exhibit a "long list" containing abbreviated summaries of information about each of those incidents [~~MIB/C/537-540~~HBS/2099-2109].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

the age of 10) and 7 women. Mwatana identified 21 civilians wounded in the attack, including 12 children and 6 women [~~MIB/C/464-494~~HBS/2026-2056].

- ii. On 3 March 2020, two Coalition airstrikes, about half an hour apart, hit 2 civilian cars on the same road in the Al-Labnat area of Al-Hazm District in Al-Jawf Governorate. Mwatana documented 5 people killed and one injured in the airstrikes. All 6 were civilians working in the qat trade, and were transporting qat when the airstrike occurred [~~MIB/C/495-504~~HBS/2057-2063].
- iii. On 7 April 2020, the Coalition hit a farm in Baghtah village, Abs District, Hajjah Governorate, with at least one bomb. Mwatana identified one civilian killed and another civilian injured, both of whom were working on the farm. The bomb also hit the farm's water well [~~MIB/C/502-504~~HBS/2064-2066].
- iv. On 8 April 2020, two Hilux vehicles loaded with qat were hit by a Coalition airstrike in Al-Labnat area of Al-Hazm District in Al-Jawf Governorate. Mwatana documented one civilian killed, the driver of one of the vehicles [~~MIB/C/540~~HBS/2102].
- v. On 7 June 2020, a Coalition airstrike hit an empty parcel of land near a residential house in the village of Nawah in Bakil Mir District in Hajjah Governorate, where children played. A civilian girl of approximately 7 years old was injured [~~MIB/C/5392~~HBS/2101].
- vi. On 1 July 2020, a Coalition airstrike hit, a few successive times, a warehouse containing relief supplies including food, blankets and irrigation tools in Al-Maqash area of Al-Safra District in Saada Governorate. Mwatana documented 2 civilian women killed in the strike, and 5 civilians, including 3 women and 2 children, wounded [~~MIB/C/505-507~~].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- vii. On 12 July 2020, a Coalition airstrike hit a house in the village of Al-Jassim in Al-Asra, in the Washaha District of Hajjah Governorate. Mwatana documented 9 civilians, including 6 children and 3 women, killed, and 4 civilians, 1 woman and 3 children, injured. The airstrike destroyed the house and killed the family's livestock [~~MIB/C/538~~ HBS/2100].
- viii. On 15 July 2020, the Coalition carried out an airstrike on Al-Masa'fa village of Al-Hazm District in Al-Jawf Governorate. Mwatana identified 12 civilians killed, including 7 children and 2 women, in the strike and 6 others, including 5 children and a woman, injured. The airstrike hit the house during a family circumcision ceremony for one of the children, and caused significant damage to the house and its surroundings, and destroyed the family's car [~~MIB/C/508-524~~ HBS/2083].
- ix. On 6 August 2020, the Coalition hit 3 civilian vehicles, using multiple successive bombs, in the Haradh area of Khab w Al-Sha'af District in Al-Jawf Governorate, on the road linking Khab w Al-Sha'af and Burat al-Enan district. The cars contained families travelling to visit relatives for Eid. Mwatana identified 8 civilians killed, all children, and 15 civilians wounded, including 8 children and 4 women [~~MIB/C/522-533~~ HBS/2084-2095].
- x. On 23 August 2020, at around 10:30 p.m., in the Terak area of Al-Ashash, Kataf District in Saada Governorate, a Coalition airstrike hit a tent. Mwatana identified 2 civilian women, whose bodies were torn apart, killed in the strike. The strike also damaged the tent owner's car [~~MIB/C/538~~ HBS/2100].
- xi. On 4 September 2020, at about 12:00 p.m., the Coalition bombed a number of shops on the main street of Al-Ardhiya village of Maheliya District in Marib Governorate. Mwatana identified 4

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

children and an adult man who were injured, all of whom were civilians ~~MIB/C/537~~ HBS/2099].

- xii. On 12 September 2020, at about 1:00 a.m., a Coalition airstrike hit a chicken farm in Al-Thib village of Arhab District in Sana'a. Mwatana identified 2 civilians injured, including a 16-year-old boy [~~MIB/C/537~~ HBS/2099].
  - xiii. On 13 September 2020, at about 8:00 p.m., a Coalition airstrike hit a fuel station in the Qalas area of Al-Mahliya District in Marib Governorate, Mwatana identified 5 civilians killed, including a child and 3 African migrants, and an adult man wounded. The strike damaged the fuel station, 3 stores, a truck loaded with empty gas cylinders and nearby houses [~~534-536~~ HBS/2096-2098].
21. Further details of these incidents, including in some cases photographic evidence, are set out at [~~MIB/C/464-540~~ HBS/2026-2098]. I also refer to these incidents in the following section when I describe how they contribute to demonstrating the patterns identified by Mwatana.

### **Patterns**

22. Since the beginning of the Coalition's intervention in the Yemen conflict in March 2015, Mwatana has observed a range of repeated patterns of attack. These patterns can be divided into:
- i. patterns of repeatedly attacking certain categories of objects in apparent violation of IHL, being civilians, infrastructure and economic objects and civilian homes (Pattern 1/the "**object type**" patterns);
  - ii. a pattern of failure to follow procedures designed to minimize civilian harm and ensure compliance with IHL (Pattern 2/the "**behaviour**" pattern); and

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

iii. a pattern of deficient investigation and impunity in Saudi Arabia's conduct in the war in Yemen (Pattern 3/the “**response**” pattern).

23. In August 2019, Mwatana considered it important to present evidence demonstrating these patterns to the Defendant for consideration in her retaking of the decision, given:

- i. the Defendant's own stated approach of paying close attention to patterns as part of its Criterion 2(c) assessment, which it used during the First Proceedings to justify its position that isolated incidents are not necessarily indicative of future risk and that it is not obliged to consider all specified factors set out in the User's Guide;<sup>12</sup>
- ii. the Court of Appeal's acceptance of the “central argument” that the question of patterns is relevant to the estimation of the risk of future violations;<sup>13</sup>
- iii. the revelatory nature of the patterns as to the reasons that civilian harm continued to recur (the “why” question expressed by the Court of Appeal as being highly relevant to whether IHL had been violated);<sup>14</sup> and
- iv. the application of the patterns to two of three “key factors” considered by the Defendant in its Criterion 2(c) assessment, namely a) the recipient's past and present record of respect for IHL and b) the recipient's intentions as expressed through formal commitments.

24. Additionally, we considered the patterns relating to the behaviour of the Coalition prior to an attack, and its response after an attack, to be crucial to enable the Defendant to take its new decision lawfully in light of the specific circumstances in which the Defendant had claimed during the proceedings

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<sup>12</sup> See, for example, the Defendant's Grounds of Resistance in the First Proceedings, para. 15.

<sup>13</sup> Court of Appeal Judgment in the First Proceedings, paras 62, 138-139.

<sup>14</sup> Court of Appeal Judgment in the First Proceedings, para. 134

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

that it *would* refuse arms licenses. The Defendant had stated that a foreign state's responses to engagement on issues of IHL compliance are an "absolutely critical" part of an iterative process and accepted that where it takes into consideration statements and assurances made by the foreign state to whom weapons are being supplied, it is important that "what the state does must be set beside what it says."<sup>15</sup> This made clear that the formal commitments relied on by the Defendant must be set against what Saudi Arabia actually does. The pattern analysis that we submitted to the Defendant in the August 2019 Letter sought to highlight that whilst Saudi Arabia may be engaging with the Defendant and seeking to assure the Defendant it is improving its official procedures and safeguards, its actions are not consonant with commitments and assurances made in the course of that engagement. That is to say, our analysis of the incidents we investigated showed that the Saudi engagement on which the Defendant had stated it so heavily depends was not reliable, whether because it was not conducted in good faith or for other reasons related to capacity and control over its armed forces.

25. We sent the August 2019 Letter to the Defendant setting out the patterns identified, including our analysis as to their bearing on the future risk of Coalition violations of IHL, so that this relevant information could be taken into account in the retaking of the decision.
26. The evidence which I exhibit to this statement of airstrikes occurring in 2020 demonstrates that those patterns have continued to repeat themselves. In order to understand how each airstrike contributes to the indication of the existence of one (or more) pattern(s), I now set out the categories of patterns originally identified to the Defendant in the August 2019 Letter and the airstrikes,

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<sup>15</sup> Transcript of the First Proceedings hearing on 10 April 2019, p.23, D-H, available at <https://caat.org.uk/wp-content/uploads/2020/09/2019-04-10.transcript.pdf>.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

including in 2020, that go toward demonstrating them. It should be borne in mind that the below list is not exhaustive: it comprises incidents that Mwatana itself has documented; there are also further incidents documented by other organisations which also display these categories of patterns.<sup>16</sup>

***Pattern 1: Object Type***

27. The first pattern category presented to the Defendant in the August 2019 Letter was object type.<sup>17</sup> The three categories of objects were residential homes, infrastructure and economic targets, and civilians.

***Pattern 1a - Residential Homes***

28. A pattern of attacking residential homes evident from the following examples of incidents documented by Mwatana:
  - i. In mid-September 2015, a residential home in the UNESCO-protected Old City of Sana'a was hit with a Coalition bomb at night. The bomb destroyed the house and killed 13 people, including a man, his wife and their children as they ate dinner. It also caused severe damage to surrounding homes, which are also UNESCO-protected. Remnants of a munition found at the scene were identified by a weapons expert as being from a Mark-80 series bomb. The witnesses who spoke to Mwatana said that the man who was killed was poor and had no connection to the conflict. JIAT claimed that the Coalition had not conducted the attack [~~MIB/C/182-222~~ HBS/1744-1784].

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<sup>16</sup> Some such incidents were included in the August 2019 Letter which was sent jointly by GLAN and Mwatana and as such are annexed to this statement.

<sup>17</sup> By "object", we refer to the object(s) or person(s) affected by the attack; in other words, the object(s) or person(s) that were struck by, or were in the immediate impact area of, a Coalition attack.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- ii. At around 1:30 a.m. on Saturday 6 February 2016, when residents were asleep, Coalition aircraft dropped a US-made Mk-82 bomb on a home in Al-Miqsas village, At-Ta'iziyah District, Taizz Governorate. The homeowner's wife and 14-year-old daughter were killed in the attack, and half the house was destroyed. The nearest military site Mwatana identified was about 3 kilometres to the east [~~MIB/C/424~~ HBS/1983, ~~SB/857~~ HBS/1558].
- iii. At around 8 p.m. on Wednesday, 21 September 2016, Coalition forces bombed al-Hunood residential neighborhood in Hawak District, Hudaydah Governorate during a funeral for one of the neighborhood's residents. The attack on al-Hunood neighborhood killed about 2 dozen civilians, wounded about 4 dozen, and destroyed up to 15 homes. Extremely extensive damage was done to the street. A remnant of what appeared to be a US-made bomb, the GBU-16 (1,000 lb bomb), was recovered at the scene of the strike. Whilst the strike followed an attack on the Presidential Palace, no military targets were identified in the residential neighbourhood by Mwatana. JIAT claimed that the Coalition had not conducted the attack [~~MIB/C/262-303~~ HBS/1824-1965].
- iv. On the evening of 24 September 2016, Coalition forces bombed a residential apartment building near Jiblah Fork in the Ibb Governorate, killing 6 people, including 3 children and a woman, and injuring another woman. There were no military targets identified by Mwatana, who conducted interviews 2 days after the strike. JIAT claimed that the Coalition had not conducted the attack [~~MIB/C/304-308~~ HBS/1066-1870].



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- v. At about 6:30 a.m. on the morning of Saturday 27 January 2018, Coalition aircraft hit a house in the village of al-Raqab, in At Ta'iziyah District, in the Taizz Governorate. Mwatana's investigation confirmed that the attack killed 2 children and their mother, and wounded 2 other children, in addition to their father [MIB/C/432 HBS/1994].
- vi. On Monday, 25 June 2018, at about 2:30 a.m., Coalition aircraft carried out an attack on a home in the Al Ettisalat neighborhood, in the center of Amran city, located to the north of the capital Sana'a. The attack completely destroyed the house and severely damaged 5 other houses. Mwatana's investigation confirmed that the attack killed 9 people, including 2 women and 4 children, and injured 19 others, including 5 children and 5 women [MIB/C/434 HBS/1996].
- vii. On 10 January 2019 at about 6.30 a.m. in al Farash village, Hajjah, an airstrike hit a home while 6 members of the family were inside the *majlis*, a room for visitors, about 35 metres from the main living area, having breakfast. Mwatana's investigation identified that 2 men were killed and 4 people were injured, including 2 children [MIB/C/382-384 HBS/1944-1946].
- viii. On 16 May 2019, a very densely populated area of Sana'a, al-Raqas Street, was hit with a Coalition bomb, killing 5 children and injuring about 77 people, including almost three dozen children. Mwatana also found that the house and the surrounding buildings, also damaged or destroyed, were inhabited by civilians. [MIB/C/388-407 HBS/1950-1969]. JIAT issued a press release with their findings, acknowledging that the Coalition hit a civilian home, but claiming

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

it was a mistake due to a “technical defect” with the bomb [~~MIB/C/455-456~~ HBS/2017-2018].

- ix. At about 8:30 p.m. on the evening of Saturday, 9 March 2019, Coalition aircraft launched two airstrikes against a home in the Kushar district of Hajjah. A group of women and children had recently entered the house, fleeing from their own home, where they feared they were unsafe as an airstrike had landed nearby. Mwatana identified 12 civilians killed in the strike, 7 women and 5 children. Mwatana also identified 8 civilians injured in the strike, 2 women and 6 children [~~MIB/C/435~~ HBS/1997]. JIAT claimed that the target was a house which Houthi fighters had recently entered [~~MIB/C/460~~ HBS/2022].
- x. On Friday, 14 February 2020, at about 11:45 p.m., the Coalition hit civilian homes in the area of Al-Saidah village, in the Al-Heija area of Al-Maslub District, Al-Jawf Governorate, in four consecutive strike. The attack killed 32 civilians—most of them children and women—and wounded 21 civilians [~~MIB/C/464-494~~ HBS/2026-2056]. On 25 November 2020, JIAT released its findings in respect of this incident, claiming there was a legitimate military target [~~MIB/C/491-494~~ HBS/2053-2056].
- xi. On Sunday, 7 June 2020, at about 9:00 a.m., Coalition aircraft hit an empty parcel of land near a residential house in the village of Nawah in Bakil Mir District in Hajjah Governorate. A child, of approximately 7 years old, was playing near her house and was injured by shrapnel that hit her lower back. Mwatana did not identify any nearby military sites [~~MIB/C/539~~ HBS/2101].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- xii. On Sunday 12 July 2020, at about 1:00 p.m., a Coalition airstrike on a house in the village of Al-Jassim in Al-Asra, in the Washaha District of Hajjah Governorate killed 9 civilians, 6 children and 3 women, and injured 4 people, a woman and 3 children. Mwatana did not identify a military target: the house belonged to a member of the Ansar Allah (Houthi) group in the area, who had fought with the group, but he was not at home when the strike occurred; and there was a military checkpoint about 300 metres from the house [~~MIB/C/539~~ HBS/2101]. On 25 November 2020, JIAT released its findings in respect of this incident, claiming there was an intended military target 780 metres away, an alleged Ansar Allah (Houthi) command and control centre, but that due to adverse weather the bomb went off course and hit the house accidentally [~~MIB/C/461-463~~ HBS/2023-2025].
- xiii. On Wednesday 15 July 2020, at about 7:00 a.m., a Coalition airstrike in Al-Masa'fa village of Al-Hazm District in Al-Jawf Governorate killed 12 civilians, including 7 children and 2 women, and injuring 6 others, including 5 children and a woman. The airstrike hit a civilian house during a family circumcision ceremony for one of the children and caused significant damage to the house and its surroundings. Minutes later, a second bomb hit another civilian house located about 100 meters north of the first home, completely destroying the house which was empty at the time [~~MIB/C/508-521~~ HBS/2070-2083].
- xiv. On Sunday 23 August 2020, at around 10:30 p.m., in the Terak area of Al-Ashash, Kataf District in Saada Governorate, a Coalition

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

airstrike hit a tent, killing 2 civilian women—the owner of the tent's daughter and sister. The women's bodies were torn apart. The strike also damaged the tent owner's car. Mwatana did not identify military sites near the site of attack. According to witnesses, the man who owned the tent was supportive of the Ansar Allah (Houthi) group but this alone would not make the man targetable [~~MIB/C/538~~ HBS/2100].

***Pattern 1b – Infrastructure And Economic Objects***

29. The extent to which infrastructure and economic objects have been attacked by the Coalition is extremely troubling, particularly given Yemen's ongoing humanitarian crisis as outlined above. These objects include water, power and fuel infrastructure, as well as agricultural sites, factories, markets and transport.
30. In the August 2019 Letter, we pointed out to the Defendant the particular importance and significance of these sites in Yemen. Yemen is one of the most water-scarce countries in the world and is therefore heavily reliant on the irrigation structures it has developed, such that attacks on water infrastructure have a profound effect on civilians' access to water. Fuel is needed to operate that water supply and to transport vital supplies, such that attacks on fuel infrastructure also has a profound effect on civilians. The Coalition has also repeatedly hit bridges important for the transport of critical life-saving supplies and attacks on transport infrastructure further increase the cost of transporting food, water and fuel. Markets have also been hit in very high numbers and often result in high civilian casualties.
31. On 21 April 2015, Coalition aircraft dropped two consecutive bombs, in a 'second-wave' attack, on the Al-Dhaleel bridge in Ibb Governorate.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

Mwatana's investigation confirmed that the attack killed dozens of civilians, including children, and wounding dozens more. JIAT claimed that the bridge was a military target as there was a military necessity to cut Houthi supply routes, and that there were no civilians present at the time of the bombing [~~MIB/C/409~~ HBS/1971].

32. At about 4:00 p.m. on 12 May 2015, the Coalition bombed the Al-Shaje market in the Zabid District of Hodeidah, when the market was crowded with people shopping and having lunch. Mwatana identified approximately 80 people killed or wounded in the strike, including 9 children and 5 women. JIAT claimed that no airstrike took place at that location on that date [~~MIB/C/411~~ HBS/1973].
33. On 14 September 2015, between 5 and 6 Coalition bombs hit Wa'lan Agricultural Complex, a building with 5 residential apartments in which agricultural engineers lived with their families, an administration room, a guard room and a generator room. Mwatana identified 8 residents killed in the strike, including 2 children and 4 women, and 12 more injured, including 6 children and 2 women. Mwatana did not identify any military target [~~MIB/C/223-245~~ HBS/1785-1807].
34. At around 2 p.m. on Thursday, 12 November 2015, Coalition aircraft dropped a bomb—likely a US-made CBU-58 cluster bomb—on 65-year-old civilian's farm in Al-O'saila village, Haradh District, Hajjah Governorate. A group of young men were fixing a water pump on the farm. Mwatana's investigation confirmed that the strike killed 2 of the 5 men, injured the remaining 3, and set the farm on fire [~~MIB/C/418~~ HBS/1980, ~~SB/860~~ HBS/1561].
35. At around 10:30 p.m. on Thursday, 31 December 2015, three Coalition bombs struck Al-Kahlani Cosmetics Factory and Tahama Packaging Tools Company

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

in Kilo 16, Hudaydah Governorate. Mwatana's investigation found that the attack damaged Al-Kahlani Factory and uprooted many families living nearby [~~MIB/C/419~~ HBS/1981].

36. At about 12:30 a.m. on Wednesday, 6 January 2016, two Coalition bombs struck Al-Muqbeli Warehouse in Kilo 7, Hudaydah Governorate, setting the warehouse on fire. No military target was identified by Mwatana, who visited the scene. JIAT claimed the target was a weapons and ammunition depot. At least one of the bombs used in the attack was identified by a weapons expert as a UK-made Paveway IV laser-guided bomb with US-made Mk-82 warhead [~~MIB/C/419~~ HBS/1981].
37. In the very early hours of Wednesday, 6 January 2016—less than an hour after attacking nearby Al-Muqbeli Warehouse—Coalition aircraft dropped four bombs on Derhim Industrial Factory near Al-Maraw'a, Hudaydah Governorate, setting the factory on fire. A Raytheon-manufactured Paveway IV bomb appears to have been used in the attack. No military target was identified by Mwatana, who visited the scene. JIAT claimed that the target was a weapons depot [~~MIB/C/420~~ HBS/1982].
38. Just after midnight on Monday, 12 September 2016, the Coalition dropped four bombs on Al-Senidar Factory Complex in Bani Al-Harith District, Amanat Al-Asimah Governorate. The Coalition used a Raytheon-manufactured Paveway IV bomb in the attack. Within about 5 minutes, the bombs struck 3 different factories in the complex and damaged at least one house nearby. JIAT claimed that there was a legitimate military target. Mwatana did not find any evidence of military activity at the scene [~~MIB/C/423,447~~ HBS/1985,2009].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

39. At around 5:30 p.m. on 10 March 2017, the Coalition carried out an airstrike on a qat market in al-Khoukha in Hodeidah Governorate when, according to Mwatana's investigation, it was very busy. The attack killed 21 civilians, including 3 children, and injured 7 others. The strike on the market followed two strikes on a nearby military camp. JIAT claimed that the Coalition bombed legitimate military targets on that date and did not bomb the market [~~MIB/C/426~~, HBS/1988].
40. At approximately 8:00 a.m. on 26 December 2017, a Coalition airstrike hit a popular market in Al-Haymah Al-Sufla village, in Al-Taizziah District, Taizz Governorate. Mwatana's investigation confirmed that 27 civilians were killed, including 6 children, and a further 8 were wounded. JIAT claimed that the target was a gathering of Houthi militia and that no civilians were present [~~MIB/C/431, 450~~ HBS/1993,2012; ~~SB/26/325, 359~~ HBS/186,220].
41. In Sana'a, in late May 2018, a fuel station was destroyed by two Coalition bombs. Mwatana confirmed that the attack killed 4 people, including a woman and a child, and wounded about a dozen others [~~MIB/C/433~~ HBS/1995]. JIAT claimed that the strike was legitimate because it said the Houthis were using it [~~MIB/C/457~~ HBS/2019].
42. Mwatana investigated a Coalition attack on 23 July 2018 that struck a water project in Wadi Al Nashoor, Al Safra'a in Saadah governorate: the site consisted of wells, a solar energy system, and water pumps and pipes, and the project provided water to about twenty villages in an area in which there was significant water scarcity. A UNICEF press release said the attack resulted in "cutting off 10,500 people from safe drinking water"<sup>18</sup> and noted that the

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<sup>18</sup> UNICEF, *Access to water continues to be jeopardized for millions of children in war-torn Yemen*, 24 July 2018, available at: <https://www.unicef.org/mena/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen>

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

same project had been attacked in March of that year.<sup>19</sup> The United Nations Panel of Experts investigated this attack and was informed by a confidential source that the project was on the Coalition's no-strike list [~~MIB/C/434~~ HBS/1996].

43. On 7 April 2020 at about 10:00 a.m., a civilian's farm, located in the village of Baghtah, Abs District in Hajjah Governorate, was hit by at least one bomb in a Coalition airstrike. The strike killed one civilian and injured another, both of whom were working at the farm. The farm stopped operating after the airstrike. Mwatana did not identify any military target in or near the farm [~~MIB/C/502-504~~ HBS/2064-2066].
44. On 1 July 2020, at around 11:40 p.m., a Coalition airstrike hit a warehouse containing relief supplies including food and irrigation tools in Al-Maqash area of Al-Safra District in Saada Governorate in four successive strikes. The airstrikes killed 2 civilian women and wounded 5 civilians from the same family, 3 women and 2 children. The strikes also resulted in the destruction of the warehouse and many of the materials stored inside, and damaged a neighboring house. Mwatana's research indicated a sixth person who was affiliated with Ansar Allah was wounded, and that the contractor who ran the warehouse was also affiliated with the group. This alone would not make either the wounded man or the warehouse targetable, nor outweigh the significant resulting civilian harm [~~MIB/C/505-507~~ HBS/2067-2069].

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<sup>19</sup> UNICEF also reported that a sanitation centre it supported in Zabid was attacked on 28 July 2018 and that on 27 July 2018, a water station providing Hodeida with most of its water was targeted: UNICEF, *Drinking water systems under repeated attack in Yemen*, 1 August 2018, available at: <https://www.unicef.org/press-releases/drinking-water-systems-under-repeated-attack-yemen>. The same press release states that on 29 July 2018, a UNICEF-supported warehouse containing water-related supplies was hit by two airstrikes. The press release said: "the past few days have seen an escalation in the targeting of systems and facilities that are essential to sustaining civilian lives."



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

45. On Saturday 12 September 2020, at about 1:00 a.m., a Coalition airstrike hit a chicken farm in Al-Thib village of Arhab District in Sana'a, injuring 2 civilians, including a 16-year-old boy. The chicken farm was destroyed. The closest military target Mwatana identified was a group of gunmen about 200 meters from the site of the incident. There was a military checkpoint 300 meters away from the farm [~~MIB/C/537~~ HBS/2099].
46. On 13 September 2020 at about 8:00 p.m., a Coalition airstrike hit a fuel station in the Qalas area of Al-Mahliya District in Marib Governorate. The airstrike killed 5 civilians, including a child and 3 African migrants, and wounded an adult man. In addition, the strike damaged the fuel station, 3 stores, a truck loaded with empty gas cylinders and nearby houses [~~MIB/C/534-536~~ HBS/2096-2098].
47. Further attacks demonstrating a pattern of attacks on farms and critical infrastructure are featured in the "long-list" at [~~MIB/C/540-546~~ HBS/2099-2109].

***Pattern 1c – Attacks Affecting Civilians***

48. Attacks that kill and harm large numbers of civilians have been a persistent feature of the Coalition's military operations in Yemen. We highlight the following examples:
  - i. The attack on the market in Zabid on 12 May 2015 referenced at [32] above killed about 40 people including 9 children and 5 women [~~MIB/C/411~~ HBS/1973].
  - ii. At about 8:00 a.m. on 20 September 2016, a pick-up truck driving women and children to harvest crops on their farm in Al Qashah in Al Jawf Governorate was directly struck by a bomb killing 15

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

people, 12 children and 3 women, and injuring 3 children. The account provided by JIAT directly contradicts the evidence: JIAT states that video footage showed no civilians on the back of the truck, which was being monitored – yet Mwatana’s evidence indicates that 15 women and children were riding in the pick-up truck [~~MIB/C/246-261~~ HBS/1808-1823].

- iii. On 15 March 2017, 41 people were killed or went missing when a Coalition helicopter attacked a boat carrying about 140 Somali migrants and refugees and four Yemeni crew. The attack, which was carried out using gunfire, continued over an extended period, with the aircraft returning to launch further attacks at intervals. JIAT said it investigated the activities of the only Coalition vessel in the area that could carry aircraft and claimed that an Apache helicopter based on that vessel had spotted the boat but had not attacked it, recognising its civilian character [~~MIB/C/426~~ HBS/1988].
- iv. On 22 April 2018, the male gathering at a wedding party, attended by many young children, was hit by an airstrike in al-Raaqah village, Hajjah governorate. At least 21 people were killed, and 97 were injured. Remnants of a GBU-12 bomb were found at the scene by Mwatana. There were no military targets or personnel in the area identified by Mwatana. The Coalition’s explanation for this strike is that 3 individuals (including a suspected weapons expert) and 2 vehicles were observed outside a house – and it claims that no wedding or tent was visible. JIAT appeared to acknowledge that damage to the tent resulted from a Coalition strike despite also claiming that the Coalition forces “did not target the wedding tent at the claimed place.” Photographs taken at the scene on 24 April 2018 depict the remains of a tent/canopy along with many other objects

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

indicative of a wedding party.<sup>20</sup> Aircraft had been flying overhead throughout the afternoon, during which time the number of guests at the wedding had reduced from around 500 to around 200, according to witnesses. Immediately before the strike, a few guests said that a call was received to say the wedding would be hit. [~~MIB/C/309-345~~ HBS/1871-1907; ~~SB/27/371-372~~ HBS/1420-1421; ~~SB/41/830-833~~ HBS/1531-1534].

- v. At approximately 3:30 a.m. on Wednesday 13 February 2019, a Coalition aircraft attacked 13 fishermen while they were at sea north of Al-Budaie Island, Al-Luhayyah District of Hudaydah Governorate. Mwatana identified that eight people were either killed or missing after the attack, including two minors, and a further five wounded. The area where the attack occurred is controlled by Houthi forces but interviewees said there were no Houthi military forces or sites near the affected area, which the fishermen had fished in regularly [~~MIB/C/385-387~~ HBS/1947-1949].
- vi. On 3 March 2020, two Saudi/UAE-led Coalition airstrikes, about half an hour apart, hit two civilian cars on the same road in the Al-Labnat area of Al-Hazm District in Al-Jawf Governorate, killing 5 people and injuring another person. All 6 were civilians working in the qat trade, who were transporting qat when the airstrike occurred. The strikes took place on the main road in a desert area that is about 3 kilometers long and 2 kilometers wide and is surrounded by hills. The men regularly used this road to transport qat, as did other civilians, as other roads had been closed due to conflict [~~MIB/C/495-504~~ HBS/2057-2063].

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<sup>20</sup> The photographs were not included in the enclosures to the August 2019 Letter due to an administrative issue. They are included here to demonstrate to the Court the clear civilian nature of the scene.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- vii. On 8 April 2020, at about 4:00 a.m., two Hilux vehicles loaded with qat were hit by two airstrikes in Al-Labnat area of Al-Hazm District in Al-Jawf Governorate, killing one of the drivers. He and the other two people travelling with him were all civilians who worked in the qat trade. The area where the strike occurred is a strip of desert between Marib and Al-Jawf governorates. After the main road between the two governorates closed due to clashes between the Houthis and the Coalition-backed Yemeni government, the road where the strike occurred became the only route between the two governorates such that civilians had to use it [~~MIB/C/540~~ HBS/2102].
- viii. On 6 August 2020, at about 9:30 a.m., the Coalition hit 3 civilian vehicles in multiple successive strikes in the Haradh area of Khab w Al-Sha'af District in Al-Jawf Governorate, killing 8 civilians, all children, and wounding 15 civilians, including 8 children and 4 women. The civilians were families travelling together to visit relatives for the Eid holiday. Mwatana did not identify any military target nearby and found that for many years, civilians in the area have had to rely on remote roads for travel, as many of the main roads have been closed by warring parties and/or laden with landmines. JIAT claimed that the Coalition observed Houthi pick-ups and fighters on a known Houthi approach route, that one civilian car had driven into that alleged group of military vehicles, and due to "time pressure and stress on the targeting officer, and the importance of speedy decision-making" the pilot had accidentally failed to re-evaluate the target after re-fueling and had hit one civilian vehicle [~~MIB/C/522-533~~ HBS/2084-2095].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- ix. On Friday 4 September 2020, at about 12:00 p.m., the Coalition bombed a number of shops on the main street of Al-Ardhiya village of Maheliya District in Marib Governorate, injuring 4 children and an adult man, all civilians. Mwatana identified no military target at the time of the strike; one witness said that there had been one or two Houthi fighters in the area, but a vehicle had picked them up a few hours before the strike [~~MIB/C/537~~ HBS/2099].
49. For completeness and to assist the Court, I also exhibit a comprehensive itemised list of all of the attacks that Mwatana has either published or prepared for these proceedings. Where appropriate, cross-references are made to the Claimant's bundle. The list contains further examples in all of the patterns outlined above, in addition to a number of schools and medical facilities [~~MIB/C/553-562~~ HBS/2115-2124].

***Pattern 2: Failure To Follow Procedure Designed to Minimize Civilian Harm and Ensure Compliance with IHL***

50. The second pattern concerns the apparent failure by Coalition decision-makers to follow procedures designed to minimize civilian harm and ensure compliance with IHL. The February 2016 statement by Saudi Arabia to the UN Security Council ("**Saudi Arabia Statement**") described the Coalition's targeting procedure as follows:

*"1. Identifying the military targets undergoes several stages. It starts from choosing a target, analysing it and confirming that it's a military target through several sources to ensure not to make any mistakes when targeting every site in the Yemen is suppose to be a civilian unless the contrary is decisively proved. [sic]*

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

*2. Constantly working on developing the list of sites that are prohibited from being targeted including sites of civilian presence, places of worship diplomatic quarters, international governmental and non-governmental organisations and committees, and cultural sites. The list is updated constantly and sent in a periodic basis, to all the levels of the Saudi/UAE-led Coalition forces to insure that all the specialists are aware of it.*

...

*4. The Saudi/UAE-led Coalition forces use precise and guided weapons, in spite of their high cost in addition to the lack of international legal commitment on the countries to use them, in order to avoid any mistakes, collateral damages and casualties.”<sup>21</sup>*

51. Paragraph 2 would appear to refer to a No Strike List (“NSL”). Paragraph 4 indicates that, in general, the Coalition should be taken to have intended to hit the target of its attacks.<sup>22</sup>
52. The Defendant also provided further details during the First Proceedings about the Coalition’s targeting procedure, explaining how both ‘pre-planned targeting’ and ‘dynamic targeting’ procedures appear to indicate an intention to comply with IHL.

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<sup>21</sup> Divisional Court Judgment in the First Proceedings, para 135.

<sup>22</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, available from <https://undocs.org/en/A/HRC/45/6>, at para 38.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

53. However, as we raised to the Defendant in the August 2019 Letter, Mwatana's analysis of many relevant incidents clearly shows that the Coalition's conduct of operations in practice has not only repeatedly resulted in serious IHL violations, but also is not consistent with the procedures as outlined by Saudi Arabia to the UN Security Council or as described by the Defendant in the First Proceedings.
54. Mwatana's investigations, along with other reliable open source reporting, show that in a large number of cases, Coalition airstrikes appear to have been indiscriminate and/or disproportionate, for example the many airstrikes where investigation by Mwatana and others identified no known military target and those where, even if a military target was identifiable, there was grave civilian harm caused, indicative of a disproportionate attack. The sheer volume of Coalition airstrikes that appear to violate the IHL principles of proportionality and discrimination in this way strongly indicates that procedures designed to ensure compliance with IHL, including minimizing civilian harm, are not being followed by the Coalition. In addition, there are some specific indicators of failure to follow procedure.
55. First, the repeated striking of objects which would be expected to appear on the Coalition's NSL indicates a failure to effectively incorporate the precautions generally intended through the adoption and development of an NSL. Paragraph 2 of Saudi Arabia's Statement specifically identifies "*cultural sites*" as suitable for inclusion on a NSL, consistent with the prohibition on directing attacks against buildings of particular cultural importance. Further, the US provided Saudi Arabia with no-strike lists of targets to avoid, including water and electrical facilities and infrastructure

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

vital to delivering humanitarian aid,<sup>23</sup> and Saudi Arabia announced in 2018 that it was operating a NSL of 40,000 locations.<sup>24</sup> Finally, humanitarian organizations consistently provide the Coalition with the coordinates of their facilities and movements. Avoiding damage to critical objects includes refraining from bombing targets so near them as to endanger the object itself. Nevertheless, the Coalition has attacked objects that one would reasonably expect be present on any NSL, such as:

- i. Al Feleihi Neighbourhood in Sana'a's Old City, which was UNESCO protected, September 2015 [~~MIB/C/182-222~~ HBS/1744-1784];
- ii. The main bridge between Hodeidah and Sana'a, which was reported to have been on the Coalition's NSL, which was struck on 11 August 2016 [~~MIB/C/422~~ HBS/1984] (documentation by Oxfam, the Atlantic and the New York Times);
- iii. Many health facilities,<sup>25</sup> including the MSF cholera clinic in Abs, the coordinates of which were supplied twelve times to the Coalition and whose red crescents were clearly visible on satellite imagery, was struck on 11 June 2018 [~~MIB/C/361-381~~ HBS/1923-1943];
- iv. Nashoor water treatment plant, which was struck repeatedly, including on 23 July 2018, and was confirmed by the UN Panel of Experts to have been on the NSL [~~MIB/C/434~~ HBS/1996];
- v. A Houthi detention centre in Dhamar containing around 170 civilians and combatant detainees, which was struck on 31 August 2019, despite being a known detention centre that had been visited regularly by the Red Cross [~~MIB/C/546~~ HBS/2108]. Of further

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<sup>23</sup> Reuters, *As Saudis bombed Yemen, U.S. worried about legal blowback*, 10 October 2010, available at: <https://www.reuters.com/article/us-usa-saudi-yemen-idUSKCN12A0BQ>.

<sup>24</sup> Embassy of Saudi Arabia, *Coalition Investigating Claims of a Strike in Bani Qais*, 23 April 2018, available at: <https://www.saudiembassy.net/news/coalition-investigating-claims-strike-bani-qais>.

<sup>25</sup> Mwatana, *I Ripped the IV Out and Started Running*, March 2020, *supra* note 6.



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

concern is the fact that JIAT claimed that the Coalition was unaware that the location was a detention centre, which would indicate that it was not on the NSL when it plainly should have been.

56. Second, the striking of individuals and other objects which would appear from the air to be clearly civilian in nature suggest that precautions to verify the target were not taken or that, if they were, precautions to minimise harm, cancel attacks or warn civilians were not taken. For example, indicative factors include:

- i. the presence of civilians and children's swings and a merry-go-round in the al Mokha residential complex when it was hit by up to 6 successive airstrikes [~~MIB/C/413~~ HBS/1975];
- ii. the presence of roof markings on the Abs MSF cholera clinic captured on satellite imagery [~~MIB/C/377~~ HBS/1939];
- iii. the presence of 15 women and children in the Al-Jawf pick-up truck [~~MIB/C/246-261~~ HBS/1808-1823];
- iv. the presence of hundreds of civilians at the Bani Qais wedding before it was attacked [~~MIB/C/309-345~~ HBS/1871-1906];
- v. the presence of large numbers of civilians at the various markets which have been attacked (and the visibility of market stalls in many of these cases), often with multiple bombs [e.g. ~~MIB/C/162-181, 413~~ HBS/1724-1743,1975 (documented by Human Rights Watch) and ~~MIB/C/411~~ HBS/1973];
- vi. an airstrike on 14 May 2018 directed at tents in Saada, which housed the Maswadah family of over 12 people, including 9 children. The Intercept reported that a leaked US military document described the decision to strike having been taken less than 50 minutes after a drone first identified the target and without any intelligence to justify the strike. The US document also stated that the Saudi officers privately admitted to failing to follow their own procedures and had

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

failed to corroborate the target with additional intelligence sources or weigh the lack of time-sensitivity with the decision to strike immediately [~~MIB/C/346-360~~ HBS/1908-1922].

57. Thirdly, 'second-wave' attacks where one airstrike rapidly follows another also do not appear consistent with the targeting procedure as described above, as it suggests that the Saudi/UAE-led Coalition is failing to carry out a new, and specific estimate of collateral damage, as per the procedure explained by the Defendant during the First Proceedings, ahead of second-wave attacks, when the harm analysis should incorporate the potential (and, often, likely) presence of first responders. This phenomenon has continued throughout the conflict. Some examples are:
- i. Al-Dhaleel bridge [~~MIB/C/324~~ HBS/1971];
  - ii. Zabid market, Hodeidah [~~MIB/C/411~~ HBS/1973];
  - iii. Wa'lan agricultural complex [~~MIB/C/223-245~~ HBS/1785-1807];
  - iv. As-Sabain District, Amanat Al Asimah, community hall during a funeral [~~SB/15/172~~ HBS/1322; ~~SB/27/388-390~~ HBS/1437-1439; ~~SB/41/872-873~~ HBS/1573-1574]; and
  - v. Civilian homes in al-Jawf [~~MIB/C/464-494~~ HBS/2026-2056].
58. Fourthly, the striking of homes in densely populated areas with wide-area bombs indicates that certain possible precautions, like choice of an appropriate weapon to minimise civilian harm or cancelling attacks which are expected to be disproportionate are not being taken. For example:
- i. Al-Feleihi neighbourhood, Sana'a [~~MIB/C/182-222~~ HBS/1744-1784];
  - ii. Houses near Presidential Palace in Taiz [~~MIB/C/415~~ HBS/1977];
  - iii. Al-Hunood neighbourhood, Hodeidah, using a Mark-83 1,000 lb bomb [~~MIB/C/262-303~~ HBS/1824-1865];

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- iv. House in al-Ettisalat neighbourhood, Amran city [~~MIB/C/433~~ HBS/1995]; and
- v. Al-Raqas neighbourhood, Sana'a (which is one of the most crowded streets in Sana'a) [~~MIB/C/388-407~~ HBS/1950-1969].

59. There are a number of incidents in respect of which JIAT itself, after overwhelming international pressure, has acknowledged some level of fault by Coalition forces. In most of those cases, the reason given by JIAT is that procedure was not followed. Given the fundamental credibility issues with JIAT (see below), Mwatana does not presume that these findings accurately represent the whole picture; indeed, many of the findings listed below are themselves internally inconsistent. However, if they are taken at face value, they display a clear pattern:

- i. The attack on Mokha steam power plant residential complex on 24 July 2015, which killed at least 65 civilians. JIAT found that intelligence had been received regarding the existence of military targets constituting an immediate threat to the Coalition's naval vessels, and that the "*objective was a residential complex partly affected by unintentional bombing, based on inaccurate intelligence information,*" resulting in a decision being made too quickly [~~MIB/C/413,444~~ HBS/1975,2006].
- ii. The attack on 8 October 2016 on a community hall during a funeral in Sana'a in which JIAT concluded that the Yemeni air operations centre had passed incorrect intelligence to Coalition aircraft, insisting that they attack immediately, which they did "*without obtaining approval from the Saudi/UAE-led Coalition command ... and without following the Saudi/UAE-led Coalition command's precautionary measures to ensure that the location is not a civilian*

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

*one that may not be targeted*" [~~SB/15/172~~ HBS/1322; ~~SB/27/388-390~~ HBS/1437-1439; ~~SB/41/872-873~~ HBS/1573-1574].

- iii. The attack on 22 April 2018 on a wedding in Bani Qais in respect of which JIAT acknowledged that it "*found a number of errors indicating non-compliance with some of the Rules of Engagement procedures to minimize damage which caused collateral damage to the tent in the claim as a result of the bombing of the target building.*" [~~MIB/C/309-345~~ HBS/1871-1907].
  - iv. The attack on 11 June 2018 on the cholera clinic in Abs, Hajjah in which JIAT concluded that the attack had been conducted based on information from a source inside Yemen and that the necessary procedures were not completed [~~MIB/C/361-381~~ HBS/1923-1943].
  - v. The attack on three civilian vehicles in the Haradh are of Al-Jawf Governorate, on 6 August 2020, in respect of which JIAT admitted that "*due to the time pressure and stress on the targeting officer, and the importance of speedy decision-making*", the pilot failed to re-evaluate one of the targets after re-fueling in accordance with the procedures, and "accidentally" hit a civilian vehicle (note that Mwatana found that 3 civilian vehicles were hit and found no military targets) [~~MIB/C/444-445~~ HBS/2006-2007].
60. Even in the few cases where JIAT has admitted that procedures were not followed in respect of a particular incident, including procedures necessary to ensure the practical application of fundamental IHL rules, JIAT does not necessarily conclude that the Coalition violated IHL, and fails to explain how that could be: for example, in the attack on civilian vehicles in Haradh, Al-Jawf, on 6 August 2020 referred to above, JIAT concluded both that the targeting officer breached the rules of engagement and was inaccurate in taking procedures, but also that the procedures taken by the Coalition were

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

correct and in accordance with IHL. Human Rights Watch found that JIAT “*appears to have regularly failed to conduct a thorough laws-of-war analysis in its investigations and produced flawed and dubious conclusions.*”<sup>26</sup> It is highly instructive that JIAT does not describe proportionality calculations being made in advance of attacks, nor does it assess proportionality retrospectively (see [69] below), strongly suggesting that the Coalition is fundamentally failing to consider and comply with the fundamental IHL principle of proportionality. These failings and inconsistencies indicate either an inability or unwillingness on JIAT’s part to conduct a comprehensive and accurate IHL analysis.

61. In Mwatana’s view, the incidents referred to above are not consonant with a concerted application of the targeting procedure described above, nor the taking of all feasible precautions to avoid and minimise civilian harm. A failure to follow procedures suggests the omission of collateral damage assessments, proportionality calculations, measures to appropriately verify the military nature of targets before conducting attacks, and/or precautions to minimise civilian harm.<sup>27</sup> As I mentioned above, the sheer volume of Coalition airstrikes that appear to have been either disproportionate or indiscriminate in nature further support a conclusion that procedures to take all feasible precautions are not being followed.

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<sup>26</sup> Human Rights Watch, *Hiding Behind the Coalition*, 24 August 2018, available at: <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>.

<sup>27</sup> In 2017, two senior United States officials were reported to have acknowledged that, even by that date, Saudi/UAE-led Coalition airstrikes in Yemen did not follow procedures, including failing to consult the NSL and failing to consider in their targeting procedures specific estimates about potential harm to civilians and civilian object (see <https://www.nytimes.com/2017/06/14/world/middleeast/saudi-arabia-arms-training-yemen.html>). The list of incidents above clearly demonstrates that, even after the same report stated that Saudi Arabia had agreed to take such precautions in future, similar patterns of failing to do so continued to be evident.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

***Pattern 3: A Pattern of Deficient Investigation and Impunity in Saudi Arabia's Conduct in the War in Yemen***

62. Since 2015, the Coalition has repeatedly promised to credibly investigate the behaviour of its forces in Yemen and has, to date, failed to do so. This is troubling because (a) JIAT's ineffectiveness and lack of credibility, as demonstrated by the pattern I set out below, are highly relevant to the question of Saudi Arabia's attitude to IHL compliance; and (b) without an effective investigative mechanism, it is not possible for appropriate steps to be taken to punish IHL violations.
63. In response to significant international pressure, JIAT was established in 2016 to investigate incidents of alleged violations and civilian harm by the Saudi/UAE-led Coalition. Saudi Arabia confirmed the creation of JIAT in a letter to the UN Security Council on 1 February 2016. That letter described the purpose of JIAT as follows:<sup>28</sup>

*“The establishment of an independent high-level team (Team) of civilian and military experts to assess reported incidents of civilian casualties, investigation procedures, and mechanisms of precision targeting. The Team is expected to issue a comprehensive and objective report covering each incident individually and containing recommendations and lessons learnt.”*

64. The following statement was published on the Saudi Press Agency's website on 4 August 2016 entitled “Joint Incidents Assessment Team (JIAT) on

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<sup>28</sup> Divisional Court Judgment in the First Proceedings, at para 130.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

Yemen Responds to Claims on Saudi/UAE-led Coalition Forces' Violations in Decisive Storm Operations":<sup>29</sup>

*"In response to claims that the Saudi/UAE-led Coalition Forces have committed violations while conducting the Decisive Storm and the Hope Restoration military operations to support the legitimate government of Yemen, an independent Joint Incidents Assessment Team (JIAT) was formed to assess these claims and accidents. The JIAT consists of 14 members with experience and competence in military and legal fields. The members of the JIAT are from the Kingdom of Saudi Arabia, Kuwait, the Republic of Yemen, Qatar, Bahrain and the United Arab Emirates.*

*The JIAT investigated these claims after preparing an internal duty regulation governing its work, which includes customary procedures for assessing accidents occurring in such operations. The JIAT depended on the customary procedures for investigating the facts and collecting evidence, proofs and documents and lists of targets. It also depended on the international humanitarian law, the international norms, the rules of engagement, accident evaluation, and target mechanism. The JIAT also summoned whoever it considers to hear their statements. The JIAT exercised its full independence and impartiality.*

*The JIAT's Legal Advisor Lieutenant General Mansour*

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<sup>29</sup> Saudi Press Agency, *Joint Incidents Assessment Team (JIAT) on Yemen Responds to Claims on Coalition Forces' Violations in Decisive Storm Operations*, 4 August 2016, available at: <https://webcache.googleusercontent.com/search?q=cache:j198aLQUQc0J:https://www.spa.gov.sa/1524799+&cd=2&hl=en&ct=clnk&gl=uk> .

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

*Ahmed Al-Mansour from the Kingdom of Bahrain said in a news briefing held today at King Salman Air Base at the Central Sector that the JIAT's work in assessing the accidents depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict. The JIAT prepares a report for each individual case, including the facts, circumstances surrounding each accident, backgrounds, timings, lessons learned, recommendations and future actions to be taken. For this purpose, the JIAT depended on analysing the information contained in the task report, reviewing the aerial photographs from the post-mission aircraft reports, recording videos, scheduling daily tasks and reporting to the JIAT's air control officer."*

65. The Defendant stated in the First Proceedings that, in continuing to grant licences, it relies upon Saudi Arabia's responses to recognised violations; and on Saudi Arabia's desire to operate in compliance with IHL, as to which the Defendant points to the existence and processes of JIAT as a factor on which it relies.
66. However, there are several patterns that significantly undermine reliance on JIAT's existence as a reliable factor weighing in favour of the continued grant of licences for exports of military equipment to Saudi Arabia.
67. Firstly, there are a number of strikes in which the JIAT conclusions are in direct conflict with the available evidence. For example:

*Claiming that no strike occurred*



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

68. Despite the fact that only the Coalition has the capacity to conduct airstrikes:

- i. In the case of the 12 May 2015 airstrike on Zabid market which killed about 40 civilians, JIAT claimed that no airstrike took place. Mwatana's investigation report includes witness accounts describing two bombs which detonated and a third which did not [~~MIB/C/414~~ HBS/1973].
- ii. In relation to the 20 August 2015 attack on densely packed houses near the presidential palace in Taiz which killed about 50 civilians, JIAT claimed that no airstrike had taken place. However, Mwatana collected witness accounts which described repeated airstrikes landing one after another on the crowded area [~~MIB/C/415, 448~~ HBS/1977,2010].
- iii. In relation to the 28 August 2015 attack on a residential home in Al Dhihar, Hodeidah, which killed an entire family of five, JIAT claimed that no airstrike took place. However, Mwatana collected witness accounts and recovered the remains of a US weapon [~~MIB/C/415,452~~ HBS/1977,2014; ~~SB/41/849~~ HBS/1550].
- iv. In the case of the September 2015 airstrike on a family home in the UNESCO protected al-Feleihi district of Sana'a's Old City which killed 13 civilians, JIAT claimed that the Saudi/UAE-led Coalition had not carried out this airstrike. Mwatana's investigations include photographic evidence depicting the aftermath of an airstrike, including bomb fragments found at the scene, which have been identified as coming from a Mk-80 series bomb [~~MIB/C/182-222~~ HBS/1744-1784].

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- v. In the case of the bombing of al Hunood market in Hodeidah city on 21 September 2016, JIAT claimed that the damage was not the result of an airstrike. I enclose photographic evidence of bomb remnants which have been identified as those of a Coalition munition [~~MIB/C/262-303~~ HBS/1826-1865].
- vi. In the case of the 24 September 2016 airstrike on a residential area in Ibb Governorate which killed at least 6 civilians, JIAT claimed that no airstrike had taken place in that vicinity on that day. Mwatana's summary incident report includes witness accounts and a photograph of a bomb remnant which has been identified as coming from a Mk-82 general purpose bomb, which the Coalition possesses [~~MIB/C/304-308~~ HBS/1866-1870]. This strike was also documented by the United Nations Panel of Experts, who also found the Mk-82 remnants.
- vii. In the case of the 10 March 2017 airstrike on a qat market in al-Khokha roundabout, witnesses told Mwatana that two bombs had hit a nearby military camp, followed by a third which hit the market, killing 21 civilians. JIAT claimed that the nearest airstrike on that date was 10km from the market [~~MIB/C/426~~ HBS/1988].
- viii. In the case of the 16 March 2017 attack that killed and wounded dozens of civilians after a Coalition helicopter directed prolonged gunfire at a boat carrying about 140 mostly Somali migrants and refugees, when Mwatana investigated witnesses described seeing the helicopter returning several times to the boat. However, JIAT claimed that the Saudi/UAE-led Coalition's aircraft had not attacked

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

the boat, having seen it and recognised that it was civilian [~~MIB/C/426~~ HBS/1988].

*Claiming that targets were legitimate*

- i. In the case of the Coalition second-wave airstrike on the Al-Dhaleel bridge in Ibn Governorate on 21 April 2015, JIAT claimed that it was briefed that the Coalition forces' surveillance and reconnaissance showed the use of the bridge for "non-purposes" than those it was created for in normal circumstances, and therefore claimed that the bridge was a military target based on the military advantage and necessity of cutting Houthi supply routes. JIAT stated that it had reviewed video recordings of the airstrike and claimed that the bridge was partially destroyed and clear of civilians and vehicles during both strikes [~~MIB/C/409, 449~~ HBS/1971,2011].
- ii. In the case of the 20 September 2016 attack on a civilian vehicle in Al Jawf governorate, JIAT claimed that the targeted vehicle did not contain any civilians. Mwatana collected witness accounts which confirmed that all of the occupants were women and children. In this case, JIAT stated that video footage had been reviewed showing no persons on the truck in question, but the targeted vehicle was an open-backed pick-up truck carrying women and children [~~MIB/C/246-261~~ HBS/1808-1823].
- iii. In relation to the 26 December 2017 strike on a popular market in Al-Haymah Al-Sufla village, Taizz Governorate, which killed 27 civilians including 6 children and wounded 8 others, JIAT claimed that the target was a gathering of Houthi militia. JIAT stated that it reviewed video recordings which showed no evidence that the

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

location was a traditional market and that the Coalition forces took precautions to ensure that no civilians or civilian objects were in the targeted location. Mwatana's investigation found that a large number of the casualties were qat sellers who had just arrived in the market [~~MIB/C/431-450~~ HBS/1993,2012].

- iv. In relation to the 9 March 2019 airstrike on a house in Kushar, Hajjah which killed 12 people (7 women and 5 children), and injured 8 people (2 women and 6 children), JIAT found that the attack had targeted "*Houthi armed militia fighters.*" [~~MIB/C/435, 460~~ HBS/1997,2022].
- v. In relation to the 14 February 2020 airstrike on a civilian village in Al Maslub district of Al Jawf governorate, which killed 32 civilians, including 19 children and seven women, and wounded a further 21 civilians, including 12 children and six women, JIAT claimed that there were armed Houthi militia at the site and thus there was a legitimate military target [~~MIB/C/464-494~~ HBS/2026-2056].
- vi. In relation to the 6 August 2020 airstrike on three civilian vehicles in the Haradh area of Khab w Al-Sha'af District in Al-Jawf Governorate, which killed 8 civilians, all children, and wounded 15 civilians including 8 children and 4 women, JIAT claimed that one civilian car had driven into an alleged group of Houthi vehicles, and was struck accidentally when the pilot failed to re-evaluate the target [~~MIB/C/522-533~~ HBS/2084-2095].

*Claiming that an attack was legitimate without addressing civilian harm (and thus the principles of proportionality and precautions to minimize civilian harm)*

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

69. Secondly, many JIAT analyses do not appear to engage with the issue of precautions or proportionality, or those that do engage do so in a plainly erroneous way. In particular, where JIAT considers a military target was present, it often ignores the fact that there were also civilian casualties and/or the impact of the attack on civilians. For example, in relation to the airstrike at al-Saidah village that followed the day after the 14 February 2020, which Mwatana found killed two civilians gathering salvage from a wrecked aircraft, JIAT acknowledged that the airstrike that following day occurred and targeted the wreckage of the aircraft, but failed to acknowledge that the attack also killed a further two civilians (in addition to those killed in the airstrike the day before) [MIB/C/464-494 HBS/2026-2056]. Other credible organisations have similarly observed in their investigation and reporting this pattern of JIAT either failing entirely to address civilian harm and/or proportionality or doing so incorrectly.<sup>30</sup>

70. Thirdly, there are a number of more general aspects of the operation and personnel of JIAT that give cause for serious concern as to JIAT and its independence:

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<sup>30</sup> For example, Human Rights Watch documented (i) a second-wave attack on 15 March 2016 on the market at Mastaba, while it was full of civilians, which killed at least 97 people, but JIAT found that the target was a group of fighters and insisted that there was no market “except on Thursdays,” while also saying that the area was known for the buying and selling of qat (a civilian activity); (ii) an attack on 29 October 2016 on the Security Directorate prison, al-Zaidia, Hodeidah, which killed at least 63 people, mainly detainees, where JIAT claimed that the prison had been attacked because it had lost its legal protection under IHL – without referring to the dead prisoners or to the principle of proportionality; and (iii) an attack on 4 July 2015 at Muthalith Ahim market which killed at least 65 people and wounded 105 as they broke fast for the evening during Ramadan in restaurants, but JIAT claimed that a ballistic missile had been discovered inside a hangar at a “semi-isolated location” and that there were Houthi armed militia and military vehicles at the market, without referring to the civilians or to proportionality. Mediciens Sans Frontieres also reported an attack on the Office of the Presidency in the commercial centre of Sana’a, which killed at least 6 civilians and wounded many, but JIAT claimed that the building had lost its protection due alleged use for military operations without making any reference to the civilian casualties or property damage, nor to the principle of proportionality.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

- i. Saudi Arabia's concerning conduct, and violations of international humanitarian law, in Yemen extends beyond airstrikes. Mwatana has documented Saudi-backed forces indiscriminately shelling civilians, Saudi Arabia's involvement in significant detention-related abuse, including torture of Yemeni fishermen in Saudi Arabia,<sup>31</sup> and Saudi Arabia's significant role in humanitarian obstruction in Yemen, including impeding life-saving goods from entering the country.<sup>32</sup> Yet, JIAT has almost exclusively focused on airstrikes.
- ii. Human Rights Watch has addressed JIAT's approach to 17 specific strikes and found that its conclusions were characterised by legal and factual discrepancies. Further, Human Rights Watch reviewed JIAT's statements in respect of 75 incidents and found that JIAT absolved the Saudi/UAE-led Coalition of responsibility in the "vast majority" of cases.<sup>33</sup>
- iii. The UNGEE Report also analysed 71 of JIAT's reported investigations. They made requests of JIAT as to its terms of reference, appointments process and reporting structure, but received no response. The Experts also found that of all of the attacks, JIAT explained the majority on one of three grounds: 1)

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<sup>31</sup> Mwatana, *Annual Report 2018*, at 64-66, available at: <https://mwatana.org/wp-content/uploads/2019/07/Withering-Life-2.pdf>.

<sup>32</sup> Mwatana, *Annual Report 2019*, at 72-73, available at: <https://mwatana.org/wp-content/uploads/2020/10/2019-Human-Rights-in-Yemen.pdf>. See also, Human Rights Watch, *Yemen: Coalition Blockade Imperils Civilians*, 7 December 2017, available at: <https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians>. See also; United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22. See also; United Nations Security Council Panel of Experts, *Letter dated 26 January 2018 to the President of the Security Council*, at 3, available at: <https://www.undocs.org/en/S/2018/594>.

<sup>33</sup> Human Rights Watch, *Hiding Behind the Coalition*, *supra* note 26.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

accident or technical fault; 2) the Saudi/UAE-led Coalition was not responsible for the attack; and 3) the object was a military objective.

- iv. The UNGEE received “*reliable information*” suggesting that “*at times, JIAT findings were substantially altered by the Saudi Ministry of Foreign Affairs*”<sup>34</sup>
- v. JIAT’s legal advisor and spokesperson, Mansour Al-Mansour, was the presiding judge over Bahrain’s Court of National Safety, a military tribunal which prosecuted at least 300 individuals for protest-related activity in 2011. Some individuals were tortured whilst in this tribunal’s custody, according to Human Rights Watch.<sup>35</sup>

*Other Issues Indicating Impunity with Respect to Saudi Arabia’s Conduct in the War, in Particular the Role of JIAT and Coalition Assurances*

71. In its 2020 report, the UNGEE included in its conclusions that:

*“(a) Individuals in the coalition, in particular from Saudi Arabia, may have conducted air strikes in violation of the principles of distinction, proportionality and precaution, acts that may amount to war crimes;*

*(b) Individuals in the Government of Yemen and the coalition (in particular from Saudi Arabia and the United Arab Emirates) and the southern transitional council have committed, as applicable to*

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<sup>34</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22, at 34.

<sup>35</sup> Human Rights Watch, *No Justice in Bahrain*, 28 February 2012, available at: <https://www.hrw.org/report/2012/02/28/no-justice-bahrain/unfair-trials-military-and-civilian-courts>

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

*each party, acts that may amount to war crimes, including murder of civilians, torture, cruel or inhuman treatment, rape and other forms of sexual violence, outrages upon personal dignity, denial of fair trial, and enlisting children under the age of 15 or using them to participate actively in hostilities;*

*(c) Individuals in the coalition have conducted indiscriminate attacks using indirect-fire weapons, acts that may amount to war crimes... ”<sup>36</sup>*

72. Despite repeated, credible documentation of Coalition involvement (whether directly or through forces it backs and is affiliated with) in other significant violations of international humanitarian law and international human rights law in Yemen beyond airstrikes, JIAT has almost exclusively examined Coalition airstrikes, repeatedly failing to investigate other types of attack and concerning conduct, including those involving significant civilian harm and serious international law violations.<sup>37</sup> Even for airstrikes, JIAT has only released public reports on some of the many hundreds of incidents of civilian

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<sup>36</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22, at para 105.

<sup>37</sup> See, United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22. See also United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/42/17, 9 August 2019, available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/17](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/17). See also; United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/39/43, 17 August 2018, available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/43](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/43). See also; Mwatana, *Annual Report 2017*, available at: <https://mwatana.org/wp-content/uploads/2018/08/The-Woes-of-Arabia-Felix-English-Version.pdf>. See also; Mwatana, *Annual Report 2018*, *supra* note 31. See also; Mwatana, *Annual Report 2019*, *supra* note 32. See also; Mwatana, *In the Darkness*, June 2020, available at: <https://mwatana.org/wp-content/uploads/2020/06/In-the-Darkness.pdf>.



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

harm and credibly alleged international law violations documented by the UN, human rights groups and others.<sup>38</sup>

73. Saudi Arabia has played a central role in civilian harm and international law violations in Yemen beyond airstrikes, some of which are described below:

*(i) Detention-Related Abuse*

74. The scale and severity of abuse associated with detention practice in Yemen, including arbitrary detentions, enforced disappearances and torture, has had significant societal impact. Mwatana has documented many hundreds of cases of detention-related abuse by the warring parties in Yemen since the conflict began, including egregious detention-related abuse by the Ansar Allah (Houthi) group, by Coalition-backed groups and by Coalition forces in Yemen. Across Yemen, including in areas controlled by the Coalition-backed Yemeni government, by UAE-backed armed groups, by other Coalition-backed Yemeni groups, and where Saudi Arabia or the UAE exercise considerable influence, Mwatana has repeatedly documented cases of arbitrary detention, enforced disappearance, cruel, inhuman and degrading treatment, and torture, as well as the repeated use of unofficial detention sites to hold, interrogate and mistreat detainees.<sup>39</sup>

75. I myself have personally experienced arbitrary detention in which Saudi Arabia played a central role. In June 2018, I travelled from Sana'a, Yemen, to Seiyoun, Yemen, in order to travel abroad, with Abdulrasheed al-Faqih, the Executive Director of Mwatana. Abdulrasheed is my husband; we co-

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<sup>38</sup> See, e.g., United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22, at para. 105.

<sup>39</sup> Mwatana, *In the Darkness*, *supra* note 37.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

founded Mwatana together. While Sana'a has an international airport, that airport has been shuttered by the Coalition since August 2016. After a journey of many hours, we arrived in Seiyoun, which is under the control of the Yemeni government, and where Saudi Arabia exercises significant influence and the Coalition has a military base. We were traveling for work. I was meant to attend an international conference, and Abdulrasheed was preparing for training workshops in partnership with the European Union, as well as seeking medical treatment outside Yemen, where the health system has been decimated. Upon arrival at the airport, the authorities confiscated our passports, detained us, and moved us to another location. We were held for hours. Officials told us the orders had come from Saudi Arabia. By that time, Abdulrasheed and I were well-known as prominent human rights defenders, and our reporting on warring party abuse, including abuse by the Coalition, was very well-known, including by Saudi Arabia. After significant international outcry, and both public and private pressure on Saudi Arabia, we were released late at night.<sup>40</sup>

76. Mwatana has specifically documented the role of Saudi Arabia in detention-related abuse. In one case, Mwatana documented the torture of a Yemeni child while he was being held in Saudi custody. In October 2018, Coalition naval forces stopped 11 Yemeni fishermen, including a child, while they were on their boats off the coast of Yemen. The Coalition ordered Yemeni fishermen to direct their boats to a nearby island, and then to spend the night there. The fishermen, whose eyes were covered during the journey, were taken to the city of Jazan in southern Saudi Arabia. Upon arrival in Saudi

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<sup>40</sup> See for example, Mwatana, *Saudi-led Coalition Must Immediately and Unconditionally Release al-Mutawakel and al-Faqih*, 18 June 2018, available at: <https://mwatana.org/en/saudi-must-release-al-mutawakel/>. See also; Human Rights Watch, *Joint Statement by Human Rights and Civil Liberties Groups*, 18 June 2018, available at: [https://www.hrw.org/news/2018/06/18/joint-statement-human-rights-and-civil-liberties-groups\\_](https://www.hrw.org/news/2018/06/18/joint-statement-human-rights-and-civil-liberties-groups_)

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

Arabia, the fishermen were detained, beaten, tortured, and treated in a degrading manner.

77. Mwatana interviewed the fishermen after they were returned to Yemen. A 24-year-old Yemeni fisherman told Mwatana,

*“As soon as we arrived in Jazan, they called me in for interrogation. I went in before all of my other colleagues. They accused me of spying on the Coalition forces for Ansar Allah (Houthis), and they tortured me. They beat me and used many different methods, and this went on for an hour that day. The men that were taken with me also went through the same process, and they continued to torture us, individually, in this manner...”*

78. A 15-year-old boy, who was fishing with the men, said,

*“They did not have any mercy on me as a child, and they tortured and beat me with many different methods. After they tortured us, they would force us to squat, and anyone who could not squat would get a severe beating.”*

79. A 21-year-old fisherman said,

*“I was tortured in a very ugly manner, and I was bleeding. After that, one of the officers at the center that we were being detained in came and said: ‘We searched your boats, and we found out that you really are fishermen.’ After that, we were taken into a room that is around 50 meters squared in size, and they told us that they will release us in five days. We were released on 14 November 2018.”*

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

80. None of the fishermen were ever charged.<sup>41</sup>

81. Others have also investigated Saudi Arabia's role in detention-related abuse in Yemen. Human Rights Watch documented Saudi Arabia's role in further cases of torture of Yemeni fishermen while in custody in Saudi Arabia. In 2019, Human Rights Watch reported on "the detention of more than 100 [Yemeni fishermen], some of whom were tortured in custody in Saudi Arabia."<sup>42</sup> In its 2018 report, the UNGEE on Yemen found that,

*"[i]n the context of naval operations around Hudaydah Governorate, Saudi Arabian forces routinely arrested Yemeni fishermen. The Group of Experts investigated cases that occurred between October 2016 and April 2018 in which 148 fishermen were arrested by coalition forces. Victims were taken to detention facilities in Saudi Arabia and remained incommunicado. Many were beaten and interrogated and some were kept in solitary confinement for prolonged periods. Most have been released, but 18 fishermen, all held for more than one year, remain missing."*<sup>43</sup>

82. In 2021, the UN Security Council Panel of Experts reported that it had "investigated the arrests of five people in Yemen who were then transferred to Saudi Arabia, where three remain detained."<sup>44</sup> In an incident in which

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<sup>41</sup> Mwatana, *Annual Report 2017*, *supra* note 37, at 64-66. Mwatana has also repeatedly documented and reported on Coalition airstrikes on Yemeni fishing boats at sea, some of which are described above.

<sup>42</sup> Human Rights Watch, *Yemen: Coalition Warships Attack Fishing Boats*, 21 August 2019, available at: <https://www.hrw.org/news/2019/08/21/yemen-coalition-warships-attack-fishing-boats>.

<sup>43</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/39/43, 17 August 2018, at para. 72.

<sup>44</sup> United Nations, Security Council, *Final report of the Panel of Experts on Yemen*, S/2021/79, 25 January 2021, available from <https://undocs.org/S/2021/79>, at para 126 and Annex 30.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

Human Rights Watch and the New York Times alleged that Saudi forces had detained, severely neglected and tortured Yemeni fishermen who were injured after a Coalition attack, JIAT acknowledged that the fishermen had been brought to Saudi Arabia but claimed that it was “not proved” they had been tortured.<sup>45</sup>

*(ii) Humanitarian Obstruction*

83. In addition to airstrikes on farms, water points, fishermen and other critical civilian infrastructure throughout the conflict, a small number of which are described above, the Coalition has imposed a naval and aerial blockade on Yemen’s sea and airports since 2015, which, with varying levels of intensity throughout the conflict, has severely restricted the flow of food, fuel, and medicine to civilians.<sup>46</sup>
84. In 2017, the Coalition closed all Yemen’s entry points after a Houthi missile strike into Saudi Arabia. Despite repeated and high-level warnings of the grave consequences that the Coalition’s decision would have on Yemen’s civilian population, which depends on imports, the Coalition continued to block all humanitarian flights and shipments to ports in Houthi-controlled territory, including the country’s most important port of Al-Hudaydah, for a few weeks. In late November 2017, the Coalition announced it would allow humanitarian flights (but not commercial flights) to resume to Sana’a airport, and urgent humanitarian and relief materials to begin moving to Al-Hudaydah

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<sup>45</sup> See [SB/26/330] and Emirates Press Agency, *Joint Incidents Assessment Team refutes claims on incidents in Yemen*, 10 March 2020, available at: <https://wam.ae/en/details/1395302829963>.

<sup>46</sup> See, e.g. Mwatana, *Saudi-led Coalition’s Closure of Ports Cuts the Remaining Life Artery*, 12 November 2017, available at: <https://mwatana.org/en/saudi-led-coalitions-closure-of-ports/>. See also; Mwatana, *Annual Report 2019*, *supra* note 32, at 72-73. See also, Mwatana, *Annual Report 2017*, *supra* note 37, at 43-47. See also; Human Rights Watch, *Yemen: Coalition Blockade Imperils Civilians*, *supra* note 32.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

port, but major restrictions on the delivery of essential goods to the civilian population remained.<sup>47</sup>

85. In addition, the Coalition closed Sana'a International Airport to commercial flights in 2016. The airport remains closed now in 2021. According to the UNGEE, the decision to keep the airport closed "has precluded thousands of civilians from accessing necessary life-saving health care and treatment."<sup>48</sup> Mwatana interviewed people affected by the closure of Sana'a airport, including health workers who described the impact on sick Yemenis, many of whom could not get the treatment they needed in Yemen, nor handle the long journey across frontlines to the airports that remained open. Mwatana has also documented people arbitrarily detained while trying to travel to and from these airports.<sup>49</sup>
86. The overall effect of this humanitarian obstruction is a factor significantly exacerbating the impact on the civilian population of the Coalition's bombing of infrastructure, as described above.

### *(iii) Ground Attacks*

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<sup>47</sup> See, e.g. Human Rights Watch, *Deadly Consequences: Obstruction of Aid in Yemen During Covid-19*, 14 September 2020, available at: [https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19#\\_ftn126](https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19#_ftn126). See also; United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, Conference Room Paper A/HRC/45/CRP.7, 29 September 2020, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A-HRC-45-CRP.7-en.pdf>, at 41, para. 144. See also; World Food Programme (WFP), *WFP appeals for solution to Yemen fuel shortages that threaten to worsen widespread food insecurity*, 2 March 2021, available at: <https://www.wfp.org/news/wfp-appeals-solution-yemen-fuel-shortages-threaten-worsen-widespread-food-insecurity>.

<sup>48</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, Conference Room Paper, A/HRC/42/CPR.1, available at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A\\_HRC\\_42\\_CRP\\_1.PDF](https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF), at para 137.

<sup>49</sup> See, Mwatana, *Saudi-led Coalition's Closure of Ports Cuts the Remaining Life Artery*, *supra* note 46.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

87. In Yemen, ground attacks, including those involving weapons like mortars, unguided rockets, and artillery, with large destructive radiuses, have resulted in significant damage to civilian objects and in significant civilian casualties. Mwatana has documented hundreds of cases of ground attacks that have killed and wounded civilians, damaged and destroyed civilian objects, and appear to violate international law. While the Ansar Allah (Houthi) armed group has been responsible for most of the cases of apparently indiscriminate ground attacks documented by Mwatana, Mwatana has also repeatedly documented these types of attacks by the Coalition-supported Yemeni government and other Coalition-backed and Coalition-aligned Yemeni groups.<sup>50</sup> Mwatana has also documented cases of shelling by Saudi ground forces, including those that have resulted in civilian harm. For example, in August 2018, a ground attack in Haradh district in Hajjah governorate killed three civilians, including a child, and wounded a woman. And, in May 2020, in Shada district of Saada governorate, an artillery shell wounded a child who was grazing sheep near her home. Both of these attacks, as well as others, occurred near the Saudi border, near where Saudi forces are stationed, and in range of Saudi weaponry.<sup>51</sup>
88. The UNGEE has also documented ground attacks by Coalition forces which have caused significant civilian harm and appear to “amount to indiscriminate

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<sup>50</sup> See, e.g. Mwatana, *Another Year of Impunity in Yemen*, 6 January 2021, available at: <https://reliefweb.int/report/yemen/another-year-impunity-yemen>. See also; Mwatana, *Annual Report 2019*, *supra* note 32, at 40-43. See also; Mwatana, *Annual Report 2018*, *supra* note 31, at 40. See also; Mwatana, *I Ripped the IV Out and Started Running*, *supra* note 6, at Annex.

<sup>51</sup> EU Arms, *The Invisible Link*, available at: <https://euarms.com/landing> [“The Yemeni NGO Mwatana for Human Rights reported incidents of potential illegal use of artillery. When we cross-referenced the coordinates of these incidents with a leaked map from the French military intelligence (DRM), four of these locations are within the firing range of the Saudi-operated Caesar howitzers on the Saudi side of the border, which were in use in the conflict at the time. The green circles on the French state intelligence map below represent the Caesar howitzer’s firing-range. The yellow pins are the villages where artillery attacks were documented by Mwatana.”]

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

attacks prohibited under international humanitarian law.”<sup>52</sup> In discussing a series of these incidents in their 2020 report, the UNGEE found, “[t]he Joint Incident Assessment Team acknowledged only the December incident.”<sup>53</sup> JIAT, in its response, made claims similar to those it has repeatedly used in its statements on airstrikes, e.g. claiming the Coalition was targeting “armed elements” but that the weaponry went off course due to a technical failure or changing weather conditions. The GEE said, it had “received evidence contradicting this explanation.”<sup>54</sup>

*(iv) Wider Impunity*

89. To date, Saudi Arabia, through JIAT or otherwise, has failed to credibly investigate violations in Yemen, failed to hold individuals responsible for war crimes to account, and failed to provide remedy to civilian victims. By 2020, the UNGEE noted,

*“...the Group continues to have concerns as to the thoroughness and credibility of [JIAT]’s analysis and findings. There remains a tendency for the Assessment Team to accept the legality of air strikes involving military targets, without taking into proper account the principles of proportionality or precaution.”<sup>55</sup>*

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<sup>52</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22, at para. 35.

<sup>53</sup> *Ibid.*, at para. 34.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, at para 96.



1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

90. Whilst the Coalition has claimed to have referred a tiny handful of cases to national military prosecutors, little to no public information exists on the status of those cases.<sup>56</sup>
91. Members of the Coalition, including Saudi Arabia, have also actively sought to undermine credible accountability efforts. Individual Coalition member states, including Saudi Arabia, have used the Coalition, and Coalition bodies like JIAT, to shield themselves from scrutiny.<sup>57</sup> In 2016, Saudi Arabia used the threat of withdrawing funds from critical UN programs to compel the UN Secretary-General to remove the coalition from his annual “List of Shame” for killing and maiming children, and attacking schools and hospitals in Yemen.<sup>58</sup>
92. Despite these efforts, in 2017, after years of coordinated advocacy by human rights groups, including Mwatana, the Human Rights Council created a specific body, the UNGEE, to investigate abuses in Yemen. Each year, members of the Coalition, including Saudi Arabia, have sought to weaken or dismantle the UNGEE. So far, civil society and a core group of committed states have ensured the UNGEE’s work continued. Saudi Arabia and other Coalition members have refused to cooperate with the GEE, including by refusing to provide them access.<sup>59</sup>
93. As noted above, in its 2020 report entitled, “*Yemen: A Pandemic of Impunity in a Tortured Land*,” the UNGEE concluded that parties to the conflict

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<sup>56</sup> We understand these cases to be eight cases related to airstrikes occurring on: 26 October 2015, 5 August 2016, 8 October 2016, 10 September 2016, 16 September 2017, 9 August 2018, 22 April 2018 and 11 June 2018. See *Final Report of the Panel of Experts on Yemen (S/2020/326)*, dated 28 April 2020, at paragraph 99 and Table 7, available at: <https://undocs.org/S/2020/326>.

<sup>57</sup> Human Rights Watch, *Hiding Behind the Coalition*, *supra* note 26.

<sup>58</sup> *Joint NGO Statement: Suspend Saudi Arabia from the UN Human Rights Council*, 29 June 2016, available at: <https://reliefweb.int/report/yemen/joint-ngo-statement-suspend-saudi-arabia-un-human-rights-council>.

<sup>59</sup> Mwatana, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, 29 September 2020, available at: <https://mwatana.org/en/prioritize-yemen-accountability-and-redress/>.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

continued to commit serious international humanitarian law violations, grave human rights abuses, and acts likely amounting to international crimes—including Saudi Arabia and individuals fighting for Saudi Arabia. The UN experts said that the international community “can and should” do more to “help bridge the acute accountability gap” in Yemen.<sup>60</sup> The Group’s chairperson said, “the continued supply of weapons to parties to the conflict is only perpetuating the conflict and prolonging the suffering of the Yemeni people.”<sup>61</sup>

94. Yemen’s warring parties have shown themselves again and again to be uninterested in pursuing credible accountability or redress for Yemen.<sup>62</sup> In Yemen, institutions have disintegrated and the judicial system is not capable of delivering justice or accountability.<sup>63</sup> Regional actors have perpetrated egregious abuses in Yemen; any credible accountability and redress processes would necessarily have to incorporate Saudi, Emirati, Iranian and other non-Yemeni actors within their remit.
95. Neither Yemen nor Saudi Arabia (nor the UAE or Iran) have ratified the Rome Statute of the International Criminal Court (ICC). In their third report,

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<sup>60</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22.

<sup>61</sup> *Ibid.*, at para 102. In its report, the Group once again reiterated, “Its concern about third States transferring arms to parties to the conflict in Yemen in blatant disregard of the documented patterns of serious violations of international humanitarian law and human rights law in the conflict to date. The Group believes that they are failing in their responsibilities to ensure respect for international humanitarian law, and that some States may be violating their obligations under the Arms Trade Treaty. Furthermore, such support may amount to aiding and assisting internationally wrongful acts in contravention of international law.”

<sup>62</sup> See, e.g., United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, available *supra* note 22; United Nations, Security Council, *Final report of the Panel of Experts on Yemen*, S/2021/79, *supra* note 44. See also; Mwatana, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, *supra* note 59.

<sup>63</sup> United Nations, Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014*, A/HRC/45/6, 28 September 2020, *supra* note 22.

1. Statement on behalf of: Intervenor
2. Witness name: Radhya al-Mutawakel
3. Statement number: 1
4. Exhibit: 'RA1'
5. Date of statement: 30 May 2021

the UNGEE called on the Security Council to refer the situation in Yemen to the ICC.<sup>64</sup> Mwatana has also repeatedly called on the Security Council to refer the situation in Yemen to the ICC, to clearly state that accountability and redress are non-negotiable aspects of sustainable peace, and to work to ensure human rights are centred in the Security Council's approach to Yemen.<sup>65</sup> While the gravity of the situation in Yemen clearly merits these steps, the likelihood is currently remote given Security Council dynamics: after the Coalition intervened in the Yemen conflict, accountability-related language disappeared from Security Council resolutions;<sup>66</sup> and the US and UK, which support the Coalition, hold a Security Council veto.<sup>67</sup>

### **Statement of Truth**

I believe that the facts stated in this Witness Statement are true to the best of my own knowledge unless stated otherwise.

**Signed:**

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**Radhya al-Mutawakel**

**Dated:** 30 May 2021

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<sup>64</sup> *Ibid.*

<sup>65</sup> See, e.g. Mwatana, *Ensure Accountability for Yemen at the UN Security Council*, 17 February 2021, available at: <https://mwatana.org/en/ensure-accountability-for-yemen-2/>

<sup>66</sup> See, e.g. Mwatana, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, *supra* note 59; United Nations, Security Council, *Final report of the Panel of Experts on Yemen*, S/2021/79, *supra* note 44 [“160. Noting the lack of provisions directly relating to the need for accountability relating to international humanitarian law and human rights violations by all parties to the conflict in resolutions 2140 (2014), 2216 (2015) and subsequent resolutions, the Panel recommends that the Security Council include in its next resolution language that stresses that all those responsible for human rights and international humanitarian law violations and abuses must be held accountable, and that underlines the need for a comprehensive, independent and impartial investigation consistent with international standards into alleged human rights abuses and violations, to prevent impunity and ensure full accountability”].

<sup>67</sup> Mwatana, *UN Human Rights Council: Prioritize Yemen Accountability and Redress*, *supra* note 59.