

**Human Rights Council****Forty-fifth session**

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Agenda items 2 and 10

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General****Technical assistance and capacity-building****Implementation of technical assistance provided to the
National Commission of Inquiry to investigate allegations of
violations and abuses committed by all parties to the conflict
in Yemen****Report of the United Nations High Commissioner for Human Rights****Summary*

The present report provides an overview of the technical assistance and capacity-building that the Office of the United Nations High Commissioner for Human Rights provided between March 2016 and August 2020 to the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen.

The report describes the difficulties the National Commission has been facing in implementing its mandate. It concludes with a set of recommendations, calling upon all stakeholders to implement the recommendations made in the previous reports of the High Commissioner and of the Group of Eminent International and Regional Experts to the Human Rights Council.

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



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 42/31, in which the Council requested the United Nations High Commissioner for Human Rights to continue to provide substantive capacity-building and technical assistance to the Government of Yemen and technical support to the National Commission of Inquiry to ensure that the National Commission continued to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, and in line with international standards. In that resolution, the Council also requested the High Commissioner to present a written report on the implementation of technical assistance to the Council at its forty-fifth session.

2. The present report provides details of the mandate of the National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen, which started its work in October 2015. The report also provides an overview of the technical assistance and capacity-building that the Office of the United Nations High Commissioner for Human Rights (OHCHR) provided to the National Commission between March 2016 and August 2020.¹ Activities to build the capacity of the National Commission that had been planned to be implemented in person between April and August 2020 had to be postponed owing to the outbreak of coronavirus disease (COVID-19) in Yemen and the restrictions imposed in order to prevent the spread of the virus. The present report focuses on the mandate of the National Commission on the basis of international standards pertaining to commissions of inquiry.²

3. The present report should be read in conjunction with the previous reports of the High Commissioner to the Human Rights Council on the situation of human rights in Yemen (A/HRC/33/38, A/HRC/36/33, A/HRC/39/43 and A/HRC/42/33), which included information on technical assistance and capacity-building provided by OHCHR to the National Commission.

II. National Commission of Inquiry to investigate allegations of violations and abuses committed by all parties to the conflict in Yemen

A. Mandate

4. The National Commission was established under Presidential Decree No. 140 of 2012, pursuant to which it is mandated to investigate all alleged violations of human rights and international humanitarian law that have taken place since 2011, to investigate individual and group complaints received and to identify the perpetrators. It is also empowered to subpoena any person to hear their testimony and to obtain relevant documents and other evidence (art. 3). Revisions to its mandate were introduced under Presidential Decrees No. 13 of 2015, Nos. 66 and 97 of 2016, No. 50 of 2017 and No. 30 of 2019.

5. The most recent Presidential Decree, No. 30 of 2019, issued on 22 August 2019, introduced amendments concerning the appointment of commissioners to the National Commission. It increased the number of female commissioners from three to four, and extended the term of the mandate to two years from the date of the issuance of the Decree, with a possibility of renewal by Presidential Decree. In addition, it provided that commissioners should not hold another position, whether in the public or the private sector.

¹ Pursuant to Human Rights Council resolution 33/16.

² See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1) and OHCHR, *Commissions of Inquiry and Fact-finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (New York and Geneva, 2015).

B. Composition

6. The National Commission is composed of nine commissioners, currently five men and four women; four commissioners are from northern governorates and five, including the Chair, are from southern governorates. There are four judges, three lawyers and two university professors among the commissioners.

7. The National Commission reports directly to the President of Yemen, who also appoints all commissioners. While the presidential decrees and the internal regulations of the National Commission do not describe the process of selecting the commissioners, the criteria for their selection are listed in Presidential Decree No. 140 of 2012 (art. 1).

C. Secretariat

8. According to the information received from the National Commission, its secretariat consists of 29 staff members, including 8 women. The staff have various functions, namely human rights monitors, investigators, communication officers and administrative staff.³ However, there remains a lack of adequate capacity in international human rights law and international humanitarian law among the staff. The headquarters of the National Commission is in Aden, while 40 field monitors,⁴ including 15 women,⁵ are deployed in 20 out of the 22 governorates in the country.⁶

D. Resources

9. International standards recommend that a commission of inquiry be provided with transparent funding to ensure that its independence is never in doubt.⁷ Article 6 of Presidential Decree No. 140 of 2012 concerning the financial regulations of the National Commission states that funding will be provided by the Government of Yemen, donations from other governments and international human rights bodies, and grants from foreign entities to support the activities of the Commission.

10. According to the Government, every four months, the Commission provides a detailed financial report to the Presidency, the Prime Minister and the Minister of Finance. In addition, it submits an annual report to the Presidency. In June 2019, the Commission contracted an independent audit office to examine its expenditures. However, owing to the unstable security situation in Aden, the audit was suspended one month after the contract was signed.⁸

E. Progress achieved and challenges facing the National Commission

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

12. The de facto authorities have not granted the National Commission access to the areas they control, and they have been refusing to cooperate with it on the grounds that its commissioners and staff are appointed by the Government of Yemen. Nevertheless, the presence of field monitors in some areas controlled by the de facto authorities has enabled the Commission to document and investigate human rights violations and abuses in those areas to some extent.

³ The National Commission shared with OHCHR a list of the 29 staff of its secretariat and information about its 40 field monitors appointed by the commissioners.

⁴ One additional field monitor compared to the previous reporting period. See A/HRC/42/33, para. 8.

⁵ Five additional women compared to the previous reporting period. See A/HRC/42/33, para. 8.

⁶ Field monitors are not present in Mahrah and Socotra governorates.

⁷ Updated set of principles for the protection and promotion of human rights through action to combat impunity, principle 11 (a).

⁸ Information provided by the Government of Yemen.

13. Over the years, the National Commission has improved the quality of its reporting. Between August 2016 and July 2020, it produced seven reports, which are available on its website.⁹ To date, the reports have documented more than 19,500 human rights violations and abuses perpetrated by the various parties to the conflict in Yemen.

14. The National Commission has reported on various violations of international humanitarian law, including the killing and injuring of civilians, child recruitment and forced displacement. It has also documented violations and abuses of international human rights law, including extrajudicial killings, enforced disappearances, arbitrary arrests and detentions, torture and ill-treatment, and violence against women. For example, in its seventh public report,¹⁰ published in September 2019, the National Commission documented and reported on violations and abuses of international human rights law and violations of international humanitarian law committed by all parties, and attributed incidents to several parties, including the Houthi-Saleh forces, the Arab coalition forces, the Yemeni armed forces and its affiliates, and the Shabwani Elite forces. It also reported on drone warfare.

15. In its seventh report, the National Commission also described its methodology. It explained that it considers the standard of verification to have been met when it has obtained and corroborated a reliable body of information sufficient for it to conclude that there are reasonable grounds to believe that an incident has occurred as described, and that violations were committed by the party to the armed conflict that has been identified.

16. Given the highly volatile environment and the difficulty establishing effective protection mechanisms, victims and witnesses who cooperate with the National Commission have been exposed to reprisals by parties to the conflict. It is critical that the National Commission be guided by the “do no harm” principle and that, in accordance with relevant international practice, an effective mechanism be put in place to protect victims and witnesses who come into contact with it.¹¹

17. Under treaty and customary international law, States have the primary responsibility to investigate, prosecute and punish gross violations and abuses of international human rights law and serious violations of international humanitarian law, and to provide effective remedies to victims, including the right to truth, justice and reparation. Pursuant to the presidential decrees establishing the National Commission, it is responsible for investigating allegations of violations and abuses committed by all parties to the conflict, and for submitting its reports and cases to the Office of the Attorney-General to complete investigations and prosecution.

18. Between the date on which it began its work and July 2020, the National Commission submitted a large number of investigation files to the Office of the Attorney-General, some 1,500 of them, according to information provided by the Government. Nevertheless, OHCHR has not been informed about any criminal investigation, or any court cases that have been initiated or completed following such submissions. The conflict has considerably weakened the Yemeni judicial system, which is affected by the hostilities, insecurity, threats against its members, and the Government’s lack of effective authority, notably in parts of the south of the country.¹²

19. The fact that the National Commission is based in Aden, with one sub-office in Ta’izz, renders it inaccessible for individuals living in remote areas or areas under the control of the de facto authorities. The deployment of field monitors of the National Commission to 20 governorates has been key to increasing its accessibility, but further efforts are required to improve its outreach. For instance, the establishment of sub-offices across Yemen would further facilitate access to the National Commission and reporting of cases.

⁹ See www.nciavhr.com/.

¹⁰ See www.nciye.org/Reports/Seventh-Report/SeventhReport-Ar.pdf.

¹¹ OHCHR, “Manual on human rights monitoring: chapter 2 – basic principles of human rights monitoring”. Available at www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf.

¹² See www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.pdf, para. 875.

20. While the conflict and its negative impact on infrastructure have made it difficult to access the media, such as local radio broadcasting, it is important for the National Commission to develop a communication strategy in order to enhance its visibility throughout Yemen and to disseminate information about its mandate and its role. The National Commission could also expand and update the information contained on its website and on popular social media sites.

21. OHCHR notes that in its seventh report, the National Commission reported that it had engaged with civil society representatives and had received factual information from them about human rights violations and abuses that had assisted it in discharging its mandate. In order to effectively implement its mandate, the Commission must continue strengthening its engagement with civil society and enhance its outreach.

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

22. Pursuant to Human Rights Council resolutions 36/31, 39/16, 39/21, 42/2 and 42/31, OHCHR has continued to provide technical assistance and capacity-building to the National Commission. In consultation with OHCHR, the National Commission identified priority areas for the technical assistance it requires. OHCHR conducted several training activities for the commissioners and staff of the Commission in Ethiopia, Jordan, Lebanon, Malaysia, Qatar, Switzerland and Yemen, as detailed below.

23. In carrying out the mandate assigned to it by the Human Rights Council in its resolutions 42/2 and 42/31, OHCHR has been guided by the principles of independence, impartiality, objectivity, credibility and professionalism. OHCHR held regular collaborative and performance consultations with the Chair, commissioners and staff of the National Commission to define the purpose of the capacity-building activities.

24. Moreover, adherence to the principles of objectivity, transparency, impartiality and professionalism has been at the core of the capacity-building provided by OHCHR to strengthen the National Commission, its functioning and its credibility. Presidential Decree No. 50 of 2017 defines the methodology of the National Commission as being based on the international investigation standards that are used by similar commissions, and in accordance with those standards.¹³

25. Between March 2016 and September 2020, OHCHR developed and implemented 22 activities to enhance the investigative capacity of the National Commission. The activities focused on international human rights law, international humanitarian law and international criminal law, including the elements of the crime of genocide, crimes against humanity and war crimes, and on methodologies for human rights monitoring, investigation and reporting. All activities reflected a gender-sensitive approach.

26. From 7 to 10 March 2016, in Geneva, OHCHR organized a first training workshop for the commissioners on international human rights law and international humanitarian law. OHCHR provided the commissioners with material in Arabic and English on international humanitarian law and the methodology for human rights investigations, including independence, professionalism and adherence to international fair trial standards. Discussions were held on those topics.

27. On 12 May 2016, in Amman, OHCHR organized a seminar for the National Commission to discuss improving information exchange between the National Commission and OHCHR. The cooperation between the National Commission and OHCHR noticeably improved following that meeting.

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

¹³ See Presidential Decree No. 140 of 2012, art. 2 (2).

29. From 28 to 29 August 2016, in Addis Ababa, OHCHR organized a training workshop to strengthen the commissioners' skills in conducting comprehensive and impartial inquiries and reporting on human rights violations and abuses.
30. From 21 to 22 February 2017, in Doha, OHCHR organized a training workshop for the commissioners on best practices of commissions of inquiry in gathering and compiling information on possible violations and abuses of international human rights law and violations of international humanitarian law.
31. From 7 to 8 July 2017, in Beirut, OHCHR organized a training workshop entitled "Human rights database: collection, protection and archiving of information for the National Commission", focusing on how to record, preserve and secure information and physical evidence.
32. From 27 to 30 November 2017, in Kuala Lumpur, OHCHR conducted a training workshop on human rights monitoring, which included a prison visit, for 29 National Commission human rights monitors, including 5 women. The aim of the workshop was to build the human rights monitors' capacity to monitor and document violations and abuses of international human rights law, including in prisons and detention centres.
33. From 16 to 19 December 2017, also in Kuala Lumpur, OHCHR conducted a workshop for the National Commission investigators on the methodology for monitoring and documenting violations and abuses of international human rights law. The workshop deepened participants' knowledge of international criminal law, including the elements of the crime of genocide, crimes against humanity and war crimes. The training included sessions on conducting interviews and on information gathering, with particular focus on the methodology applied regarding areas with limited access.
34. From 22 to 24 January 2018, in Addis Ababa, OHCHR conducted a follow-up workshop for the commissioners on documenting violations and abuses of international human rights law and report writing.
35. On 25 January 2018, OHCHR organized a study visit to the Ethiopian Human Rights Commission, which shared good practices in dealing with human rights violations.
36. From 15 to 22 February 2018, in Aden, OHCHR conducted a working visit to the National Commission to promote further expertise among the staff to develop methods of investigation that were in line with international legal standards.
37. From 3 to 5 March 2018, in Amman, OHCHR organized a workshop for the commissioners on protecting human rights and the rule of law in the context of countering terrorism. It discussed best practices in law enforcement activity in countering terrorism, including with regard to conducting arrests, detentions and interviews of terrorist suspects in full compliance with international human rights law.
38. From 12 to 14 March 2018, in Beirut, OHCHR conducted a training workshop for 14 Commission investigators, including 2 women, on methodologies for investigating human rights violations and abuse. The workshop included sessions on investigations into sexual and gender-based violence and human rights violations in prisons and detention facilities.
39. From 3 to 5 April 2018, also in Beirut, OHCHR conducted a workshop for the administrative staff of the National Commission on good practices in archiving, information protection and financial issues.
40. From 17 to 20 July 2018, in Amman, OHCHR organized a seminar for the commissioners on international humanitarian law in the context of the conflict in Yemen.
41. From 14 to 16 August 2018, also in Amman, OHCHR organized a workshop for 17 National Commission field monitors, including 8 women, on human rights monitoring guidelines that are in line with international standards.
42. From 17 to 19 February 2019, in Aden, OHCHR facilitated a consultative meeting for 38 field monitors and investigators, including 10 women, to enhance the professional relationship between the commissioners and the field monitors and investigators. Participants subsequently reported that the meeting had significantly contributed to more effective working relationships within the National Commission.

43. From 22 to 24 March 2019, in Amman, OHCHR conducted an advanced training course, attended by 32 field monitors, including 8 women, on interactive techniques for monitoring and documenting violations and abuses of international human rights law and violations of international humanitarian law in Yemen.
44. From 22 to 24 April 2019, in Aden, OHCHR provided technical support to the National Commission on information technology and database management, and recommendations on how to improve in those areas.
45. From 30 April to 7 May 2019, in Addis Ababa, OHCHR organized, in cooperation with the Operational Satellite Applications Programme of the United Nations Institute for Training and Research, a training workshop for the commissioners to strengthen their technical capacity in the use of geospatial information technology, with a focus on cloud-based and geospatial data systems for decision-making relating to accessing and analysing information on alleged human rights violations and abuses.
46. In June 2019, following a request from the National Commission, OHCHR purchased 30 solar charging system units for the field monitors, which it delivered to the National Commission in Aden.
47. From 24 to 26 November 2019, in Aden, OHCHR facilitated a consultative meeting for 38 field monitors and investigators, including 7 women, to enhance the professional relationship between the commissioners and the field monitors and investigators. The meeting was an opportunity to improve communication between the participants, who shared their concerns and discussed the challenges they faced. It also provided an opportunity to discuss standards of evidence in criminal investigations, and evidence collection and preservation.
48. From 7 to 10 March 2020, in Aden, OHCHR organized a workshop for 14 investigators, including 2 women, on international standards for human rights monitoring and documentation of cases of arbitrary detention and enforced disappearance. Discussions focused on monitoring places of detention and reporting violations and abuses relating to detention.
49. More broadly, OHCHR delivered technical assistance to the National Commission through regular feedback and advice to improve its performance. In addition, it supported the National Commission in the development of methodologies, handbooks and tools, providing it with a range of supplementary material on international human rights law and international humanitarian law, human rights monitoring, and administrative and financial matters.
50. The technical assistance provided by OHCHR has contributed to increasing the understanding by the commissioners and staff of the National Commission of the concept of accountability, as guided by relevant international legal norms. OHCHR focused on the rights of victims of human rights violations and abuses, including the right to truth, justice and reparation, and on the need for institutional and other guarantees of non-recurrence. OHCHR has advised the National Commission that there should be accountability for human rights violations and abuses, which require redress regardless of whether they were committed by State or non-State actors. Furthermore, OHCHR has shared its expertise with the National Commission on transitional justice and how accountability should go beyond the investigation and prosecution of serious crimes and consist of a broader process that addresses the political, legal and moral responsibility of individuals and institutions for past and ongoing violations.
51. OHCHR has not advocated for the National Commission to follow a standard, one-size-fits-all approach. Instead, it has assisted the Commission to recognize the need for accountability processes to be responsive and tailored to local circumstances, defined on the basis of broad and inclusive national consultations, involving the extensive participation of the population and communities, including victims of human rights violations and abuses, and reflecting their needs and aspirations. OHCHR also provided guidelines to ensure that any national process in this respect would meet international standards.
52. The technical support provided by OHCHR has improved capacity in the National Commission to monitor, document and report on violations and abuses of international human rights law and violations of international humanitarian law. It has also led to

enhanced gender parity and geographical representation in the composition of the National Commission, and improved the administration of data and the protection of information.

53. Owing to the outbreak of the COVID-19 pandemic and the restrictions imposed in order to prevent the spread of the virus in Yemen, including the banning of gatherings and of travel to and from Yemen, OHCHR has been unable to carry out the activities to enhance the capacity of the National Commission that had been planned to be conducted between April and August 2020.

54. OHCHR stands ready to resume those activities as soon as conditions allow it to do so. In the meantime, it is exploring new ways of providing support, including remotely, to the National Commission.

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

IV. Conclusions and recommendations

56. **The conflict in Yemen has caused the world's worst humanitarian crisis, which has been exacerbated by the outbreak of COVID-19. The population remains trapped in a protracted armed conflict and in other forms of violence, which entail serious human rights violations and abuses and violations of international humanitarian law.**

57. **The National Commission and its fact-finding work are essential to address the persistent impunity in Yemen. It is therefore crucial for the National Commission to ensure that it is structurally and functionally independent, impartial and transparent in assessing the conduct of all parties to the conflict. It is also essential for the National Commission to be effective in its investigations, with findings backed by a thorough legal analysis grounded in international law.**

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

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

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

(a) **Fully cooperate with the National Commission so that it can safely and effectively fulfil its mandate, notably by granting it access to all areas of Yemen, including all places of deprivation of liberty, and providing it with all the information it requests;**

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

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

(a) **Consider strengthening the mandate of the National Commission to ensure that it can effectively fulfil its role as an independent mechanism;**

(b) **Provide the National Commission with sufficient financial resources to enable it to expand its outreach and accessibility, including by opening sub-offices across Yemen;**

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

(d) **Ensure the right of victims to redress, including the right to truth, justice and reparation.**

62. **The Attorney-General of Yemen should:**

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

(b) **Ensure prompt, impartial and effective investigation into and prosecution of all cases of human rights violations and abuses and violations of international humanitarian law, in line with international standards.**

63. **The National Commission should:**

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

(b) **Take all feasible measures to protect victims and witnesses who come in contact with its commissioners and staff;**

(c) **Continue to strengthen its engagement with civil society, including in the areas of transitional justice and accountability;**

(d) **Develop a communication strategy to enhance its visibility throughout Yemen and disseminate information about its mandate and role;**

(e) **Establish sub-offices across Yemen to facilitate access to it and the reporting of cases.**
