

## **SUBMISSION OF MWATANA FOR HUMAN RIGHTS AND THE GLOBAL LEGAL ACTION NETWORK**

*For the attention of a Parliamentary Committee on Arms Export Controls (“The Committee”)*

### **Summary**

This submission is made in relation to concerns held by Mwatana for Human Rights (“Mwatana”) and the Global Legal Action Network (“GLAN”) regarding continued arms exports from the United Kingdom to members of the Saudi/UAE-led coalition (“the Coalition”). Specifically, we refer to the application of Criterion 2(c) of the consolidated EU and national arms export licensing criteria (“the Consolidated Criteria”) by the Secretary of State for International Trade. Both organisations have serious concerns that, in light of the Coalition’s conduct of military operations in Yemen, the continued grant of licences/failure to suspend licences for the export of arms that could be used by the Coalition in Yemen appear to be in breach of Criterion 2(c). This submission describes a pattern of ongoing airstrikes causing grave civilian harm, including many serious violations of international humanitarian law (“IHL”), and demonstrates there is a clear risk that weapons transferred to members of the Coalition will be used in further serious violations of IHL.

The submission covers thematic areas which are broken down into sections for the Committee’s convenience:

- I. Detailed and summary examples of ongoing airstrikes causing civilian harm.
- II. An overview of repeated patterns in attack which we consider to be predictive of a clear risk of future, similar attacks. Those patterns are further broken down into:
  - i) object type; and
  - ii) an apparent systemic failure to take precautions as required by IHL.
- III. An overview of the performance of the Joint Incident Assessment Team (“JIAT”), which we contend is not fulfilling Coalition member states’, including Saudi Arabia’s and the UAE’s, obligations to investigate credible allegations of serious violations of international humanitarian law conducted by their forces. Rather than reassure the UK, JIAT should in fact raise serious concerns regarding the commitment of the Coalition to compliance with international law in ongoing operations. JIAT has continued to release statements on Coalition airstrikes that misapply international law, indicate ongoing investigations are not credible, and mislead as to the occurrence of airstrikes and the gravity of civilian harm.

### **Introduction**

1. Mwatana is one of the largest human rights organisations in Yemen. Mwatana’s field researchers document and investigate alleged violations of human rights and humanitarian law across almost all of the governorates in Yemen. This work includes field visits to the sites of such incidents. Independence, accuracy, objectivity and integrity are its core values as set out

in its code of conduct, which is published online. Mwatana documents violations by all parties to the conflict in Yemen, releasing detailed reports and making submissions to various United Nations bodies. Mwatana operates a strict policy of non-reliance on any material which it has not itself verified and its researchers are trained to conduct thorough and impartial field investigations by following a replicable procedure. Mwatana has documented over 400 Coalition airstrikes, publishing summaries of a number of these, which have continued from March 2015 through to October 2019.

2. GLAN is a registered charity in England and Wales, which is constituted of *inter alia* an expert ‘Legal Action Committee’ of legal academics, solicitors, barristers, and investigative journalists, supported by four full-time staff. Since mid-2017, GLAN has operated a digital evidence project which is Yemen-specific. It involves working with technicians, investigative journalists and academics to identify and remedy the obstacles to the collation of high-quality and reliable digital evidence arising out of the conflict in Yemen.
3. The majority of the information cited in this document was collected in the field by Mwatana’s researchers. Other information was gathered by GLAN from individuals who have photographed airstrike damage and munition remnants. Further reputable sources, such as the United Nations, Human Rights Watch, Amnesty International and Medecins Sans Frontieres, are cited on individual incidents. Finally, the submission cites bulk data generated by the Yemen Data Project, a neutral Yemeni organisation which gathers data on individual Coalition airstrikes, categorising them by target type but making no claim about current use.

#### *SECTION I: Serious violations of international humanitarian law*

4. The materials referred to herein cover a sample of 13 detailed summaries of Coalition attacks that we consider constituted serious violations of international humanitarian law [1-259]. The committee is encouraged to read through the detailed reports. All 13 incidents have destroyed civilian property or killed civilians including men, women and children. In each case, no military target was identified by investigators who documented the attacks by examining the area, interviewing local people and eyewitnesses.
5. Also referenced is a longer list of incidents [260-287] which have been documented either by Mwatana or other credible organisations which, considering the level of civilian harm, raise serious concerns around compliance with international humanitarian law.

#### *SECTION II: Patterns of violations*

6. The User’s Guide accompanying the European Union Common Position on Arms Export Controls (“The Common Position”), from which the Consolidated Criteria are derived, states:



*Isolated incidents of international humanitarian law violations are not necessarily indicative of the recipient country's attitude towards international humanitarian law and may not by themselves be considered to constitute a basis for denying an arms transfer. Where a certain pattern of violations can be discerned or the recipient country has not taken appropriate steps to punish violations, this should give cause for serious concern."*

7. GLAN and Mwatana observe extremely concerning patterns of conduct, in terms of target type, apparent procedural failings, and in the Coalition's failure to credibly investigate and punish violations.
8. The first area discussed below is the Saudi/UAE-led coalition's conduct of operations in Yemen that include prominent patterns of attacks on residential areas, on farms, factories, infrastructure and objects linked to the survival of the civilian population, and on civilians. Many of these attacks constitute serious violations of IHL.

#### *Residential areas*

9. Attacks on targets in residential areas have been widespread throughout the conflict. Mwatana has documented dozens of such attacks, as have Amnesty International, Human Rights Watch and the United Nations, including many constituting serious violations of international humanitarian law. For example:
  - a) In mid-September 2015, a residential home in the UNESCO-protected Old City of Sana'a was hit with a coalition bomb at night [52]. 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. The witnesses who spoke to Mwatana said that the man who was killed was poor and had no connection to the conflict.
  - b) At around 8 p.m. on Wednesday, 21 September 2016, Saudi/UAE-led coalition forces bombed Al-Hunood residential neighborhood in Hawak District, Hudaydah Governorate during a funeral for one of the neighborhood's residents [132]. The attack on al-Hunood neighborhood killed about two dozen civilians, wounded about four dozen, and destroyed up to 15 homes. 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. While the strike followed an attack on the Presidential Palace, no military targets were identified in the residential neighbourhood by Mwatana. Extremely extensive damage was done to the street.
  - c) On the evening of 24 September 2016, Coalition forces bombed a residential apartment building near Jiblah Fork in the Ibb Governorate [174]. Six were killed (including three children and one woman) and one woman was injured in the attack. There were no military targets identified by Mwatana, who conducted interviews two days after the strike.

- d) On 10 January 2019 at about 06.30 am in al Farash village, Hajjah, an airstrike hit a home while six members of the family were inside the *majlis*, a room for visitors, about 35 metres from the main living area, having breakfast. Two men were killed and four people were injured, including two children. [234]
- e) On 16 May 2019, a densely populated area of Sana'a, al-Raqas street, was targeted with a coalition bomb, killing five children and injuring about 77 people, including almost three dozen children. The house and the surrounding buildings, also damaged or destroyed, were inhabited by civilians. [240]
- f) On 6 February 2016 at around 1:30 a.m. on Saturday, when residents were asleep, Saudi/UAE-led Coalition aircraft dropped a US-made Mk-82 bomb on a home in Al-Miqsas village, At-Ta'iziyah District, Taizz Governorate. The home owner's wife and 14-year-old daughter were killed in the attack, and half the house was destroyed. The nearest identified military site was about three kilometres to the east. [261]
- g) On the morning of Saturday, January 27, 2018, at about 6:30 am, coalition aircraft hit a house in the village of al-Raqab, in At Ta'iziyah District, in the Taizz Governorate. The attack killed two children and their mother, and wounded two other children, in addition to their father. [284]
- h) On Monday, June 25, 2018, at about 2:30 am, 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 five other houses. The attack killed nine people, including two women and four children, and injured 19 others, including five children and five women. [285]
- i) At about 8:30pm on the evening of Saturday, March 9, 2019, Saudi/UAE-led 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 persons killed in the strike, 7 women and 5 children. Mwatana also identified 8 persons injured in the strike, 2 women and 6 children. [287]

10. GLAN notes that, as of August 2019, the YDP had logged 2,017 raids on “residential areas.”

*Strikes on farms, factories, infrastructure and objects linked to the survival of the civilian population*

- 11. The extent to which infrastructure and targets including agricultural sites, factories, water infrastructure and power and fuel infrastructure have been attacked by the Saudi/UAE-led coalition is troubling, particularly given Yemen's ongoing humanitarian crisis. All of the objects destroyed, damaged or otherwise impacted in the attacks listed below are linked to the survival of the civilian population, and are grouped together for this reason.

- a) 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. The strike killed two of the five men instantly, injured the remaining three, and set the farm on fire. [270]
- b) At around 10:30 p.m. on Thursday, 31 December 2015, three Coalition bombs struck Al-Kahlani Cosmetics Factory and Tahama Packaging Tools Company in Kilo 16, Hudaydah Governorate. The attack damaged Al-Kahlani Factory and uprooted many families living nearby. [271]
- c) 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. The attack occurred less than an hour prior to the Coalition airstrike on nearby Derhim Factory. No military target was identified by Mwatana, who visited the scene. [271]
- d) 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. No military target was identified by Mwatana, who visited the scene. [272]
- e) 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. Within about five minutes, the bombs struck three different factories in the complex and damaged at least one house nearby.[275]
- f) On February 22, 2017, a 10-year-old boy and a 12-year-old boy were working at their relatives’ farm at Qahza, in the al-O’albi area of northern Saada governorate, according to Human Rights Watch, when it was attacked with a cluster bomb. [277]
- g) In Sana’a, in late May 2018, a gas station was destroyed by two Coalition bombs, killing four people, including a woman and a child, and wounding about a dozen others. [285]
- h) A Coalition attack on 23 July 2018 struck a water project in Wadi Al Nushur, Al Safra’a in Saadah governorate: the site consisted of a well, a storage tank, a solar power network, 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>1</sup> and noted that the same project had been attacked in March: *“in March 2018, the Nushour water project was attacked twice in one week causing damage estimated at US\$ 20,000. UNICEF repaired this damage. The current damage to the water system is estimated at US\$ 300,000.”*<sup>2</sup> The United Nations Panel of

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<sup>1</sup> <https://www.unicef.org/mena/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen>

<sup>2</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. 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.” <https://www.unicef.org/press-releases/drinking-water-systems-under-repeated-attack-yemen>.

Experts investigated this attack and was informed by a confidential source that the project was on the Coalition’s no-strike list. [286]

12. Markets have also been targeted in very high numbers. Such attacks often result in high civilian casualties and are particularised elsewhere, including in the annexed documents. Attacks on transport infrastructure are also relevant, as they further increase the cost of transporting food, water and fuel. As particularised elsewhere, including in the annexed documents, the Coalition has repeatedly targeted bridges important for the transport of critical life-saving supplies. Beyond those attacks examined, the YDP dataset includes strikes on “infrastructure,” including strikes on sites identified as bridges, roads, civilian airports, irrigation structures and fuel pumps.<sup>3</sup> More specifically, the YDP Dataset lists 133 attacks on “water & electricity” targets which include, *inter alia*, water stations, wells, pumps, desalination plants and irrigation canals, 667 air raids on farms and 68 air raids on “private factories.”
13. When examined together, the pattern of strikes on infrastructure and targets linked to the survival of the civilian population raises serious concerns beyond the Coalition’s failure to respect the fundamental principles of distinction and proportionality in particular attacks. We would highlight, in particular, Article 14 of Additional Protocol II, in relation to non-international armed conflicts, which provides:

*“Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”*

#### *Attacks on civilians*

14. Attacks on civilians have been a persistent feature of the Coalition’s military operations in Yemen. We highlight the following examples:
  - a) On 12 May 2015, the coalition attacked a busy market in Zabid, Hodeidah, was attacked with three coalition bombs, one of which did not explode. About 40 civilians were killed, including 9 children, and about 45 wounded, including 7 children. The area consisted of markets stalls and restaurants. The small market stalls were visible on satellite imagery. [263]
  - b) On 14 September 2015, between five and six coalition bombs hit Wa’lan Agricultural Complex, a building with five residential apartments in which agricultural engineers lived with their families. The complex also contained an administration room, a guard room and a generator room [101]. Eight residents were killed in the strike (including 2 children and 4

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<sup>3</sup> See the YDP dataset for bulk figures. In relation to specific categories as of the website on November 2019:

- 217 have targeted market places
- 64 have targeted food storage
- 129 raids hit oil & gas related targets
- 779 have targeted transport infrastructure

women), and twelve were injured (including 6 children and 2 women). Mwatana interviewed three witnesses to the attack, two of whom were present inside the complex and one of whom saw the attack from a distance. Our clients are unaware of any reason that Wa'lan may have lost its protection. No interviewees reported the presence of Houthi fighters in the complex. Given the use of multiple laser-guided munitions, it can be assumed that the coalition sought to strike the complex. [93]

- c) At about 8am on the morning of 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. Fifteen were killed (12 children and 3 women), and three injured (all children) in the attack. The account provided by JIAT directly contradicts the evidence enclosed with this letter. JIAT states that video footage showed no civilians on the back of the truck, which was being monitored – yet Mwatana's evidence states that fifteen women and children were riding in the pick-up truck. [116]
  - d) On 16 March 2017, 41 people were killed or went missing when a Coalition aircraft attacked a boat carrying about 140 Somali migrants and refugees and four Yemeni crew. The attack continued over an extended period, with the aircraft returning to launch further attacks at intervals. [278]
  - e) On 22 April 2018, the male gathering at a wedding party was hit by an airstrike in al-Raaqah village, Hajjah governorate. [179] At least 21 people were killed, and 97 were injured. Remnants of a GBU-12 bomb were found at the scene by Mwatana. The civilian gathering was attended by many young children. There were no military targets or personnel in the area identified by Mwatana. The Coalition's explanation for this strike is that three individuals (including a suspected weapons expert) and two vehicles were observed outside a house – and claims that no wedding or tent was visible. Photographs taken at the scene on 24 April 2018 depict the remains of a tent/canopy along with many other objects indicative of a wedding party. 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 that a call was received to say the wedding would be hit.
15. The second recurring feature of the Coalition's conduct which has been repeated throughout the conflict is an **apparent disregard for the fundamental need to take precautions in attack**. To illustrate, we draw the committee's attention to five main points which give rise to our serious concern.
16. First, the repeated striking of objects which would be expected to appear on the Coalition's no-strike list ("NSL") indicates a failure to effectively incorporate the precautions generally intended through the adoption and development of an NSL. For example:



- a. The market outside al-Hadi Mosque, Saada, in early May 2015: The factual analysis shows that an area of approximately 60 meters by 50 meters was destroyed in an air raid and that damage was sustained to the interior of the centuries-old Imam al-Hadi Mosque; [1]
  - b. Al Feleihi Neighbourhood and Qasemi neighbourhoods in Sana'a's Old City which were UNESCO protected, in September and June 2015; [52, 264]
  - c. Haydan Hospital, whose coordinates had been supplied to the Coalition as recently as two days before it was struck with 5-6 bombs, and had roof markings (although it is noted that JIAT found this had been targeted deliberately).<sup>4</sup>
  - d. Main bridge between Hodeidah and Sana'a, which is reported to have been on the Coalition's NSL, 11 August 2016; [275]
  - e. Abs Hospital, which had consistently supplied its coordinates to the Coalition and had roof markings, 15 August 2016;<sup>5</sup>
  - f. The MSF Cholera Clinic in Abs, whose coordinates were supplied twelve times to the Coalition and whose red crescents were visible from space, 11 June 2018; [213]
  - g. Nushur water treatment plant, 23 July 2018 [286]
17. It has been said by ex-State Department advisor Larry Lewis that the NSL is not made available to aircraft pilots in the course of hostilities, which is problematic when the decision to launch a strike is being made by the pilot in response to urgent intelligence. Mr Lewis also said that calling the Command and Control Centre to check the coordinates against the NSL would take "one or two minutes", suggesting that such a precaution would be feasible in all but the most urgent circumstances.<sup>6</sup>
18. Second, the targeting of individuals and other targets which appear 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.<sup>7</sup> For example:
- (i) the presence of civilians and children's swings and a roundabout (merry-go-round) in the al Mokha residential complex when it was hit by up to six successive airstrikes; [265]
  - (ii) the presence of roof markings on the Abs MSF cholera clinic; [213]
  - (iii) the presence of 15 civilians in the Al-Jawf pick-up truck; [116]
  - (iv) the presence of hundreds of civilians at the Bani Qais wedding before it was targeted; [179]
  - (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. 32, 263, 278, 282, 283].
19. Third, 'second-wave' attacks where one airstrike rapidly follows another also do not appear consistent with the targeting procedure as described above, specifically raising concerns that the

<sup>4</sup> Discussed at length in CAAT proceedings

<sup>5</sup> Discussed at length in CAAT proceedings

<sup>6</sup> <https://www.nytimes.com/2019/05/22/world/middleeast/saudi-yemen-airstrikes-civilians.html>

<sup>7</sup> In respect of this point, we would emphasise that the Coalition has the benefit of extremely high resolution reconnaissance technology, allowing civilian activity to be discerned in fine detail.



coalition is failing to carry out a new, and specific, collateral damage assessment ahead of second-wave attacks, when the harm analysis should incorporate the potential (and, often, likely) presence of first responders.

20. Fourth, the striking of homes and markets in densely populated areas with wide-area bombs indicates that certain possible precautions, like choice of an appropriate weapon, to minimise civilian harm are not being taken.
21. Fifth, according Mr Lewis, so-called “dynamic” strikes are undertaken not according to a rigorous, methodical procedure, but rather are decided upon quickly by a pilot in conversation with a source on the ground in Yemen.<sup>8</sup>
22. In our view, these incidents are not consonant with a concerted application of a satisfactory targeting procedure, nor the taking of all feasible precautions. These cannot be excused as one-off mistakes given how often similar strikes have been carried out at the stage the conflict has reached. As a final illustration, enclosed in this submission is an Intercept report of an airstrike in May 2018 which is based on a leaked U.S. military document. The document describes the Coalition discovering a tent which showed no signs of military activity and in respect of which no intelligence existed, yet a decision was made to attack the tent. This occurred within 50 minutes of it being identified, without any recorded time-sensitivity to justify the failure to do anything to verify the target. The tent contained a civilian family which included women and children, who were seen on the drone feed fleeing the tent when the bomb missed its target [198].
23. The third recurring pattern concerns **the response of the Coalition to incidents of concern** and the failure to appropriately investigate or punish violations. The committee will be familiar with the Joint Incident Assessment Team (JIAT), which is often offered by the U.K. government as an indication of Coalition commitment to IHL compliance to justify continued arms transfers to Saudi Arabia.
24. The JIAT was established in 2016 to investigate alleged violations of IHL by the Saudi/UAE-led coalition. The KSA 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:

*“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.”*

25. After careful analysis of numerous JIAT investigations, it is our firm view that JIAT is arriving at conclusions that are directly contradicted by the evidence contained in the annex to this submission. The following factors significantly undermine reliance on JIAT’s existence as a

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<sup>8</sup> <https://www.justsecurity.org/60766/grading-pompeo-certification-yemen-war-civilian-protection-time-reconsideration/>  
Dynamic strikes reportedly make up for high proportions of the Coalition’s airstrikes.

factor weighing in favour of the continued grant of licences for exports of military equipment to the KSA.

26. First, there are a number of strikes in which the JIAT conclusions are entirely inconsistent with the available evidence or irreconcilable with a logical legal analysis. We would highlight the following examples:

*Finding that no strike occurred*<sup>9</sup>

- a) 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 found that the coalition had not carried out this airstrike. We enclose photographic evidence depicting the aftermath of an airstrike, and we draw attention in particular to the large amounts of bomb fragment found at the scene. [52].
- b) In the case of the 24 September 2016 airstrike on a residential area in Ibb Governorate which killed at least 6 civilians, JIAT concluded that no airstrike had taken place in that vicinity on that day. Enclosed are 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. This strike was also documented by the United Nations Panel of Experts, who also found the Mk-82 remnants. [174]
- c) In the case of the bombing of al Hunood market in Hodeidah city on 21 September 2016, JIAT concluded that the damage was not the result of an airstrike. Our clients enclose photographic evidence of bomb remnants which have been identified as those of a Coalition munition. [132]
- d) In the case of the 11 April 2015 attack on a home near the Amran office of education, which Human Rights Watch found killed four members of the same family, JIAT concluded that the coalition had not carried out an aerial attack. However, the damage was documented by Human Rights Watch and can be seen on satellite imagery. Further, the photographic evidence which accompanies the HRW report is indicative of the effects of an airstrike. [260]
- e) In the case of the 12 May 2015 airstrike on Zabid market which killed about 40 civilians, JIAT concluded that no airstrike took place. Witness accounts describe two bombs which detonated and a third which did not. [263]
- f) In the case of the 12 May 2015 airstrike on Abs prison, JIAT concluded that airstrikes carried out on that day had not targeted the prison in Abs. However, Human Rights Watch evidence demonstrates that the destroyed building was in fact the local prison, and that the strike killed and wounded people held there (see, for example, HRW interview with a local man who brought food to the prisoners daily). [262]
- g) In the case of the 12 June 2015 airstrike which killed five civilians and destroyed four houses in the UNESCO protected Old City of Sana'a, JIAT concluded that the coalition had not carried

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<sup>9</sup> In this regard, we remind the Committee that the Houthis do not have the capacity to conduct airstrikes.

out this attack. Witness accounts, along with reports by Amnesty International that weapons remnants were recovered, strongly indicate that this was an air-delivered bomb which, while it did not explode, was heavy enough to cause the collapse of four detached buildings. [264]

- h) In relation to the 20 August 2015 attack on densely packed houses near the presidential palace in Taiz which killed about 50 civilians, JIAT concluded that no airstrike had taken place. However, Mwatana collected witness accounts which described repeated airstrikes landing one after another on the crowded area. [267]
- i) In relation to the 28 August 2015 attack on a residential home in Al Dhihar, Hodeidah, which killed an entire family of five, JIAT concluded that no airstrike took place. However, Mwatana collected witness accounts and recovered the remains of a US weapon. [267]
- j) 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 concluded that the nearest airstrike on that date was 10km from the market. [278]
- k) In the case of the 16 March 2017 attack that killed and wounded dozens of civilians after the Coalition attacked a boat carrying about 140 mostly Somali migrants and refugees, JIAT found that the Coalition's aircraft had not attacked the boat. [278]
- l) In the case of the 3 April 2018 airstrike on a residential complex for internally displaced persons investigated by the United Nations Group of Eminent Experts and Panel of Experts, JIAT concluded that the nearest targeted location was 3500 metres away. [284]

*JIAT concluding that targets were legitimate*

- a) In the case of the 7 October 2015 Sanaban wedding strike which killed about 40 civilians, JIAT found that a convoy of armed vehicles had been targeted at specific coordinates on an asphalt road. HRW researchers did not find indication of an armed convoy – only a bridal party. [269]
- b) In the case of the 20 September 2016 attack on a civilian vehicle in Al Jawf governorate, JIAT concluded 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 only women and children. [116]. In this regard, we again refer the Committee to the Coalition's reconnaissance capabilities and query how, if JIAT had been provided with the correct drone footage, they could have arrived at the conclusion they did.
- c) In relation to a 25 May 2016 attack on a house in Al Mahala, Lahj which killed 6 occupants of the house, JIAT found that the house contained a gathering of Houthi leaders and that no civilians were present. The United Nations account of this strike suggests that the house contained many civilians and stated that more civilians would have survived had it not been for

a second airstrike. Reconnaissance capabilities, if used properly, may have allowed the coalition to view the civilians in the aftermath of the first strike. [273]

- d) In relation to the 2 September 2017 strike on a residential building in Farah village, Hajjah, which killed two women and a child and injured 13 others including one woman and 10 young children, JIAT concluded that the target was a “command centre” and was therefore legitimate. The UN found no evidence to support this. Additionally, the evidence set out by the United Nations Panel of Experts states that it was the second of two strikes, landing while women and children were fleeing, which killed most of the victims. Fleeing women and children would be visible using modern reconnaissance technology. Furthermore, the coalition appears to have used the largest bomb possible, the Mark-84 2,000 lb bomb. JIAT made no comment about the civilian casualties sustained. [281]
27. Second, 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. For example:
- a. In relation to the 29 October 2016 attack on Al Zaidia prison, Hodeidah, which killed around 63 male civilians (most of whom were detainees at the prison), JIAT concluded that the Houthis had stationed armed personnel and vehicles at the location, rendering it a military target. However, it made no comment about the proportionality considerations in attacking such personnel and vehicles when stationed next to around 100 detainees. [276]
28. JIAT occasionally employs the language of “errors”, “mistakes” and “unintentional” conduct. As noted above, such language overlooks the fact that a failure to take precautions or conduct military operations in a proportionate manner constitutes a violation of IHL irrespective of intentionality. Failing to acknowledge civilian harm (even to then conclude that it was proportionate) is a common feature of JIAT investigations when it declares it found a military target was present.
29. Third, JIAT’s recommendations do not appear to be followed through. This relates to the concerns of Larry Lewis, a US State Department Advisor who was tasked with advising the Coalition on how to reduce civilian casualties and assisted in establishing the JIAT: *“The JIAT was responsible for identifying deficiencies – and ideally, patterns that increased risk to civilians – but these insights needed to be accepted by the Coalition, which needed to then make operational adjustments to reduce the identified risks. In my early work with the JIAT, they were not perfect by any means, but they were able to identify some risk factors. However, they lamented the Coalition’s lack of receptivity to operationalize solutions to these deficiencies.”*<sup>10</sup>
30. Fourth, 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:
- a) HRW analysed and addressed JIAT’s approach to 17 specific strikes that HRW also investigated and found that its conclusions were characterised by legal and factual

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<sup>10</sup> <https://www.justsecurity.org/60766/grading-pompeo-certification-yemen-war-civilian-protection-time-reconsideration/>

discrepancies. Further, HRW reviewed JIAT's statements in respect of 75 incidents and found that JIAT absolved the coalition of responsibility in the "vast majority" of cases, and the investigations conducted were non-credible.<sup>11</sup>

- b) The United Nations Group of Eminent Experts 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) accident or technical fault; 2) the coalition was not responsible for the attack; and 3) the object was a military objective.
  - c) The UN Group of Eminent Experts received "reliable information" suggesting that "at times, JIAT findings were substantially altered by the Saudi Ministry of Foreign Affairs."<sup>12</sup>
  - d) 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,<sup>13</sup> including five who died from their injuries<sup>14</sup> and showed clear signs of having been beaten when they were taking part in their legal proceedings. Others complained of mistreatment in court, and were hooded whilst being taken into the courtroom.
31. The above points indicate that JIAT cannot reasonably be said to be having the effect of sufficiently reducing the risk of the Coalition committing serious violations of IHL. Even where JIAT does make recommendations, it is not at all clear that the Coalition takes appropriate action as a result.

## CONCLUSION

32. Enough time has passed since March 2015 for a firm conclusion to be drawn that U.K. influence, however well-intentioned, is not sufficient to prevent Coalition members from continuing to commit serious violations of international humanitarian law, including carrying out airstrikes in violation of the principles of distinction and proportionality. It is our firm view, as organisations with expertise in both the factual situation in Yemen and the international law applicable to the conflict, that attacks similar to those outlined above will continue. Consequently, there is a clear risk that weapons transferred to members of the Coalition, in particular Saudi Arabia and the UAE, will be used in serious violations of international law.

We hope that this submission has assisted the Committee.

**Mwatana for Human Rights**

**The Global Legal Action Network**

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<sup>11</sup> <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>

<sup>12</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/43](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/43)

<sup>13</sup> <https://www.hrw.org/report/2012/02/28/no-justice-bahrain/unfair-trials-military-and-civilian-courts>

<sup>14</sup> BICI Report, para. 873.