

AMNESTY INTERNATIONAL PUBLIC STATEMENT

AI Index: MDE 31/5494/2017

16 January 2017

Amnesty International response to the Saudi Arabia-led coalition's investigations

The Saudi Arabia-led coalition's investigative mechanism, the Joint Incidents Assessment Team (JIAT), published a series of legal conclusions in August, October and December 2016 surrounding specific air strike incidents where concerns have been raised that international humanitarian law (IHL) may have been breached.

Amnesty International has reviewed all publically available legal and factual conclusions and in response, has written today to Lieutenant General Mansour Ahmed Al-Mansour, legal advisor to the JIAT, to express the organization's concern the JIAT's investigations appear to be falling short of international standards including those of transparency, independence, impartiality and effectiveness. Amnesty International has also sought further information regarding the JIAT's methodology and mandate.

Amnesty International has also reviewed and evaluated responses made by General Ahmed al-Asiri regarding the organization's [findings](#) on the coalition's use of UK-manufactured cluster munition.

Amnesty International believes that the JIAT may fall short of international standards in a number of key areas including, but not limited, to:

Mandate: It remains unclear what the JIAT's mandate is, what it will do with its findings, whether it will identify possible perpetrators, how it will ensure prosecution of those suspected of criminal responsibility for crimes under international law, or whether it is mandated to identify systematic patterns of violations.

Authority: It is unclear what powers the JIAT has to subpoena witnesses, obtain relevant documents and other evidence, ensure co-operation from government officials and members of armed forces of coalition members; and whether it has the authority to require coalition members to suspend from duty officials involved in the matters it is looking into; whether its recommendations are binding vis-à-vis coalition members and if there is a committee to oversee the implementation of these recommendations. If these powers are indeed absent, it would be a serious shortcoming undermining the prospect that the JIAT could help ensure truth, justice and reparation for victims and

their families.

Transparency: Information regarding the JIAT is not readily available publicly and its methodology remains unclear. Amnesty International is concerned that the following information is not public: the qualifications of its members, detailed information on its terms of reference and a detailed timeline of its work to date (published and unpublished) or a work plan. Amnesty International has not been able to find a detailed explanation of the standards that the JIAT has followed in monitoring, reporting and verifying alleged violations.

Impartiality: The JIAT does not outline the criteria set out for the selection of the incidents to date. Amnesty International fears that the JIAT's legal and factual conclusions thus far indicate a greater willingness to absolve the coalition members of responsibility. The JIAT does not state what its sources are, how it cross checks factual information and whether it interviewed victims, witnesses and medical staff. To Amnesty International's knowledge, the JIAT has not investigated a single cluster munition attack to this day.

Since 25 March 2015, Amnesty International has documented at least 34 coalition air strikes across six different governorates in Yemen (Sana'a, Sa'da, Hajjah, Hodeidah, Ta'iz and Lahj) that appear to have violated IHL. These have resulted in 494 civilian deaths (including at least 148 children) and 359 civilian injuries. They have included indiscriminate attacks leading to civilian deaths and injuries, and attacks that appear to have deliberately targeted civilians and civilian objects such as hospitals, schools, markets and mosques, and caused damage to civilian property, which would amount to war crimes. Human Rights Watch, Mwatana Organization for Human Rights, one of Yemen's leading human rights organizations, and the United Nations have documented dozens more apparently unlawful coalition air strikes.

Between March 2015 and October 2016, 4,125 civilians were killed and 7,207 wounded in Yemen, [Office of the UN High Commissioner for Human Rights](#), reporting in [August 2016](#) that air strikes had been the "single largest cause of casualties" over the past year.

States have an obligation to provide victims of gross human rights violations under international law access to an effective remedy. This obligation includes three elements:

- Justice: investigating violations by their nationals and armed forces and, if enough admissible evidence is gathered, prosecuting the suspected perpetrators in fair trials.¹ Further, under the principle of universal jurisdiction, all states have a right

¹ ICRC Customary IHL Study, Rule 158

to investigate and, where enough admissible evidence is gathered, prosecute war crimes;²

- Truth: establishing the facts about violations of human rights;
- Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³

As of January 2017, nearly a year since the announcement to establish the JIAT, only 14 incidents were investigated, based on publicly available information. The JIAT recommended reparations to victims in three of these incidents and in two incidents, it recommended that appropriate action be taken against perpetrators.⁴ Despite these recommendations, Amnesty International is not aware of any progress made to either provide remedies to victims or ensure prosecution of those suspected of criminal responsibility for crimes under international law. Furthermore, it remains unclear if the coalition members revised their rules of engagement after the JIAT recommendations were issued.

In its published conclusions, the JIAT relieved the Saudi Arabia-led coalition of any responsibility in all but four out of 14 strikes investigated, offering legal and factual analysis that contradicts the findings of not only Amnesty International, but also of the United Nations and other human rights organizations including Human Rights Watch and [Medecins Sans Frontieres/Doctors Without Borders \(MSF\)](#).

Amnesty International would like to take this opportunity to share with the JIAT the organization's comparison of its findings with those of the JIAT, and to highlight the discrepancies between the two sets of factual findings and legal conclusions in three air strike incidents, as outlined below. We would also like to take this opportunity to ask for your response to a number of questions regarding these aforementioned discrepancies and the JIAT's *modus operandi*.

² See for example ICJ, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p.3, where the majority of the court confirmed the right of all states to exercise universal jurisdiction. Amnesty International, Universal jurisdiction: The duty of states to enact and implement legislation, (Index: IOR 53/003/2001), September 2001.

³ Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (Basic principles on the right to a remedy and reparation), adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, UN Doc. A/RES/60/147.

⁴ In the Mokha attack in July 2015, the JIAT recommended "providing compensation to the families of the victims after they submit their official and documented claims to the Reparations Committee." In the Great Hall attack in October 2016, the JIAT recommended that "appropriate action, in accordance with Coalition regulations, must be taken against those who caused the incident, and that compensation must be offered to the families of the victims. Moreover, Coalition forces must immediately review their rules of engagement (ROEs) and update their procedures to ensure adherence in future."

AIR STRIKE INCIDENTS INVESTIGATED BY AMNESTY INTERNATIONAL AND THE JIAT

24 AUGUST 2015, AL-ASMA SCHOOL, AL-MANSOURIYA, HODEIDAH

In its [December report](#), the JIAT released its findings related to an attack on al-Asma School in Hodeidah that took place on 15 August 2015. In this report, the JIAT, whose methodology remains undisclosed, publically “refuted” Amnesty International’s research. It stated that “the Coalition Forces have targeted the above-mentioned site based on surveillance information that the armed Houthi militias and forces loyal to former president [Ali Abdullah Saleh] were using the site as a headquarters and a storage and distribution post for weapons smuggled via Al-Hodeida port, classifying it as a militarily legal target of high value that achieves certified military advantage”. The JIAT went on to conclude that “targeting the questionable site were intact and correct” as the school had lost its civilian status “due to its being used as a tool within the military effort.” It also noted that school building only sustained “partial damage” which was estimated at “25%.”

In comparison, Amnesty International [found](#) that the air strike on al-Asma School violated IHL by deliberately targeting a civilian object and violating the principle of distinction. The organization’s findings were based on research conducted on-site on 8 November 2015, whereby Amnesty International spoke with four residents from al-Mansouriya village, including a student from al-Asma School and the school’s director and deputy director during a visit to the school. All four told Amnesty International that al-Asma School was never used for military purposes and was attacked by coalition forces despite its civilian status.

During this visit, Amnesty International observed the impact craters from the air strikes that hit the school and observed that there was no evidence that the school had contained any military material. There were no weapon remnants and no evidence of secondary explosions. While the JIAT argues that there was only 25% damage to the school, Amnesty International concluded that the school was rendered inoperable by the attack and would need extensive reconstruction for it to be functional and safe. Amnesty International also reviewed video footage published by a local media site on 25 August taken after the strikes on the school. The video does not show the presence of any military personnel or materiel, consistent with the residents’ statements.

While interviewees confirmed that the school was empty at the time of the attack, it was the only school catering to 1,200 students in the area. The only other school is at least five to six kilometres away and does not cater to girls. Based on its investigation, Amnesty International concluded that in violation of IHL, the strike appeared to have deliberately targeted a civilian object and caused disproportionate loss or damage to a civilian property in relation to the expected military gain from the strike.

24 JULY 2015, STEAM POWER PLANT RESIDENTIAL COMPOUND, MOKHA

In its August report, the JIAT did not explicitly [conclude](#) whether or not the Mokha attack constituted a violation of IHL. After “reviewing the facts” surrounding an air strike that took place in July 2015 in Mokha, the JIAT concluded that the coalition struck the area due to the presence of Huthi and former president Ali Abdullah Saleh affiliated forces including coastal defence missiles. However, the JIAT also found that the steam power plant residential compound was the target of “unintentional bombing, based on inaccurate intelligence information”. The JIAT did not explicitly state how many civilians were killed or injured in the incident, but recommended providing compensation to the “families of victims after they submit their official and documented claims to the Reparations Committee”.

Amnesty International’s research [concluded](#) that the air strike on the Mokha residential compound violated the legal principles of distinction and proportionality. The organization’s researchers visited the site three days after the air strike and interviewed 21 residents and plant workers at the site and in five hospitals in Mokha and Hodeidah. During its visit to the site on 27 July, Amnesty International observed at least eight impact craters from the air strikes that hit the complex during one 30-minute period on 24 July 2015, according to witnesses. Such a repetition of air strikes on the same location makes it difficult to argue that this attack was “unintentional” and Amnesty International concluded that the attack could amount to a war crime. The air strikes at the time killed at least 63 civilians and injured 50 others. Amnesty International found no evidence that the residential compounds were being used for military purposes.

6 JULY 2015, FAYUSH MARKET, LAHIJ

The JIAT concluded in its [December report](#) that the Fayush livestock market was “not bombed by coalition forces, and was not affected by the accidental bombing of targets in the region”. In its report, the JIAT “refuted” Amnesty International’s evidence and legal conclusion. It did not clarify how it reached this conclusion, nor did it explain its methodology and sources in reaching this conclusion.

Amnesty International [concluded](#) that the attack on the Fayush market constituted a violation of IHL. Its researchers visited the site on 11 July 2015, five days after the attack, and interviewed several people, including witnesses who work at the market, victims and a member of medical staff.

Local residents and sellers in the adjacent food market told Amnesty International that at the time of the air strike there were no unusual gatherings or activities in the market. One resident told Amnesty International that “it was a massacre, body parts and blood of humans and animals were mixed together”. Relatives and witnesses told Amnesty

International some of the victims had been blown apart in the blast but there were no adequate systems available to allow for post-burial identification of unclaimed bodies or remains. Hospital workers told Amnesty International that they had received a large number of civilians injured from the strike.

Amnesty International inspected the impact crater at the site of the strike and it appeared to be some three meters deep and four meters in diameter – indicating it was likely caused by a 500-1,000 lbs (200 – 450+ Kg) bomb (similar to those used by the coalition in other attacks documented by Amnesty International).

The attack violated the principle of distinction, a cornerstone of IHL, which requires all parties to a conflict to: “...at all times distinguish between the civilian population and combatants and between civilian objects and military objectives...”,⁵ and which defines military objectives as “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Military advantage may not be interpreted so broadly as to render the rule ineffective.⁶

Even if some combatants had been present at the site this would not have justified launching an attack on a market, which was sure to cause large-scale civilian casualties and fatalities and which would therefore have been not only disproportionate but also indiscriminate.

FOLLOW-UP QUESTIONS

In order to assist Amnesty International’s research and monitoring of accountability in the conflict in Yemen, and to ensure that we have all the various facts applicable to allegations of serious violations of IHL by all sides to the conflict in Yemen, we would be grateful for your clarification on a number of aspects of the work of the JIAT. These responses will be taken into account in all future reports in which we analyse allegations of violations and abuses committed during the conflict.

METHODOLOGY

1. What are the criteria the JIAT adheres to in selecting and prioritizing the incidents it investigates? Could you disclose which incidents you are currently investigating

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 48 <https://www.icrc.org/jihl/WebART/470-750067>

⁶ Ibid, Articles 50 to 52.

and those you are planning to? Will there be an opportunity for non-governmental organizations to contribute their evidence?

2. What sources does the JIAT rely upon when cross-checking factual information? What is the scope of access the JIAT investigators have to airstrike sites? During investigations of the aforementioned air strikes, were victims, witnesses and medical staff interviewed? If so, how many, on what date, and by what means (telephone or in person)? Did the JIAT rely on any aerial footage to assess the damage caused in aforementioned air strikes?
3. In the investigation into the al-Asma School attack, the JIAT judged that the school only sustained 25% damage. How does the JIAT assess or define “damage” in such instances?
4. Will the JIAT publish its full findings, including detailed methodology, and if so, what is the timeframe?
5. [General Ahmed al-Asiri announced on 19 December 2016](#) that the coalition did in fact use UK-manufactured cluster munition in December 2015, confirming Amnesty International’s findings published in [May 2016](#).⁷ Will the JIAT consider investigating this specific cluster munition attack or any other cluster munition attack throughout its work?

REPARATIONS, RULES OF ENGAGEMENT AND PROSECUTION

6. After the air strike on the Great Hall on 8 October, which killed and injured hundreds of civilians, the JIAT [recommended](#) that appropriate action be taken against officials responsible, that compensation be offered to victims and the coalition’s rules of engagement reviewed. What concrete steps have been taken to follow up on recommendations to provide compensation to the victims of the Great Hall and Mokha steam power plant residential complex? How can families of victims contact the Reparations Committee? Has the Reparations Committee received or issued any reparation claims to victims and their families? If so, how many and in what form were victims compensated? Has the Reparations Committee devised any reparation programme that includes rehabilitation and guarantees of non-repetition as well as compensation?

⁷ The coalition spokesperson stated that “neither Saudi Arabia nor its Coalition partners are States Parties to the 2008 Convention, and accordingly, the Coalition’s use of cluster munitions does not violate the obligations of these States under international law.” Despite Saudi Arabia and other coalition members not being signatories to the Cluster Munition Convention, under customary international humanitarian law, coalition members must not use inherently indiscriminate weapons, which invariably pose a threat to civilians, and the use of cluster munitions in this case therefore appears to have been a serious violation of international humanitarian law.

7. What progress has been made on revising the coalition's rules of engagement, as per the JIAT recommendations? Will the coalition disclose its rules of engagement in order for international organizations including Amnesty International to objectively assess the rules of engagement's compliance with IHL?
8. Following the JIAT's recommendation to hold officers accountable in the [Great Hall incident on 8 October](#), have any members of the coalition taken concrete steps to investigate and prosecute those national officers reasonably suspected of criminal responsibility for war crimes? Are the JIAT's recommendations binding vis-à-vis coalition members? Has a committee been formed and tasked with monitoring the implementation of the JIAT's recommendations?