Starvation Makers

The use of starvation by warring parties in Yemen

September 2021
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A fisherman sleeping under his boat at the dock in Al-Hudaydah City, Al-Hudaydah Governorate.
February 26, 2021.
Executive summary

The use of starvation by warring parties in Yemen
In Yemen, parties to the conflict have deprived civilians of objects that are essential to their survival (OIS), starving them, in some cases to death.

When asked about the impacts that warring party attacks and other conduct have had on their lives, people across Yemen described dire effects on food sources, water sources and critical civilian infrastructure. After the Saudi and United Arab Emirates-led coalition started bombing artisanal fishermen in the waters off Al-Hudaydah, one woman said her “son was no longer able to go fishing.” They “decided to flee,” fearing [they] would either die from starvation or that [a Saudi/UAE-led coalition] aircraft would kill [them].” The sea “meant everything for the community” but had become a place of fear. Some fishermen had no choice but to return to fishing, “because [they] have no other source of food or income.” Similarly, in Dhubab District in Taiz governate, a man talked about how the Ansar Allah (Houthi) armed group (Ansar Allah) had laid landmines everywhere, with “no signs or maps showing their whereabouts,” becoming “a threat to all of [them].” Residents of areas in which landmines had been planted by Ansar Allah said that they had not “suffer[ed] from starvation or water scarcity before the mines were planted, and [their] livelihood was fine,” but because of the landmines, they “stopped herding, logging, and agriculture, and [their] water has been cut off.”

Following a year-long investigation, and several years of research and documentation across Yemen, this Mwatana for Human Rights (Mwatana) and Global Rights Compliance (GRC) report documents conduct of the Saudi/UAE-led coalition—acting with the consent of the

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iv Mwatana for Human Rights interview with Waheed Zaid on October 15, 2019
internationally recognized Government of Yemen and fighting with the Yemeni military—and Ansar Allah that has likely violated prohibitions under international humanitarian law (IHL) and international humanitarian law (IHRL).

In Part G, we document airstrikes by the Saudi/UAE-led coalition on farms in Abs District in Hajjah Governate, on water facilities in the Sahar and Kitaf wa Al Buqa’a districts in Saada Governate, and on artisanal fishing boats and equipment in Alluheyah District in Al-Hudaydah Governate. The attacks destroyed, damaged and/or rendered useless OIS, namely agricultural areas, irrigation works, livestock, foodstuffs, water infrastructure, fishing boats and fishing equipment. Airstrikes on fishermen, in particular, instilled fear in the fishing population, preventing them from fishing at their pre-existing capacity.

In Part H, we document Ansar Allah-imposed restrictions on humanitarian relief actions in Saada Governate and their widespread use of landmines in Taiz Governate. Restrictions on humanitarian organizations’ operations and the diversion and redirection of humanitarian aid to Ansar Allah-loyalists constituted effective refusals to consent to humanitarian relief action and to allow and facilitate the passage of impartial relief action; restrictions were so severe that they forced the World Food Programme (WFP) to suspend its operations in 2019 and again in 2020. Ansar Allah actions deprived civilians of indispensable aid, including food. Ansar Allah’s widespread and indiscriminate use of landmines in wholly civilian areas, including in the Al-Omari area of Dhubab District, Taiz Governate, constituted attacks on grazing and agricultural areas (OIS) that damaged, destroyed or otherwise rendered the areas useless. The widespread and indiscriminate use of landmines in the area, which have injured and killed some shepherds and their livestock, has instilled fear in the farming population, preventing them from accessing agricultural land.

Mwatana and GRC conclude that members of the Saudi/UAE-led coalition and Ansar Allah used starvation as a method of warfare. Their conduct severely impeded civilians’ access to food and water, and they acted in spite of the widespread knowledge of the dire humanitarian situation in Yemen, where people, including children, were dying from starvation. Members of the Saudi/UAE-led coalition and Ansar Allah were aware of the virtual certainty that, following their conduct, starvation would occur in the ordinary course of events—that is, without humanitarian intervention—or intended to use starvation as a method of warfare.

Further investigation with a view to mapping and identifying those responsible for the use of starvation as a method of warfare, as well as other crimes committed in the context of the conflict in Yemen, is required to determine the identity of the perpetrators and the mode/s of liability under which they may be held responsible.
Parties to the conflict in Yemen committed starvation as a war crime

This report focuses on the use of starvation as a war crime in the conflict in Yemen. We analyse the conduct of the Saudi/UAE-led coalition and Ansar Allah in the context of the IHL prohibition and the corollary war crime.

IHL prohibits the use of starvation as a method of warfare. Article 14 of AP II prohibits the use of "starvation as a method of warfare" in non-international armed conflicts, stating that "[i]t is therefore prohibited to attack, destroy, remove or render useless, for that purpose, [OIS], such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."

Using starvation as a method of warfare is a war crime. As recognized by Article 8(2)(e)(xix) of the Rome Statute of the International Criminal Court (ICC), in addition to the conduct Article 14 of AP II prohibits, willfully impeding relief supplies may also constitute the war crime of starvation. Although the ICC does not currently have jurisdiction over the parties to the conflict in Yemen, the definition under the Rome Statute is nevertheless relevant. It provides the most recent and comprehensive articulation of the crime of starvation. Any future domestic proceedings based on universal jurisdiction are likely to rely on the Rome Statute (see Part F, Section 2).

After finding that the Saudi/UAE-led coalition and Ansar Allah intentionally (Part G, Section 5.2.2.2 and Part H, Sections 2.4.1.3(ii) and 3.2.2.2(ii)), and unlawfully (Part F, Sections 1.2.2 and 2.2.1; Part G, Section 5.2.1; and Part H, Sections 2.4.1.2 and 3.2.2.1), deprived civilians of objects which constituted OIS, and that Ansar Allah willfully impeded relief supplies, we examine whether members of the Saudi/UAE-led coalition and Ansar Allah may have intended to starve civilians or whether they had knowledge of the virtual certainty that starvation would result from their actions in the ordinary course of events (that is, without intervention); the defining mens rea element of the crime under Article 30 of the Rome Statute.
The report assesses a range of indicators of intent relevant to determining whether starvation as a war crime was committed. Indications of intent in conflict are rarely overt, particularly with respect to crimes that require specific intent, like starvation. Instead, indirect or circumstantial evidence from which intent can be inferred is often necessary to determine what was in the minds of the perpetrator/s when they decided on, ordered, or otherwise assisted or participated in the conduct documented. It is also difficult, although not impossible, to establish that a single attack on OIS or restriction of access to OIS was carried out with intent to starve civilians. Bearing this in mind, the pattern of conduct—relied upon in numerous criminal trials in which war crimes have been prosecuted—and the context surrounding the attacks becomes vital to understanding why individuals acted as they did.

1.1 The general context in which the conduct occurred

Food insecurity is not incidental to the conflict in Yemen—the conflict, and the conduct of the warring parties, drives it. When the conflict began in 2014, approximately 41% of the population in Yemen was food insecure (see Part E, Section 2.1). According to the WFP and the UN Office for the Coordination of Humanitarian Affairs (OHCA), the percentage of the population that is food insecure has increased almost every year since 2014. In early 2021, WFP reported that Yemen was “headed straight toward the biggest famine in modern history,” with “over 400,000 children at risk of dying” and 16.2 million people facing acute food insecurity (see Part E, Section 2.2).

OCHA reported that 66% of people needing support to treat or prevent malnutrition in 2021 are women and, of the 4.7 million people requiring treatment for acute malnutrition in 2021, 1.2 million are pregnant and lactating women (see Part E, Section 4).

Chronic food insecurity and the risk of famine have been particularly acute in the Hajjah, Saada, Al-Hudaydah and Taiz Governates, wherein the starvation-related conduct documented in this report occurred. These governates have been classified by the Integrated Food Security Phase Classification as Phase 3 (crisis) or Phase 4 (emergency) throughout the conflict, with pockets of them at various times projected to be in Phase 5 (famine) (See Part C and Part E, Section 2.2).

While the number of people who have been killed during the conflict in Yemen vary by source, OCHA estimated that the conflict has directly and indirectly caused 233,000
deaths (including of persons directly participating in hostilities), with more than half—131,000 deaths—resulting “from indirect causes such as a lack of food, health services and infrastructure.”

Members of the Saudi/UAE-led coalition and Ansar Allah must have known of the dire humanitarian situation. They very likely had knowledge that segments of the civilian population were entirely reliant on access to specific agricultural produce and livestock, artisanal fishing and water infrastructure, and that the destruction of such objects and restrictions on humanitarian access would mean these civilians would be unable to access affordable food and clean water. Humanitarian organizations, as well as UN bodies such as the UN Group of Eminent Experts on Yemen (GEE) and the UN Panel of Experts on Yemen (PoE), engaged directly with parties to the conflict and reported on food and water security-related issues, and advocated for humanitarian access to ameliorate the devastating impacts the war was having on the civilian population. The Saudi/UAE-led coalition, the Yemeni government and Ansar Allah must also have known that the conduct of other parties to the conflict was exacerbating food insecurity throughout the areas in which hostilities occurred.

1.2 The manner, timing and repetition of attacks on OIS or restrictions on humanitarian access

The manner, timing and repetition of attacks on OIS and the restrictions on humanitarian access that were documented in this report, particularly in the context of the broader pattern of attacks on OIS, support a finding of intent.

With respect to the Saudi/UAE-led coalition, the airstrikes documented formed part of a pattern of repetitive attacks on similar OIS, e.g. on farms, water facilities and artisanal fishing boats and equipment, and on other types of OIS, including food markets, means of transporting food and water, and food and water storage and production facilities. Saudi/UAE-led coalition attacks on OIS have been documented by Mwatana, the GEE, the PoE and other groups. In the attacks on the water facilities documented in this report, multiple airstrikes were carried out on each facility, some of which occurred immediately after the facilities had been built or repaired.

Ansar Allah’s obstruction of humanitarian access—including arresting and intimidating humanitarian workers, blocking aid convoys and illegally seizing the
property of humanitarian organizations and workers—have been widely reported on in Saada Governate and elsewhere by the GEE, the PoE, WFP, OCHA and others. As noted above, the impediments were so severe WFP suspended humanitarian operations in Ansar Allah-controlled areas in 2019, impacting an estimated 850,000 beneficiaries, and again in 2020. The GEE, Mwatana, and others have also reported on the widespread and repeated use of landmines in civilian areas by Ansar Allah, without any precautions to minimize their indiscriminate effects, in violation of IHL.

1.3 Other drivers of food insecurity in Yemen attributable to the parties to the conflict

Other factors driving food insecurity can be attributed to the Saudi/UAE-led coalition, the Yemeni Government, and Ansar Allah, supporting a finding of intent.

The Saudi/UAE-led coalition, the Yemeni government, and Ansar Allah-imposed targeted restrictive economic policies, which—in the context of a population vulnerable to fluctuations in the value of the Yemeni riyal and to disruptions to the supply chain—adversely impacted purchasing power, and consequently, access to food and water. These include the movement of the Central Bank of Yemen (CBY) from Sana’a to Aden by the Yemeni Government in 2016, followed by their withholding of salaries of hundreds of thousands of civil servants, and Ansar Allah’s banning of new bills issued by the CBY in Aden, diversion of 50 billion Yemeni riyals from the CBY in March 2020, withholding of salaries, imposition of heavy taxes (some of which were funnelled to support the war effort) and other tariffs in territories under their control, including on direly needed fuel. These are just a few examples of a wide array of restrictive policies.

Since 2015, the Saudi/UAE-led coalition has also imposed a de facto naval and aerial blockade on Yemen’s sea and airports, which—with varying levels of intensity throughout the conflict—has severely restricted the flow of food, fuel, and medicine to civilians. The Saudi/UAE-led coalition and Yemeni government’s decision to keep Sana’a international airport closed to commercial flights since 2016 “has precluded thousands of civilians from accessing necessary life-saving health care and treatment,” according to the GEE, which consequently found that the Government of Yemen violated the right to food and water.
Ansar Allah has also used siege-like warfare in Yemen, which has had a particularly acute impact on Taiz, where they confiscated food and medicine critical for meeting civilian’s survival needs and impeded civilian’s movement into and out of the city. Ansar Allah has also taken direct actions that have impacted civilians’ food security, including shelling areas affecting access to food and laying mines inside the Red Sea Mills in Al-Hudaydah, which previously contained enough wheat to feed 3.7 million people for one month; a quarter of WFP’s in-country stock.

### 1.4 Systematic violations of IHL and violations and abuses of IHRL throughout the conflict

Warring parties’ adherence, or non-adherence, to norms and prohibitions of IHL and IHRL can provide a window into the minds of their members. According to reports by the GEE, the PoE, Mwatana and numerous international and non-governmental organizations, the Saudi/UAE-led coalition and Ansar Allah have committed other serious violations of IHL and violations and abuses of IHRL—beyond those outlined above—in connection with the conflict, which may constitute war crimes.

The Saudi/UAE-led coalition has attacked, destroyed and damaged other critical infrastructure, some of which may also constitute OIS in the Yemen context, including food storage sites, oil and gas, roads and bridges, electricity supplies and markets, and health facilities, which are necessary to access life-saving treatment, including to prevent wasting and death from malnutrition.

Ansar Allah has also indiscriminately shelled areas affecting access to food with a particular acute impact on Taiz, including those seeking food or safety.

Numerous other violations, including unlawful killings, enforced disappearances, arbitrary detention, torture and other forms of cruel, inhuman and degrading treatment or punishment, sexual and gender-based violence, and the recruitment and use of children and other violations against children have also been committed by parties to the conflict.

Although further criminal investigation is required to identify the perpetrator/s and their mode/s of liability, this report ultimately concludes that it is possible to find, based on the above factors, that members of the Saudi/UAE-led coalition and Ansar Allah
were aware of the virtual certainty that starvation would occur in the ordinary course of events, that is, without humanitarian intervention, or intended to use starvation as a method of warfare. (see Part G, Section 5.2 and Part H, Sections 2.4.1 and 3.4.2).

Other violations of IHL and violations or abuses of IHRL, which may constitute war crimes

Through the conduct documented in the report, the Saudi/UAE-led coalition and Ansar Allah, as well as the Yemeni Government, violated their obligations to respect, and in some cases protect and fulfill, the rights to food and water, as well as the rights to life, work, health and property (see Part. F, Section 3; Part G, Section 5.3.2; Part H, Sections 2.4.2, 3.4.3.2 and 3.4.4).

In addition to starvation, the conduct documented in this report may violate Article 13 of AP II and customary IHL and constitute other war crimes, in particular attacks on civilians and civilian objects and terrorizing the civilian population. Ansar Allah’s restrictions on humanitarian access also violate Article 18 of AP II and customary IHL, which require parties to a conflict to consent to, and allow and facilitate, impartial humanitarian relief actions carried out without adverse distinction. For further discussion, see Part F, Sections 2.3 and 2.4; Part G, Section 5.3.1; and Part H, Section 3.4.3.1.
Limited steps have been taken to prevent further international crimes and ensure accountability for Saudi/UAE-led coalition and Ansar Allah conduct

To date, steps taken at the international and domestic levels have had little impact in holding the perpetrators of international crimes accountable and ensuring reparations for civilian victims. Much more must be done to ensure accountability and redress.

The avenues for accountability and redress on the domestic level, to date, have not, and are unlikely to, meet the standards applicable to investigations and prosecutions under international law (see Part I, Section 1.3). The domestic criminal justice systems in Yemen, Saudi Arabia and the UAE (as well as Iran) are unable to provide an effective remedy, either because they do not penalize the use of starvation as a method of warfare or do not ensure criminal proceedings are compliant with international law and standards governing the right to a fair trial and victims’ right to participate meaningfully in proceedings. Even if they could dispense effective justice, such States are unwilling or unable to hold perpetrators of starvation-related conduct liable (see Part I, Section 1.1).

The Yemeni National Commission of Inquiry, activated in 2015 to “investigate all alleged violations of human rights and [IHL] that have taken place since 2011 and to identify the perpetrators,” has faced significant challenges associated with its lack of structural independence, including because NCI commissioners are appointed by and report to the coalition-backed internationally recognized Yemeni Government. The NCI has also faced significant obstacles to carrying out its documentation mandate, and completed investigations have not resulted in the prosecution of alleged perpetrators (see Part I, Section 1.2).

The Saudi/UAE-led coalition’s Joint Incidents Assessment Team lacks the transparency, independence and impartiality necessary of an investigative mechanism.
At the international level, options for holding perpetrators accountable for starvation-related conduct appear to be more viable, but mechanisms which currently exist have not yet resulted in effective remedies for victims.

The GEE, in particular, has reported extensively on the conduct of the Saudi/UAE-led coalition, the Yemeni government, Ansar Allah, and other warring parties, and has laid the groundwork for future accountability mechanisms. However, it is not mandated to collect and preserve evidence for criminal prosecutions per se, nor can it prepare case files for prosecution (see Part I, Section 2.2). The GEE itself recommends the adoption of some of the measures we recommend, set out below and in Part J.

Targeted sanctions, both by the UNSC and at the domestic level, have only thus far been imposed on Ansar Allah (see Part I, Section 2.3).

The ICC currently only has jurisdiction over persons involved in the conflict who are nationals of a state party to the ICC—such as nationals of state parties to the ICC who have provided assistance to the coalition, or nationals of one of the members of the coalition, like Jordan, who are state parties to the ICC. Communications submitted to the ICC in relation to such states parties, including by Mwatana, have yet to result in the opening of an investigation by the Office of the Prosecutor (See Part I, Section 2.4). The ICC could exercise jurisdiction over Saudi Arabia, the UAE, Yemen and Ansar Allah if the UN Security Council referred the situation in Yemen to the Court, or if Yemen joined the Court or made a declaration accepting the court’s jurisdiction.

As states like Yemen, Saudi Arabia and the UAE have not ratified the relevant protocols, treaty bodies, such as the UN Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee, are not able to receive individual complaints regarding non-compliance with the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights on Yemen (see Part I, Section 2.1).

To fill ongoing gaps in accountability, non-government organizations, including Mwatana, have sought to institute criminal proceedings in Italy for complicity, targeting Italian arms manufacturers, or administrative proceedings in the United Kingdom (UK), seeking to prevent the UK government’s licensing of arms sales. Such proceedings are ongoing (See Part I, Section 3).
Given the considerable gaps in the measures currently available at the domestic and international levels, significantly more needs to be done by the warring parties, by the internationally recognised Government of Yemen, by the UN Security Council, by the UN Human Rights Council, and by States to ensure accountability for international crimes and reparations for victims.

What should States do to prevent and ensure accountability for Saudi/UAE-led coalition and Ansar Allah conduct?vi

In Part J of the report, we set out a comprehensive range of recommendations directed at parties to the conflict, other states and UN actors aimed at preventing further violations of IHL, violations and abuses of IHRL, and war crimes, holding perpetrators accountable, ensuring reparations for victims, and strengthening the institutional and normative architecture by which states and UN actors can do so. A selection of the core, most urgent, recommendations is set out below.

We call on all parties to the conflict to cease all violations of IHL, violations and abuses of IHRL and war crimes and to take steps to protect civilians and civilian objects, including OIS, and facilitate access to full humanitarian aid, including food and water. Additionally, parties to the conflict should (amongst other things):

• Agree to a cessation of hostilities with a view to ensuring a sustainable and inclusive peace.
• Resume and ensure uninterrupted civil servant salary payments to civil servants throughout the country, with a priority for health, education, sanitation, and other essential workers.
• Take proactive steps to adhere to the fundamental rules and principles of IHL, including the prohibition on the use of starvation as a method of warfare.
• Facilitate unimpeded access and movement of humanitarian aid, medical supplies,

vi For a full list of recommendations, see Part J.
humanitarian workers, and life-saving commercial goods without interference or
discrimination throughout Yemen, including supplies needed to maintain food production,
water, health facilities, and fuel needed to operate water pumps and generators.

- Cooperate fully with the GEE, the POE, UN special procedures mandate holders, including
the UN Special Rapporteur on the Right to Food and the UN Special Rapporteur on the
human rights to safe drinking water and sanitation, and other UN entities, as well as the
ICC and other criminal investigators, where appropriate, so that allegations of violations
and abuses committed by all parties to the conflict in Yemen can be properly investigated,
documented and the perpetrators thereof brought to account.

The internationally recognized Government of Yemen, in particular, should:

- Take proactive steps to prevent further harm to civilians, including by proactively seeking
to prevent further damage to OIS, including by working to ensure the coalition’s no-
strike list is up-to-date and includes essential food, water, and health facilities, as well as
functioning educational facilities; and by raising specific cases of civilian harm with the
coalition, including those documented in this report;

- Ensure that any transitional justice mechanism established to address violations and
abuses of IHL and IHRL during the current conflict addresses economic, social, and
cultural rights, as well as the impact of the conflict on groups disproportionately affected
by it, including women and girls; adopts transparent, inclusive and fair procedures,
and gender-aware and intersectional approaches to peace-building and accountability
processes, with sufficient information publicly released for independent monitoring; and
offers meaningful reparations and amends to civilians.

- Extend an invitation to relevant UN entities, including the GEE and UN special procedures
mandate holders, including the UN Special Rapporteur on the right to food and the UN
Special Rapporteur on the human rights to safe drinking water and sanitation, to visit
Yemen, and cooperate with these entities.

- Clear landmines in areas under the government’s control, with a focus on those that are
on or fall along paths to, or are otherwise near, water and food sources.

With a view to preventing and ensuring accountability for starvation-related conduct and other
criminal conduct committed during the conflict in Yemen, as well as violations and abuses of IHL
and IHRL, we call on the UNSC, the UN Human Rights Council and states to urge parties to the
conflict to cease committing violations of IHL and violations and abuses of IHRL, and proactively
and decisively take the steps set out below.

**UN Security Council**

To facilitate a range of preventative and accountability-oriented tools available under UN Security Council (UNSC) Resolution 2417, as well as other relevant UNSC resolutions (see Part J, Section 5), the UNSC should:

- Refer the situation in Yemen to the ICC to conduct a full investigation into alleged international crimes committed by the parties to the conflict and into actors that may be complicit in them.

- Call for and provide support to independent, impartial, full, prompt, and effective criminal investigations into alleged violations and abuses of IHRL and IHL by all parties to the conflict, as well as those providing support to such parties, pursuant to international standards.

- Appoint a special envoy on UNSC Resolution 2417 to monitor and quickly inform the UNSC about conflict-induced food insecurity in armed conflicts, including Yemen, with a view to facilitating and encouraging the safe and reliable reporting of information to the UN Secretary General within 30 days after emerging situations.

- Establish an independent body of experts, building on the Famine Review Committee (FRC) of the Integrated Food Security Phase Classification process, to collect and channel sensitive information and equip the Special Envoy, the UNSC and the Secretary-General to take action.

**UN Human Rights Council**

To ensure justice and redress for violations and abuses of IHL and IHRL, as well as contribute to accountability for international crimes, at the 48th regular session in 2021, the UN Human Rights Council (UN HRC) should:

- Support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings.

- Ensuring the continuity of the GEE’s operations through an ongoing or multi-year mandate to continue investigating the warring parties’ violations and abuses of IHL and IHRL in Yemen, including with respect to the impact these violations have had on starvation, and
preserve the information from these investigations for future use, including efforts towards accountability and reparation, and renew the GEE’s mandate to advise states on practical steps to ensure justice and redress.

**States**

To combat food insecurity and famine, prevent further violations and abuses of IHL and IHRL and secure justice and redress for victims, States, where appropriate, should:

- Support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings.

- Conduct independent, impartial, full, prompt, and effective criminal investigations into alleged international crimes, including in relation to the starvation of civilians, and hold the perpetrators accountable, including through the exercise of universal or other forms of jurisdiction.

- Immediately cease activities perpetuating the conflict and potentially contributing to violations in Yemen, including by ceasing arms sales and transfers to the warring parties.

- Ratify the amendment to the Rome Statute making the use of starvation as a method of warfare a crime in non-international armed conflicts.

**The US, UK and France in particular, should:**

- Support and actively call for a referral of the situation in Yemen to the ICC to conduct a full investigation into alleged international crimes committed by the parties to the conflict and into actors that may be complicit in them.

- Support and actively call for the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings.

- Immediately cease all sales of arms to the warring parties.

**Iran**

- Immediately cease the transfer of weapons and the provision of logistical Support and other military support to the Ansar Allah armed group (Houthi).
Destruction from air strike on an area that held more than 60 fishing boats in Al-Hima Port, Al-Khokha, Al-Hudaydah Governorate.

December 14, 2015.
Introduction

The use of starvation by warring parties in Yemen
In Yemen, “No one dies of hunger” is a popular proverb. In a society known for its kindness and generosity—from honoring guests to the providing relief to the distressed, whether neighbors or strangers—it was only natural that Yemenis, regardless of their vulnerability to food insecurity and their other circumstances, did not often suffer from hunger in the past.

However, this culture of kindness and generosity has not prevented groups from using starvation as a weapon in the many power struggles that have ravaged Yemen. “No one dies of hunger” is no longer a proverb that can easily be said, as countless Yemenis have died of starvation throughout the war or face the ongoing risk that they will suffer such fate.

Starvation is one of the greatest threats to peace and stability in Yemen. And yet, the routes toward accountability for the utilization of starvation as a method of warfare by the warring parties are limited.

The war has brought about extensive destruction of food and water infrastructure, including industrial production facilities, agricultural projects, farms, and other sources of food and water. The destruction is no accident—warring parties have attacked this
infrastructure with airstrikes, ground shelling, and landmines, not only exacerbating pervasive starvation in the country, but also contributing to large segments of the civilian population falling into poverty. In addition to the destruction they’ve wrought, parties to the conflict have also restricted access to humanitarian supplies necessary to feed the population.

Although the victims of starvation are often invisible, the magnitude of the impact of these actions is too great to quantify. Millions of people are suffering from hunger, whether because they were unable to move and access food, water and livelihoods where their sources have been destroyed, or whether because they lost their livelihoods when their government salaries went unpaid, or because of the destruction of infrastructure and production lines or a because of a multitude of other complex reasons. The warring parties have directly contributed to each of these causal factors, even where their actions are not clearly and visibly linked with the outcome of starvation.

The lack of access to food has made Yemenis’ health incredibly vulnerable. Children, as well as adults, have died from malnutrition, or from diseases that have attacked their weakened immune system. The painful images of children suffering from severe malnutrition across Yemen that have been circulated across the globe provide a small lens into the frightening state of food security in the country. The drawn-out war and the conduct of the parties to the conflict have been the major—if not the primary—cause of this food insecurity.

The following report, by Mwatana for Human Rights and Global Rights Compliance, can serve as a prelude to examining the ways in which the conduct of parties to this war has been a cause of starvation, and the impacts that this has had on the population of Yemen. This report attempts to put faces to the invisible millions suffering from starvation that have been described in UN and NGO reporting over the last several years. Further investigation and analysis of the patterns of violations of international humanitarian law and violations and abuses of international human rights law that have caused and impacted food insecurity is needed. Further investigation is also needed in order to identify the perpetrators of these violations, who have sacrificed Yemeni lives in their pursuit of power and who must be held accountable for their actions.
Children gather near a charity water tank to fill jerry cans. Amran City, Amran Governorate
May 25, 2021
Terminology
We use the term “starvation” throughout this report to cover the process of deprivation that occurs when actors impede the capacity of targeted persons to access the means of sustaining life. It is important to stress that the means to sustain life and the term “objects indispensable to survival” (OIS)¹ include objects broader than just food, encompassing water (including water installations, supplies and irrigation works²), medicine, clothing,³ shelter,⁴ fuel and electricity.⁵ The means to sustain life and the term OIS are likely to be interpreted broadly and are not subject to a pre-defined list. Moreover, they are case specific; what is indispensable to survival for a child in South Sudan will differ greatly from the needs of a pregnant Syrian woman besieged in winter. For further discussion of the meaning of OIS under international humanitarian law (IHL), including food- and water-related items that constitute OIS, see Part F, Section 1.2.2.1.

Labelling is important because terms such as “hunger,” “malnutrition,” “famine,” or “food-insecurity,” while adequately describing some of the most salient aspects of starvation, do not reflect the intentional conduct which may underpin it, in breach of

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¹ As defined under Additional Protocol I, Article 54, and Additional Protocol II, Article 14 and featured in the war crime definition under the Rome Statute.

² Additional Protocol I, Article 54; Additional Protocol II, Article 14.

³ Geneva Convention IV, Article 59, which is considered to be part of customary international law applicable also in non-international armed conflicts (ICRC, IHL Database, Customary IHL (ICRC Customary IHL) Rule 55). See also Geneva Convention IV, Article 23, which includes “clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.”

⁴ See e.g., Additional Protocol I, Article 69.


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international human rights law (IHRL) or IHL. Ensuring that the deliberate deprivation of OIS are labelled consistently and appropriately will ensure that the conduct is properly recognised as a crime and that perpetrators are held accountable for intentional starvation-conduct.

**Famine** is defined in this report as a condition in which access to and availability of food are severely limited and restricted. Populations are wholly dependent on aid, often causing distress migrations. The Integrated Food Phase Classification (IPC) System classifies famine under Phase 5 as when “households have an extreme lack of food and/or other basic needs even after full employment of coping strategies.” A famine declaration is triggered when at least 20% of the households are experiencing IPC 5 conditions of famine, 30% of children are suffering from acute malnutrition levels and mortality is evident, with significant numbers of deaths due to starvation taking place (two out of every 10,000 people).

**Hunger** is defined as an uncomfortable or painful physical sensation caused by insufficient consumption of dietary energy. It becomes chronic when the person does not consume a sufficient number of calories (dietary energy) on a regular basis to lead a normal, active and healthy life. It can manifest in different ways including:

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7 “Integrated Phase Classification,” Famine Early Warning Systems Network (FEWSNET), https://fews.net/IPC.

Undernourishment, occurring when people do not take in enough calories to meet minimum physiological needs.

Malnutrition, occurring when people have an inadequate intake of protein, energy and micronutrients. Starved of the right nutrition, they can die from common infections such as measles or diarrhoea.

Wasting, which is usually the result of starvation or disease and is an indicator of acute malnutrition with substantial weight loss. Wasting is defined as having a low weight-for-height ratio.

Food insecurity is a situation where people do not have access to sufficient safe and nutritious food for regular growth and development as well as an active and healthy life. This may be due to unavailability of food and/or lack of resources to obtain food.

The World Food Programme (WFP), the UN Office for the Coordination of Humanitarian Affairs’ (OCHA) and the Famine Early Warning Systems Network (FEWSNET), among others, report regularly on food security, and in doing so rely on the above terms. When making food security assessments, these actors also rely on the Integrated Phase Classification (IPC) system, a multi-partner initiative developed under the umbrella of UN Food and Agriculture Organization (FAO) in 2004, which classifies the severity and magnitude of food insecurity and malnutrition according to five phases of severity, namely: minimal/none (phase 1); stressed (phase 2); crisis (phase 3); emergency (phase

12 FEWSNET, supra note 7.
4); and catastrophe/famine (phase 5). Because it relies on consensus-building, the IPC system has limitations insofar as it results in a conservative approach to classifying the risk of famine in any given context and is susceptible to politicisation. Moreover, data sets are often incomplete, partly due to the denial of access to information and evidence by parties to the conflict. There is good reason to fear that incomplete data sets conceal severe human deprivation, including starvation.

While food insecurity does not necessarily equate to starvation, situations of food insecurity can indicate the risks, as well as adverse impacts, that the conduct of parties to a conflict can have on access to food, water and other OIS. Pre-existing situations of food insecurity, particularly those that rise to the level of emergency or famine, can potentially provide evidence of an intent to starve civilians or knowledge that it would occur in the ordinary course of events.

The Ansar Allah (Houthi) armed group (“Ansar Allah”) refers to the group known as the “Houthis” that emerged as an armed group in 2004 when it launched a rebellion against the Yemeni government. The group was named after one of its founders, Hussein Badr Al-Din Al-Houthi. The group took military control of the Yemeni capital, Sana’a, on September 21, 2014, and is the most prominent non-state actor involved in the current conflict. The group is now the de facto authority over Sanaa Governorate (which includes Sana’a City, the capital of Yemen) as well as a number of other governorates. In these areas, Ansar Allah controls all government departments and facilities. The group is supported by the Islamic Republic of Iran.

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13 Ibid.
16 See Part F, Section 2.2.2, for the intent standard that applies to starvation as a war crime.
The Saudi/UAE-led Coalition ("the coalition") refers to a coalition of nine countries—Saudi Arabia, the Emirates, Jordan, Egypt, Morocco, Sudan, Kuwait and Qatar—that entered the conflict on March 26, 2015 when the coalition announced the launch of a military campaign against Ansar Allah forces and forces loyal to former President Saleh. The campaign was launched in response to a request made by President Hadi to the Gulf Cooperation Council to regain his powers and establish his legitimacy. The coalition acts on the consent of the Yemeni government. The role of the United Arab Emirates has grown since the coalition took control of Aden governorate in July 2015, and its support for local armed groups loyal to it. Qatar left the coalition in June 2017. The coalition also receives support from the US, the UK and France.

The use of starvation by warring parties in Yemen.
Methodology
Mwatana for Human Rights and Global Rights Compliance co-authored this report.

Mwatana for Human Rights (Mwatana) is an independent Yemeni organization that advocates for human rights through the documentation of civilian harm, the provision of legal support to victims, and through advocacy and legal action. Mwatana has worked extensively to document civilian harm caused by all warring parties in Yemen, including publishing reports on violations and abuses by the Ansar Allah (Houthi) armed group, the Saudi/UAE-led Coalition, the internationally recognized Yemeni government, the UAE-backed Southern Transitional Council and others.17

Global Rights Compliance (GRC) is a foundation of international lawyers and development experts focused on “democratising” complex international human rights, criminal and humanitarian law. GRC’s “root and branch” philosophy combines innovative accountability strategies, capacity building and bespoke expertise in evidence gathering in conflict settings, as well as assisting communities to seek remedies for violations. GRC’s global expertise and granular knowledge on the crime of starvation and right to food violations is derived from its dedicated starvation portfolio, established in 2017.18

17 See https://mwatana.org/en/.
18 See https://starvationaccountability.org/.

7KLVUHSRUWdVоПQLйVDUHEDVHGрQLйRУDLPWLRQFROOHFWHE\Mwatana researchers in Yemen between 2015 and 2021. The оПQLйVZRUHDQDO\VHGЕ\ERWK0ZDWDQDDQG*5&
Mwatana’s researchers use rigorous and peer-reviewed investigation methods to investigate alleged incidents. They visit attack sites; interview survivors, family members, and witnesses; photograph weapons remnants found in the aftermath of attacks; and collect supporting documents that relate to victims or witness accounts. All cases documented by Mwatana field researchers are reviewed and cross-checked by Mwatana’s central research team. In addition to the field researchers, Mwatana’s central research team also conducts periodic field visits to different governorates to further investigate particular cases. Mwatana chooses cases to investigate based on the existence of civilian harm and regardless of the party that conducted the attack.

The information examined in this report was gathered as part of a wider effort by Mwatana to document human rights abuses and violations of IHL and IHRL during the ongoing conflicts in Yemen. In almost all of the incidents detailed in this report, Mwatana initially documented the civilian harm that was immediately apparent in the aftermath of attacks or incidents—for example, civilian deaths and injuries or damage and destruction to civilian property—by collecting witness statements first-hand and documenting physical evidence found at sites, including by taking or collecting photographs of the strike sites and surrounding areas.

This report documents the impact on access to food and water caused by attacks and other conduct by the Saudi/UAE-led Coalition and the Ansar Allah (Houthi) armed group in the Hajjah, Saada, Al-Hudaydah, and Taiz governorates between 2015 and 2021. Mwatana researchers conducted an additional 101 interviews across Yemen for this report. The interviews conducted for this report focused on individuals’ and communities’ access to food, water, and other objects indispensable to survival and how specific attacks and incidents affected such access, including by impacting livelihoods. The interviewees were asked questions about, amongst other things, their food and water security before and after certain attacks and incidents; how these incidents impacted their food and water security, including their ability to make use of agricultural land, farms, water facilities and other objects and areas crucial for food and water security; and how these incidents impacted individuals’ livelihoods.

Mwatana researchers specifically asked interviewees several questions related to the existence of a military target at or near the site of attack, including: whether the area or object in question was being used by any armed forces; whether there was any reason to believe the area or object may have been used in support of military action; whether there were any hostilities at or near the site of attack; and what made it clear that
the area or object targeted was not a military target. All of Mwatana’s researchers are trained to conduct interviews and field visits, including to detect, through observation and investigation, whether an affected object or person may have military connections. Any military targets that were identified or reported are mentioned in the report.

The 101 individuals interviewed for this report included victims, family members of victims, witnesses, individuals working at or near the objects or areas impacted, residents of the impacted areas, and others. All interviews were conducted in person. In some cases, follow-up interviews to gather further information from the same individuals were conducted by phone or during additional site visits. A description of the sources of information gathered for each incident is included in each case summary below.

All interviews were conducted in Arabic. Interviewees were informed of the purpose of the interview and asked if they consented to their identities being disclosed in this report. In some cases, the report does not provide identifying information in the interests of individuals’ security and privacy. No financial or other incentives were offered to the interviewees for speaking with researchers.

The incidents described in this report are just a few examples of documented incidents that were selected after careful research. Since 2014, Mwatana has documented thousands of cases of civilian harm by the different warring parties, including patterns of attack and conduct that have killed and wounded civilians, damaged and destroyed civilian objects and caused other types of long-lasting civilian harm. For this report, Mwatana examined cases documented by Mwatana since 2014 that directly impacted food and water.

It should be noted that while Mwatana’s information set is extensive, it is not exhaustive. The volume and scale of violations and abuses in Yemen have not allowed for coverage of each incident of civilian harm, nor each potential international law violation.

For this report, Mwatana identified particular types of attack and types of conduct that repeatedly presented themselves in the information set as impacting food and
water, namely: airstrikes on farms; airstrikes on water facilities; airstrikes on fisherman and fishing facilities; landmines impacting food and water access; and humanitarian obstruction. Using case studies, the report discusses each of these five patterns of attack or conduct by focusing on a particular geographic area in which Mwatana repeatedly documented the specific pattern impacting food and water, namely: airstrikes on farms in Hajjah Governorate, airstrikes on water facilities in Saada Governorate, airstrikes on fisherman and fishing facilities in Al-Hudaydah Governorate, landmines impacting food and water security in Taiz Governorate, and humanitarian obstruction in Saada Governorate.

Mwatana and GRC also examined and compiled documentation by other organizations, including human rights and humanitarian groups and UN bodies, of patterns of attacks and conduct impacting food and water in Yemen. Outside documentation corroborated and reinforced the patterns identified by Mwatana and GRC in the report, and helped demonstrate the wider impacts these patterns of attacks and conduct have had on individuals and communities in Yemen beyond the cases highlighted in the report and, accordingly, the possible intent of the parties responsible for such patterns of attacks and conduct.

This report does not purport to provide a comprehensive account of all factors contributing to starvation in Yemen, nor even all conflict-related factors that have contributed to starvation in Yemen. There are many drivers of food insecurity in Yemen—including economic factors, the use of de facto blockades and sieges, displacement, and corruption—that are not examined in detail here. The aim of this report is to specifically examine five patterns of attack and conduct by the Saudi/UAE-led Coalition and by the Ansar Allah (Houthi) armed group related to food and water security in Yemen, and how such attacks and conduct might violate international law, including the prohibition on the deliberate starvation of civilians as a method of warfare. While each chapter is focused on a particular geographic area, it should be noted that, for each pattern of attack and conduct identified, Mwatana documented other, similar cases in additional geographic areas.

Mwatana and GRC also conducted desk research to support the report. GRC conducted legal research, with a focus on starvation, on the applicable norms under IHRL and IHL, as well as international criminal law (ICL), as well as a review of open source information on the (specific and pattern of) attacks and conduct documented in this report. GRC also conducted background research on contextual issues, including food insecurity in
Yemen and steps taken to date to hold perpetrators of violations and abuses of IHRL and IHL accountable. GRC’s legal analysis of the cases documented by Mwatana has been incorporated throughout the report.

Mwatana conducted desk research to gather further information regarding the geographic areas described in the report. This included examining studies, surveys, and reports that included population statistics for different areas, information related to food and water security, data regarding various health indicators, and information regarding livelihoods amongst different populations. Mwatana also examined warring party statements regarding the incidents highlighted in the report to understand what—if any—claims the parties had made in regards to the specific incidents. Desk research corroborated and bolstered the information Mwatana gathered through interviews and field research.

Research was conducted in the context of several ongoing armed conflicts in Yemen, and extremely difficult security situations in many of the areas where attacks and incidents took place—including repeated attacks and the proliferation of armed actors, as well as local communities’ fear of reprisals.
The use of starvation by warring parties in Yemen.
The Yemeni Conflict context
The conflict in Yemen since 2014

Yemen’s most recent conflict began in 2014. On September 21st of that year, the Ansar Allah (Houthi) armed group took control of the capital, Sana’a, by force,19 after having aligned themselves with the former long-time president Ali Abdullah Saleh.20 By the end of 2014, Houthi-Saleh forces controlled most of Sana’a Governate. In early 2015, the Houthi-Saleh alliance placed the government of President Hadi under house arrest,


announced a “constitutional declaration,” and dissolved the parliament. President Hadi fled to Yemen’s southern port city of Aden, which he declared the country’s temporary capital. Houthi-Saleh forces advanced south, and took over large swathes of territory, eventually entering Aden. President Hadi fled to Riyadh. On March 26, 2015, a coalition of nine states led by Saudi Arabia and the United Arab Emirates (UAE) (the Saudi/UAE-led Coalition) intervened in the conflict in support of the internationally recognised government of President Hadi against the Houthi-Saleh forces. Despite numerous UN efforts to broker peace, including ceasefires and peace talks, Yemen has been in conflict since.

The Saudi/UAE-led Coalition operates in Yemen with the consent of the internationally recognized government of Yemen, and Yemen’s military and armed forces actively participates in Saudi/UAE-led Coalition operations, including by providing intelligence to identify targets for aerial attacks. The coalition’s investigative mechanism, JIAT, has frequently pointed to the role of intelligence from Yemeni forces in particular airstrikes, while notably failing to mention the role of other coalition members, such as Saudi Arabia and the UAE, in particular attacks.

The United States (US) has provided intelligence, logistical support, training, aerial refuelling and significant arms to the coalition. In 2021, the Biden administration


22 As the UN Group of Eminent Experts (GEE) noted in its 2020 report: “Among the main military developments, the second half of 2019 saw the United Arab Emirates withdraw most of its ground troops, leaving a minimal presence in Mukha, Aden, Balhaf, Mukalla and Socotra. The United Arab Emirates has, however, continued its air operations, and some 90,000 United Arab Emirates-backed Yemeni fighters remain on the ground in Yemen.” See GEE, “Situation of human rights in Yemen, including violations and abuses since September 2014,” UN Doc. A/HRC/45/6 (September 28, 2020), para. 17, https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf.

23 The coalition operates with very little transparency. In addition to Saudi Arabia and the UAE, coalition members initially included Bahrain, Egypt, Jordan, Kuwait, Qatar, Morocco, Senegal, and Sudan, but the states making up the coalition appear to have changed slightly since the conflict began. For example, Qatar and Morocco left the coalition in 2017 and 2019, respectively. GEE, “Situation of human rights in Yemen, including violations and abuses since September 2014,” UN Doc. A/HRC/45/CRP.7 (September 29, 2020), Annex 1.A, para. 1, https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A-HRC-45-CRP.7-en.pdf.


announced the US would “end support for offensive operations in the war in Yemen” and suspend “relevant arms sales,” but would continue “defending” Saudi Arabia against “missile attacks, [drone] strikes and other threats from Iranian supplied forces in multiples countries.”26 Later, the US said it would continue selling weapons to the UAE, and “defensive” weapons to Saudi Arabia.27 The United Kingdom (UK), France and Germany, among others, have provided arms and, in some cases, other forms of military support, to the Saudi/UAE-led Coalition. Since 2015, the UK has sold over £4 billion (US$5.65 billion) worth of arms to Saudi Arabia.28 After a brief pause in sales following a 2019 UK Court of Appeals’ ruling that the Government’s failure to conduct due diligence on arms exports to Saudi Arabia was unlawful,29 in July 2020, the UK government announced it would continue arms sales to Saudi Arabia.30 Organizations documenting the use of US and UK manufactured weapons in the Yemen conflict have found that they have been used repeatedly in international humanitarian law (IHL) violations.31


Ansar Allah has received political and military support from Iran. In late 2020, Iran sent an “ambassador” to Sana’a. In its January 2021 report, the UN Security Council Sanctions Committee Panel of Experts (PoE) found that “an increasing body of evidence suggests that individuals or entities in the Islamic Republic of Iran supply significant volumes of weapons and components to the Houthis.”

Yemen’s war is multi-faceted and has involved an increasing number of actors in distinct but related conflicts. As the conflict(s) continued, alliances have both formed and fractured. The Ansar Allah (Houthi) armed group formed a governing council with members of former President Saleh’s political party, as mentioned above, but that alliance ended in December 2017 when fighting broke out between Ansar Allah and Saleh forces, and Ansar Allah forces killed Saleh. On the Saudi/UAE-led Coalition side, the UAE has supported and backed groups that have clashed with the Yemeni government, most notably the Southern Transitional Council and the forces of Tariq Saleh (the nephew of former president Saleh) in Al-Mukha. While the Yemeni government and Southern Transitional Council signed an agreement in Riyadh in 2019, tensions between the two have remained high. Other armed actors have also taken advantage of the destabilised context, and the US has carried out air strikes and ground raids against Al-Qaeda in the Arabian Peninsula (AQAP) and other groups, which have resulted in dozens of


33 “Yemen’s Houthis want to strengthen Iran ties, Minister tells Tehran’s new ambassador,” Reuters (October 27, 2020), https://www.reuters.com/article/yemen-security-iran-int-idUSKBN27C1WF.


civilian deaths and injuries.\textsuperscript{37}

There have been multiple attempts at peace talks and ceasefires in Yemen since the conflict began. UN-brokered peace talks in 2016 in Kuwait led to little consensus and ultimately broke down.\textsuperscript{38} Talks in Stockholm in 2018 resulted in agreements regarding prisoner exchanges, humanitarian corridors for Taiz governorate, and Al- Hudaydah, including Al-Hudaydah port, which is of critical importance to Yemen as a key entry point for food imports and aid deliveries. However, the agreements were not fully implemented and the conflict continued, as did IHRL and IHL violations and abuses.\textsuperscript{39} Since then, agreements—including the November 2019 Riyadh Agreement—have been reached, and proposals for peace and for ceasefires have been announced, including unilaterally, such as Saudi Arabia’s March 2021 peace proposal.\textsuperscript{40} Nevertheless, according to OCHA, rather than a reduction in hostilities, the number of front lines increased in 2020 – by the end of October there were “47 front lines, up from 33 in January 2020”\textsuperscript{41} – and in 2021 the conflict was “escalating.”\textsuperscript{42}

In early 2021, Ansar Allah again escalated its attacks on Marib Governorate, which quickly reverberated across Yemen, with fighting along other frontlines escalating. Fighting in Marib, which is home to the largest number of internally displaced persons in Yemen,\textsuperscript{43} poses significant humanitarian concerns, and is already exacerbating displacement.

\textsuperscript{37} Mwatana for Human Rights, supra note 25.


\textsuperscript{39} Ibrahim Jalal, “Yemen’s Stockholm Agreement one year on: Imaginary Progress?” MEI@75 (January 22, 2020), https://www.mei.edu/publications/yemens-stockholm-agreement-one-year-imaginary-progress. Although some political prisoners were released by both sides to the conflict, over 95% of those incarcerated remained in detention in January 2020.


According to reports by the UN Group of Eminent Experts on Yemen (GEE), the PoE, Mwatana and numerous international and non-government organizations (NGOs), the Saudi/UAE-led Coalition, Ansar Allah, the internationally recognized Government of Yemen, the UAE-backed Southern Transitional Council and other warring parties have committed serious violations of IHL and violations and abuses of IHRL in connection with the conflict, including attacks on civilians and civilian objects. In their most recent report in 2020, the GEE stated that “Airstrikes continue to be carried out by coalition forces without appropriate regard to international law principles of distinction, proportionality and/or precaution...[and] indiscriminate attacks [by Houthi as well as coalition forces] are killing and wounding civilians and damaging critical infrastructure.” Numerous other violations, including unlawful killings, enforced disappearances, arbitrary detention, torture and other forms of cruel, inhuman and degrading treatment or punishment, sexual and gender-based violence, the use of banned antipersonnel landmines, and the recruitment and use of children and other violations against children have also been committed. Additionally, restrictions on humanitarian aid through both physical and bureaucratic hurdles, discussed further below and in Part H, Section 2, have been imposed by Ansar Allah, the Saudi/UAE-led Coalition, and the Government of Yemen, as well as other warring parties.

While the numbers vary by source, OCHA estimated that the conflict has directly and indirectly caused 233,000 deaths (including of persons directly participating in hostilities), with more than half—131,000 deaths—resulting “from indirect causes such

44 GEE, supra note 23 at pp. 2, 20-30. The direct deaths reported by OCHA include the direct killing of combatants.


as a lack of food, health services and infrastructure.”

In its most recent report in May 2021, OCHA reported that over 4 million Yemenis have been displaced—largely internally—as a result of the conflict, and over 20 million people are in need of humanitarian assistance. Yemen Data Project (YDP), a data collection project aimed at collecting and disseminating data on the conduct of the war in Yemen, has estimated that since March 2015, there have been 18,588 civilian casualties resulting from (a recorded 23,001) airstrikes alone in the conflict, with 8,760 civilian deaths and 9,828 civilian injuries.

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47 OCHA, supra note 41 at p. 111.
48 “Yemen Situation Report,” OCHA, 5 August 2021, p. 1; See also HRW (“Yemen: Events of 2020”), supra note 46.
49 Ibid. (“Yemen Situation Report”).
Food insecurity in Yemen

Food security in Yemen prior to 2014

Yemen is historically food insecure. Long-term structural problems, limited arable land, environmental degradation, locust invasions and other diseases, political unrest, population growth, gender inequalities and economic factors including fluctuations in the price of fuel—an essential commodity for cooking, food and water production and distribution, as well as for generators (including in hospitals)—amongst a number of


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other drivers, contributed to food insecurity in the country prior to the outbreak of the current conflict.\textsuperscript{52} Yemen is also “one of the most water-scarce countries in the world, lacking rainfall and surface water,”\textsuperscript{53} essential for the production of food.\textsuperscript{54}

In 2011, Yemen was ranked by the Global Hunger Index as the 11th most food-insecure country in the world.\textsuperscript{55} According to the WFP, by 2012, nearly 45% of the Yemeni population was food insecure, with 22% of the population severely food insecure.\textsuperscript{56} Almost half of children under five years of age were chronically malnourished, with 13% acutely malnourished.\textsuperscript{57} In 2012, 24% of the population were in IPC Phase 4 (Emergency) and 22% in Phase 3 (Crisis), with Al-Hudaydah and Hajjah in IPC Phase 4 and Taiz in Phase 3.\textsuperscript{58}

By 2014, these figures remained largely unchanged. According to the WFP’s 2014 Comprehensive Food Security Survey, 41.3% of the population remained food insecure, with around half of those individuals classified as severely food insecure.\textsuperscript{59} More than 10% of children were acutely malnourished.\textsuperscript{60} At the end of 2014, as the conflict broke out, Yemen was ranked the eighth most food insecure country in the world.\textsuperscript{61}

\begin{itemize}
  \item \textsuperscript{52} Ibid.
  \item \textsuperscript{54} For further information about water scarcity in Yemen, see Part G, Section 3.
  \item \textsuperscript{55} WFP (“The State of Food Security and Nutrition in Yemen: Comprehensive Food Security Survey”), supra note 53 at p. 12.
  \item \textsuperscript{56} Ibid., at pp. 7, 18-19.
  \item \textsuperscript{57} Ibid, at p. 32.
  \item \textsuperscript{58} “Yemen Current Acute Food Insecurity Situation Overview,” Integrated Food Security Phase Classification (August 8, 2012), http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Yemen_AcuteFI_Situation_2012Aug.pdf. By the end of 2013, the food insecurity risk in Al-Hudaydah had dropped to Phase 3. There was insufficient data to make an assessment for Saada Governate. See “Yemen: Acute Food Insecurity Current Situation Overview,” Integrated Food Security Phase Classification (December 2013), http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_Yemen_AcuteFI_Situation_2013Dec.pdf. Note that at the time of reporting in 2012, phase 1 signaled famine, and phase 5 signaled no risk; the phases were later switched so that phase 5 reflected famine. For the ease of comparison, this report relies on the current classification system to represent the data.
  \item \textsuperscript{59} WFP (“The State of Food Security and Nutrition in Yemen: Comprehensive Food Security Survey”), supra note 53 at pp. 21-22.
  \item \textsuperscript{60} WFP (“The State of Food Security and Nutrition in Yemen: Comprehensive Food Security Survey”), supra note 53 at 21-22.
\end{itemize}
Food security following the outbreak of conflict

Food insecurity has worsened since the outbreak of conflict in Yemen. The percentage of the population that is food insecure has increased every year, except for 2017 when the percentage dropped by 4%, but even then the number of children facing severe acute malnutrition increased. The IPC’s assessment for December 2018 to January 2019 reported that, without humanitarian food assistance, “close to a quarter of a million people are facing catastrophic levels of hunger (IPC Phase 5 Catastrophe) and are barely surviving.” According to the WFP, “[f]ood insecurity [was] most severe in areas with active fighting.” Those most affected were in the Al-Hudaydah, Amran, Hajjah, Taiz and Saada governorates. The figures remained largely unchanged in 2020, by which time Yemen was ranked as the second most food insecure country in


63 In 2016, 55% were food insecure, with over half severely food insecure, see “Yemen: 2016 Humanitarian Needs Overview,” OCHA (November 2015), pp. 3-4, 9, 16, 23, https://reliefweb.int/sites/reliefweb.int/files/resources/2016_HNO_English_%20FINAL.pdf. In 2018, 60% were food insecure, with 29% in “acute need,” see “Yemen: 2018 Humanitarian Needs Overview,” OCHA (December 2017), pp. 2-4, 9, 12-13, 31, 33-35, https://reliefweb.int/sites/reliefweb.int/files/resources/yemen_humanitarian_needs_overview_hno_2018_20171204_0.pdf. In 2019, 66% were food insecure, with almost half in acute need, see OCHA (“Yemen: 2019 Humanitarian Needs Overview”), supra note 62.


67 Ibid, at p. 34.

the world in the Global Hunger Index.⁶⁹

In March 2021, the WFP reported that Yemen was “headed straight toward the biggest famine in modern history” with “over 400,000 children at risk of dying.”⁷⁰

According to WFP, the number of people facing acute food insecurity in the first half of 2021 was anticipated to reach 16.2 million.⁷¹ To accommodate significant gaps in access to food, around 70% of households adopt negative coping strategies,⁷² including choosing less appetising, cheaper foods, limiting portion sizes or eating less meals.⁷³ Food-insecure Yemenis are vulnerable to other negative coping strategies such as child marriage and begging.⁷⁴ For further discussion of the gendered impacts of food

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⁷³ Ibid.

insecurity in Yemen see Section 4, below.

Chronic food insecurity and the risk of famine has been most severe in the western half of Yemen, where fighting has been most intense, and where territory is under the control of, or contested by, Ansar Allah, the Southern Transitional Council and forces affiliated with the internationally recognized government of Yemen, among others. Most of this territory has been in either IPC Phase 3 or Phase 4 throughout the conflict.75 This is particularly apparent from the IPC’s visual representation of food insecurity in late 2020 and known food insecurity risks for 2021, in which Hajjah, Al-Hudaydah, Saada and Taiz—areas in which this report documents starvation-related conduct by the warring parties—among others, are at emergency levels. Although not represented on the map, the “population in Catastrophe (IPC Phase 5) [were] found in five districts of Al Jawf, Hajjah

and Amran during the [October-December 2020] period increasing to 11 districts in the same governates during the projection.”

76 Integrated Food Security Phase Classification, supra note 72 at p. 6.
Drivers of food insecurity and famine in Yemen during the conflict

Conflict, economic decline and institutional collapse have relentlessly exacerbated pre-existing challenges in Yemen, including food insecurity and malnutrition. With two-thirds of the population now food insecure, Yemen is the world’s largest food security crisis. This is not a result of food scarcity or natural disasters. Assessments confirm that conflict is the primary driver, with the worst hunger concentrated in areas that saw the fiercest violence in the last year. Economic factors are playing a major role, including constraints on the supply and distribution of goods, diminishing purchasing power, exchange rate volatility and related issues.77

77 OCHA, supra note 62.
Since 2014, conflict has become the key driver of food insecurity and famine in Yemen. Attacks on civilians and civilian objects, targeted economic policies and other direct actions by parties to the conflict, and resultant forced or indirect internal displacement, coupled with other factors—including disease outbreaks like cholera and Covid-19 and climate change—have "relentlessly exacerbated pre-existing challenges in Yemen, including food insecurity and malnutrition." They have also given Yemen the title of the "world’s largest food security crisis." And as needs have grown throughout the conflict, humanitarian aid has fallen drastically short of meeting these needs, with UN fundraising efforts reaching “less than half” of its funding target in 2021. Below, the impact of targeted economic policies, the imposition of de facto blockades and sieges, and displacement on food security are briefly considered before turning to the focus of this report: the impact of attacks on OIS and restrictions on humanitarian access.

Restrictive economic policies, particularly given Yemen’s reliance on food imports, have contributed to the humanitarian crisis in Yemen. Prior to the conflict, 80% of food

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78 Over 4 million people have fled their homes, over 80% of whom have been displaced for over one year. See “Yemen: UNHCR Operational Update, 16 – 22 April 2021,” UNHCR (April 22, 2021), https://reliefweb.int/report/yemen/yemen-unhcr-operational-update-16-22-april-2021. Displacement significantly impacts the capacity to earn income, access food and farm, and it increases the demand for essential aid. Displacement also causes negative coping mechanisms, as outlined above at Section 2.2.


80 OCHA, supra note 62 at p. 7.

81 Ibid.


83 For further detail on the selection of drivers and case studies please see Part D.

84 For more analysis on the economic strategies pursued in the Yemen war and their history see Conley et al., supra note 15.
in Yemen was imported and 95% of food needs in Yemen—or about 100% of needs in urban areas and 75-85% in rural areas—were met through purchase.85 This made the population extremely vulnerable to fluctuations in the value of the Yemeni riyal and access to it, as well as to disruptions to the supply chain and trade. In addition to the indirect impacts of the conflict—including the collapse in business confidence, decline in government revenue, currency depreciation and the resulting increase in food prices86 and reduction in foreign reserves87—targeted economic measures by the Saudi/UAE-led Coalition, the internationally recognized Yemeni government and Ansar Allah have reduced purchasing power and the supply of food.

On September 19, 2016, the internationally recognized government of Yemen moved the Central Bank of Yemen (CBY) from Sana’a to Aden. The relocation of the CBY was followed by the withholding of salaries of hundreds of thousands of civil servants, including teachers and medical workers.88 In 2020, the GEE found that civil servants were still reporting delays in salary disbursements, “including irregular public sector salary payments in the southern governorates and no salary payments in the north.”89 The Yemeni government’s non-payment of civil servant salaries has had a critical impact on purchasing power.90

The dual Central Bank system, and Ansar Allah’s and the internationally recognized government’s related policies, have also contributed to further devaluation of the Yemeni riyal, and the collapse in Yemeni purchasing power. The Central Bank in Aden has

85 WFP et al., supra note 51 at pp. 42, 65-66.
89 GEE, supra note 23 at para. 145.
continued to print new bills. Further complicating matters, in 2019, Ansar Allah decided to ban the use of new bills printed by the CBY in Aden, which resulted in increased fees for money transfers. Ansar Allah has also imposed heavy taxes and other duties in territories under their control, including on direly needed fuel, which have contributed to driving prices up.

Ongoing disputes over fuel have been another critical factor contributing to the economic and humanitarian crises. The Saudi/UAE-led Coalition, Yemeni government and Ansar Allah have all contributed to the fuel crisis. The GEE, in their 2020 report, stated that “[t]he restrictions since 2015 on imports and access to Al-Hudaydah port have contributed to a man-made fuel crisis and to the rise of prices against the backdrop of currency depreciation.” At various points, the Yemeni government and Saudi/UAE-led Coalition have severely restricted the import of fuel, including through Al-Hudaydah port in 2020. In March 2021, the WFP reported that no fuel vessels had been able to dock at Al-Hudaydah Port since January 3, 2021, leaving “the population struggling to reach markets, access health facilities and other vital services.” Ansar Allah, for their part, have profited immensely from fuel sales in territories under their control. In 2020, the GEE found that even when fuel came through Al-Hudaydah port, “it was often delayed,

91 GEE, supra note 23 at para. 144.
93 GEE, supra note 23 at para. 146.
possibly due to corruption and the intention to inflate fuel prices.” Fuel shortages have adversely impacted the transportation of food and the operation of water infrastructure, as well as essential aid projects supporting hundreds of thousands of people.95

Ansar Allah has also promulgated and engaged in other detrimental economic policies, including the withholding of salaries; funneling taxes collected from the population to fund their war efforts;96 and diverting 50 billion Yemeni riyals from the Al-Hudaydah branch of the CBY in March 2020.97 These policies have also triggered economic retaliation by the Saudi/UAE-led Coalition, contributing to broader food, fuel and water insecurity.

Additionally, the warring parties have imposed de facto blockades and used siege-like warfare, which have had a significant impact on food security.

Since 2015, the Saudi/UAE-led Coalition has imposed a de facto naval and aerial blockade98 on Yemen’s sea and airports, which—with varying levels of intensity


97 UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at para. 115, fn 62; Middle East Eye, supra note 95.

98 The GEE has consistently referred to the blockade as a “de facto” blockade because “blockades are generally understood as applicable in international armed conflict.” See GEE, “Situation of human rights in Yemen, including violations and abuses since September 2014,” UN Doc. A/HRC/39/43 (August 17, 2018), p. 29, fn. 1, https://daccess-ods.un.org/TMP/9935172.79624939.html. Although the law governing blockades in IACs may be applied to NIACs in certain circumstances, it is not necessary to determine the status of the blockade or its lawfulness for the purposes of analysing the Saudi/UAE-led Coalition’s conduct documented in this report. Accordingly, the report refers to the blockade as a de facto blockade without making a determination of its lawfulness, nor whether the rules governing the imposition of blockades under international law might apply. For further information, see, e.g., “Yemen, Potential Existence and Effects of Naval Blockade,” ICRC Casebook- How Does Law Protect in War?, https://casebook.icrc.org/case-study/yemen-potential-existence-and-effects-naval-blockade; M. D. Fink, ‘Naval Blockade and the Humanitarian Crisis in Yemen’ [2017] 65(2) Netherlands International Law Review 291, 299.
throughout the conflict—has severely restricted the flow of food, fuel, and medicine to civilians.\footnote{“Yemen: Coalition Blockade Imperils Civilians,” Human Rights Watch (December 7, 2017), https://www.hrw.org/news/2017/12/07/yemen-coalition-blockade-imperils-civilians; Reuters, supra note 94. The Yemeni Government apparently declared that it suspended innocent passage by foreign vessels through Yemen’s territorial sea, banning “[n]avigation in Yemen’s territorial waters” and entry into Yemen “unless inspected and approval [sic] by the Saudi-led Coalition forces.” See “Yemen Bans Entry into Its Territorial Waters,” World Maritime News (April 13, 2015), https://www.offshore-energy.biz/yemen-bans-entry-into-its-territorial-waters/. Pursuant to Articles 17 to 19 of the UN Convention on the Law of the Sea, all vessels enjoy the right of continuous and expeditious passage through the territorial sea, provided it is not prejudicial to the peace, good order or security of the coastal State.}

In late November 2017, the coalition announced it would allow humanitarian flights to resume to Sana’a, and urgent humanitarian and relief materials to begin moving to the Ansar Allah-controlled port of Al-Hudaydah. Major restrictions on the delivery

\footnote{On 6 November 2017, a total air, sea and land de facto blockade of Yemen was imposed by the Saudi/UAE-led Coalition after Ansar Allah attacks on the Saudi city of Riyadh. The coalition continued to shutter ports under Ansar Allah control for a few weeks. See GEE, supra note 88 at para. 771; Ibid. (Human Rights Watch).


Integrated Food Security Phase Classification (March 1, 2017), supra note 75.


Integrated Food Security Phase Classification (March 1, 2017), supra note 75.}
of essential goods to the civilian population remained,\footnote{Human Rights Watch, supra note 95; GEE, supra note 98 at para. 47; GEE, supra note 88 at para. 771. This was compounded by a closure of the airspace around Sana’a airport on 9 August 2016, which remained closed to commercial aviation til November 2019. See GEE, supra note 88 at para. 111. The airport was only recently reopened. See Karen McVeigh, “Reopening Sana’a airport ’critical first step’ for Yemenis needing medical care,” The Guardian, (November 28, 2019), https://www.theguardian.com/global-development/2019/nov/28/reopening-sanaa-airport-critical-first-step-for-yemenis-needing-medical-care.} despite the worsening humanitarian situation.\footnote{See Part E, Section 2.2.} In addition, the Saudi/UAE-led Coalition and Yemeni government decision to keep Sana’a international airport closed to commercial flights since 2016 “has precluded thousands of civilians from accessing necessary life-saving health care and treatment,” according to the GEE.\footnote{GEE, supra note 23 at para. 137.}


Ansar Allah has used siege-like warfare in Yemen.\footnote{GEE, supra note 98 at paras. 61–63; GEE, “Situation of human rights in Yemen, including violations and abuses since September 2014,” UN Doc. A/HRC/42/17 (August 9, 2019), para. 53, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/240/87/PDF/G1924087.pdf?OpenElement; GEE, supra note 23 at paras. 110–116.} This has had a particularly acute impact on Taiz, Yemen’s third largest city. Since 2015, Ansar Allah forces have

\[\text{Photo: Women gather near a charity’s water tank to get water in Al-Tabari neighborhood. Old Sana’a District, Amanat Al-Asimah Governorate. buary 16, 2021.}\]
controlled various entry points to the city, and have confiscated food and medicine critical for meeting civilian’s survival needs, as well as impeded civilian’s movement into and out of the city. Médecins Sans Frontières reported in 2017 that, “[o]n several occasions, humanitarian and medical aid has been denied or delayed from entering both the city centre and surrounding areas.” Human Rights Watch (HRW) documented 16 incidents between December 2015 and January 2016 in which “guards at checkpoints prevented civilians from bringing items into the city, including fruit, vegetables, cooking gas, vaccination doses, dialysis treatment packets, and oxygen cylinders, and confiscated some of these items.” According to the GEE, “the siege-like conditions used by the Houthis in the "context of dire humanitarian needs" gave rise to "legitimate concerns" regarding whether these actions contributed to starvation. The GEE also found that Ansar Allah "may have used the siege as a form of collective punishment on the civilian population residing inside Ta’izz," who they perceived as supporting opposing parties. Other warring parties, including forces affiliated with the internationally recognized government, have also imposed arbitrary restrictions on movement and forced civilians to turn over large sums of money at checkpoints they control in other areas of Taiz.

Parties to the conflict have weaponized food insecurity, taking advantage of existing vulnerabilities to starve sections of the population. Parts G and H of this report document such conduct by parties to conflict—namely (i) attacks on objects indispensable to the survival of the civilian population and (ii) restrictions on humanitarian access—for which there is evidence that these actions were carried out with intent to starve the civilian population as a method of warfare or awareness that it would almost certainly occur in the ordinary course of events, particularly when viewed as part of a pattern of conduct by the perpetrators. Such conduct cannot be assessed in isolation, but must

111 GEE, supra note 98 at paras. 61-63; GEE (“Situation of human rights in Yemen, including violations and abuses since September 2014”), supra note 110 at paras. 53-54; GEE, supra note 23 at paras. 110-116, 130-133.


114 GEE, supra note 88 at paras. 356-358.

115 GEE, supra note 88 at paras. paras. 356-358.

116 See e.g. Mwatana for Human Rights (“Withering Life”), supra note 45 at Part 3 (Undermining Rights and Freedoms), Section 4 (Movement).

117 See Part F, Section 1.2.2.1, for a discussion of the meaning of "objects indispensable to survival of the civilian population" in the context of IHL.
be viewed in the context of other conduct by the warring parties which also serve as drivers of food insecurity and famine.
The gendered impacts of the conflict and food insecurity in Yemen

Women and girls are significantly affected by the ongoing conflict, deteriorating socioeconomic situation, abject poverty, degradation of living conditions and associated distress in families with repercussions including various forms of violence and negative coping mechanisms such as child marriage and exploitation.118

Although data indicates the proportion of the population that is food insecure is spread relatively evenly between men and women, as well as between boys and girls, the dire humanitarian situation disproportionally impacts women. According to OCHA, in 2021, 66% of people needing support to treat or prevent malnutrition are women and, of the 4.7 million people requiring treatment for acute malnutrition in 2021, 1.2 million are pregnant and lactating women. Despite this, access to reproductive health services is limited or non-existent, and the country has the highest maternal mortality ratio in the region.

Women are additionally “under more economic pressure” since the conflict began due to the increasing instances of women becoming heads of household after losing their husbands, “sometimes without, any or limited prior experience in income generating activities.” Further, the conflict’s impact on access to food, water and sanitation, and the subsequent increased burden on women and girls to obtain food and water (e.g., having to travel longer distances to access it), leaves them exposed to increased risks of SGBV and the use of unsafe coping mechanisms, child marriage, survival sex, sex for rent, forced/coerced prostitution, begging, child labour, eating less and borrowing, all of which expose women to further harm. Restrictions on women’s freedom of movement, costs of transportation and fear of abuse at checkpoints also make accessing humanitarian aid more difficult for women, which reports by Oxfam indicate.

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120 OCHA, supra note 118 at p. 72.
121 Ibid, at p. 69.
122 Ibid, at p. 81.
123 Ibid, at p. 93.
126 Rohwerder, supra note 74 at p. 7.
is more often received and collected by men (88% in urban areas, 74% in rural areas).\textsuperscript{127}

As a result of the conflict, women’s economic development in Yemen has not progressed. The World Economic Forum Global Gender Gap Index for 2021 ranked Yemen 155th out of 156 countries worldwide,\textsuperscript{128} after being one of the lowest performing countries for over a decade.\textsuperscript{129} The additional developmental, educational, social and other outcomes of the conflict for women are yet to be seen, and require further research.

Addressing the impact of the conflict on groups disproportionately affected by it, including women and girls, requires gender-aware and intersectional approaches to peace-building and accountability processes, as well as to programs implemented by humanitarian actors and policy makers.


\textsuperscript{129} Ibid, at pp. 18-19.
A queue of families waiting for free ice to be distributed on a hot day. Al-Hali District, Al-Hudaydah Governorate. April 28, 2021.
Destruction from air strike on an area that held more than 60 fishing boats in Al-Hima Port, Al-Khokha, Al-Hudaydah Governorate. December 14, 2015.
The legal framework governing the conflict in Yemen
International law requires States, and in some instances non-State actors, to respect, protect and prevent violations of norms safeguarding civilians’ access to objects indispensable for their survival (OIS), including food and water, during international and non-international armed conflicts. Under international humanitarian law (IHL), these norms include a clear prohibition on the deliberate starvation of civilians and an obligation on the warring parties to allow relief activities that are humanitarian and impartial in nature to meet the needs of the civilian population under their control. Under international human rights law (IHRL), the right to life and the right to food, among others, are non-derogable and continue to apply during situations of armed conflict, imposing obligations on States and, in some cases, non-State actors to ensure “a minimum essential level of subsistence.” International criminal law (ICL) criminalizes the IHL prohibition by making the intentional use of starvation as a method of warfare


131 Additional Protocol I, Article 54(2); Additional Protocol II, Article 14; ICRC Customary IHL Rule 53. Combatants that are hors de combat (e.g. wounded, sick, shipwrecked or captured/detained) must also be afforded access to sufficient food and water, as well as clothing, see Geneva Convention I, Article 12; ICRC Commentary to Geneva Convention I Article 12, para. 1387. See also Geneva Convention III, Articles 26, 27; Geneva Conventions I-IV, Common Article 3; ICRC Commentary to Geneva Convention I Article 3, para. 558; Additional Protocol II, Article 5(1)(b).


133 States may take measures effectively derogating from their obligations under the ICCPR “[i]n a time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,” provided such measures are “strictly limited to the exigencies of the situation” and as such proportionate. Such right to derogate does not apply to the right to life under the ICCPR. See Articles 4, 6 and 7. See also UN Human Rights Committee, “General Comment No. 29: States of Emergency (Article 4),” UN Doc. CCPR/C/21/Rev.1/Add.11 (August 31, 2001), para. 16, https://undocs.org/CCPR/C/21/Rev1/Add.11. The ICESCR does not contain a derogation clause, and States may only “subject [ICESCR] rights … to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” See ICESCR, Articles 4, 11. See also Arab Charter on Human Rights (adopted 22 May 2004 by the Council of the League of Arab States) (Arab Charter), Article 5.

134 See Part F, Section 3 below.
and the wilful impediment of relief supplies a war crime under Article 8 of the Rome Statute.\textsuperscript{135}

What follows is an overview of the international legal framework applicable in the context of these prohibitions and rights, in particular in relation to starvation-related conduct that may amount to a violation of IHL or IHRL, as well as relevant crimes under ICL.

\textsuperscript{135} Rome Statute, Article 8(2)(b)(xxv) during an international armed conflict (IAC) and, following the amendment to the Rome Statute in 2019, Article 8(2)(e)(xix) during a non-international armed conflict (NIAC).
The international humanitarian law framework

Classification of the conflict and applicable body of law

The conflict between the internationally recognized government of Yemen’s armed forces and the Ansar Allah (Houthi) armed group has been generally accepted as a non-international armed conflict (NIAC). A NIAC has been defined in IHL as “protracted armed violence between governmental authorities and organized armed groups or...”

between such groups within a State.” The two threshold requirements for a NIAC—organisation (of Ansar Allah) and intensity (of the hostilities)—have been met. Although the Saudi/UAE-led Coalition intervened in the conflict in support of the internationally recognized government of Yemen against Ansar Allah, its intervention occurred at the request of the Government, such that the coalition’s involvement does not alter the classification of the conflict to an international armed conflict (IAC).

As parties to a NIAC, the Yemeni armed forces, the Saudi/UAE-led Coalition and Ansar Allah are bound by Common Article 3 to the Geneva Conventions (CA 3). In addition, Additional Protocol II (AP II), which has a more restrictive scope of application than CA 3, applies where the threshold requirements are met, namely where the conflict “takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” Ansar Allah’s exercise of territorial control over a large part of Yemen enables them to carry out sustained military operations and implement IHL, meeting the threshold criteria for the applicability of AP II. AP II is said to “develop and supplement” CA 3 “without modifying its existing conditions of application,” such that both apply concurrently.

Finally, Customary IHL also applies.

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137 Prosecutor v. Dusko Tadić, IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70. See also Geneva Conventions I-IV, Common Article 3.


139 Jelena Pejic, ‘The Protective Scope of Common Article 3: More Than Meets the Eye’ [2011] 93 (881) International Review of the Red Cross and Red Crescent 1, 2 (noting that the scope of application of Protocol II is “narrower than that of Common Article 3, with Article 3 maintaining a separate legal significance even when Protocol II is also applicable”).

140 Additional Protocol II, Article 1(1).

141 For a discussion of Ansar Allah’s territorial control, see GEE, supra note 98 at para. 14; Fink, supra note 98 at p. 296; Geneva Academy-RULAC, supra note 136.

142 Additional Protocol II, Article 1(1).
The prohibition against starvation as a method of warfare in a NIAC

As referenced above, the starvation of civilians is prohibited by a number of codified and uncodified sources of IHL. Article 14 of AP II prohibits the starvation of civilians in NIACs in the following terms:

Starvation 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.143

Article 14 represents a “specific application” of the CA 3 obligation “to guarantee humane treatment for all persons not participating in hostilities.”144 The IHL prohibition on starvation as a method of warfare is also firmly accepted as part of customary IHL.145 It is a prohibition from which no derogation is permitted,146 which aligns with the unconditional and absolute prohibition on the targeting of civilians and persons hors de combat under CA 3 and AP II, as well as civilian objects under customary international law.147

143 Additional Protocol II, Article 14.


146 ICRC, supra note 144 at para. 4798.

147 Geneva Conventions I-IV, Common Article 3; Additional Protocol II, Article 13; ICRC Customary IHL Rule 1; ICRC Customary IHL Rule 7.
Article 14 of AP II is a “simplified version of Article 54 of API,” which prohibits the deliberate use of starvation as a method of warfare in an IAC. The former article is considered to “correspond to” and “preserve the essence” of Article 54 of AP I. Thus, while there are striking differences in the ways in which the AP I and AP II prohibitions are drafted—the AP I version being much longer and of a seemingly more complex construction—it may be that these differences were not necessarily intended to create substantial differences to the substantive obligations imposed on parties. In general, the drafters of AP II, regulating conflict involving non-State actors, were cautious about creating and assigning rights to non-State armed groups, and drafted the AP II obligations and prohibitions accordingly. This concern did not apply to the drafters of AP I.

The Purposive Requirement of Article 14 AP II

The relationship between the first and second sentences

On a plain-language interpretation of Article 14 of AP II, the first sentence appears to create a general prohibition, whilst the second sentence appears to be illustrative of the ways in which the general prohibition may be breached. The manner in which they have been drafted suggests a lex generalis (the first sentence, creating the general prohibition) and lex specialis (the second illustrative sentence) relationship. This would mean that in circumstances where the lex specialis applies, it would supersede or disapply the lex generalis as the governing rule of law.

If that is the case, then the most significant outcome of that form of legal construction would be that, where the lex specialis applies, proof of “a purpose” would be required, whereas no such express purposive requirement exists in relation to the lex generalis. However, a contextualised reading of Article 14 with the International Committee of the Red Cross (ICRC) Commentary, which constitutes an authoritative interpretation of AP

148 ICRC, supra note 144 at para. 4792.
149 ICRC Commentary to Additional Protocol I Article 54, para. 2089.
150 Bothe et al., supra note 5 at p. 783.
II,\textsuperscript{151} suggests that the drafters did not intend to create that distinction. The Commentary acknowledges that the first sentence is broader than the second—for example, that the general prohibition in the first sentence may be breached through omission, such as deliberately deciding “not to take measures to supply the population with objects indispensable for its survival in a way would become a method of combat,”\textsuperscript{152} whilst the second sentence is confined to positive acts. Nevertheless, the Commentary makes clear that the term “starvation,” the central concept of the first sentence, inherently involves deliberate—in other words, intentional—conduct: “[t]he object of this provision is to prohibit the deliberate provocation of [famine, i.e. extreme and general scarcity of food].”\textsuperscript{153} In these circumstances, intent and purpose can be used interchangeably.\textsuperscript{154} It seems likely therefore that the drafters intended intent or purpose to be essential elements of the prohibitions articulated by both the first and second sentences.

The purposive requirement under treaty law is further confirmed by the Customary IHL study. While Rule 54 of the study prohibits interference with OIS without stating that this conduct must be carried out with a specific purpose,\textsuperscript{155} The commentary to the aforementioned Rule states that in relation to IACs, “[s]everal military manuals specify that in order to be illegal, the intent of the attack has to be to prevent the civilian population from being supplied.”\textsuperscript{156}

\textsuperscript{151} ICRC Commentary to Geneva Convention I Introduction, para. 3; Eric Jensen and Carolyn Sharp, “Non-State Commentaries: Law Marking or Law Suggesting?,” Articles of War, Lieber Institute, West Point (April 8, 2021), https://lieber.westpoint.edu/non-state-commentaries-law-making-law-suggesting/. The ICRC has the statutory mandate to work for the faithful application of IHL. See Yves Sandoz, “The International Committee of the Red Cross as guardian of international humanitarian law,” ICRC (December 31, 1998), https://www.icrc.org/en/doc/resources/documents/misc/about-the-icrc-311298.htm#:~:text=Article%205%20of%20the%20Statutes,alleged%20breaches%20of%20that%20law%E2%80%9D%20. The Commentary is not legally binding, but in accordance with the sources of international law, it qualifies as “the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.” See Statute of the International Court of Justice, Article 38(1)(d).

\textsuperscript{152} ICRC, supra note 144 at para. 4800.

\textsuperscript{153} Ibid, at para. 4791.


\textsuperscript{155} Henckaerts and Doswald-Beck, supra note 130 at pp. 189-190.

\textsuperscript{156} Ibid, at p. 190.
The meaning of purpose and intent

For the reasons given above, the requirement that the “provocation” of famine or food scarcity is done deliberately, and therefore intentionally, is unlikely to be different in substance from the requirement in the second sentence that an attack is perpetrated with “purpose.” The question then arises: what is meant by “purpose” or “intent?”

In answering this question, an essential touchstone is the position that is taken under ICL. Article 8(2) of the Rome Statute, which includes the offence of starvation, criminalises “serious violations of the laws and customs [of war]” and to that extent is premised upon the IHL prohibition. Therefore, conduct that does not amount to a serious violation is not capable of satisfying an offence under Article 8(2) of the Rome Statute. Consequently, ICL can impose more exacting standards than the IHL, but the reverse is not true.

Intent and purpose are obviously highly familiar concepts to criminal law, often used to fix standards of culpability that are appropriate to the seriousness of the crime for the purposes of satisfying principles of individual criminal responsibility. For the reasons set out below, the intent requirement in ICL, where it relates to a consequence such as the intention to starve, must be understood to be satisfied not only where a “person means to cause that consequence” (i.e. with direct intent), but also where “that consequence [...] will occur in the ordinary course of events” (or “indirect intent”).

Attacking, destroying, damaging or rendering useless OIS

Meaning of objects indispensable to survival

Under Article 14 of AP II, “[i]t is prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population [...].” OIS are non-exhaustively defined as “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation

157 ICRC, supra note 144 at para. 4791.
158 Additional Protocol II, Article 14.
works.” According to the ICRC Commentary, objects which “are of basic importance for the population from the point of view of providing the means of existence” should also be considered OIS. Furthermore, Article 14 should be interpreted in line with the scope of Articles 17 and 18 of AP II—which require measures to be taken to ensure displaced civilian populations are received “under satisfactory conditions of shelter, hygiene, health, safety and nutrition” (Article 17) and that impartial “relief actions” are undertaken to meet the needs of the civilian population (Article 18)—bringing such protected items within the scope of items protected by Article 14. This follows from the fact that Articles 14, 17 and 18 are all derivatives of the general principles on humane treatment of all persons not participating in hostilities set out in CA 3. Furthermore, it is submitted that the language of the Article 14 Commentary generally suggests that its protections should be construed and applied expansively. For example, “the verbs ‘attack,’ ‘destroy,’ ‘remove,’ and ‘render useless’ are used to cover all eventualities” and the term “foodstuffs” and ‘agricultural areas for the production of foodstuffs’ must be understood in the broadest sense to cover the infinite variety of needs of the populations of different geographical areas throughout the world.”

Furthermore, Article 14 of AP II does not introduce any exceptions to the deliberate use of starvation. This is not to say though that objects protected by Article 14 of AP II are protected from attack in all circumstances. Upon cases where OIS qualify as military objectives during a NIAC, the principles of IHL, specifically the principles of distinction, proportionality and precautions in attack, would govern their targeting.

### The use of landmines

The use of landmines to render OIS useless or prevent their use also constitutes a violation of Article 14 of AP II. It should be noted that under customary IHL, parties, including non-state armed actors, to a NIAC are bound to try and minimise the

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159 Ibid. See also ICRC, supra note 144 at paras. 4802-4805.

160 ICRC, supra note 144 at paras. 4802-4805. Electricity and fuel required to grow and store food, heat homes and power hospitals, as well as fulfil basic needs such as cooking, may also constitute OIS. See “Practice Relating to Rule 54. Attacks against Objects Indispensable to the Survival of the Civilian Population,” ICRC, https://ihl-databases.icrc.org/customey-ihl/eng/docs/v2_rul_rule54.

161 ICRC, supra note 144 at paras. 4801, 4805.


163 Pejic, supra note 144 at pp. 1097, 1099.
indiscriminate effects resulting from the use of landmines,\textsuperscript{164} including by posting warnings about their location,\textsuperscript{165} and undertaking mine clearance action at the end of active hostilities.\textsuperscript{166} In addition, States parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention) are bound, among other obligations, to never use anti-personnel mines,\textsuperscript{167} while the Amended Protocol II to the Convention on Certain Conventional Weapons (CCW) imposes general restrictions on the use of landmines.\textsuperscript{168} The aforementioned treaties apply both in IACs and NIACs.\textsuperscript{169} Yemen ratified the Ottawa Convention on 1 September 1998.\textsuperscript{170}

While Saudi Arabia and the UAE are neither parties to the aforementioned Convention, nor to the Amended Protocol II to the CCW,\textsuperscript{171} they are arguably responsible for implementing

\textsuperscript{164} ICRC Customary IHL Rule 81.
\textsuperscript{165} ICRC Customary IHL Rule 82. The Rule is arguably applicable in NIACs.
\textsuperscript{166} ICRC Customary IHL Rule 83.
\textsuperscript{167} Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997, Article 1(a).
\textsuperscript{169} Protocol II to the 1980 CCW Convention as amended on 3 May 1996, Article 1; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Article 1; Henckaerts and Doswald-Beck, supra note 130 at pp. 280-283.
them because Yemen consented to their intervention in the conflict.\textsuperscript{172}

\begin{flushright}
Explosives, Al-Quraisbuh District, Al-Bayda Governorate
September 26, 2020
\end{flushright}

The application of the fundamental principles of IHL

Where the essential components of Article 14 have been met—namely the starvation of the civilian population as a method of combat, with intent or purpose—Article 14 has been violated. With regard to the prohibition on attacking, destroying, removing or rendering useless OIS for the purpose of starving the civilian population, the fundamental principles of IHL, namely the principles of distinction, proportionality and precautions, inform the analysis as to whether Article 14 AP II has been violated.\(^\text{173}\) We outline these principles in brief here, and apply them to the case-studies in more detail below.

The principle of distinction

The decision to attack a target must first apply the principle of distinction, which requires parties to an armed conflict to distinguish between civilians and civilian objects on the one hand and combatants and military objectives on the other, and to only direct attacks against the latter.\(^\text{174}\) In a NIAC, civilians are protected "unless and for such time as they take a direct part in hostilities."\(^\text{175}\) When members of organized armed groups undertake a continuous combat function,\(^\text{176}\) they lose their civilian status and are targetable to the same extent as combatants, unlike persons taking direct part in hostilities who may only be targeted only for such time they take part.\(^\text{177}\) Persons hors de combat are also protected from attack.\(^\text{178}\)

Civilian objects are defined as "objects which are not military objectives,"\(^\text{179}\) the latter

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\(^{175}\) Additional Protocol II, Article 13(2) and (3).


\(^{178}\) Geneva Conventions I-IV, Common Article 3; Henckaerts andDoswald-Beck, supra note 130 at p. 165.

\(^{179}\) ICRC Customary IHL Rule 9.
being “objects which [i] by their nature, location, purpose or use make an effective contribution to military action and [ii] whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”\textsuperscript{180} Objects that qualify as military objectives but also serve civilian functions, such as a power plant that serves a military base but that also supplies the local town with electricity and drinking water, are considered “dual-use” objects.\textsuperscript{181} As the total or partial destruction of a “dual-use object” is presumed to adversely impact the fighting capacity of the adversary and offer a definite military advantage, the principle of distinction permits their targeting, provided that any action taken also complies with the principles of proportionality and precautions in attack.\textsuperscript{182}

The principle of proportionality

As described above, where an object qualifies as a military objective,\textsuperscript{183} the principle of proportionality will govern the lawfulness of the attack. In sum, this principle operates to prohibit attacks against otherwise lawful military objectives that may cause excessive damage to civilian objects, civilians or the civilian population, when viewed in relation to the concrete and direct military advantage anticipated,\textsuperscript{184} based on the information available at the time.\textsuperscript{185} In the first instance, the principle of proportionality requires commanders to conduct a proportionality assessment. In the course of making that assessment, the principle prohibits excessive collateral damage to civilians or civilian objects.

Article 14 seeks to protect civilians from starvation. While starvation is not often an

\textsuperscript{180} ICRC Customary IHL Rule 8.
\textsuperscript{181} Sassoli and Nagler, supra note 173 at p. 354.
\textsuperscript{183} Although the Geneva Conventions and the Additional Protocols do not use the term “dual use,” the phrase has been used in practice to refer to objects which constitute a military objective by virtue of their nature, location, purpose or use but which also serve civilian functions.
\textsuperscript{184} ICRC Customary IHL Rule 14.
immediate consequence of an attack, but instead usually occurs after a period of time has passed, proportionality assessments must account for both the direct and indirect consequences of an attack on the civilian population. This would include accounting for an attack’s possible indirect consequences, such as exacerbating food and water insecurity and leading to starvation. The foreseeability that an attack would cause indirect harm should be used as the guiding criteria.

The principle of precautions in attack

Finally, even where the principle of proportionality can be respected, the principle of precaution in attack requires parties to the conflict to take “constant care ... to spare the civilian population, civilians and civilian objects.” Warring parties must take all feasible measures to “avoid or, in any event, minimise” collateral damage from military attacks, including through target verification, the choice in the means and methods of warfare, the assessment of the effects of the attack, the retention of control during the execution of attacks, and the provision of effective advance warnings. The principle of precautions against the effects of attacks imposes obligations on the parties to a conflict vis-à-vis the civilian population under their control, including the removal of the civilian population and civilian objects from the vicinity of military objectives and avoid placing military objectives in densely populated areas.

186 Ibid, p. 45; Stockton Center for the Study of International Law, supra note 182 at pp. 352-354.
187 Gillard, supra note 182 at pp. 13, 15.
188 ICRC Customary IHL Rule 15.
189 ICRC Customary IHL Rule 16.
190 ICRC Customary IHL Rule 17.
191 ICRC Customary IHL Rule 18.
192 ICRC Customary IHL Rule 19.
193 ICRC Customary IHL Rule 20.
194 ICRC Customary IHL Rule 22.
Denying humanitarian access

States parties to armed conflicts bear the primary responsibility of ensuring the needs of the population within their territory or under their control. During NIAC, non-State actors are also required to meet the needs of the civilian population under their control, “if the State party to the conflict is unable to or otherwise does not discharge its obligations in this regard.” When the civilian population is inadequately supplied, humanitarian relief organisations may offer their services. Where a civilian population is threatened with starvation, the relevant party to the conflict is obliged to provide consent to humanitarian relief. Consent may be withheld only in limited circumstances:

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196 Akande and Gillard, supra note 195 at p. 13.

197 Geneva Conventions I-IV, Common Article 3; Additional Protocol II, Article 18; ICRC Customary IHL Rule 55. While Article 18 of Additional Protocol II appears to request the consent of the State Party for relief operations to take place, the consent by the ANSA controlling the territory where relief activities are intended to take place is therefore also needed, at least from a practical point of view. See Felix Schwendimann, “The Legal Framework of Humanitarian Access in Armed Conflict,” International Review of the Red Cross (December 2011), p. 1001, https://www.icrc.org/fr/doc/assets/files/review/2011/irrc-884-schwendimann.pdf; Akande and Gillard, supra note 195 at pp. 17-18.

198 Additional Protocol II, Article 18; ICRC Customary IHL Rule 55. The threshold of need under treaty and customary IHL appears to be the same, as the commentary to Rule 55 states that “if [...] a civilian population is threatened with starvation and a humanitarian organisation [...] is able to remedy the situation, a party is obliged to consent.” See Henckaerts and Doswald-Beck, supra note 130 at p. 197.
(i) where there are no needs to meet in relation to the civilian population;\textsuperscript{199} or (ii) where
the supplies are not humanitarian in nature or are being received from an organisation
that is not impartial or humanitarian in nature.\textsuperscript{200}

In addition to constituting a violation of Article 18 of AP II and Rule 55 of Customary
IHL, withholding consent for humanitarian relief would also constitute a violation of
the prohibition on starvation under Article 14 of AP II and Rule 53 of Customary IHL
when done for the purpose of starving civilians (purpose being understood as set out in
Section 1.2.1 above).

\section*{Restricting the passage of humanitarian relief}

Once relief actions are accepted, parties to the conflict are obliged to "allow and
facilitate rapid and unimpeded passage of humanitarian relief,"\textsuperscript{201} and "ensure the
freedom of movement of authorized humanitarian relief personnel."\textsuperscript{202} Parties to a
conflict are entitled to a right of control, including by prescribing technical arrangements,
searching relief consignments, and allocating the implementation of relief activities to
a local organization,\textsuperscript{203} but, these measures "must be applied in good faith and their
nature, extent, and impact must not prevent the rapid delivery of humanitarian relief in
a principled manner."\textsuperscript{204} The impediment of humanitarian assistance through the failure
to allow and facilitate the passage of relief may also constitute an arbitrary denial of
consent to relief activities.\textsuperscript{205}

As for withholding consent for humanitarian relief, impeding the passage of relief
supplies would constitute a violation of Rules 55 and 56 of Customary IHL, as well as a
violation of the prohibition on starvation under article 14 AP II and Rule 53 of Customary
IHL when done for the purpose of starving civilians.

\begin{itemize}
\item \textsuperscript{199} ICRC, supra note 144 at paras. 2794-2795, 2825; Akande and Gillard, supra note 195 at pp. 14-15.\textsuperscript{199}
\item \textsuperscript{200} Additional Protocol II, Article 18(2); ICRC Customary IHL Rule 55; ICRC, supra note 144 at para. 2797; Akande and Gillard, supra note 195 at pp. 14-15. \textsuperscript{200}
\item \textsuperscript{201} ICRC Customary IHL Rule 55. This possibility is not explicitly provided for NIACs in Additional Protocol
II or in Common Article 3 to the Geneva Conventions, but it is considered to be part of customary IHL
applicable to NIACs, see ICRC, supra note 144 at para. 4888. \textsuperscript{201}
\item \textsuperscript{202} ICRC Customary IHL Rule 56. \textsuperscript{202}
\item \textsuperscript{203} A. Muller, The Relationship between Economic, Social and Cultural Rights and International Humanitarian
Law (Brill, 2013) pp. 264-265; International Review of the Red Cross, supra note 132 at p. 364; Akande
and Gillard, supra note 195 at pp. 28-29. \textsuperscript{203}
\item \textsuperscript{204} Akande and Gillard, supra note 195 at p. 26. \textsuperscript{204}
\item \textsuperscript{205} Sassoli and Nagler, supra note 173 at 581. \textsuperscript{205}
\end{itemize}
International Criminal Law (ICL)\textsuperscript{206}

ICL is concerned with the responsibility of individuals for international crimes, including inter alia war crimes, crimes against humanity (CAH) and genocide.\textsuperscript{207} This part of the report sets out the elements of the war crime of starvation under the Rome Statute, as well as alternative crimes under ICL, for which individuals engaged in the conduct documented in this report could be held liable based on the information currently available. This is followed by a discussion of modes of liability under ICL and the relevance of direct and indirect evidence for determining intent to starve civilians in a complex multi-causal environment like Yemen.

For the purposes of this report, war crimes as defined by the Rome Statute are considered. Yemen is not a State party to the Rome Statute of the International Criminal Court (ICC), nor are any of the other principal parties to the conflict (apart from Jordan).

\textsuperscript{206} For a detailed practitioners’ guide to 26 ICL crimes relating to starvation contact GRC for our unique Starvation Manual. This is a first-to-market guide aimed at practitioners seeking to identify, monitor, investigate, respond and seek remedies for violations relation to starvation.

\textsuperscript{207} In general, persons engaging in conduct amounting to starvation may be held liable under all three of these categories.

\textit{Photo: The International Criminal Court in The Hague. September 24, 2017.}
parties have committed war crimes on the territory of Yemen.\textsuperscript{208} Notwithstanding that Yemen is not a party to the Rome Statute, the ICC regime remains relevant for three reasons. First, the Rome Statute comprehensively sets out the relevant ICL framework for starvation. Second, in the event of an ICC prosecution resulting from the current preliminary examination or from a referral to the ICC by the Security Council,\textsuperscript{209} the accused’s liability will be determined based on crimes defined by the Statute. Third, any domestic proceedings based on universal or other form of extraterritorial jurisdiction will likely rely upon the Rome Statute regime, as many national States have implemented the Rome Statute wholesale into their domestic legislation. It is therefore instructive to consider allegations of deliberate starvation of civilians in Yemen within the Rome Statute framework.

The chapeau elements of war crimes

As a preliminary matter, for any conduct to qualify as a war crime, two chapeau elements must be satisfied:

- The relevant conduct must be committed in the context of, and be sufficiently connected to, an armed conflict,\textsuperscript{210} although it need not be carried out at a time or location where the actual hostilities occurred provided it was related to them;\textsuperscript{211} and

\begin{itemize}
  \item \textsuperscript{208} "Report on Preliminary Examination Activities (2019)," ICC Office of the Prosecutor (December 5, 2019), paras. 52-56, https://www.icc-cpi.int/Pages/item.aspx?name=191205-rep-otp-PE.
  \item \textsuperscript{209} Pursuant to Article 13(b) of the Rome Statute.
  \item \textsuperscript{210} See, for example, ICC Elements of Crimes, Article 8(2)(b)(xxv), Element 3. See also Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, Trial Judgment, 8 July 2019, para. 731 ("The existence of the conflict must have, at a minimum, played a substantial part in the perpetrator’s ability to commit the crime, the decision to commit, the purpose of the commission, or the manner in which it was committed"); Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT-96-23-A & IT-96-23/1-A, Appeals Judgment, 12 June 2002, paras. 56-59.
  \item \textsuperscript{211} Prosecutor v. Tadic, supra note 137 at para. 70 (the act must be "closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict"); Prosecutor v. Dragoljub Kunarac, supra note 210 at para. 57.
\end{itemize}
• The direct perpetrator or other relevant actor must have been aware of factual circumstances that established the existence of the armed conflict.\(^{212}\)

## Starvation as a method of warfare

A landmark amendment to the Rome Statute, Article 8(2)(e)(xix), brought the war crime of the use of starvation as a method of warfare in a NIAC within the jurisdiction of the ICC.\(^{213}\) The principles of legality and non-retroactivity mean that States-parties will not be bound by amendments to the Rome Statute until one year after they have ratified or accepted the amendment.\(^{214}\) New Zealand will be the first state for which the amendment will come into force, on 14 October 2021.\(^{215}\) Domestic or international courts otherwise could hold perpetrators liable based on their domestic law, where appropriate, or on customary international law prohibitions.\(^{216}\)


214 Rome Statute, Article 121(5).


Understanding the parameters of IHL will inform the way in which the counterpart war crimes under ICL should be interpreted, given the collection of offences under Article 8(2)(e) criminalises “serious violations of the laws and customs applicable in armed conflicts [..], within the established framework of international law.” According to the Elements of Crimes, in addition to the chapeau elements of war crimes, there are two essential elements required to establish the offence: (i) the perpetrator deprived civilians of OIS; (ii) the perpetrator intended to starve civilians as a method of warfare.217

The physical elements (actus reus)

Element one describes the only actus reus of the offence: depriving civilians of OIS. The objects which the offence seeks to protect, namely OIS, should be construed in line with Article 14 of AP II, given the offence seeks to criminalise a relevant violation of IHL.218 Generally, any conduct that restricts civilians’ use of such an object would be considered to be causing “deprivation.”219 This includes wilfully impeding relief supplies as well as acts such as attacking, destroying, damaging or removing such objects or rendering them useless.220 It would also include omissions, such as refusing to take measures to ensure civilians’ access to OIS.221

The intent elements (mens rea222)

There are two mens rea elements of the war crime of using starvation as a method of warfare:

• the perpetrator must have intentionally deprived civilians of objects indispensable to their survival; and


218 See Section 1.2 above.

219 ICRC, supra note 149 at para. 2101.

220 See Additional Protocol I, Article 54 and Additional Protocol II, Article 14. See also ICRC Commentary to Additional Protocol I Article 70, para. 2795.

221 Triffterer and Ambos, supra note 5 at p. 516.

222 For a detailed analysis of the intent of the war crime of starvation see Jordash et al., supra note 6.
the perpetrator must have intended to starve civilians as a method of warfare.

The first of these requirements follows from the application of Article 30 of the Rome Statute, which mandates that “unless otherwise provided” all material elements of crimes within the jurisdiction of the Rome Statute are committed “with intent and knowledge.”

**Article 30**

**Mental element**

- Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

- For the purposes of this article, a person has intent where:
  - In relation to conduct, that person means to engage in the conduct;
  - In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

- For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

“Depriving civilians of objects indispensable to their survival” is a distinct and severable “material element” for the purpose of Article 30(1) with its own distinct mental element standard.223 By virtue of Article 30(2)(a), the perpetrator must “mean” (i.e. desire) to engage in conduct which deprives civilians of objects indispensable to their survival. In addition, Article 30(3) requires a material element to be committed with knowledge (i.e.

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223 Point 2 of the General Introduction to the ICC Elements of Crimes, containing guidance for the application of Article 30, provides that: “Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in Article 30 applies.” Given that the essential element of depriving civilians of objects indispensable to their survival is a conduct (and a consequence) without an express associated mental standard, Article 30 operates to require that that element be committed intentionally.
awareness that a circumstance exists). Thus, it is an essential feature of the commission of starvation that the perpetrator is aware that the objects which he or she is depriving the civilian population of are essential to their survival.

The interpretation of the second of these mens rea requirements, the “intention to starve” (Element 2), is likely to pose the most significant challenge to prosecutorial practice.

I Intention to starve does not require proof that civilians starved

Whilst the crime requires the deprivation of OIS as both a conduct and a consequence, the crime does not appear to require proof that civilians did in fact starve.\(^{224}\) This is apparent from the terminology used in both Article 8(2)(e)(xix) and the Elements of Crimes, and can be inferred from the fact that it was rejected by the Rome Conference to include language that would have required proof that civilians starved to death.\(^{225}\) This is not to argue that the consequences of any deprivation will be irrelevant to an assessment of individual criminal responsibility. On the contrary, mens rea is invariably

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\(^{224}\) This is consistent with the prevailing view in IHL that starvation as a method of warfare is prohibited, independently of whether its effects become visible on the population. See Triffterer and Ambos, supra note 5 at pp. 517, 790 (“The only material element required by the elements of crimes is that there is a deprivation of certain objects. This suggests that it is ... sufficient that civilians are deprived of objects indispensable to their survival, that is, a deprivation that would cause them in the future to starve, without requiring that the deprivation takes its effect over time”). See also, Simone Hutter, Starvation as a Weapon: Domestic Policies of Deliberate Starvation as a Means to an End under International Law (Brill | Nijhoff, 2015) p. 32; René Provost, ‘Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait’ [1992] 30 Columbia Journal of Transnational Law 577. Other authoritative commentators have also likened starvation with incitement to genocide, denying quarter, displacing civilians, and intentionally directing attacks against civilians not taking direct part in hostilities. These are all offences that do not require proof of the consequences intended. See Roy S. Lee, The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results (Kluwer Law International, 1999) pp. 141-142; Triffterer and Ambos, supra note 5 at pp. 448, 531, citing at 635, fn. 74; UN General Assembly, “Report of the Preparatory Committee on the Establishment of an International Criminal Court: Volume I: Proceedings of the Preparatory Committee during March-April and August 1996,” UN Doc. A/51/22 (General Assembly Supplement No. 22) (1996), https://digitallibrary.un.org/record/222404.

inferred from the consequences of the defendant’s conduct. Any consequences that
flow will also be important at the sentencing stage and in determining any reparations
tobeawarded.226

I Intention to starve can be satisfied through direct or indirect intent

Based upon the relationship between Article 30, which sets the default mental
standards that need to be established in relation to each “material element,” and the
intention to starve element, the mens rea requirement of intention to starve can be
met through both direct intent or indirect intent (knowledge). Whilst there are reasons
why Article 30(2)(a) might apply to the intention to starve element,227 the underlying
purpose of Article 30—namely to create a presumption that uniform mental standards
should be the norm (as a means of creating or enhancing consistency in the standards
of culpability required for individual responsibility at the ICC)228—still applies to the
intention to starve element. As the intention to starve element relates to the intention
to cause civilians to starve, Article 30(2)(b) permits that intention to be satisfied where
either the person “means to cause” the civilian population to starve (i.e. direct intent) or
“is aware that it will occur in the course of events” (i.e. indirect intent).

II “Method of warfare” means that the intended starvation must
be linked to the conduct of hostilities

Another legal requirement to fulfil the mens rea standards under article 8(2)(e)(xix)
is to establish the intent to starve civilians as a “method of warfare.” This is a term
of art likely to be construed in line with the IHL concept. Consequently, this creates a

226 Prosecutor v. Radovan Karadžić, IT-95-5/18-T, Trial Judgement, 24 March 2016, para. 5669; Prosecutor
v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Mitekić, Vinko Pandurević, Ljubomir Borovčanin
& Milan Gvero, IT-05-88-T, Trial Judgement, 10 June 2010, para. 820; A. Cassese and P. Gaeta (eds),
Cassese’s International Criminal Law (3rd edn, Oxford University Press, 2013) pp. 57-58; Kai Ambos,
“Karadžić’s Genocidal Intent as the ‘Only Reasonable Inference’?” EJIL: Talk! Blog of the European
Journal of International Law (April 1, 2016), https://www.ejiltalk.org/karadzics-genocidal-intent-as-the-
only-reasonable-inference/.

227 Joffe et al., supra note 6 at pp. 856-860.

228 Triffterer and Ambos, supra note 5 at p. 1112 (outlining that the Preparatory Committee felt that “[a]
clear understanding of the general legal framework in which the court would operate was important for the
Court, States Parties and the accused so as to provide guidance, predictability and certainty, and to
promote consistent jurisprudence on fundamental questions, including the issue of moral culpability or
mens rea”).
contextual element that has the effect of requiring that the perpetrator’s conduct be linked to the military activities (See Section 2.1 above). Starvation, therefore, must have been intended to be a “specific, tactical or strategic, way of conducting hostilities,” but nothing more demanding than this is required.²²⁹

²²⁹ For a detailed analysis of the meaning of the phrase “method of warfare” under IHL, see Jordash et al., supra note 6 at pp. 861-863.


### Evidentiary considerations

In assessing whether an individual intended to use starvation of civilians as a method of warfare by depriving them of OIS, relevant evidentiary considerations (or indicators) will include a vast array of assessments: the nature, manner, timing and duration of any deprivations of OIS or attacks on civilians,\(^\text{230}\) including whether such attacks were long-term, persistent and/or indiscriminate;\(^\text{231}\) whether the attacks were widespread and perpetrated in an organised manner;\(^\text{232}\) and whether they took place as part of a campaign that systematically targeted civilians including on account of their membership in a particular group.\(^\text{233}\) The analysis will encompass all relevant issues, including: the general context in which the crime was committed;\(^\text{234}\) the repetition of destruction and discriminatory acts;\(^\text{235}\) attacks against civilians more generally;\(^\text{236}\) involvement of a range of modes of perpetration;\(^\text{237}\) the scale of those attacks;\(^\text{238}\) and relevant policies or speeches encouraging the targeting of those civilians.\(^\text{239}\)

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\(^{230}\) The elements of the IHL prohibition on, and war crime of, attacks against civilians and civilian objects and terrorising the civilian population are set out in Section 2.3 below.

\(^{231}\) Attacks during ceasefires and truces or long-term and persistent attacks against civilians, as well as indiscriminate attacks, may be taken as indicia of the intent to spread terror. The specific intent may also be inferred from the site of the attack; see Prosecutor v.Dragomir Milošević, IT-98-29/1-T, Trial Judgement, 12 December 2007, para. 881.

\(^{232}\) Prosecutor v. Ratko Mladić, IT-09-92-T, Trial Judgement (Volume III of V), 22 November 2017, paras. 3514, 3515, 3519 and 3524, where the intent to destroy by the physical perpetrators was inferred from the intensity of the prohibited acts, their widespread and discriminatory nature, and the fact that many were perpetrated by the same individuals or units.

\(^{233}\) Prosecutor v. Radovan Karadžić, supra note 226 at para. 5825. See also the ICC Elements of Crimes, which add a “contextual element” to the actus reus, requiring that the conduct for which the defendant is on trial takes place in the context of “a manifest pattern of similar conduct” and Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-3, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 119.


\(^{235}\) Ibid.


\(^{239}\) Prosecutor v. Nyiramasuhuko et al., supra note 234 at para. 6012.
At a minimum, any triers of fact will be required to consider the following four factors:

- **Awareness** of the risk that interference with OIS would lead to starvation (including where the deprivation occurs in pursuit of an ostensibly lawful purpose);

- **Respect** for the full range of relevant IHL prohibitions (including the prohibitions on indiscriminate and disproportionate attacks;\(^\text{240}\) the prohibition against terrorising the civilian population;\(^\text{241}\) the prohibition against collective punishment;\(^\text{242}\) the prohibition on the use of human shields\(^\text{243}\) and the prohibition against displacement);\(^\text{244}\)

- **Implementation** of positive obligations flowing from IHL principles applicable in the context of the conduct of hostilities;\(^\text{245}\) and

- **The concrete steps** taken (or not taken) to alleviate civilian suffering, especially those that are capable of facilitating delivery of OIS to affected civilian populations.

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\(^\text{240}\) See Part 1.2.2.3 above.

\(^\text{241}\) See Additional Protocol I, Article 51(2); Additional Protocol II, Article 13(2); ICRC Customary IHL Rule 2.

\(^\text{242}\) See Additional Protocol I, Article 75; Additional Protocol II, Article 4; ICRC Customary IHL Rule 103.

\(^\text{243}\) See Additional Protocol I, Article 51(7); ICRC Customary IHL Rule 97; Rome Statute, Article 8(2)(b)(xxiii).

\(^\text{244}\) See Geneva Convention IV, Article 49; Additional Protocol II, Article 17; ICRC Customary IHL Rule 129.

\(^\text{245}\) Including the obligation to comply with the principle of precaution and to allow humanitarian aid (both discussed above), as well as to protect the natural environment (Additional Protocol I, Article 55) which may be relevant when considering destruction to agricultural areas.
Attacking civilians and civilian objects

Notwithstanding the customary international law status of the prohibition on starvation,\textsuperscript{246} even if persons responsible for committing starvation as a war crime were nationals of a State over which the ICC had jurisdiction, the war crime of starvation in a NIAC under the Rome Statute would not have retroactive application to conduct prior to its entry into force.\textsuperscript{247} Only domestic courts or a newly established international court or tribunal could prosecute starvation committed by such perpetrators based on the prohibition of starvation under domestic law and/or under customary international law. There are an array of other crimes which may serve the purpose of ensuring that the deprivation of OIS for the purpose of starving civilians is captured in its entirety and that the trier of fact is provided with a range of prospective bases for conviction arising from relevant starvationfacts.\textsuperscript{248}

Intentionally directing attacks that deprive civilians of OIS may amount to the war crime of attacking civilians under ICL,\textsuperscript{249} which is based on the customary IHL principle of distinction as outlined above (see Section 1.2.2.3(i) above). In addition to the chapeau elements, there are four other elements of this war crime: (i) the perpetrator directed an attack;\textsuperscript{250} (ii) the object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities;\textsuperscript{251} (iii) the perpetrator committed the physical

\textsuperscript{246} See Section 1.2 above.

\textsuperscript{247} See A.S. Galand, UN Security Council Referrals to the International Criminal Court: Legal Nature, Effects and Limits (Brill | Nijhoff, 2019) Chapter 3, which explores how this would run counter to the principle of legality. There is merit in the academic debate of using starvation’s status in customary law as a basis for the ICC’s jurisdiction to prosecute starvation as a war crime in a NIAC. Parallels can be drawn from the aggression amendment which has been analysed more and it is generally understood to have only prospective application.

\textsuperscript{248} Such crimes include crimes against humanity (notably persecution, deportation or forcible transfer of a population and other inhuman acts), genocide and a large number of war crimes, such as the following ones in the ICC Statute: Articles 8(2)(b)(i), 8(2)(b)(xii), 8(2)(e)(xii). For further analysis on alternative crimes see: Jordash et al., supra note 6; M. J. Ventura, ‘Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities’ [2019] 17(4) Journal of International Criminal Justice 781.

\textsuperscript{249} Rome Statute, Article 8(2)(e)(i); Prosecutor v. Germain Katanga, ICC-01/04-01/07, Trial Judgment, 7 March 2014, para. 800.

\textsuperscript{250} ICC Elements of Crimes, Article 8(2)(e)(i), Element One.

\textsuperscript{251} ICC Elements of Crimes, Article 8(2)(e)(i), Element Two.
elements of the crime with intent and knowledge;252 and (iv) the perpetrator intended
the civilian population as such or individual civilians not taking direct part in hostilities
to be the object of the attack.253

The removal or rendering useless of OIS may constitute an attack.254 Additionally the
imposition of a siege which could lead to the starvation of civilians has previously been
considered a form of attack.255 The attack need not succeed, provided its primary or sole
target was civilians not taking direct part in hostilities (see above definition of civilians
in IHL in Section 1.2.2.3(i) above).256 That being said, indiscriminate attacks where the
harm caused to civilians is so great that it appears that the perpetrator meant to target
civilians may qualify as intentional attacks against civilians.257 The four factors relevant
to determining intent to starve are also instructive in assessing the object of the attack.
Compliance with IHL is important, including for example, whether the perpetrator
attempted to spare civilians by issuing warnings beforehand.258

To be held responsible, the perpetrator must act with intent and knowledge in the
commission of the physical elements of the crime.259 The perpetrator must also have
intended civilians not directly taking part in the hostilities to be the primary or sole
object of the attack, meaning he or she must have been aware of the civilian character

252 Rome Statute, Article 30.
253 ICC Elements of Crimes, Article 8(2)(e)(i), Element Three.
254 Additional Protocol I, Article 54. An attack is an offensive or defensive act of violence involving use of
physical force (including unlawful deprivation of liberty) carried out by one side of the conflict against
the adversary. See Additional Protocol I, Article 49(1); Prosecutor v. Hassan Sesay, Morris Kallon,
Augustine Gbao, SCSL-04-15-T, Trial Judgment, 2 March 2009, paras. 1891-1897; Prosecutor v. Issa
500. Psychological, political and economic warfare do not constitute attacks for the purposes of this
crime; see Triffterer and Ambos, supra note 5 at pp. 355, 368.
255 Prosecutor v. Milosavić, supra note 231 at paras. 910-912.
256 Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, ICC-01/04-01/07, Decision on the Confirmation
799, 802.
257 Prosecutor v. Katanga, supra note 249 at para. 802 (targeting a legitimate military objective but has used
weaponry that had indiscriminate effects and caused harm to a high number of civilians); Prosecutor v.
Stanimir Galić, IT-98-29-A, Appeals Judgment, 30 November 2006, para. 132; Prosecutor v. Milošević,
supra note 231 at paras. 910-912 (the perpetrator laid siege to an area and deprived the civilian
population therein of OIS, together with any combatants).
258 Prosecutor v. Milošević, supra note 231 at para. 921; Prosecutor v. Kunarac, supra note 210 at para. 91;
96.
259 Rome Statute, Article 30(2)-(3); Prosecutor v. Katanga, supra note 249 at para. 808.
of the target.\footnote{260}

Notably, attacks on civilian objects are not explicitly discussed in AP II, but they do constitute a violation of customary IHL,\footnote{261} which could constitute a war crime in NIACs.\footnote{262}

**Acts or threats of violence to terrorise the civilian population**

Intentionally directing attacks against OIS may also constitute the war crime of terror. Article 13(2) of AP II and Rule 82 of customary IHL prohibit “[a]cts or threats of threats of violence the primary purpose of which is to spread terror among the civilian population.” The war crime of terrorising a civilian population under customary ICL “shares the same elements of unlawful attacks against civilians, except for the additional requirement that to constitute terror it must be established that the acts were committed with the primary purpose of spreading terror among the civilian population.”\footnote{263} The ICC does have jurisdiction over the war crime of terror, such that the Court could only prosecute conduct amounting to terror as an underlying act of crimes against humanity.\footnote{264}

The International Criminal Tribunal for the Former Yugoslavia (ICTY) in Galić described the crime of terror as “not a case in which an explosive device was planted outside of an ongoing military attack but rather a case of ‘extensive trauma and psychological damage’ being caused by ‘attacks [which] were designed to keep the inhabitants in a...
constant state of terror." In Dragomir Milošević, ICTY found that sniping and direct and indiscriminate shelling, including by modified air bombs, of "civilian targets that were of no military significance in order to kill, injure, terrorise and demoralise the civilian population of Sarajevo" constituted the war crime of terrorising the civilian population. The actual terrorization of the population is not an element of the crime.

Although the mens rea of this crime requires specific intent to spread terror among the civilian population, as for attacks on civilian objects, it need not be the only purpose for which the acts or threats of violence are carried out. In Galić, the ICTY found that "[t]he fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims." As for the war crime of starvation and attacks on civilians and civilian objects, "such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration" as well as the factors outlined above.

Modes of liability

Whilst this report does not identify individual perpetrators liable for the potential crimes documented, it is important to briefly explain how individuals may be held responsible. Broadly, an individual may be criminally responsible for international crimes if he/she:

265 Prosecutor v. Galić, supra note 263 at para. 102.
266 Prosecutor v. Milošević, supra note 231 at paras. 208, 936-938, 967-971, 978.
267 Prosecutor v. Galić, supra note 263 at para. 104.
268 Prosecutor v. Galić, supra note 263 at para. 104.
269 Ibid.
270 A detailed exploration of the specific legal elements of various modes of liability is outside the scope this article. For an overview of the various modes of liability, see GRC’s Basic Investigative Standards App (BIS App). The BIS is available in mobile app (Android and Apple), desktop or hard copy formats. It is a live tool that distills international documentation for accountability standards into user-friendly guidance and empowers users with a succinct and practical knowledge of the relevant legal standards for documenting IHL, IHRL and ICL violations. See https://www.globalrightscompliance.com/en/projects/basic-investigative-standards-for-international-crimes-investigations.
Committed the crime either (i) as an individual (i.e. direct perpetration); (ii) jointly with another (co-perpetration); (iii) through another person, regardless of whether that other person is criminally responsible (indirect perpetration); or (iv) through other persons, together with co-perpetrators (indirect co-perpetration);271

Ordered, solicited or induced the crime;272

Aided, abetted or otherwise assisted the crime;273

Contributed to the commission (or attempted commission) of a crime by a group of persons acting with a common purpose (complicity);274 or

Failed to prevent, repress or punish the commission of the crime (command or superior responsibility);275

Generally speaking, whereas culpable lower-level perpetrators are more likely to be prosecuted through national systems, the ICC aims to prosecute senior leaders or those who are the most responsible for the criminal conduct who often operate at a level that is far-removed from the physical perpetration of the crimes. Accordingly, in order to establish their liability, it must be proven that such persons have contributed to the crimes committed by others without being physically involved in their commission to

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271 Rome Statute, Article 25(3)(a).
272 Rome Statute, Article 25(3)(b).
273 Rome Statute, Article 25(3)(c).
274 Rome Statute, Article 25(3)(d).
275 Rome Statute, Article 28(a) and (b).

Displaced children and adults fetching water in Al-Saba’a Village.
a degree that attracts individual criminal responsibility. Certain modes of liability may hold criminally responsible those who exercise control over others or who share and contribute to criminal plans.  

These modes may be relevant in situations where:

There is a common criminal plan among multiple perpetrators which led to the commission of the crime (required for co-perpetration & indirect co-perpetration). To establish liability under the modes that require this element, it must be proven that the accused made an essential contribution to that plan with awareness of its criminal consequences.

The accused exercises control over the acts of direct perpetrators who automatically comply with the orders of the accused due to his/her leadership position in an organised and hierarchical organisation (required for indirect perpetration and indirect co-perpetration).

The accused contributed to a crime committed by a group acting with a common purpose with knowledge of the fact that the group will commit crimes but without necessarily belonging to such group or sharing such purpose (required for complicity).


277 Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, 14 March 2012, paras. 980-1006.


279 See e.g., Rome Statute, Article 25(3)(c); Prosecutor v. Jean-Pierre Bemba Gombo et al., ICC-01/05-01/13, Judgement Pursuant to Article 74 of the Rome Statute, 19 October 2016, paras. 84-98; Prosecutor v. Tadić, IT-94-1-T, Trial Chamber, 7 May 1997, paras. 674, 688-692 (aiding and abetting).
The accused (who may either be a military commander or a civilian superior) failed to prevent or repress crimes committed by persons who are under their effective command, authority and control. For military commanders, establishing this mode requires a demonstration that the accused had either actual knowledge of the crimes committed by his/her subordinates or, alternatively, he/she should have known about the commission of the crimes.\textsuperscript{280} For civilian superiors, on the other hand, it must either be shown that the accused knew the commission of the crime or consciously disregarded information indicating their commission (required for command/superior responsibility).\textsuperscript{281}

**Direct and Indirect Evidence**

In analysing the conduct documented in Parts G and H, we rely on an assessment of direct and circumstantial (indirect) evidence collected by Mwatana’s field investigators. Prosecutions at the international level often piece together the requisite intent required for the various crimes through an examination of the underlying and surrounding circumstances that show, beyond reasonable doubt, that the perpetrator was responsible. Distinct from direct evidence, calculations based upon circumstantial evidence require that the various strands of evidence, when considered together, lead to an inference that a conduct was intended or a particular result was intended or would

\textsuperscript{280} Rome Statute, Article 28(a); The higher standard of “actual knowledge” has usually been reserved as a basis for convicting commanders who ordered or participated in the crime or were present during their commission. See Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo & Zejnil Delalić, IT-96-21-T, Trial Judgement, 16 November 1998, para. 769; Prosecutor v.米尔罗德克罗乔尔卡, IT-97-25-T, Trial Judgement, 15 March 2002, paras. 309-312; Prosecutor v. Milođen Naletilić, supra note 211 at para. 435; Prosecutor v. Zlatko Aleksovski, IT-95-14/1-T, Trial Judgement, 25 June 1999, para. 114; Prosecutor v. Théoneste Bagosora, Gratien Kabiliği, Aloys Ntabakuze and Anatole Nsengiyumva, ICTR-98-41-T, Trial Judgement and Sentence, 18 December 2008, paras. 2038-2041, 2065-2067, 2082-2083; Prosecutor v. Alex Tamba Brima, Ibrahim Bazzy Kamara and Santigie Borbor Kanu, SCSL-04-16-T, Trial Judgement, 20 June 2007, paras. 1729-1734. The more physically distant a commander is to the commission of the acts “the more difficult it will be, in the absence of other indicia, to establish [actual knowledge].” See Prosecutor v Enver Hadžihasanović and Amir Kubura, IT-01-47-T, Trial Judgement, 15 March 2006, para. 94.

\textsuperscript{281} Rome Statute, Article 28(b).
result in the ordinary course of events. See Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, ICC-01/05-01/13 A A2 A3 A4 A5, Appeals Judgement, 8 March 2018, para. 868 ("Where a factual finding is based on an inference drawn from circumstantial evidence, the finding is only established beyond reasonable doubt if it was the only reasonable conclusion that could be drawn from the evidence. It is indeed well established that it is not sufficient that a conclusion reached by a trial chamber is merely a reasonable conclusion available from that evidence; the conclusion pointing to the guilt of the accused must be the only reasonable conclusion available. If there is another conclusion reasonably open from the evidence, and which is consistent with the innocence of the accused, he or she must be acquitted"). See also Prosecutor v. Dyilo, supra note 277 at para. 447; Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 362; Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 192; Prosecutor v. Brđanin, supra note 237 at para. 970.
International Human Rights Law (IHRL)

IHRL applies both in times of peace and in times of armed conflict. The relationship between IHL and IHRL is complementary and one of mutual reinforcement, wherein

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284 For a full analysis on the relationship between the two spheres, see Hutter, supra note 224; Simone Hutter, ‘Starvation in Armed Conflicts: An Analysis Based on the Right to Food’ (2019) 17(4) Journal of International Criminal Justice 723.
both bodies of law share the underlying aim of the protection of human dignity.\textsuperscript{285} The applicability of the International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) during both IACs and NIACs has been affirmed by the International Court of Justice (ICJ).\textsuperscript{286}

The fundamental rights to food, water and freedom from starvation are detailed in several international and national instruments.\textsuperscript{287} Yemen is obliged to implement policies aimed at ensuring the right to food of every individual, as recognised in the Universal Declaration of Human Rights (UDHR) and ICESCR, the latter of which was ratified by Yemen in 1987.\textsuperscript{288} Members of the Saudi/UAE-led Coalition are also obliged to respect the obligations of the ICESCR when engaging in activities in Yemen.\textsuperscript{289} Although subject to some debate, the Ansar Allah (Houthi) armed group, as a non-State armed group, may also be held responsible for violations of IHRL where they exercise de facto control over territory and population.\textsuperscript{290} This subsection will briefly set out some of the human rights standards of relevance to starvation conduct, with a focus on the right to food, as well as the extraterritorial application of IHRL and the obligations of non-state actors to protect and fulfill human rights as well as respect them.

\begin{footnotesize}
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\begin{enumerate}
\item \textsuperscript{285} Prosecutor v. Anto Furundžija, IT-95-17/1-T, Trial Judgement, 10 December 1998, para. 183.
\item \textsuperscript{286} Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, supra note 283 at paras. 111-114, 130.
\item \textsuperscript{287} Universal Declaration on the Eradication of Malnutrition and Hunger; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Articles 12(2) and 14(2)(h); Convention on the Rights of Persons with Disabilities, Articles 25(f) and 28(1); Convention on the Rights of the Child (CRC), Articles 24(2)(c) and 27; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 12; African Charter on the Rights and Welfare of the Child, Article 14(2)(c); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Article 15; Arab Charter, Articles 38 and 39(2)(e) (The Arab Charter was ratified by Yemen in 2013).
\item \textsuperscript{288} Under Articles 32 and 55 of the Constitution of Yemen, the Yemeni Government is also obligated to respect the right to health and social care for all its citizens.
\item \textsuperscript{289} See Section 3.2.2 below.
\item \textsuperscript{290} See Section 3.3 below. Even in the absence of the applicability of international human rights law to non-state armed groups, IHL and ICL remain applicable.
\end{enumerate}
\end{footnotesize}
The rights to food and water

The right to food is a core human right recognised under the UDHR, article 25 of the Universal Declaration on Human Rights states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...Children and mothers are entitled to special care and assistance.”

Article 11(1) of ICESCR lists adequate food and housing as essential to the universal right to an adequate standard of living.

Article 38(1) and (4) of the CRC requires state parties to respect IHL applicable to children in an armed conflict. The incorporation of IHL into the CRC covers the prohibition of using starvation as a method of warfare. It is also recognised under various other human rights treaties including CEDAW and the Convention on the Rights of Persons with Disabilities, to which Yemen, Saudi Arabia and the UAE are all signatories. See "Submissions on behalf of the intervener Oxfam in R (Campaign Against Arms Trade) v. The Secretary of State for Business, Innovation, and Skills (Claim No. CO/1306/2016);" Campaign Against Arms Trade (CAAT) (January 19, 2016), p. 4, https://caat.org.uk/wp-content/uploads/2020/09/2017-01-19.oxfam-submission.pdf.

Hutter, supra note 224; Hutter, supra note 284. The right to be free from hunger is a non-derogable fundamental right, which lays down a “minimum threshold that must not be undershot.” This right is subject to immediate realisation, requiring urgent steps to be taken; only very limited situations of force majeure could potentially justify non-compliance and this would not include conflict situations. See United Nations Committee on Economic, Social and Cultural Rights (CESCR) “CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12),” UN Doc. E/C.12/2000/4 (August 11, 2000), para. 47, https://www.refworld.org/pdfid/4538838d0.pdf. CESCR “General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant),” UN Doc. E/C.12/2002/11 (January 20, 2003), para. 40, https://www.refworld.org/pdfid/4538838d11.pdf. The right to be free from hunger can, however, be limited in order “to protect public health, public safety and morals, to restore order, and to protect fundamental rights and freedoms of others.” See Hutter, supra note 224 at p. 731; ICESCR Articles 4, 11(2). The CESCR was established under ECOSOC Res. 1985/17, 28 May 1985, to carry out monitoring functions. Neither the committee’s concluding observations on the submitted state reports nor its general comments are binding, but its interpretations of the right to food, particularly its General Comment No. 12, play a crucial role in promoting this right.

is implicit in the right to food under the ICESCR, which protects the right to the highest attainable standard of physical and mental health.296

The right to adequate food addresses less severe food deprivation and is realised when every man, woman and child, alone or in community with others, has physical access297 and economic access298 at all times to a sufficient quality and quantity of food to satisfy the dietary needs of individuals.299 While this right is subject to progressive realisation, States are required to begin taking steps immediately to fulfil their obligations.300

The right to adequate food and water and the right to be free from hunger impose three different obligations on state parties, namely, obligations to respect, protect, and fulfil.301 Violations of these tripartite obligations can occur through either the “direct action”302 or the “omission or failure of States to take necessary measures stemming from legalobligations.”303


297 Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised, see CECSR General Comment No. 12, supra note 295 at para. 13.

298 Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Ibid, at para. 13.


303 Maastricht Guidelines, supra note 301 at para. 15.
The extra-territorial application of right to food

Members of the Saudi/UAE-led Coalition who are party to the ICCPR and ICESCR

The question of whether the incidents documented in this report amount to a violation of the right to food requires a brief analysis of the extraterritorial application of IHRL and whether those States that form part of the Saudi/UAE-led Coalition are bound by the aforementioned obligations.

The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that State parties that have ratified the ICESCR have to ensure the effective protection of all persons “within its territory or under its jurisdiction.”304 The extra-territorial application of human rights obligations is widely recognised, whereby State parties remain bound by the obligations to protect, respect and fulfil human rights in cases where their actions might impact “persons located outside any territory effectively controlled by the State, whose right to life is […] impacted by its military or other activities in a direct and reasonably foreseeable manner.”

Members of the Saudi/UAE-led Coalition who are parties to ICESCR,306 where they exercise effective authority and control or decisive influence over parts of Yemen,307 remain bound by their human rights obligations under ICESCR to refrain from

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306 All members other than Saudi Arabia and the UAE are parties to ICESCR.

undertaking activities which can have a direct and foreseeable impact amounting to the deprivation of food amongst the civilian population in Yemen. As highlighted by the former Special Rapporteur on the right to food, destroying crops or forcibly displacing people from their land or means of subsistence would violate the negative obligation to not interfere with peoples’ access to food.308

While the negative obligation not to violate the right to food while operating extraterritorially, for example by conducting airstrikes, is arguably easier to establish, it may prove more difficult to establish the positive obligation to provide food in a foreign territory. It has been argued that such positive obligations arise more strongly when the acts and omissions of foreign States are a major influence in causing the food insecurity.309 The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights extend these positive and negative obligations to situations where the States acting separately or jointly, are in “position to exercise decisive influence or to take measures to realise economic, social and cultural rights extraterritorially, in accordance with international law.”310

Members of the Saudi/UAE-led Coalition who are not party to the ICCPR and ICESCR

Saudi Arabia and the UAE—two of the few States not parties to the widely ratified ICCPR and ICESCR—still remain bound by the customary international law obligations reflected in them. The right to be free from hunger (in its most severe form where the deprivation would not leave sufficient food for survival) has been independently


309 Hutter, supra note 224; Hutter, supra note 284.

recognised as having status as customary law.\textsuperscript{311} This has also been recognised by the Special Rapporteur on the right to food:

Freedom from hunger is accepted as part of customary international law, rendering it binding for all States regardless of whether they are a party to [ICESCR].\textsuperscript{312}

This customary international law interpretation binds Saudi Arabia and UAE whilst operating in Yemen to comply with the right to food, notwithstanding their lack of ratification of the ICESCR.

In addition, where invited to intervene, an intervening State effectively stands in the shoes of the host State and is bound by the international and domestic law obligations of the host State in addition to their own obligations.\textsuperscript{313} The Saudi/UAE-led Coalition intervened in the conflict with the consent of the internationally recognized Yemeni Government, the de jure authority representing Yemen, which is bound by the ICESCR as a treaty party across the entirety of Yemen.\textsuperscript{314} Accordingly, the GEE has confirmed that Saudi Arabia and other members of the Saudi/UAE-led Coalition remain bound by the human rights obligations of Yemen, including those under the ICESCR, while operating in Yemen.\textsuperscript{315}

\begin{flushleft}

312 UN General Assembly, supra note 295 at para. 52.


314 See e.g., Mwatana for Human Rights and Columbia Law School Human Rights Clinic, supra note 90.

315 GEE, supra note 88 at para. 85. See also Sands et al., supra note 311 at para. 2.29; Deeks, supra note 172 at pp. 33-39; Byrne, supra note 172 at pp. 120-124. This stance is also supported by the former Special Rapporteur on the Right to Food, who highlighted that States are required to respect, protect and fulfil the rights of people in other countries. See UN Economic and Social Council, “The Right to Food: Report of the Special Rapporteur on the Right to Food,” UN Doc. E/CN.4/2005/47 (January 24, 2005), para. 48, https://undocs.org/E/CN.4/2005/47.
\end{flushleft}
The IHRL obligations of armed non-State groups

Although the extent to which armed non-State actors (ANSAs) have obligations under IHRL is debatable,\textsuperscript{316} there is broad acceptance that “[ANSAs] exercising either government-like functions or de facto control over territory and population must respect and protect the human rights of individuals and groups.”\textsuperscript{317} Determining the scope of the human rights obligations imposed on ANSAs is not a one-size-fits-all approach; on the contrary, this determination is based on a “differentiated approach,”\textsuperscript{318} which takes into account armed groups’ distinct organisation, authority and capacities.\textsuperscript{319}

In addition to abstaining from specific conduct, ANSAs that exercise power and control over a territory are required to take positive steps to ensure that the human rights of the civilian population under their control, or at least the minimum core obligations of these rights,\textsuperscript{320} are respected and fulfilled.\textsuperscript{321} Furthermore, upon displacement of a State authority, ANSAs “become subject to the obligation to fulfil (at least as obligation to facilitate).”\textsuperscript{322}


\textsuperscript{320} Rodenhäuser, supra note 318 at pp. 192-193.


\textsuperscript{322} Hutter, supra note 284 at p. 750.
On the basis of the above, and considering that the Ansar Allah (Houthi) armed group exercises territorial control and government-like functions in the northern part of Yemen, the obligations to respect, protect and fulfil the human rights obligations enshrined in the ICCPR and the ICESCR are applicable, to varying degrees, to the group. This is certainly the case with regard to the obligation “to respect” the right to food by not impeding peoples’ access to food. In addition, considering that “the de facto authorities control large swathes of territory, […] and exercise a government-like function in that territory,” and that “in the Houthi-controlled territories, formal State authorities are systematically paralleled by the Houthi supervisory system,” Ansar Allah is also under the obligation—to the extent possible—to “protect” and “facilitate” the enjoyment of the right to food by the individuals subject to their control.

Even where Ansar Allah assumes obligations to protect and fulfil rights under IHRL, Yemen as the de jure authority will not be relieved of its IHRL obligations. Yemen still maintains an obligation of due diligence to do all it can to protect persons under its jurisdiction against threats from ANSAs. Moreover, Yemen will still be obligated to ensure that the rights enshrined in the ICCPR are respected, within the limits of its effective power. These obligations have been acknowledged by Yemen.

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323 GEE, supra note 98 at para. 14; Fink, supra note 98 at p. 6; Geneva Academy-RULAC, supra note 116.

324 GEE, supra note 23 at para. 29; “Annex to the Letter from the Special Rapporteur on extrajudicial, summary or arbitrary executions; Vice-Chair of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Ansar Allah (Mr. Sharaf and Ms. Shabib),” OHCHR (October 6, 2020), p. 7, https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=2554.

325 GEE, supra note 98 at para. 14.

326 “The Houthi Supervisory System: The interplay of formal state institutions and informal political structures,” ACAPS Yemen Analysis Hub (June 17, 2020), https://www.acaps.org/sites/acaps/files/products/files/20200617_acaps_yemen_analysis_hub_the_houthi_supervisory_system.pdf?bclid=iwAR2DVHmT4yHkIuR7q4eNK4-8b-PPG3wNo7lAvkqZqoG6yspZWCSlZ4Ks

327 GEE, supra note 88 at para. 81.

328 See e.g., Geneva Academy, supra note 316 at p. 15.

329 GEE, supra note 88 at para. 81.

A group of marginalized “Muhamseen” being displaced from their homes due to clashes. Taiz Governorate. June 20, 2018
Destruction from air strike on an area that held more than 60 fishing boats in Al-Hima Port. Al-Khokha, Al-Hudaydah Governorate. December 14, 2015.
Saudi/UAE-led Coalition airstrikes on objects indispensable to the survival of the civilian population
Introduction

Mwatana for Human Rights, UN bodies and non-governmental human rights organizations have documented how airstrikes, shelling and other artillery attacks have destroyed or damaged civilian objects essential for meeting food and water needs, including agricultural facilities and areas, water infrastructure, objects and structures related to artisanal fishing and other critical infrastructure such as markets, electricity,

The body of a cow that was killed in an air strike on a cow farm in Al-Kadan Area, Bajil District, Al-Hudaydah Governorate. January 2, 2016.
roads and bridges through the conflict and as recently as June 2021. The NRC, for example, reported in 2020 that Yemeni farms were struck by airstrikes 348 times and impacted by at least 570 cases of ground shelling between during the January 2018 to September 2020 period. Parties to the conflict have also targeted health facilities, impacting the population’s ability to access life-saving treatment. Damage to critical infrastructure resulting from such attacks has increased Yemen’s risk of famine and disease and its reliance on external humanitarian aid.

The Saudi/UAE-led Coalition has conducted attacks damaging and destroying critical civilian objects through its aerial bombing campaign. Between March 2015 and August 2021, Mwatana documented approximately 579 airstrikes by the coalition that caused civilian harm, including killing and injuring thousands of civilians and damaging and destroying civilian property, across 19 Yemeni governorates.

The coalition has “near-exclusive control over airpower in the conflict,” and has carried out many thousands of airstrikes, which have caused immense damage to civilian infrastructure, including OIS, in Yemen. In March 2020, YDP reported that 31% of


332 NRC, supra note 86.


335 Mwatana for Human Rights, supra note 333 at p. 33.
the 20,624 air raids carried out by the coalition since March 2015 had hit “non-military civilian sites,” including farms, food storage sites, water and electricity, oil and gas, residential areas and IDP settlements. In its most recent report in September 2020, the GEE found that “airstrikes continue to be carried out by coalition forces without appropriate regard to international law principles of distinction, proportionality, and precaution,” and that “individuals in the coalition, in particular Saudi Arabia, may have conducted airstrikes...that may amount to war crimes.”

The PoE and GEE have reported on the Saudi/UAE-led Coalition’s use of precision-guided weapons, causing death and injury to civilians, including women and children. The use of widely-banned cluster munitions by the Saudi/UAE-led Coalition, as well as indirect fire weapons with wide-area impact—including mortars and rockets, and including in populated areas—has also been extensively documented. Such weapons often result in civilian casualties and damage to civilian objects in excess of any possible military advantage.

The following three sections describe Saudi/UAE-led Coalition airstrikes on food and water across three governorates of Yemen. Section 2 of this report documents attacks on agriculture in Baghtah and Bani Adhabi villages in the Al-Jar area of Abs District in Hajjah Governorate; Section 3 documents attacks on the Al-Hamazat and Al-Nushoor

336 As the Yemen Data Project explains, “[t]he dataset lists target category and subcategory for each incident, where information on the target is available. When listing permanent structures the target category refers to the original use of the target e.g. a school hit by an air raid is referred to as a school building with no further assessment made on its use at the time of the air raid, or any possible change of use over the course of the conflict.” See “Five Years of Data on Saudi-led Air War,” Yemen Data Project (March 25, 2020), https://us16.campaign-archive.com/?u=1912a1b11cab332fa977d3a6a&id=e0562bce18.

337 Yemen Data Project, supra note 336.


340 GEE, supra note 23 at p. 2, paras. 75, 80-82 and 420(c); GEE, supra note 88 at paras. 303 and 318; Human Rights Watch, supra note 46.

341 See GEE, supra note 23 at para. 75.
water facilities in the Al-Hamazat area in Sahar District and Al-Assaid Area in Kitaf wa Al Buqa’a District, respectively, in Saada Governate; and Section 4 documents attacks on fishing boats near the Al-Badea’a and Aqaban Islands in waters off Al-Hudaydah Governorate. Such attacks are discussed in the context of a pattern of evidence, where contextual evidence of similar conduct—such as repeated strikes on specific targets or areas—manifest as a pattern which can in turn be used to infer intent. While this report does not document the Saudi/UAE-led Coalition’s use of the de facto blockade and other Coalition conduct to restrict access to essential food and water, they also constitute contextual evidence from which intent may be inferred, discussed in Part E, Section 3. Based on the information available, it is possible to conclude that members of the Saudi/UAE-led Coalition responsible for the conduct documented intended to use starvation as a method of warfare, in that they deprived civilians of OIS with intent to starve civilians or with knowledge of the virtual certainty that such deprivations and conduct would, in the ordinary course of events, lead to starvation.

Airstrikes on agricultural infrastructure in Hajjah Governate

Farmers who could provide lifesaving food have been bombed, shelled and killed while planting in their fields. Yemenis are not falling into starvation. They are pushed into the abyss by men with guns and power. 344

344 NRC, supra note 86.

Photo: Watermelons that have been damaged due to the Houthi siege. Midi District, Hajjah Governorate. Midi District, Hajjah Governorate. October 11, 2020
Farming in Hajjah Governorate

The conflict has dramatically worsened Yemen’s food insecurity. As discussed in Part E, Section 2.2, the proportion of the Yemeni population that is food insecure has steadily increased since the start of the current conflict in 2014. Going into 2021, UN bodies and NGOs warned that Yemen was on the brink of famine and that without urgent intervention, 400,000 children were at risk of death.\(^\text{345}\)

The farming and agricultural sector has been particularly impacted by the conflict. According to ACAPS data, cultivated areas of land fell by 31% between 2014 and 2018.\(^\text{346}\) Oxfam found that Yemen’s total cereal production in 2016 had fallen by 48% compared to pre-conflict levels, and livestock production levels had fallen by 45%,\(^\text{347}\) further contributing to food insecurity. In a 2017 Briefing Note, Oxfam found that repeated Saudi/UAE-led Coalition airstrikes on markets and agricultural areas have had a substantial effect on farming across Yemen, and listed Coalition airstrikes as one of the reasons farmers have been abandoning their land.\(^\text{348}\)

\(^\text{345}\) See e.g., WFP, supra note 70.
\(^\text{347}\) Oxfam, supra note 334 at p. 8.
\(^\text{348}\) Ibid, at p. 9.
Food insecurity and poverty have historically been concentrated in rural areas of Yemen, where 63% of the population lives.\textsuperscript{349} Farming can be critical in rural areas as a source of key foods, and as a source of livelihoods, particularly given high food prices and a lack of access to markets selling food in rural areas; it is estimated that over 50% of rural households do not have a market in their area.\textsuperscript{350} From the start of the conflict through 2018, OCHA estimated that, due to the economic impacts of the conflict (and other indirect impacts), “the livelihoods of 1.7 million rural households engaged in crop and livestock production ha[d] been seriously compromised.”\textsuperscript{351}

Hajjah, a largely rural governorate in northern Yemen, has been particularly affected by food insecurity. World Bank data from 2014 suggests that more than half the citizens in Hajjah—63.9% of the population, or 1,251,550 people—were living in poverty prior to the start of the conflict.\textsuperscript{352} For the people of Hajjah, the ability to grow crops, keep livestock or fish is critical; they are heavily reliant upon agriculture both as a means of food security and as a source of income.\textsuperscript{353} Since the start of the conflict, poverty and food security for individuals living in Hajjah has significantly worsened. Throughout 2015, as the price of fuel increased dramatically, many farmers within Hajjah could no longer afford to water their crops using the water pumps on their farms.\textsuperscript{354} IPC data for Hajjah shows that food insecurity in the governorate has continued to increase since the conflict began in 2014,\textsuperscript{355} with three Hajjah districts in IPC phase 5 famine in the January to June 2021 period.\textsuperscript{356}


\textsuperscript{350} Oxfam, supra note 334 at p. 9.


\textsuperscript{354} Oxfam, supra note 334 at p. 8; “Yemen’s farmers forced to eat leaves as war devastates harvests,” Middle East Eye (March 3, 2019), https://www.middleeasteye.net/news/yemens-farmers-forced-eat-leaves-war-devastates-harvests.

\textsuperscript{355} See Part E, Section 2.2.

\textsuperscript{356} Integrated Food Security Phase Classification, supra note 72 at 4.
Airstrikes impacting farming in Hajjah Governorate

Saudi/UAE-led Coalition airstrikes on agriculture and on water infrastructure on farms have worsened food insecurity in Yemen. Such attacks have had particularly devastating effects on rural areas reliant on agriculture, which are widespread across Hajjah Governorate. Within these areas, farmers and farm workers lost their source of livelihood and access to food after airstrikes. Some fled after Coalition attacks, living as IDPs dependent on humanitarian aid, which is not always available and may not be sufficient to meet needs. Where farms sold food, including to local markets, these attacks also impacted the availability, supply, and price of food for other Yemenis.

Mwatana has documented approximately 90 Saudi/UAE-led Coalition airstrikes on farms, livestock, agricultural land, agricultural tools and equipment, and food in stores across the region.

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357 Integrated Food Security Phase Classification, supra note 72.


360 Al-Jer is located in the western part of Abs District. The last population census in Al-Jer was carried out in 2004, at which time there was a population of 8,551 individuals and 1,340 families across the smaller villages within Al-Jer of Al-Saqef, Bhagta, Bani Hadi, Al-Nawashir, Al-Tawila, Al-Arif, Al-Hareeq, Deer Al-Aqam, Al-Juhloufia Al-sara’ah, Habeel Al-Jalaheef, Jarb Al-A’ak, Bani Manfas and Bait Adhabi. At the time of the census, the average population growth in Hajjah Governorate was 3.04% annually, which, if remaining consistent, would lead to an estimated population of about 14,227 in 2021. However, this estimate does not take into account the impact of the conflict and persistent food insecurity since long prior to the conflict, which makes it difficult to know the size of the population today. See “Comprehensive Directory, Hajjah Governorate, Abs District,” https://web.archive.org/web/20191121205540/yemenna.com/index.php?g=guide&op=show_pr&ide=706.

361 Information provided by a Mwatana for Human Rights field researcher in Hajjah on December 2020.


The attacks in Abs District were particularly concentrated in Al-Jar village, which is well known for its large farms.\footnote{360 Al-Jar is located within the Tahama Plain, which runs parallel to the western coast of Yemen, from the Yemeni-Saudi border down to Bab Al-Mandab. The Tahama Plain is famous for its fertile land and access to irrigatable water (though this requires proper infrastructure, such as wells, to be able to access the water), making it a prime location for agriculture.\footnote{361 Mwatana has documented at least 11 airstrikes on farms in the Al-Jer area, two of which are described in detail below.} As part of its research, Mwatana interviewed 23 individuals about the impact of specific Saudi/UAE-led Coalition airstrikes that hit farms in Hajjah Governorate, including victims, witnesses, residents of the different areas where attacks occurred, individuals who worked on the farms, and others.\footnote{362 Nine of these people were interviewed specifically about the two cases described in detail below. Mwatana also collected 17 additional pieces of evidence, including photographs of the farms after the attacks and victims’ medical
records. In at least nine of these attacks, Mwatana did not identify any military target on the farms.

The airstrikes documented by Mwatana destroyed Al-Jar residents' main source of food and income, leaving them food insecure and in fear of future attacks.\textsuperscript{363} One of the health workers in the area, 40-year-old Muhammad Siddiq, said: “There are no alternative sources of food in this area other than farms. All the residents in this area are farm owners or workers. [...] Everyone had enough food from the crops of his farm [before the attack], and the farms were a good source of income as well, as many farms used to sell their crops in the markets of Hajjah, Sana’a and Hudaydah.”\textsuperscript{364} Muhammad added: “I cannot recall an attack on a farm, in which the farm owner or workers were warned. The same scenario is always repeated: a sudden attack and farmers flee for their lives to any other village, camp, or sometimes to live in empty lands.”\textsuperscript{365}

Many farm owners were displaced after the attacks, as the cost of repairing the damage was often too high or the land was no longer cultivable. Additionally, in many cases, the Ansar Allah (Houthi) armed group took over the farms after the farmers fled. A 30-year-old local resident, Mohammed Yahya, said: “Many of Al-Jar ’s farms were attacked by the coalition. Most of them lost their water pumps, electricity generators, and old trees that they have been growing for decades. Owners are disappointed and not willing to repair their farms. It is really costly to repair these farms, and if they can afford it, will the coalition stop attacking them?”\textsuperscript{366}

\textit{A 40-year-old resident of the area, Saeed (a pseudonym), said:}

\begin{quote}
Many farms have stopped and become completely out of service. In most cases, the farm is targeted, and those who were in it are displaced. Then Ansar Allah occupies it and does not allow the farm owners to return.”\textsuperscript{367} Another resident of the area also said that “[m]any of those who were displaced did not find anyone to help them or provide them with humanitarian aid, and even those who decided to stay, no one helps them.”\textsuperscript{368}
\end{quote}

\textsuperscript{363} Mwatana for Human Rights interviews with residents of Al-Jer from interviews conducted between 2017 and 2020.
\textsuperscript{364} Mwatana for Human Rights interview with Muhammad Siddiq on December 13, 2020.
\textsuperscript{365} Ibid.
\textsuperscript{366} Mwatana for Human Rights interview with Mohammed Yahya on December 17, 2020
\textsuperscript{367} Mwatana for Human Rights interview with Residents of Al-Jer on December 14, 2020.
\textsuperscript{368} Ibid.
Case Study 1

Jalhouf Farm

Saudi/UAE-led Coalition Airstrike on Jalhouf Farm on April 8, 2017
Baghtah village, Al-Jar area, Abs District and Hajjah Governorate

132,000 m²

Ali Jalhouf’s farm is located in Baghtah village of Al-Jar area in Abs District, Hajjah Governorate. The farm is approximately 132,000 square meters, and employed 30 workers who lived and worked on the farm cultivating corn, sesame, and watermelon, as well as melons and tomatoes on a seasonal basis. The farm is co-owned by Ali Jalhouf and 14 other partners. The owners, the workers, and their families totaled about 250 people.

The farm was a source of income and food for both the farm’s owners and employees. Surplus crops were sold at Shafar Market in Abs District, Bajel market in Bajel District of Al-Hudaydah Governorate, Al-Hudaydah city and in Sana’a city. One of the owners of the farm, 28-year-old Ahmed Jalhouf, said: “The farm used to produce an average of 2000 kg of sesame and 3000 kg of corn and nearly 80 tons of watermelon per year. The farm crops met our needs and the needs of our workers, and we used to sell a large part of the crops in markets outside the region, including in Shafar, Al-Hudaydah and Sana’a.”

On Saturday, April 8, 2017, at approximately 5:00 a.m., the Saudi/UAE-led Coalition bombed the Jalhouf farm, striking a 3x3 meter room containing the farm’s water pump and wounding 4 civilians, including a child.

The attack destroyed the farm’s water pump, the pond, the irrigation network, and resulted in the death of four livestock. Everyone on the farm was a civilian.

At the time of the attack, the western plain of Hajjah, where Abs District is located, was classified as IPC phase 4 (emergency).

**Figure 2: Yemen acute food insecurity March 2017 (projection)**

Mwatana interviewed two of the survivors the day of the attack and conducted follow-up interviews with two witnesses in December 2020. Based on interviews with these four individuals, the nearest military target Mwatana researchers identified was the front line located approximately 30 kilometers north of the farm. A former employee of the farm, Hadi Thabet Ahmed Hakimi, said: “There were no armed men in the farm. All those entering it were the owners, workers or civilians who came to buy the crops.”

The survivors of the attack on the farm left without their source of income and food, and fearing another attack, fled the area. Ahmed Jalhouf said: “After the bombing,

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370 Integrated Food Security Phase Classification (March 1, 2017), supra note 75.

371 Dedicated research of open-source data by Bellingcat, including satellite imagery, did not reveal the presence of military objectives at the site at the time of the attack.

we were displaced to different areas. I do not know where the rest of the owners and workers live, I do not know whether they are still alive or dead.”\(^{373}\) He added: “We left our farm because it became impossible to cultivate it after the water pump was destroyed. We are unable to repair our farm. We are afraid that the planes will bomb it again, and we cannot afford the repair costs.”\(^{374}\)

After the attack, survivors faced food insecurity and struggled to find aid to assist them in meeting their basic needs. It is generally more difficult for humanitarian aid to reach small cities and villages like Al-Jar or the other areas to which many of the residents fled.\(^{375}\) Hadi Thabet Ahmed Hakimi said: “The farm we used to work on has been ruined. We lost our source of income and we are looking for an alternative source, but we have not found anyone to help us.”\(^{376}\)

Ahmed Jalhouf described the coalition’s attacks on farms as being a common occurrence in the area. “The coalition has targeted many farms in Al-Jar. Most of the farms have become empty. This is wrong and aggressive behavior,” he said.\(^{377}\)

The Jalhouf farm was occupied by the Ansar Allah (Houthi) armed group after the owner and workers fled in the aftermath of the attack. At the time this report was drafted, the farm was still damaged and its owners were not able to reclaim it from Ansar Allah. Sameer (a pseudonym), 28-year-old farmer, said: “We cannot access the farm anymore. Ansar Allah prevents anyone trying to go in. They say ‘this area is dangerous now, you are not allowed to enter for your own safety.’”\(^{378}\)

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\(^{374}\) Ibid.

\(^{375}\) Mwatana for Human Rights interview with Ahmed Jalhouf by phone on March 17, 2021.


\(^{378}\) Mwatana for Human Rights interview with Sameer (a pseudonym) on March 17, 2021.
Case Study 2
Al-Taweel Farm

Saudi/UAE-led Coalition Airstrike on Al-Taweel Farm on July 4, 2019
Bani Adhabi village, Al-Jar area, Abs District and Hajjah Governorate

374,000 m²

Muhammad Al-Taweel is the owner of a farm approximately 374,000 square meters located in the Bani Adhabi village of Al-Jar area, where there are around 40 agricultural farms. The farm was used to grow corn, tomatoes, watermelon, sesame, and fodder and had about 50 beehives. Muhammad, his relatives and 15 employees worked on the farm, which provided them with a source of food and income. The owner, his family, and some of the workers and their families lived on the farm—totaling around 172 individuals.

Annually, the farm produced a total of 40 20-kilogram baskets of watermelon, 40 20-kilogram baskets of tomatoes, six 50-kilogram bags of corn and five 50-kilogram bags of sesame, in addition to fodder and honey, according to Othman Abdo, a 30-year-old farmer on the farm.

In addition to being a source of food for the families on the farm, the farm sold the produce to Abs Market. Khaldoun (pseudonym), a 24-year-old farm worker, said: “The farm was our source of income. We used to eat and sell its crops, and give gifts to visitors and neighbors.” Yusef Ashram, the 24-year-old beekeeper on the farm, said: “I used to keep bees on the farm and I had three assistants. The honey that the bees

379 Mwatana for Human Rights interview with Khalidoun (a pseudonym) on March 17, 2021.
380 Ibid.
381 Mwatana for Human Rights interview with Othman Abdo on December 14, 2020.
382 Mwatana for Human Rights interview with Khalidoun (a pseudonym) on March 17, 2021.
produced met our needs. We were not in need of any assistance.”

On Thursday, July 4, 2019, at approximately 1:00 a.m., the Saudi/UAE-led Coalition airstrike bombed Muhammad Al-Taweel’s farm in Al-Jar area. The bomb fell about 2-3 meters away from the farm’s water pump, and about five meters from a tree under which the farm’s beekeeper was sleeping. The beekeeper sustained serious burns as a result of the attack, and had shrapnel in his limbs and other wounds to his body.

The attack destroyed the farm’s water pump, the irrigation network and the beehives.

At the time of the attack, Hajjah was projected to remain in IPC phase 4 (emergency) for the June to September 2019 period.

Figure 3: Projected Acute Food Insecurity Phase June – September 2019


Mwatana interviewed five individuals after the attack: Mwatana met with two of the farm workers 16 days after the attack and interviewed three individuals—including a victim, the farm owner’s son, and an eye-witness—a year after the attack.

Mwatana researchers did not identify any military targets in or near the farm at the time of the attack. None of the individuals interviewed identified any military targets nearby at the time of the attack or before the attack—the nearest military target identified was a frontline about 35 kilometers to the north. Yusef Ashram said: “There was only me and some of the workers at the time of the attack. There were no militants present during or before the attack.”386 Khaldoun added: “Many other farms were bombed. I remember eight farms in our area were bombed by the coalition. They want to starve us.”387 According to the witnesses and Mwatana’s research, everyone on the farm at the time of the attack was a civilian.

Parts of the farm became unsuitable for agriculture after the attack, including due to the destruction of the water pump and the water network. Without food or income from the farm and without access to humanitarian aid, the survivors faced food insecurity. Many of them fled the area the day of the attack and did not return.

Khaldoun said: “The farm that was the source of our food was destroyed, and we are consuming basic supplies that come from outside the area at high prices. No one helped us flee the area or provided us with humanitarian aid. Even the aid provided by relief organizations does not reach us because members of the Ansar Allah seize them.”388 Another worker added: “We are tired of filling out forms! The staff of relief organizations visit us and ask us to fill out forms requesting humanitarian aid, but nothing has arrived.”389

Khaldoun added: “The farm I was working on was occupied by the Ansar Allah armed group [after we fled].”390

At the time the report was written, the Al-Taweel farm was still occupied by the Ansar

387 Mwatana for Human Rights interview with Khaldoun (a pseudonym) on December 14, 2020.
388 Mwatana for Human Rights interview with Khaldoun (a pseudonym) on December 14, 2020.
389 Mwatana for Human Rights interview with Al Taweel farm workers on December 14, 2020.
390 Ibid.
Allah (Houthi) armed group, and the owners and workers of the farm were unable return to it.391

Other documentation of airstrikes impacting farming in Hajjah

In addition to Mwatana’s documentation of airstrikes impacting food and food infrastructure in Yemen, other credible organizations and groups have also reported on airstrikes impacting farming, food and agriculture in Yemen, including in Hajjah. Organizations have documented the conflict’s impact on farming and agriculture since the start of the war, and data suggests that, in spite of the worsening food insecurity, these attacks have continued.

In their 2016 report, the PoE reported on three Coalition attacks on farms and agricultural areas between April 7, 2015 and January 26, 2016.392 The PoE also investigated an airstrike on Al Aqil Factory, a food production facility located in Sana’a, on August 9, 2016, and included the investigation in two separate reports.393 The Panel concluded that the evidence “strongly demonstrate[d]” that the Saudi/UAE-led Coalition had violated IHL principles, finding “that the use of precision-guided weapons demonstrates that the factory complex was the intended target of these air strikes,” and that “there was no evidence to support a finding that the complex had become a legitimate military objective.”394 The PoE has also documented several airstrikes on marketplaces, which may have further impacted access to food.395

392 PoE (2016), supra note 331 at Annex 47.
393 PoE (2018), supra note 331 at Annex 59, Appendix A to Annex 60; PoE (2017), supra note 331 at p. 46, Table 7.
394 PoE (2018), supra note 331 at para. 9, 10 of Appendix A to Annex 60.
The GEE has also investigated airstrikes by the Saudi/UAE-led Coalition that have impacted farming and access to food. In 2019, the GEE stated that while all parties to the conflict have attacked OIS, “Coalition airstrikes notably destroyed or damaged farmland, water facilities, essential port infrastructure and medical facilities.”396 The GEE’s 2019 report stated that the group had “examined 14 airstrikes that hit locations in Sa’dah and Hajjah governorates between March 2018 and June 2019,” all of which had reportedly “hit civilian infrastructure, including farms, telecommunication towers, banks, schools, and trucks carrying agricultural goods.”397 From 2015 to 2019, the GEE recorded “14 incidents of airstrikes hitting mostly crowded marketplaces, 19 incidents of airstrikes hitting farms or agricultural workers; eight incidents of airstrikes hitting food processing or storage facilities; and 12 incidents of airstrikes on civilian food transports.”398

In the same report, the GEE also included information from two detailed investigations the group had conducted regarding Coalition airstrikes on farms. One such investigation described an airstrike that occurred on October 24, 2018 in Mahatat al-Mas’odi area, al- Mansuriyah district, Al-Hudaydah Governorate, in which 21 civilians, including two children, were killed, and seven injured, by the airstrike.399 The GEE stated that they had not received “reports of any apparent military objectives near the farm at the time of the attack.”400 The GEE concluded that “the destruction of the farm and the killing of breadwinners destroyed the sources of income for many in the area,”401 and that the evidence suggested that the coalition “may not have complied with the principles of distinction, proportionality and precautions in attack.”402 The report also described an airstrike that took place on March 9, 2019 and hit two civilian homes and a farm in Maghrabat Talan, Kushar, in Hajjah,403 finding that “there [was] nothing to suggest” that there had been any military targets in the area.404 The GEE found that the evidence suggested the Saudi/UAE-led Coalition may have violated the principles of distinction

396 GEE, supra note 88 at para. 52.
397 GEE, supra note 88 at para. 429.
398 GEE, supra note 88 at para. 755.
399 GEE, supra note 88 at para. 521.
400 Ibid, at para. 521.
403 Ibid, at para. 440.
404 Ibid, at para. 446.
and proportionality in the March 9 attack.405

In 2020, NRC, using data from the Civilian Impact Monitoring Project (CIMP), found that from January 2018 to September 2020, Yemeni farms were struck by airstrikes 348 times, leaving crop fields “barren” and leading to the loss of livelihoods for millions of Yemenis.406

A separate NRC report also described an airstrike on May 6, 2020 that hit a family on their farm in Al-Jar.407 The airstrike killed three members of the family.408 One of the individuals NRC interviewed stated that after this strike, “other strikes followed,” and that “[w]e saw the deaths in front of us.”409 Many of the individuals and families described in the report were displaced.410

Amnesty International has also described the devastating impact of the Saudi/UAE-led Coalition’s use of cluster munitions, which are widely banned,411 on farming populations in Yemen.412 Amnesty found, based on investigations into attacks in Saada, Hajjah, and Sana’a, that cluster munition attacks have killed and injured civilians, and had the effect of “severely damag[ing] livelihoods by killing livestock and turning agricultural land into de facto minefields, interfering with animal herding as well as harvesting of banana, mango and tomato crops.”413 In interviews, Yemeni farmers and herdners told Amnesty International that they felt they had “no choice but to work in contaminated areas despite the risks.”414

405 Ibid, at para. 448.
406 NRC, supra note 86.
408 Ibid.
409 Ibid.
410 Ibid.
413 Ibid.
414 Ibid.
Martha Mundy, a Professor Emeritus in Anthropology at the London School of Economics, relying on data compiled by the Sana’a-based Ministry of Agriculture and Irrigation and YDP, found that the target most frequently hit by Coalition airstrikes in almost every governorate from March 2015 to August 2016 was agricultural land. From the fact that agricultural land only constituted “just under 3% of the land” in Yemen, she argued that the coalition would have had to intentionally target agricultural land to hit it so frequently.416

YDP’s data includes about 1112 Saudi/UAE-led Coalition air strikes impacting food and food-related sites.417 In its dataset as of mid-October 2020, YDP had recorded about 103 airstrikes on farms in Hajjah Governorate, including about 59 in Abs District, and about 54 of these in Al-Jer (spelled as “Al-Jar”).418

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416 Ibid.

417 This number is based on the Yemen Data Project’s data on airstrikes impacting farms, fishers’ boats, food storage facilities and transportation, and markets. The Yemen Data Project does not make specific claims about the legality of individual recorded airstrikes under IHL, as each object’s category is recorded based on its status before the war, and does not take into account any change of use.

418 See Annex A.1. Attacks for which the target is unknown or where the target was food storage/transportation or a market are included, such that even more attacks may have occurred than outlined above. An up-to-date incident table is available for download here: https://yemendataproject.org/data.html.
Airstrikes on water facilities and water sources in Saada Governorate

[Saudi/UAE-led coalition planes] waged an “out-and-out coercive air campaign” of “terror bombing” over the city of


that meant everything: cranes, bridges [and] ministries....”


[bhoo chd girs fechng aer in Maaen isric, mana simah oernorae Noemer 12, 2020]
Access to water in Saada Governorate

Yemen is one of the most water scarce countries in the world. Long before the outbreak of the current conflict, water scarcity was a significant issue in Yemen. Accordingly, the infrastructure supporting Yemen’s water is indispensable to the population’s access to water.

Data from Oxfam indicates that in 2014, 13 million of Yemen’s 27-million-person population did not have access to clean water. Six years later, UNICEF reported that 18 million people in Yemen were in need of “water support” across the country—about two-thirds of Yemen’s population at that time. According to ICED Facility, the Water and Environment Centre of Sana’a University conducted an assessment of the war’s impact on rural water, sanitation and hygiene (WASH) and found that water and sanitation infrastructure had

2014

13 Million

of Yemen’s 27-million-person population

Did not have access to clean water

Source: Oxfam

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been damaged across Yemen.\textsuperscript{423} The Centre’s data from 2014-2016 included damage to 962 WASH facilities, 39% of which were destroyed completely. Of these WASH facilities, 438 were water facilities. OCHA reported in February 2021 that the country’s water infrastructure was operating at less than 5% efficiency.\textsuperscript{424}

The right to water and its protection under IHL is intertwined with the right to food and the deliberate starvation of civilians as a violation of IHL and as a war crime. As set out in Part F, Section 1.2.2.1, water installations and supplies and irrigation works, including reservoirs, are all listed as OIS under IHL.\textsuperscript{425} A reduction in access to clean water—an
essential component of human consumption and necessary to maintain nutrition—adversely affects the survival of the population.

Access to water is also closely linked to resilience, livelihoods and food production. According to OCHA, the vast majority of Yemen has an arid climate, and 90% of Yemen’s groundwater is used for irrigation, meaning that where water resources have declined, agriculture—and thus access to food—has also declined.

Further, reduced access to clean water impacts Yemenis’ ability to remain physically healthy, and thereby affects their ability to endure the malnutrition that follows food insecurity. Water-borne diseases such as cholera that thrive in contaminated water and in areas that do not have proper water and sanitation structures have persisted throughout the conflict in Yemen. The largest-ever documented cholera outbreak occurred after the conflict began, in which over a million suspected cases were reported in just two years, from 2016 to 2018. UNICEF has warned that attacks on water infrastructure “jeopardize efforts to prevent another outbreak of cholera and acute watery diarrhoea in Yemen.” Access to clean water has also impacted the spread of other diseases, such as COVID-19, as water scarcity reduces peoples’ abilities to take preventative measures, such as handwashing, thus increasing the risk of the further spread of the disease and exacerbating the impacts of food insecurity.

Access to water is of particular relevance in Saada Governorate, which is located in a mountainous, semi-arid area of Yemen with little rainfall and with high rates

427 Ibid, at p. 36.
431 ACAPS, supra 62 at p. 6.
of water scarcity. It is also one of Yemen’s northernmost and poorest governorates.\textsuperscript{433} According to the Berghof Foundation, a German NGO focused on conflict transformation and peacebuilding,\textsuperscript{434} the poverty rate in Saada was already 84.5\% prior to the start of the war.\textsuperscript{435} Since then, it has very likely increased.\textsuperscript{436} Water-borne diseases, such as cholera and acute watery diarrhoea, spread easily in Saada, due in part to the shortage of clean water.\textsuperscript{437} These diseases can in turn lead to loss of nutrients and malnutrition.\textsuperscript{438}
Airstrikes impacting water in Saada

Bordering Saudi Arabia and an Ansar Allah stronghold, Saada has been significantly impacted by the current conflict, both by the direct physical impacts of the war, and by the psychological and economic impacts the war has had on residents of the governorate. The Civilian Impact Monitoring Project (CIMP) has reported on many instances in which different warring parties damaged and destroyed water facilities through various forms of armed violence, including repeated attacks impacting water in Saada Governorate.

The Saudi/UAE-led Coalition has repeatedly damaged and destroyed water infrastructure in airstrikes. The assessment conducted by the Water and Environment Centre of Sana’a University mentioned above recorded 145 WASH facilities destroyed within Saada Governorate by various forms of attacks by different warring parties between 2014 and 2016. The assessment specified that most of the documented damage was caused by airstrikes. Such strikes have exacerbated the challenges residents face in meeting their basic needs in the water-poor governorate.

Mwatana has documented approximately 25 Saudi/UAE-led Coalition airstrikes on water sites, water infrastructure and means of water transportation in Yemen since 2015. Of the 25 documented Saudi/UAE-led Coalition airstrikes on water sites, 17 occurred in Saada Governorate, including four strikes impacting water in 2015, three in 2017, seven in 2018, two in 2019 and one in 2020. These 17 strikes hit 12 different

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441 ICED Facility, supra note 423.

442 Ibid.

443 Berghof Foundation, supra note 435 at p. 64, fn. 185.

444 See Part D.
water facilities (including wells and water rigs) of an already limited number of water facilities in Saada Governorate. Of the 17 documented strikes impacting water in Saada, most occurred in just two districts. Seven attacks occurred in Sahar District, which had a population of 207,208 in 2020, according to data from the Berghof Foundation,445 and five were in Kitaf wa Al Buqa’a, which had a population of 67,169 in 2020.446

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Saudi/UAE-led Coalition airstrikes

on water sites, water infrastructure and means of water transportation in Yemen since 2015.

17 in Saada Governorate.

Source: Mwatana

This report describes Coalition attacks, and the impact of those attacks, on two water facilities—one in Sahar District, and one in Kitaf wa Al Buqa’a District. As part of its research, Mwatana interviewed 24 individuals about the attacks, including eyewitnesses, residents of the areas of the attacks, engineers and others who worked at the water facilities, humanitarian workers, and others. Ten of those interviewed were asked specifically about the two attacks detailed below. Mwatana also collected 19 additional pieces of evidence, including photographs of the facilities before and after the attacks and satellite imagery of the attack sites.

Many of the individuals Mwatana interviewed believed the coalition airstrikes deliberately targeted water infrastructure.

445 Berghof Foundation, supra note 435 at p. 63.
446 Ibid.
A 37-year-old engineer working in water facilities in Saada, Abdul Salam (a pseudonym), said:

"The targeting of water sources in Saada was a common pattern, especially in 2015 and 2016. Through my work in water facilities, I found more than eight water facilities that were targeted by airstrikes in Saada." 447

Saad (a pseudonym), a 37-year-old engineer who works in water and sanitation in Saada, said:

"Two water facilities I was working on rehabilitating were targeted. One of them was targeted less than a month after the installation of the solar panel, and the other was targeted in the cement tank twice during our work period. These can only be intentional acts." 448

Because of the scarcity of water in Saada, attacks on water infrastructure in the governorate were particularly devastating.

In 2018, UNICEF said that,

"Since 2015, the escalation of conflict has only exacerbated this already dire situation, with attacks and military action on and around water infrastructure cutting off even more people from access to safe drinking water." 449

Saada has consistently been one of the governorates where humanitarian needs have been most acute. 450 In 2018, OCHA reported that more than 800,000 people in Saada—

447 Mwatana for Human Rights interview with Abdul Salam (a pseudonym) on December 10, 2020.
448 Mwatana for Human Rights interview with Saad (a pseudonym) on December 16, 2020.
450 OCHA, supra note 426 at pp. 4–6, 11, 34 and 37. Note that in Part H, Section 2, of this report, we discuss the ways in which Ansar Allah has restricted the ability of humanitarian organizations to assess needs in Saada governorate. Although these numbers may be affected by this, the information is generally consistent with the overall context in the governorate (e.g. massive humanitarian needs, and water scarcity), which was also evident in Mwatana’s field research in the governorate for this report.
at least 83% of the governorate’s population—would need humanitarian assistance in 2019, with 90% of that group in dire need and pockets of the governate at risk of famine (IPC phase 5). In 2018 alone, IDPs increased in Saada from 105,400 persons to 306,100 persons, exacerbating water needs. By 2019, UNICEF reported that the water access situation in Saada was “particularly dire” and taking a “heavy toll on the health” of inhabitants. According to Oxfam, influxes of displaced people in certain areas have also strained existing water resources. By 2021, and as shown in Figure 1, significant parts of Saada were projected to be in IPC phase 4 emergency.

Saada is one of the most difficult to reach governorates and therefore one of the most inaccessible for humanitarian workers, presenting yet another challenge for civilians who do not have, or have limited, access to water and other necessities. Access to humanitarian aid in Saada is adversely affected in many ways, not only by the de facto naval blockade attributable to the Yemeni Government and Saudi/UAE-led Coalition, but also due to the obstacles imposed by Ansar Allah in territories under their control, and in Saada specifically.

A humanitarian worker and engineer in Saada Governorate, 32-year-old Essam (a pseudonym), said:

“We face many obstacles on an ongoing basis. Though we only do anything after obtaining approval from the [Ansar Allah (Houthi) armed group], we are nevertheless stopped for hours at many checkpoints, and sometimes we are prevented from carrying out the work we have already obtained licenses to do. We are usually accused of sending coordinates to coalition countries.”

451 Ibid, at pp. 33-34.
452 Ibid, at p. 16.
453 Bracquemont, supra note 437.
454 Oxfam, supra note 421.
455 Integrated Food Security Phase Classification, supra note 72 at p. 6.
457 Dwyer, supra note 456.
Restrictions on humanitarian aid imposed by Ansar Allah are discussed in Part H, Section 2, of this report.

Within Saada, some of the hardest to reach districts include AsSafra, Sahar, and Kitaf wa Al Buqa’a districts. Of the coalition’s airstrikes on water facilities in Saada, many of them have impacted Sahar and Kitaf wa Al Buqa’a districts, which are described in more detail below.

459 Dwyer, supra note 456.
Case-study 1

Al-Hamazat Water Facility

Saudi/UAE-led Coalition Airstrikes on Al-Hamazat Water Facility on November 17, 2015 and April 17, 2018

7,000 beneficiaries from 600 households

Al-Hamazat area, Sahar District, Saada Governorate

The Al-Hamazat Water Facility is located on a hill, southwest of the Al-Hamazat area of the Sahar District, about six kilometers northeast of Saada City. The area is host to many IDPs. After the Saudi/UAE-led Coalition announced the start of its military campaign in Yemen, many IDPs fled to the area due to its proximity to the city and the fact that the coalition was striking the area less than Saada city at the time.

As the Al-Hamazat region was suffering from water scarcity and a resultant decline in agricultural production, in 2014, the Rural Water Authority established the Al-Hamazat Water Facility, the first facility to cover the region’s water needs. Previously, the area used to rely on shallow wells that were privately owned.

The Facility consisted of an artesian well, a pump, a cement tank, and a main and auxiliary water distribution network that distributed water for drinking and personal use to about 7,000 people from about 600 families from the Al-Hamazat area.

On Tuesday, November 17, 2015, at approximately 9:00 pm, a Saudi/UAE-led Coalition aircraft dropped two bombs on the cement water tank of the Al-Hamazat Water Facility, Sahar District, Saada Governorate. As

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460 Mwatana for human rights researcher’s remarks and satellite imagery.
461 Mwatana for Human Rights interviews with Mourad (a pseudonym) and Khaleel (a pseudonym) on December 16, 2020.
462 Mwatana for Human Rights interviews with Mourad (a pseudonym) and Samed (a pseudonym) on December 16, 2020.
463 Mwatana for Human Rights interviews with Saad (a pseudonym); a worker in the field of water and sanitation and Samed (a pseudonym); a humanitarian worker on December 16, 2020.
a result, the cement reservoir was completely destroyed, and the facility stopped working.465

In the months prior to the attack, Saada was projected as being in IPC Phase 4 (emergency).

![Yemen IPC Map](image)

Figure 4: Yemen acute food insecurity June to March 2015 (projection)466

The facility was out of service for two years, until 2017, when UNICEF repaired the facility at a cost of more than 7.7 million Yemeni riyals (equivalent to approximately US$22,000 at the time).467 During the two years it was out of service, the facility’s 7,000 beneficiaries were forced to get water either through privately-owned wells in Al-Hamazat (which did not contain a lot of water and therefore sales were very limited)

465 Mwatana for Human Rights interviews with Mourad (a pseudonym) and Samed (a pseudonym) on December 16, 2020.

466 FSIS, supra note 75.

467 Mwatana for Human Rights interview with Saad (a pseudonym) on December 16, 2020.
or by buying water from trucks delivering water from neighbouring areas.\textsuperscript{468} Both of these options were very expensive for residents—prior to the airstrike, residents paid a monthly bill of around 1000-1500 Yemeni riyal per household, while after the attack, they paid around six times that amount.\textsuperscript{469}

In April 2018, Oxfam also installed a solar energy system to run the Al-Hamazat Facility at an additional cost of US$49,580.\textsuperscript{470} That same month, however, a Coalition airstrike hit the facility again.

On Tuesday, April 17, 2018, at around 9:30 p.m.\textsuperscript{471} a Saudi/UAE-led Coalition aircraft dropped at least one bomb on the Al-Hamazat Water Facility, causing damage to the cement tank and the solar energy system and to parts of the main water distribution network.\textsuperscript{472} The Facility remained out of service until it was repaired by Save the Children in 2019.\textsuperscript{473}

At the time of the attack, Saada was classified as being in IPC Phase 3 (crisis) or higher, and in the months thereafter the governorate rose to IPC Phase 4.\textsuperscript{474}

\textsuperscript{468} Mwatana for Human Rights follow up interviews with Mourad (a pseudonym) and Khaleel (a pseudonym) over phone on March 14, 2021.

\textsuperscript{469} Mwatana for Human Rights follow up interviews with Mourad (a pseudonym) and Khaleel (a pseudonym) over phone on March 14, 2021.

\textsuperscript{470} Mwatana for Human Rights interviews with Saad (a pseudonym) and Samed (a pseudonym) on December 16, 2020.


\textsuperscript{472} Mwatana for Human Rights interview with Saad (a pseudonym) on December 16, 2020.

\textsuperscript{473} Mwatana for Human Rights interview a humanitarian worker on December 16, 2020.

The use of starvation by warring parties in Yemen

Figure 5: IPC 2.0 Acute Food Insecurity Phase, April–May 2018

Figure 6: IPC 2.0 Acute Food Insecurity Phase, June–September 2018 (projected)

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475 Ibid.

476 Ibid.
Mwatana visited the area, the site of the water facility and three of the beneficiary villages on December 16, 2020. Mwatana conducted interviews with four individuals, including an individual working in water and sanitation in the area, a resident of the Al-Hamazat area, an IDP living in the area, and a humanitarian worker. Two follow-up interviews were conducted over the phone with local residents on March 14, 2021.

Mwatana researchers and witnesses interviewed did not identify any military target near or at the site of the Al-Hamazat Water Facility during either attack. At the time of the attacks, there were no front lines nearby.477

The damage caused by the second airstrike on the facility meant that beneficiaries were once again left without accessible and affordable clean water.

A resident of Al-Hamazat area, 32-year-old Mourad (a pseudonym) said:

“We were very happy with the establishment of the water facility that delivered water through pipes to our homes after we had struggled to bring water by trucks from Saada City. The water facility became our main source of water after most of the shallow wells in the region dried up, but the war has left us with nothing good.”478

A worker in the water and sanitation sector, Saad, said:

“The facility stopped from the first attack until 2017, and then stopped again from April 2018 until 2019. During those two periods, the residents used to go search for water from neighboring areas [Al-Baqlat, Zor Wadia’a, and Al-Taweelah], or they were forced to buy water from trucks transporting it from the city of Saada at prices that people with limited income cannot afford.”479

477 Mwatana for Human Rights researcher’s remarks and Mwatana for Human Rights interviews with Mourad (a pseudonym), Khaleel (a pseudonym) and Saad (a pseudonym) on December 16, 2020.

478 Mwatana for Human Rights interview with Mourad (a pseudonym) on December 16, 2020.

479 Mwatana for Human Rights interview with Saad (a pseudonym) on December 16, 2020.
One of the IDPs to the Al-Hamazat area, 43-year-old Khalil (a pseudonym) added:

“We were very happy after the facility was restored and the solar energy system was installed, because it made water less expensive since there was no need to pay the cost of diesel, but the second attack made our happiness fade away.”

Witnesses believed the two Coalition attacks on the same facility indicated the coalition had intended to target the source of water. Khalil stated that, “[T]here is no doubt that targeting vital civilian facilities and services forces civilians to bear heavy burdens, but targeting water sources in particular represents an unspeakable disaster. I cannot describe the situation of displaced children and women, who cannot afford to buy water that is delivered by trucks, and they fetch water daily by walking long distances.” Saad added: “The fact that the facility was targeted twice, especially since the second attack was less than a month after the installation of the solar system, confirms that this targeting was deliberate and was carried out on purpose.”

A statement issued by UNICEF on the day of the second attack notes that the facility was completely destroyed and the nearby solar energy system was severely damaged. They state:

Earlier this week, the Al-Hamazat water system in the Sahar District in Sa’ada Governorate was completely destroyed in an attack that left 7,500 people, including internally displaced families, without water. During the attack, the nearby solar energy system which provides power to the water system was also severely damaged. The same water system came under attack and was destroyed in 2015. UNICEF rebuilt it in 2017.

At the same time, armed groups have launched military attacks from sites close to water points.

480 Mwatana for Human Rights interview with Khalil (a pseudonym) on December 16, 2020.
481 Ibid.
482 Mwatana for Human Rights interview with Saad (a pseudonym) on December 16, 2020.
UNICEF urged parties to the conflict to protect basic civilian infrastructure, and “stop attacks on civilians and civilian infrastructure and any military activities near or from these facilities including schools, hospitals, water facilities and keep children out of harm’s way.” 483

Oxfam 484 also reported on the second attack, and YDP includes the first attack in its airstrikes database. 485

483 See Cappelaere, supra note 449.


Case Study 2

Al-Nushoor Water Facility

Saudi/UAE-led Coalition Airstrikes on Al-Nushoor Water Facility on March 22, 2018 and July 23, 2018

10,500 beneficiaries from 600 households

Al Assaid Area, Kitaf wa Al Buqa’a District, Saada Governorate

From April 2017 to March 2018, the National Foundation for Development and Humanitarian Response (NFDHR) built the Al-Nushoor Water Facility with funding from UNICEF at a cost of US$650,000.\textsuperscript{486} The facility, which is managed by the Local Corporation for Water and Sanitation, is located approximately eight kilometers east of Wadi Al-Nushoor in the Al-Assaid area of the Kitaf wa Al-Buqa’a District in the Saada Governorate. It is an uninhabited area, with the exception of simple settlements of nomadic Bedouins scattered across the eastern and southern portions of the area.\textsuperscript{487}

\textsuperscript{486} Mwatana for Human Rights interview with a former engineer in the facility, on December 14, 2020.

\textsuperscript{487} Mwatana for Human Rights interviews with a Bedouin living in the area, a former engineer in the facility, and a community leader, on December 14, 2020.
The Al-Nushoor Water Facility was established to meet the needs of the population of large areas of As Safra Sahar, and Kitaf wa Al-Buqa’a districts in Saada Governorate, which has scarce ground water. The only sources of water outside the facility are surface wells whose water is often salty and not safe for drinking, and in which water is only available during the rainy season.

The Al-Nushoor Water Facility consists of two artesian wells, two pumps, a cement tank, and a solar energy system. It pumps water to an area in the middle of three different districts that includes 26 villages. Water from the facility reached villages approximately 100 kilometers away, and served approximately 10,500 beneficiaries until the Saudi/UAE-led Coalition hit the facility in an airstrike in March of 2018, just after it had finished being built.

On Thursday, March 22, 2018, a Saudi/UAE-led Coalition aircraft dropped at least one bomb on Al-Nushoor Water Facility. The airstrike destroyed a water pump and the guard room.

488 Mwatana for Human Rights interviews with a former engineer in the facility and a community leader on December 14, 2020.

489 Mwatana for Human Rights interviews with a Bedouin living in the area, a former engineer in the facility, a worker in the field of water and environmental sanitation, and a community leader, on December 14, 2020.

490 Mwatana for Human Rights interviews with a Bedouin living in the area and a former engineer in the facility, on December 14, 2020.

491 Mwatana for Human Rights interviews with a Bedouin living in the area, a former engineer in the facility, a worker in the field of water and environmental sanitation, and a community leader, on December 14, 2020.

492 Mwatana for Human Rights interviews a former engineer in the facility and a worker in the field of water and environmental sanitation, on December 14, 2020.

493 Mwatana for Human Rights interviews with Dhaifallah (a pseudonym), a former engineer in the facility, and Essam (a pseudonym), a humanitarian worker and a former engineer in the facility who currently works on water and sanitation in Saada, on March 14, 2020.
After the airstrike, and due to the damage, the facility was unable to function at full capacity. It continued operating with a single well until UNICEF purchased a new pump at a cost of about US$20,000, and the facility started fully functioning again in June 2018.494

Image 2: Satellite imagery of Al-Nushoor Water Facility after its establishment and after the first attack on the facility (April 2018)

As discussed in relation to the Al-Hamazat water facility, at the time of the attack Saada was classified as being in IPC Phase 3 (crisis) or higher, and was projected to move into Phase 4 (emergency) in the following months.

One month later, the Saudi/UAE-led Coalition hit the water facility again.

On Monday, July 23, 2018, at around 11:00 p.m., a Saudi/UAE-led Coalition bomb. The bombs fell directly on Al-Nushoor Water Facility, destroying one of the water pumps and one of the wells, and damaging the water distribution network and solar panels.495

495 Mwatana for Human Rights interviews with Waleed (a pseudonym), a worker at the facility, and Hani (a pseudonym), a local resident on July 26 and 29, 2018; Mwatana for Human Rights interview with Ali (a pseudonym), a Bedouin living in the area, and Dhaifallah (a pseudonym) on December 14, 2020.
Image 4 (above): Satellite imagery of Al-Nushoor Water Facility after the second attack on the facility (July 2018); (below): Satellite imagery displaying the distance between Al-Nushoor Water Facility and the nearest military target.
After the second Saudi/UAE-led Coalition airstrike, Al-Nushoor Water Facility continued to operate with one well until UNICEF, in partnership with OCHA, restored the facility and repaired the damage, which cost hundreds of thousands of dollars, according to a former engineer at the facility. The water facility returned to working at its full capacity in August 2019.

Ali (a pseudonym), a 44-year-old Bedouin who lives near Al-Nushoor Water Facility, said:

“Al-Nushoor Water Facility saved us the trouble of fetching water on donkeys from neighboring villages. This facility was bigger than a dream for us.” He added: “We suffered a lot from the bombing of Al-Nushoor Water Facility. The water became available only for limited days and in small quantities. Many of the beneficiaries of the facility do not have another source of water, and their financial condition is poor and they cannot afford the water that comes on board the trucks.”

Two months later, the Saudi/UAE-led Coalition carried out a third airstrike near the facility.

On October 5, 2019, at around 5:30 p.m., a Saudi/UAE-led Coalition aircraft dropped a bomb that landed 100-150 meters from the site of the Al-Nushoor Water Facility. The airstrike did not cause any damage to the facility.

496 Mwatana for Human Rights interview with Qaid (a pseudonym) on December 14, 2020. UNICEF estimated that the facility would cost approximately $300,000 to repair. UNICEF, supra note 494.

497 Mwatana for Human Rights interview with Dhaifallah (a pseudonym) on December 14, 2020.


500 Mwatana for Human Rights interview with Dhaifallah (a pseudonym) on December 14, 2020; Dwyer, supra note 456.
Just prior to the third attack, Saada was classified as being in IPC Phase 4 (emergency) and remained in that phase until January 2020.  


502 Ibid.
Mwatana visited the area and the site of the facility on July 26 and 29, 2018, and conducted interviews with two individuals—one area resident and one individual who worked at the water facility, respectively. Mwatana visited the area again and conducted a second set of interviews with four individuals on December 14, 2020, including an engineer who had previously worked at the water facility, an area resident, a community leader in the area, and another individual who previously worked at Al-Nushoor Water Facility but who now works in water and sanitation in Saada. Mwatana also collected one photograph.

Mwatana researchers and those interviewed by Mwatana, including residents of the area and workers at the water facility, did not identify any military target at Al-Nushoor Water Facility at the time of the March 22, 2018 airstrike. Mwatana also did not identify any military target at the site of the facility at the time of the July 23, 2018 airstrike. One person said an Ansar Allah community supervisor may have visited the facility the day before, though it is unclear whether he was directly participating in hostilities with the group. The closest military target Mwatana identified at the time of each of the three attacks was a checkpoint approximately 500 meters south of the facility.

Witnesses described what they had seen as a pattern of Saudi/UAE-led Coalition attacks against water facilities in the area.

*Essam said:*

“The first attack occurred less than a month after the opening of the Al-Nushoor Water Facility, then the facility was targeted about one month after it was restored, and the third time the bombing took place was a month after it was restored for the second time. It seems to me that it is a deliberate targeting of the community.”

The PoE, which investigated the July 23 strike, said it “received information that the coordinates of the three components of the [Al-Nushoor] project were communicated to

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503 Mwatana for Human Rights interview with Hani (a pseudonym) on July 26, 2018, and Mwatana for Human Rights interviews with Ali (a pseudonym), Dhaifallah (a pseudonym), Essam (a pseudonym), and Rajeh (a pseudonym); a community leader on December 14, 2020.

504 Dedicated research of open-source data by Bellingcat, including satellite imagery, did not reveal the presence of military objectives at the site at the time of the attack.

505 Mwatana for Human Rights interview Ali (a pseudonym) on December 14, 2020, with satellite images.

506 Mwatana for Human Rights interview with Essam (a pseudonym) on December 14, 2020.
the coalition to be put on the « no strike list.™

The Al-Nushoor Water Facility was critical for meeting the water needs of residents of As Safra and Sahar districts. Essam said: “Al-Nushoor Water Facility is of high importance, as it pumps safe water from an uninhabited and water-rich area to large, water-scarce inhabited areas. The facility is the main source of water for 26 villages, as there are no water facilities in those areas and their inhabitants rely on surface wells, which have weak production capacity and many of which have salty water.”

After the airstrikes damaged Al-Nushoor Water Facility, former beneficiaries had to go to great lengths to get clean water, and some could not afford to purchase clean water. Ali (a pseudonym), a 44-year-old Bedouin who lives near Al-Nushoor Water Facility, said after the second strike: “The water in these areas, which is located to the west of the Kitaf wa Al-Buqa’a District and east of the As Safra District, is scarce, and many of the wells here are salty and not safe for drinking. This area relies on only two water facilities—namely Al-Nushoor Water Facility and Al-Eshash Water Facility, each of which covers a part of this area—and both have been targeted by the coalition more than once. This proves that there is an intentional targeting of water sources for the residents of this area.”

Hani (a pseudonym), a 41-year-old Bedouin shepherd living close to the facility, said:

“My sheep are my source of living and they need water to live. This water facility is the only reason I am living in this area”

Some people were forced to move to other areas in order to access water.

Ali said:

“Some Bedouins have been forced to leave the area because they could not find drinking water for themselves and their livestock.”

508 Mwatana for Human Rights interview with Essam (a pseudonym) on December 14, 2020.
510 Mwatana for Human Rights interview with Hani (a pseudonym) on July 26, 2018.
The PoE also documented the airstrike on Al-Nushoor Water Facility on July 23, 2018, reporting that “an explosive ordnance” had damaged the “[one of these] borehole[s], pipe, and solar panels” of the facility. The PoE found that a water supply system providing drinking water to the civilian population was “an object indispensable to the survival of the civilian population,” and that it therefore was “prohibited to attack, destroy or remove it or to render it useless.”

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512 PoE (2019), supra note 331 at pp. 47, 176 and 183-185. See also UNICEF, supra note 494; Dwyer, supra note 456.

513 PoE (2019), supra note 331 at Appendix 33.D.
Other documentation of airstrikes impacting access to water in Yemen

Other credible organizations and groups have also reported on Saudi/UAE-led Coalition airstrikes impacting water facilities, both in Saada and in other governorates, and in some cases have reported on—and corroborated—airstrikes that Mwatana has documented. Some additional documentation on Saudi/UAE-led Coalition airstrikes impacting water in Yemen are included below.

The PoE, in their six annual reports from 2015-2021, reported on several Saudi/UAE-led Coalition airstrikes impacting water. In addition to the July 2018 airstrike on Al-Nushoor Water Facility mentioned above, the Panel reported on an additional three airstrikes on water facilities in their 2017 and 2018 reports: two airstrikes within ten days on Alsonidar factory complex in Sana’a,514 which included a water pump factory,515 and one airstrike on Radfan Mineral Water-Bottling Factory in Lahj.516 Human Rights Watch also reported on the strike against the Radfan Mineral Water-Bottling Factory in Lahj, adding that: “Military officers affiliated with the coalition inspected the factory about two weeks before the strike and took four men originally from northern Yemen into custody. The officers did not alert employees that they found any military goods or had concerns regarding the factory.”517

The GEE has also investigated Coalition airstrikes that have damaged or destroyed water infrastructure in Yemen. In their 2020 report, the GEE investigated an airstrike that took place on December 16, 2018 in Sawidiyah District of Al-Bayda Governorate

514 PoE (2017), supra note 331 at p. 46, Table 7; PoE (2018), supra note 331 at Annex 60, Appendices B and C.

515 The water pump factory was “used by Yemen’s Alsonidar Group to make and sell pumps under a long-standing arrangement with Italian water specialist company Caprari.” See “Coalition hits Yemen factory but businessmen deny alleged war role,” Reuters (September 13, 2016), https://www.reuters.com/article/us-yemen-security/coalition-hits-yemen-factory-but-businessmen-deny-alleged-war-role-idUSKCN11J27V.

516 PoE (2017), supra note 331 at p. 48, Table 7; PoE (2018), supra note 331 at p. 261, Table 60.2.

that hit a water tanker that was transporting a supply of fresh water for a village and crops.\textsuperscript{518} The GEE reported that there were “no known military targets nearby.”\textsuperscript{519} The GEE stated that while they would need to conduct further investigations in order to establish the purpose of this attack, paired with other attacks the Group examined and “in a situation of such acute food insecurity, the conduct of the parties displays a reckless disregard for the impact of their operations on the civilian population and their access to food and water.”\textsuperscript{520} In their 2019 report, the GEE reported on “six incidents where coalition airstrikes hit water supply facilities, such as water wells, a water pump, a water bottling plant, a water tank and a water truck.”\textsuperscript{521} Again, while the GEE indicated further investigation was required, they found that “information regarding the circumstances of these attacks and, in some cases, their recurrence, may be considered indicative of the objective [to deprive the civilian population of the sustenance value of the objects].”\textsuperscript{522}

Both the GEE’s 2020 report and the PoE’s 2018 report included JIAT’s findings regarding an airstrike on Al-Sham Water Factory in 2015, in which JIAT admitted to causing “some deaths and injuries”\textsuperscript{523} due to a technical error.\textsuperscript{524} The United Nations High Commissioner for Human Rights (OHCHR) and Human Rights Watch also reported on this strike, stating that at least 13 civilians were killed and 12 injured by the airstrike,\textsuperscript{525} and that there were no known military targets nearby.\textsuperscript{526}

Human Rights Watch, in a separate report, also documented a Saudi/UAE-led Coalition airstrike on a water drilling site in Arhab on September 10, 2016 that “killed at least 31 civilians, including three children.”\textsuperscript{527} The report stated that “[t]he drill rig was in an unpopulated area reachable only by dirt road, about two kilometers from the nearest

\begin{itemize}
\item \textsuperscript{518} GEE, supra note 23 at para. 120.
\item \textsuperscript{519} Ibid.
\item \textsuperscript{520} Ibid, at para. 121.
\item \textsuperscript{521} GEE, supra note 88 at paras. 504, 752, 755.
\item \textsuperscript{522} Ibid, at para. 760.
\item \textsuperscript{523} PoE (2018), supra note 331 at p. 259, Table X.2.
\item \textsuperscript{524} GEE, supra note 23 at para. 377.
\item \textsuperscript{525} UNHCR, supra note 45 at 25-26.
\item \textsuperscript{527} HRW, supra note 526.
\end{itemize}
YDP also reported an additional 121 airstrikes by the Saudi/UAE-led Coalition on water sources or infrastructure in Yemen since March 2015, including an additional 31 attacks on water infrastructure in Saada Governate from 2015 to 2018 (excluding three on the Al-Hamazat facility), including two strikes in Kitaf Al Buqa’a District, three in Al-Safra District and 13 in Sahar District. 

Amnesty International has also described the devastating impact of the Saudi/UAE-led Coalition’s use of cluster munitions on civilian populations in Saada, Hajjah, and Sana’a governorates. Cluster munitions have also impacted access to water. In one particular incident that Amnesty highlighted, a 13-year-old boy was injured by a submunition while he was gathering water from a spring that local residents of Noug’a, a village in As Safra District of Saada, used as a source of water. In an interview after the incident, the victim told Amnesty International that additional submunitions still existed near the spring.

528 Ibid.
529 See Annex A.2. Attacks for which the target is unknown or the target was food storage/transportation or a market are included, such that even more attacks may have occurred than outlined above. An up-to-date incident table is available for download here: https://yemendataproject.org/data.html.
530 See Annex A.2.
532 Amnesty International, supra note 412.
533 Ibid.
534 Ibid.
Airstrikes on artisanal fishing in Al-Hudaydah Governorate

Yemen has a coastline of over 2500 kilometers, for which artisanal fishing is the main economic activity.\(^5\) Fisheries represent a major source of food security, income and

employment for coastal communities. According to the London School of Economics’ Middle East Centre, before 2015, fishing ranked second in terms of Yemen’s exports. The Centre found that prior to the war, the fishing sector provided jobs for “more than half a million individuals” who in turn supported an estimated 1.7 million people, constituting 18% of the coastline’s population. Along the Red Sea coastal area, artisanal fishing produces all fish sold in Yemen.

Fishing is particularly vital for rural communities on the coast. In the World Bank’s most recent estimate from 2019, about 63% of Yemen’s population lives in rural areas, and the UN Development Programme has found that many rural areas are dependent on agriculture and fisheries for their source of livelihood.

The conflict has had a severe impact on those working in the fishing industry and the wider coastal communities that are reliant upon the fishing industry. Direct attacks on fishing boats, fishing-related structures, and fishing businesses have resulted in the deaths and injuries of civilians throughout the conflict. Further, attacks have physically destroyed fishermen’s means to fish by destroying boats, fishing tools and other structures and objects linked to fishing, thus destroying livelihoods and a critical source of food. Limited access to the sea and increased fuel prices for boats and generators have also exacerbated the toll on these communities.

According to the Special Rapporteur on the Right to Food, in 2016 alone there was a 70%
decrease in fishing in Yemen. This substantial reduction impacted both fishermen’s livelihoods and food availability, particularly in areas more reliant on fishing as a source of food. A few years into the conflict, only around 50% of all fishermen were able to maintain work. Work had also become increasingly dangerous due to Saudi/UAE-led Coalition attacks on fishing boats.

Al-Hudaydah Governorate contains Yemen’s most important commercial port. The governorate runs along the western coast of Yemen, bordering the Red Sea. It is also part of the Tahama Plain, described in Part G, Section 2.2, of the report.

Al-Hudaydah’s fishing infrastructure is important to Yemen’s economic outlook, providing a source of sustenance to Yemenis in the area and income to local fishermen and their families. The fish caught in Al-Hudaydah provide an important source of food for the country, as well as an important source of economic activity, feeding into downstream economic markets including fish processing, freezing and packaging—some of which is aimed at the export market. In November 2017, the FAO reported that “fishers in the coastal areas of Hajjah, Taiz, and southern [Hudaydah] have completely stopped fishing and the majority have already lost their livelihood opportunities in the sector.” FAO pointed to the “destruction of [fishing] assets and landing sites, restricted access and the blockade of land, air and marine ports for fish exports and other socio-economic challenges” as impacting fishing.

According to Solidarités International, the population of Al-Hudaydah has also faced particular challenges with food security. Prior to the conflict, Al-Hudaydah was amongst Yemen’s poorest governorates, and its population was already largely food

545 Ibid.
546 Al-Fareh, supra note 535 at p. 9, citing Oxfam, supra note 334 at p. 9.
insecure.551

The conflict has exacerbated this food insecurity. In 2016, UNICEF found that "96,600 children under the age of five were found at risk of severe acute malnutrition compared to 23,000 before the escalation of the conflict in March" in Al-Hudaydah.552 In 2018, 46.7% of households in the governorate reported that their basic food needs were not being met, and almost the entire population—95%—reported having reduced their food intake due to inadequate income.553 As discussed in Part E, Section 2.2 and Figure 3, even with projected humanitarian food assistance for 2021, 19% of the Al-Hudaydah population faces emergency levels of food insecurity (IPC Phase 4) with another 37% at crisis level (IPC Phase 3).


Airstrikes impacting fishing in Al-Hudaydah Governorate

Al-Hudaydah, the location of one of the conflict’s main frontlines, has consistently experienced the greatest number of incidents of armed violence and civilian casualties since the start of the war.⁵⁵⁴ Even after the 2018 Al-Hudaydah ceasefire agreement, CIMP recorded 966 incidents of armed violence in the governorate during 2019 (accounting for 43% of all incidents of armed violence across the country that year).⁵⁵⁵

Attacks by the Saudi/UAE-led Coalition have been a critical factor in the destruction of Al-Hudaydah’s fishing economy. The coalition has repeatedly struck fishing boats and fishing-related facilities in the governorate, killing and wounding civilians and destroying livelihoods in the process.

Mwatana documented at least 16 Saudi/UAE-led Coalition airstrikes on fishermen, fishing boats, and fish markets between March 2015 to December 2020. Of the 16 documented airstrikes, 13 occurred in Al-Hudaydah Governorate, including two in 2015, one in 2016, three in 2017, six in 2018, and one in 2019. Of the 13 documented strikes impacting fishing in Al-Hudaydah, almost half occurred in Alluheyah District.


Alluheyah District is located in the far northwest of Al-Hudaydah Governorate on the western coast of Yemen. Alluheyah District covers 1299 square kilometers and had a population of 105,682 persons in 2004—the last time a census was taken for the area. More than 3,000 of those living in Alluheyah work as fishermen, and many others living in the district work in fishing-related occupations, including as fish sellers, porters, fishing tool sellers, and other professions.

Fishing is a critical source of both livelihoods and food for those living in the area.

A 30-year-old local resident of Alluheyah, Ahmed Ali, said:

"Fishing was a haven for everyone looking for food or a source of income. The sea meant everything for the community. There are people who fish.


people who sell fish, and people who work in ice factories or fish export companies. There were no problems related to fishing before this war. As for hunger, it is something that the Tahama community suffered from even before the war, but the war has made many people easy prey to hunger.\textsuperscript{558} Ahmed added: “The targeting of fishing has greatly affected the price of fish. The price of fish has doubled and then tripled, and the reason is the scarcity of fish in the market and the high prices of oil.”\textsuperscript{559}

As part of their research, Mwatana researchers interviewed 28 individuals regarding attacks on fishing in Alluheyah, including survivors, victims’ families, individuals working in the fishing industry, area residents, humanitarian aid workers, and others. Mwatana specifically interviewed 23 individuals about the case studies included below. Researchers also collected other documents, including boat licenses, from interviewees.

Some interviewees described the repetitive nature of the Saudi/UAE-led Coalition’s attacks on fishing in the area. A 40-year-old health worker in Alluheyah,

\textit{Samar (a pseudonym) said:}

“The attacks against fishermen at sea have been repeated many times; so have air attacks targeting the fish market in the district, the fish landing centre, an ice factory and a shrimp farming company. The attacks have had a significant impact on a community that depends on fishing, and make it clear that the coalition intends to harm the economy and the food security of this community.”\textsuperscript{560}

Though humanitarian aid organizations try to meet the needs of families who have been cut off from their source of income and food, there are many challenges impeding their ability to do so. Samar commented on some of these challenges, stating: “The distribution of relief in Alluheyah is very limited and does not meet the needs of the population. Organizations providing aid are often harassed by the Ansar Allah group.


\textsuperscript{559} Ibid.

\textsuperscript{560} Mwatana for Human Rights interview with Samar (a pseudonym) on January 11, 2020.
and the aid remains in storage until it expires. I personally do not see humanitarian aid as a sufficient alternative to fishing.”

A 28-year-old humanitarian worker, Abdul Jabbar (a pseudonym), also described the limitations of humanitarian aid. He said:

“Humanitarian aid covers only about half of the families in need, and Ansar Allah forces relief organizations to distribute aid to families loyal to the group instead of families in need.”

The airstrikes caused more than physical and economic destruction—some residents were forced to flee the area for fear that they would be the next to be killed by an airstrike, or that they would die from starvation if they could not fish. Aisha Ahmed, a 65-year-old IDP from the area said: “We used to live in Khouba [a village in Alluheyah] and my son was the one who supported the family. My son was no longer able to go fishing, fearing the coalition’s aircrafts. We had no other source of income. We decided to flee from the area [of Al-Salif], fearing we would either die from starvation or that the aircrafts would kill us.”

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561 Mwatana for Human Rights interview with Samar (a pseudonym) on January 11, 2020. Restrictions on humanitarian access imposed by Ansar Allah are described in more detail in Part H, Section 2.

562 Mwatana for Human Rights interview with Abdul Jabbar (a pseudonym) on December 21, 2020.

Case Study 1
Al-Badeea` Island

Saudi/UAE-led Coalition Airstrikes on two wooden boats and two fibre boats on 10 November 2017

Al-Badeea` Island, Alluheyah District, Al-Hudaydah Governorate
20 workers, supporting 14 households

Abbas Muhammad Balam has been a fisherman in the town of Alluheyah in Alluheyah District, Al-Hudaydah Governorate since the 1990s. He owned two large wooden fishing boats and two smaller fibre fishing boats in addition to a range of fishing tools associated with each boat, including engines, fishing nets, refrigerators, and anchors. Abbas worked with a group of 19 other fishermen. Together, they spent about 20-25 days each month at sea, stopping at islands to sell fish and periodically conduct maintenance for the fishing nets. They usually caught different species of fish, including Emperor, Trevally, and Grouper fish.

Fishing is the main source of food for the fishermen and their families, who total about 120 individuals. It is also a source of income. The fishermen sell the surplus fish on the islands that they land on and in the fish market in Alluheyah upon their return home. Alluheyah fish market is one of the main suppliers for fish merchants who sell fish across many Yemeni cities. One of Abbas’s sons, 25-year-old Salem, said: “Fishing is the source of food and livelihood for everyone in this area. We eat fish as a part of almost every meal, and everyone here works in one way or another in fishing. There are fishing boat owners, fishermen, those who work in the fish market, or those who work on fishing tools. It is not common here to work in agriculture or livestock. Most of the population depends on fishing for food and income.”

On the night of Friday, November 10, 2017, Abbas and the 19 other fishermen he worked with were busy repairing fishing nets on the shore of Al-Badeaa Island, which is about 20 minutes away from the Alluheyah District beach. At about 9:30 p.m., a Saudi/UAE-led Coalition aircraft repeatedly bombed the area. The first and the second bombs landed on the fishermen, while the others fell on the four boats that were moored on the island’s beach.

The attack killed nine fishermen and wounded five others. Abbas’s four boats, and all of the fishing equipment and tools described above, were destroyed.

At the time of the attack, Al-Hudaydah Governorate was classified as IPC Phase 3 (crisis).

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569 Ibid, FEWSNET (December 2017).
Mwatana visited Alluheyah from November 12 to November 18, 2017 and conducted in-depth interviews with four survivors and one victim’s relative. Mwatana later conducted a follow-up visit to the area on December 21, 2020 and conducted a follow-up interview with one of the survivors, and an additional interview with another survivor. Additionally, Mwatana collected an official document of the victims’ names.

None of the survivors that Mwatana interviewed identified any military target on or near Al-Badeea’ Island when asked whether there were any military targets in the area. Al-Badeea’ Island is not inhabited and it does not have any military sites. It is visited by fishermen during their trips at sea.570

Survivors described the details of the night of the attack.

“I cannot forget that night… I lost three of my brothers,”
said 38-year-old Alaallah Abbas, another one of Abbas’s sons.

“We were on the beach fixing fishing nets, and suddenly two bombs fell on us. The rest of the bombs fell on the boats in succession. I knew then that there was no chance of saving anyone. I left my brother on the coast and jumped into the sea. I swam for more than a nautical mile until I found another fisherman, and I asked him to rescue my co-workers. We went back to Alluheyah, and we found some fishermen on the coast. They had heard the sound of bombs, but they did not dare come to our rescue, fearing for their safety.”571

The attack’s destruction went beyond the individuals who were killed and wounded. The fish they caught were an important source of food and income for the fisherman and their families, who totalled 120 individuals. The attack was extremely costly to them, both due to the expensive fishing equipment destroyed, and due to the lost sales stemming from their inability to fish in the aftermath of the attack.

570 Dedicated research of open-source data by Bellingcat, including satellite imagery, did not reveal the presence of military objectives at the site at the time of the attack.

571 Mwatana for Human Rights interview with Alaallah Abas on December 21, 2020.
Alaallah said:

“There was no specific quantity or type of fish that we used to catch each month. The fish and their quantity differed according to the season, the winds, and the area of fishing, but it was sufficient for our needs and the needs of those who work with us and their families. We used to sell with an average of 2.5 million riyals (approximately US$4000) per month.”

After the attack, Abbas Muhammad Balam stopped fishing for two years and did not return to fishing again until 2019, after he was able to obtain a loan from one of his friends to buy a new fishing boat. He started fishing for limited time periods compared to the amount of time he spent at sea before the attack, never exceeding 10 days a month.

His son, Salem said:

“The attack destroyed all of our equipment, destroying the boats, the networks, engines and other equipment on them. My father collected these boats and equipment over his thirty years of fishing... We could not compensate for this loss. We stopped fishing for nearly two years, until my father was able to obtain a loan from one of his friends to buy a small boat for US$30,000,” which Salem said was far, far less than the family had cumulatively spent, over decades, on the fishing equipment that was destroyed. “We couldn’t fish with this boat in the quantities that we used to fish in the past, and we still have to pay off the loan as well.”

Salem described the recurring nature of attacks on fisherman in the area and his fear of being bombed again. He said:

“The attacks on fishermen have been repeated in this area, targeting fishermen near Al-Khoub, fishermen on Aqaban Island, and fishermen on...”


573 Mwatana for Human Rights interviews with Salem Abbas and Allaallah Abbas on December 21, 2020.

574 Mwatana for Human Rights interview with Salem Abas on December 21, 2020.
the same island in which they targeted us. The sea in which we’ve worked since our childhood became an unsafe place for us. I used to love fishing trips, especially the long ones, but I hate fishing now and I don’t feel safe. When I go fishing and hear the sound of the planes, I come back to the beach immediately. We feel that we are potential targets for the planes just because we are fishermen. But there is no other way to live, we are not good at any other profession and we don’t have any source of income other than fishing.”

With the loss of income and food that has come with the successive attacks on fishermen, many in the area have become food insecure, but have faced challenges in accessing aid to meet their needs.

A 32-year-old humanitarian worker in Alluheyah District, Huda (a pseudonym) described some of the obstacles to the distribution of humanitarian aid in the area:

“There are two organizations working to distribute relief materials in Alluheyah, but the aid does not reach the beneficiaries on a regular basis,” she said. “We face difficulties in obtaining work permits from the Ansar Allah group.”

Survivors of the attack have been left with few options, and have struggled to meet the needs of themselves and their families. They sometimes worked for other fishermen for small daily wages, and some have had to rely on neighbours to provide them with food at times.

Alaallah said:

“We and those who survived the attacks went through harsh living conditions. Our source of income and food was cut off, and we did not receive humanitarian aid on a regular basis. The displacement was also not easy. We decided to stay in our homes in spite of all of this, and we are still trying to move past what we went through.”

576 Mwatana for Human Rights interview with Huda (a pseudonym) on January 9, 2021.
In 2019, the Joint Incidents Assessment Team (JIAT), the Saudi/UAE-led Coalition’s investigative mechanism, released a public statement on the incident. JIAT claimed that the coalition had intelligence indicating that weapons-smuggling operations were imminent in the Alluheyah area. According to JIAT, on November 10, the coalition surveilled the area and spotted three boats near Al-Badéea’ Island as well as “a gathering of elements from the Houthi armed group,” which it hit with three bombs at about 7:10 pm. JIAT concluded the coalition complied with international law in the attack.

Nothing in Mwatana’s research indicated those on the island at the time of the strike were affiliated with Ansar Allah, or were involved in smuggling weapons. Alaallah told Mwatana that he did not understand why the coalition had targeted the fishermen that night. He said: “We were 20 civilian fishermen. We did not carry any weapons, and we did not pose any threat. We did not carry out any actions that might provoke doubts about us.”

The GEE also documented this incident, and found that the incident “raise[d] serious concerns about the targeting process applied by the coalition.”

578 For further discussion of the JIAT, see Part J, Section 1.3.
580 For further discussion of the errors in JIAT’s legal analysis for this attack, see Section 5.2.1.1(iii) below.
582 The Yemen Data Project (YDP) recorded the airstrike on November 10, 2017 on “Al-Bawadi Island,” killing three civilians (Incident No. 15040). YDP recorded that between one and two airstrikes hit fishermen’s boats. See https://yemendataproject.org/data.html.
583 The GEE referred to the island as the “Island of Al Bodhi.” See GEE, supra note 98 at Annex IV, paras. 13-14. However, they stated the incident occurred on November 11, 2017 rather than November 10, 2017, and that the strike killed 11 male civilians and injured one male.
Case Study 2
Aqaban Island

Airstrikes on four fishing boats on 30 August 2018
Aqaban Island, Alluheyah District, Al-Hudaydah Governorate
22 fishermen supporting 15 households

Aqaban Island is located approximately 45 kilometres from Al-Khouba Beach, in Alluheyah District of Al-Hudaydah Governorate. Fishermen from the Al-Khouba area fish near the island because of the availability of fish surrounding it, including species such as Tuna, King Fish, Spanish Mackerel, Bonito, and Indian Mackerel. About 600 residents of Al-Khouba village, which had a population of 8387 at the time of the last census in 2004, are fishermen. Some of them own fishing boats, and others work for the boat owners in exchange for a quantity of fish and a daily wage.

On Thursday, August 30, 2018, at approximately 6:00 p.m., Coalition aircraft repeatedly bombed a gathering of 22 fishermen on board four boats that were about three nautical miles away from Aqaban Island, Alluheyah District, Al-Hudaydah Governorate. Four bombs hit each of the four boats, with a time difference of about one minute between each. The four boats were completely destroyed. The attack killed seven fishermen, including three children, and wounded two fishermen. Four of the six survivors used remnants of the destroyed boats to swim away from the attack site and seek help, and found a fisherman on Aqaban Island who used his boat to rescue them and the two other survivors. The fate of seven others is still not known.

586 Mwatana for Human Rights interviews with Musa Abkar, Muhammad Ali and Abdullah Alaallah, on September 1, 2018; Mwatana for Human Rights interview with Abdullah Allaallah on December 16, 2020.
As shown in Figure 6 above, Al-Hudaydah was classified as being in IPC Phase 3 (crisis) at the time of the attack.

Mwatana visited Alluheyah from September 1 to 3, 2018 and conducted in-depth interviews with three of the survivors. Mwatana later conducted a follow-up visit to the area on December 16, 2020 and conducted a second interview with one of the survivors. Additionally, Mwatana collected copies of the four boats’ licenses.

The survivors of the attack did not identify any military target near the site and stated that only the fishermen were present in the area at the time.587

The fishermen had relied on fishing as their source of livelihood and as a source of food for themselves and their families—a total of 15 households. After the attack, they continued to work for other fishing boat owners, earning small daily wages compared to when they owned their own boats and equipment.

One of the survivors, 21-year-old Abdullah Alaallah, said:

“Our village [Al-Khouba] is known for fishing. We only work in fishing and we do not know how to do anything else. We get our food and our source of income from fishing.”588 He added: “We stopped fishing after the incident. The incident raised fear on the villagers. But per usual, after each attack on fishermen, we stop fishing for a period of time and then go back to fishing again [for others], because we have no other source of food or income.”589

One fish market worker, 31-year-old Saddam (a pseudonym), described the repetitiveness and the frequency of attacks on fishing in Alluheyah District. He said:


587 Mwatana for Human Rights interviews with Musa Abkar, Muhammad Ali and Abdullah Alaallah on September 1, 2018; Mwatana for Human Rights interview with Abdullah Alaallah on December 16, 2020.


Interviewees also described the fear that fishermen now have due to the attacks.

_Saddam said:_

"Fishermen told me that they go fishing and do not expect to return, but they have no other option, because the sea is their only source of livelihood." 590

_Abdullah added:_

"Every time I hear the sound of planes, I drop everything in my hands and jump into the sea." 591

In spite of the food insecurity caused by the attacks, humanitarian aid has not been able to meet residents’ needs. Saddam said: “Whoever needs food depends on community solidarity, or finds relatives or neighbours to help him. As for humanitarian aid, it does not cover all those in need, and those who receive aid do not receive it on a regular basis.” 592

YDP recorded this incident, finding that between one and two airstrikes struck fishing boats on Aqaban Island on August 30, 2018, resulting in seven civilian casualties. 593

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592 Mwatana for Human Rights interview with Saddam (a pseudonym), on January 9, 2020.
593 Yemen Data Project, Incident No. 18347. See https://yemendataproject.org/data.html.
Other documentation of Saudi/UAE-led Coalition airstrikes impacting artisanal fishing and fishing infrastructure in Yemen

Other credible organizations have also reported on the impacts that the conflict has had on fishing in the country, and particularly in Al-Hudaydah Governorate. In some cases, organizations have documented the same attacks described by Mwatana in this report. Some of the additional documentation of attacks impacting fishing are included below.

The GEE has extensively described the negative impacts the conflict has had on the fishing communities in and around Al-Hudaydah, including the impact of Saudi/UAE-led Coalition airstrikes on these communities. In their 2019 report, the GEE examined 11 airstrikes that took place between March 2015 and May 2018, in which 43 fishermen were killed, another 49 were injured, and 19 were missing. They additionally stated that, since their investigations into the 11 incidents, an additional eight airstrikes against fishermen’s boats had taken place off the coast of Al-Hudaydah, killing another 17 fishermen and injuring 15. The GEE concluded that Coalition airstrikes, as well as shelling by Yemeni armed forces and UAE-backed groups (both affiliated with the Coalition), “severely affected” the livelihoods of fishermen and their families.594 The GEE further stated that the conflict’s impacts on fishing communities in Al-Hudaydah had “obviously compounded food-related needs in the region.”595

The PoE, in their six annual reports from 2015-2021, reported on ten Saudi/UAE-led Coalition attacks on fishing (boats and fishermen), wharfs, and fishing market villages. In their 2016 report, they documented three coalition attacks on fishing vessels and dhows, and two attacks on “fishing markets and their communities,” resulting in the

594 GEE, supra note 88 at para. 756. See also GEE, supra note 88 at paras. 594-595 and 597-599.
deaths of at least 115 fishermen. The details of three of these attacks were included in their report: one from September 8, 2015, in which the coalition hit two boats near Al-Hudaydah; the other two occurred on October 22 and 23, 2015, wherein Coalition airstrikes “targeted and killed many fishermen” in the Bab-el Mandab, resulting in the deaths of more than 100 individuals.

In their 2018 and 2019 reports, the PoE documented an additional five Coalition attacks that occurred in 2017, including four attacks on fishing vessels and boats, two of which occurred in succession near Al-Hudaydah on March 15, and a fifth attack on the port in Al-Hudaydah. The combined attacks killed at least nine individuals and injured eight, and one attack left ten individuals missing. OHCHR also reported on the four attacks on fishing vessels and boats in 2017 that the PoE documented in their 2018 report. They additionally found that two of the victims of the March 15 attacks were children.

Human Rights Watch has also documented a pattern of attacks by the coalition on fishing boats in the Red Sea, all of which they found to be “violations of the laws of war.” In 2018 alone, Human Rights Watch documented five attacks on Yemeni fishing boats that killed 47 fishermen and injured 14. In three of the five attacks, Human Rights Watch found that the coalition had left the attack site “without trying to help fishermen who were wounded or adrift at sea.” Discussing the attacks, Human Rights Watch said the coalition seemed to have deliberately attacked boats and fishermen who “could clearly be identified as civilian,” and that they found “no evidence that any of these boats posed

598 PoE (2016), supra note 331 at Annex 54, para. 2.
600 PoE (2019), supra note 331 at p. 47, Table 5.
603 OHCHR, supra note 124 at para. 16.
605 Ibid.
a military threat to the coalition forces.”

YDP reported on 55 Saudi/UAE-led Coalition air strikes on boats from September 2015 through October 2019, of which 34 were identified as fishers’ boats. Of the 55 attacks on boats, 38 of them occurred in Al-Hudaydah Governorate. Two of these incidents were described in the case studies above: the August 30, 2018 attack on Aqaban Island, and the February 13, 2019 attack on Al-Badeea’ Island.

606 Ibid.

607 The Yemen Data Project does not make specific IHL claims about individual recorded airstrikes in the dataset, as each object’s category is recorded based on its status before the war, and does not take into account change of use.

608 See Annex A.3. Attacks for which the target is unknown or the target was food storage/transportation or a market are included, such that even more attacks may have occurred than outlined above. An up-to-date incident table is available for download here: https://yemendataproject.org/data.html.
Violations of international law by the Saudi/UAE-led Coalition

The applicable legal framework

The airstrikes in the Hajjah, Saada and Al-Hudaydah governorates by the Saudi/UAE-led Coalition in Yemen were carried out in the context of the NIAC between the Yemeni government and Ansar Allah. As discussed in Part E, Section 1, in carrying out such airstrikes, the coalition intervened on the side of the internationally recognized government of Yemen. The internationally recognized government’s armed forces play
an active role in Coalition military operations, including by participating in air strikes. Throughout this report, references to the Saudi/UAE-led Coalition include reference to the internationally recognized government of Yemen. As discussed in Part F, Section 1.1, CA 3, AP II and customary IHL are applicable to the conduct of hostilities and the protection of those not taking a direct part in them in the context of the conflict in Yemen.\textsuperscript{609}

In addition, as set out in Part F, Section 3, states are still bound to apply, with some limitations, IHRL during armed conflict. States which are not parties to the ICESCR and the ICCPR remain bound by the customary international law obligations reflected in the two covenants, even in times of armed conflict (subject to limited exceptions). Notwithstanding their lack of ratification of the ICESCR and the ICCPR, Saudi Arabia and the UAE (as well as other States that intervened in the conflict) are bound to comply with their obligations under customary international law with respect of the right to food and the right to life while operating in Yemen.\textsuperscript{610}

Violations of IHL and IHRL may constitute crimes under ICL, including war crimes and crimes against humanity. In addition to customary ICL, in certain circumstances (discussed further in Part F, Section 2) the Rome Statue of the ICC may apply to the conduct of the warring parties.

### The use of starvation as a method of warfare

As set out in Part F, Section 1.2, the use of starvation as a method of warfare is prohibited under Article 14 of AP II and customary IHL. Article 14 of AP II stipulates that

\[ \text{“it is … prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”} \textsuperscript{611} \]

\textsuperscript{609} See Part F, Section 1.2.2.3.

\textsuperscript{610} See Part F, Section 3.2.2.

\textsuperscript{611} Additional Protocol II, Article 14.
The prohibition provides a non-exhaustive list of OIS, and additional objects not included on the list may also be indispensable in the applicable circumstances. The prohibition on the use of starvation as a method of warfare during NIAC is firmly accepted as part of customary IHL.612

In the context of the airstrikes on objects documented in this report, to constitute a violation of the prohibition under IHL:

(i) the objects targeted must constitute OIS;
(ii) the objects must have been attacked, destroyed, removed or rendered useless;
(iii) the objects must retain their civilian status or be otherwise unlawfully targeted; and
(iv) the OIS must have been attacked, destroyed, removed or rendered useless for the purpose of starving civilians.

The elements of starvation as a method of warfare under ICL are substantially similar. Where the first three of the above elements under IHL have been met, the actus reus requirement under ICL that the perpetrator must have “deprived civilians of OIS” will likely also have been met. Further, where OIS are attacked, destroyed, removed or rendered useless for the purpose of starving civilians, the perpetrator may have

(i) intentionally deprived civilians of OIS and
(ii) intended to starve civilians as a method of warfare or been aware of the virtual certainty that they would in the ordinary course of events. The relationship between the elements of the prohibition under IHL and the actus reus and mens rea elements under ICL in the context of the airstrikes are discussed in more detail below.

In addition, to show that a violation of IHL constituted a war crime under ICL, the chapeau elements of war crimes must be met: namely, that

612 ICRC Customary IHL Rule 54.
(ii) the direct perpetrator or other relevant actor must have been aware of factual requirements of, Saudi/UAE-led engaged armed engaging in framework and documented are and this as such, on, civilian and OIS, and As discussed below, the Saudi/UAE-led Coalition attacked, damaged and destroyed OIS, namely farms and agricultural infrastructure, water facilities and fishing boats and equipment through airstrikes, rendering them useless. The objects retained their civilian status and were unlawfully targeted. As such, the airstrikes constituted an attack on, damage to and/or destruction and rendering useless of OIS under Article 14 of AP II and customary IHL. By doing so, the Saudi/UAE-led Coalition deprived civilians of OIS, such that the actus reus element of the war crime of starvation is also met.

The airstrikes deprived civilians of OIS

With respect to (i), the Saudi/UAE-led Coalition airstrikes on the objects documented in this report were carried out in the context of the NIAC between the Yemeni government and Ansar Allah, to which Saudi Arabia, the UAE, and other members of the coalition are party, and were inextricably connected to the conflict. At the time the airstrikes documented were carried out, the hostilities had been ongoing for a number of years and it was widely accepted that they constituted an armed conflict to which the IHL framework applied. With respect to (ii), the direct and indirect perpetrators (discussed in Section 5.2.2.1 below) must have been aware that the Saudi/UAE-led Coalition was engaging in hostilities with Ansar Allah and that such hostilities rose to the level of an armed conflict. By mere virtue of the fact that they were engaging in airstrikes, persons engaged in them must have been on notice that they were engaged in hostilities. The Saudi/UAE-led Coalition has issued multiple statements acknowledging the existence of, and their involvement in, an armed conflict. Accordingly, both of the chapeau requirements are met.

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613 See Part F, Section 2.2.2. See also Rome Statute, Article 8(2)(e)(xix). The same requirements will apply to the prohibition on starvation as a method of warfare under NIACs when it is in force under the Rome Statute.

The airstrikes constituted an attack on OIS under IHL

- The objects constituted OIS that were unlawfully targeted under IHL

### Hajjah - Farms and agricultural infrastructure

The Jalhouf farm and Al-Taweel farm constitute “agricultural areas for the production of foodstuffs” explicitly protected by Article 14 of AP II. The irrigation works destroyed by the coalition airstrikes on the Jalhouf and Al-Taweel farms—namely a water pump and pond at the Jalhouf farm and the irrigation network, including the water pump, at the Al-Taweel farm—as well as livestock killed at Jalhouf farm constitute OIS falling within the protective scope of Article 14 of AP II. The beehives on the Al-Taweel farm can also be classified as protected foodstuffs and/or livestock, and part of the agricultural area for the production of foodstuffs, and are therefore protected OIS under Article 14 of AP II.

In addition, the farms, livestock and other objects were indispensable to the farm owners, employees and inhabitants they supplied with food. In both cases, the farms constituted the farm owners, workers and their families’ primary source of food. The vegetables and fruits cultivated on the farms, as well as livestock and honey, were sufficient to meet the farmers’ and workers’ needs without requiring access to humanitarian aid. They also contributed to the needs of inhabitants who bought food at the Shafar Market in Abs District in Hajjah Governate, the Bajel Market in the Bajel District of Al-Hudaydah Governate and Al-Hudaydah City (Jalhouf farm) and the Abs Market in Hajjah Governate (Al-Taweel farm), as well as neighbours of the Al-Taweel farm. Following the airstrikes, the farm owners and employees faced food insecurity.

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615 Mwatana for Human Rights interview with Ahmed Jalhouf on phone January 31, 2021 (Jalhouf farm: “The farm crops met our needs and the needs of our workers”); Mwatana for Human Rights interview with Yusef Ashram on December 14, 2020 (Al-Taweel farm: “We used to eat and sell its crops, and give gifts to visitors and neighbors... The farm that was the source of our food was destroyed”); Mwatana for Human Rights interview with Yusef Ashram on December 14, 2020 (Al-Taweel farm: “The honey that the bees produced met our needs”).

616 Mwatana for Human Rights interview with Yusef Ashram on December 14, 2020 (Al-Taweel farm: “We were not in need of any assistance”).

617 Mwatana for Human Rights interview with Ahmed Jalhouf on phone January 31, 2021 (Jalhouf farm: “We used to sell a large part of the crops in markets outside the region such as Souk Shafar, Hudaydah and Sana’a”); Mwatana for Human Rights interview with Khaldoun (a pseudonym) on March 17, 2021 (Al-Taweel Farm: The farm sold the produce to Abs Market).

618 Mwatana for Human Rights interview with Khaldoun (a pseudonym) on December 14, 2020 (Al-Taweel farm: “We used to eat and sell its crops, and give gifts to visitors and neighbors”).
and struggled to receive humanitarian aid to meet their basic needs, and some were forced to flee the area.\(^{619}\)

**Saada - Water infrastructure**

The Al-Nushoor and Al-Hamazat water facilities targeted by the Saudi/UAE-led Coalition fall within the protective scope of Article 14 of AP II, which specifically refers to “drinking water installations and supplies” as examples of OIS.

Additionally, the facilities were, in fact, indispensable to the survival of the populations of Sahar, As Safra and Kitaf wa Al-Buqa’a districts in Saada Governate. The Al-Hamazat Water Facility provided a necessary water source for 7,000 beneficiaries of 600 households in the Al-Hamazat region of Sahar District. After the facility’s destruction, they had to purchase water from a limited number of privately-owned shallow wells or trucks delivering water from neighbouring areas, both of which were very costly.\(^{620}\) Those who could not afford to do so had to walk long distances to fetch water daily.\(^{621}\)

The Al-Nushoor Water Facility benefited 10,500 civilians from 26 villages in Sahar, As Safra and Kitaf wa Al-Buqa’a districts, who had significant difficulties in accessing alternative sources of water after its destruction. The inhabitants had to search for

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\(^{619}\) Mwatana for Human Rights interview with Ahmed Jalhouf on phone January 31, 2021 (Jalhouf farm: “After the bombing, we were displaced to different areas. I do not know where the rest of the owners and workers live, I do not know whether they are still alive or dead”); Mwatana for Human Rights interview with Hadi Thabet Ahmed Hakimi on December 15, 2020 (Jalhouf farm: “We lost our source of income and we are looking for an alternative source, but we have not found anyone to help us”); Mwatana for Human Rights interview with Khalidoun (a pseudonym) on December 14, 2020 (Al-Taweel farm: “We are consuming basic supplies that come from outside the area at high prices. No one helped us flee the area or provided us with humanitarian aid. Even the aid provided by relief organizations does not reach us because members of the Ansar Allah seize them”); Mwatana for Human Rights interview with Al Taweel farm workers on December 14, 2020 (Al-Taweel farm: “We are tired of filling out forms! The staff of relief organizations visit us and ask us to fill out forms requesting humanitarian aid, but nothing has arrived”).

\(^{620}\) Mwatana for Human Rights interview with Saad on 16 December 2020 (“During those two periods, the residents used to go search for water from neighboring areas [Al-Baqlat, Zor Wadia’a, and Al-Taweelah], or they were forced to buy water from trucks transporting it from the city of Saada at prices that people with limited income cannot afford”); Mwatana for Human Rights follow up interviews with Mourad (a pseudonym) and Khaleel (a pseudonym) over phone on March 14, 2021 (During the two years it was out of service, the facility’s 7,000 beneficiaries were forced to get water either through privately-owned wells in Al Hamazat (which did not contain a lot of water and therefore sales were very limited) or by buying water from trucks delivering water from neighboring areas. Both of these options were very expensive for residents—prior to the airstrike, residents paid a monthly bill of around 1000-1500 Yemeni riyal per household, while after the attack, they paid around six times that amount).

\(^{621}\) Mwatana for Human Rights interview with Khalid (a pseudonym) on December 16, 2020 (“I cannot describe the situation of displaced children and women, who cannot afford to buy water that is delivered by trucks, and they fetch water daily by walking long distances”).
water in neighbouring villages and rely on surface wells, many of which have salty water, while others had to flee the area to search for water.\textsuperscript{622} Some residents could not afford to buy clean water and had to walk long distances to access it.\textsuperscript{623} Saada’s location in a mountainous and semi-arid area and its reliance on international organizations to fund the establishment of water facilities underscores the civilian population’s reliance on the destroyed water infrastructure for access to clean and affordable water, and the status of the Al-Nushoor and Al-Hamazat water facilities as OIS.

\textbf{Al-Hudaydah - Fishing boats and equipment}

The Saudi/UAE-led Coalition airstrikes in Al-Hudaydah targeted fishing boats and equipment. These objects “are of basic importance for the population from the point of view of providing the means of existence”\textsuperscript{624} and can therefore be considered OIS.\textsuperscript{625}

In the context of Al-Hudaydah, the fishing boats and equipment constitute OIS because they were necessary to catch fish to feed the owners of the boats, the individuals working for them, their families and other members of the civilian population. As discussed in Section 4.1, residents, particularly in coastal areas, were reliant on fish as a source of

\textsuperscript{622} Mwatana for Human Rights interview with Essam (a pseudonym) on December 14, 2020 (“Al-Nushoor Water Facility is of high importance, as it pumps safe water from an uninhabited and water-rich area to large, water-scarce inhabited areas...there are no water facilities in those areas and their inhabitants rely on surface wells, which have weak production capacity and many of which have salty water”); Mwatana for Human Rights interview with Ali (a pseudonym) on December 14, 2020 (“The water in these areas, which is located to the west of the Kitaf wa Al-Buqa district and east of the As Safra district, is scarce, and many of the wells here are salty and not safe for drinking. This area relies on only two water facilities—namely Al-Nushoor Water Facility and Al-Ehash Water Facility, each of which covers a part of this area”); Mwatana for Human Rights interview with Mourad (a pseudonym) on December 16, 2020 (“The water facility became our main source of water after most of the shallow wells in the region dried up”); Mwatana for Human Rights interview with Ali (a pseudonym) on December 14, 2020 (“Some Bedouins have been forced to leave the area because they could not find drinking water for themselves and their livestock”)

\textsuperscript{623} Mwatana for Human Rights interview with Ali (a pseudonym) on December 14, 2020 (“Many of the beneficiaries of the facility do not have another source of water, and their financial condition is poor and they cannot afford the water that comes on board the trucks”).

\textsuperscript{624} ICRC, supra note 144 at paras. 4802-4803. See also Yoram Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict (Cambridge University Press, 2004), p. 132.

\textsuperscript{625} Ibid.
daily food. As stated by one area resident, Ahmed Ali, fishing was a “haven” for the community, and the “sea meant everything [to them].” During the course of the conflict and the resulting attacks on fishing, the cost of food in the area increased dramatically and the price of fish doubled and then tripled. The impact of airstrikes on the fishing industry also forced some residents to flee the area. In similar circumstances, the GEE has examined attacks on fishermen in the IHL framework of attacks on OIS, finding that “the fishing community on the western coast of Yemen has been severely impacted by the conflict and people’s livelihoods have been considerably affected,” which “obviously compounded food-related needs in the region.”

- **The airstrikes constituted an attack on, and destroyed, damaged and rendered useless, OIS**

The airstrikes on the Jalhouf and Al-Taweel farms, on the Al-Nushoor and Al-Hamazat water facilities and on fishing boats and equipment near the Al-Badeea’ and Aqaban islands constituted attacks on OIS. The airstrikes also resulted in the complete destruction of, or damage to, OIS, rendering them useless.

In relation to the Jalhouf and Al-Taweel farms, the water pump, the pond, and parts of the irrigation network on the Jalhouf farm and the irrigation network on the Al-Taweel

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626 Mwatana for Human Rights interviewed Salem Abbas on December 21, 2020 (Al-Badeea’ Island: “Fishing is the source of food and livelihood for everyone in this area. We eat fish as a part of almost every meal, and everyone here works in one way or another in fishing. There are fishing boat owners, fishermen, those who work in the fish market, or those who work on fishing tools”). Mwatana for Human Rights interview with Abdullah Alaaalah on December 16, 2020 (Aqaban Island: “Our village (Al-Khoub) is known for fishing. We only work in fishing and we do not know how to do anything else. We get our food and our source of income from fishing”).


628 Mwatana for Human Rights interview with Ahmed Ali on January 10, 2020 (“The targeting of fishing has greatly affected the price of fish. The price of fish has doubled and then tripled, and the reason is the scarcity of fish in the market and the high prices of oil”). The GEE has also found that the laying of landmines in coastal areas by Ansar Allah prevented fisher persons from fishing, particularly in Hudaydah, which adversely impacted the availability and market price of fish. See GEE, supra note 22 at para. 52.


630 GEE, supra note 88 at para. 756. In the context of the war between Israel and Hezbollah in Lebanon in 2006, the Special Rapporteur on the Right to Food called for further investigation into possible violations of the right to food under IHL and IHRL after discussing the destruction of fishing boats as well as fishing nets, fish markets and related facilities and the imposition of a naval blockade preventing fishing. See UN Human Rights Council, “Report of the Special Rapporteur on the right to food, Jean Ziegler, on his mission to Lebanon,” UN Doc. A/HRC/2/8 (September 29, 2006), paras. 26 and 31, https://www.refworld.org/docid/45c30b650.html
farm were destroyed, such that the farms were rendered useless because of the inability to irrigate the land. Four livestock on the Jalhouf farm and the beehives on the Al-Taweel farm were also destroyed.

The destruction and damage to the Al-Nushoor and Al-Hamazat water facilities’ infrastructure also rendered the facilities useless, evident from the fact that the facilities could not operate at full capacity (Al-Nushoor) or at all (Al-Hamazat) after the attacks; from the stretches of time the facilities were not or were only partially operational; and from the significant amount of funds required to repair the damage. With regard to the Al-Nushoor Water Facility, in addition to witness testimony, satellite imagery (Images 2 and 4) confirms the destruction of parts of the water facility, particularly after the second attack. In Image 4, satellite imagery taken after the second attack on 23 July 2018 shows that several solar panels have been destroyed, as has the pump room next to them. It is also possible to discern burn marks caused by the airstrikes in the southwest of the area of the facility. As noted in Section 3 above, water infrastructure is essential to food production in agricultural areas such that where water infrastructure is destroyed, it can also adversely impact farms’ capacity to produce food, and therefore possibly also render them useless.

The airstrikes on the fishing boats near the Al-Badea` and Aqaban islands completely destroyed the fishing boats and the equipment, as well as fishing boat engines, fishing nets, refrigerators and anchors in the attack at Al-Badea` Island. These objects were essential to catching fish vital to feeding the fishermen, their families and other members of the civilian population and were therefore OIS. The attacks on the fishing industry and fishing waters not only destroyed these OIS, but killed fishermen and

631 The attack on the Al-Hamazat Water Facility destroyed the cement reservoir in the first attack and damaged the cement reservoir, solar energy system and parts of the main water distribution network in the second attack. The first attack on the Al-Nushoor Water Facility destroyed one of the water pumps and guard room and the second attack destroyed one of the water pumps and one of the wells and damaged the water distribution network and solar energy system.

632 With respect to the Hamazat Water Facility, the facility was not operational for two years following the first attack and at least 8 months after the second attack. With respect to the Al-Nushoor Water Facility, the repair of the facility following the first attack took approximately 3 months, while the repair following the second airstrike took approximately one year and one month.

633 For the Al-Hamazat Water Facility, UNICEF repaired the facility after the first attack at a cost equivalent to US$22,000. For the Al-Nushoor Water Facility, UNICEF purchased a new pump in the aftermath of the first attack at the cost of US$20,000. Following the second attack on the facility, UNICEF, in partnership with OCHA, restored the facility and repaired the damage at a cost of $500,000.
instilled fear in the fishing community, inhibiting their ability to return to the sea to fish, and “render[ed] useless not only OIS related to fishing, but the role of the fishermen themselves.” It is self-evident that if the fishermen were themselves the object of attack, this too falls foul of the broader prohibition on attacks on OIS, as well as on a broader starvation analysis more generally. The impact of the attacks on the fishing industry meant that fishermen were unable to fish in Al-Hudaydah or were only able to fish for shorter periods of time, causing shortages in fish and therefore the food supply, not just for these fishermen and their families and communities, but also across Yemen. Some chose to return to fishing only because they had to choose between starving or the possibility of facing another attack.

634 Mwatana for Human Rights interview with Salem Abas on December 21, 2020 (Al-Badeaa’ island: “The sea in which we’ve worked since our childhood became an unsafe place for us. I used to love fishing trips, especially the long ones, but I hate fishing now and I don’t feel safe...We feel that we are potential targets for the planes just because we are fishermen”); Mwatana for Human Rights interview with Saddam (a pseudonym), on January 9, 2020 (Aqaban Island: “Fishermen told me that they go fishing and do not expect to return, but they have no other option, because the sea is their only source of livelihood”). Although outside the scope of this report, this could constitute terrorization of civilians as a war crime under customary IHL, Rule 2 (Violence aimed at spreading terror among the civilian population).

635 Hutter, supra note 224 at p. 197 (“Starvation may also be evoked by acts or threats of violence that indirectly threaten food security. For example, reducing the number of farmers through attacks or terror may cause acute food shortages as production falls”).

636 For example, if the fishermen were the only targets but their targeting prevented them from fishing, this may also constitute the use of starvation as a method of warfare under the prohibition contained in Article 14 of AP II, without requiring attacks on OIS specifically.

637 Mwatana for Human Rights interview with Salem Abas on December 21, 2020 (Al-Badeaa’ Island: “[T]here is no other way to live, we are not good at any other profession and we don’t have any source of income other than fishing”); Mwatana for Human Rights interview with Abdullah Alalallah on December 16, 2020 (Aqaban Island: “But per usual, after each attack on fishermen, we stop fishing for a period of time and then go back to fishing again [for others], because we have no other source of food or income”); Mwatana for Human Rights interview with Aisha Ahmed on January 11, 2020 (“My son was no longer able to go fishing, fearing the coalition’s aircrafts. We had no other source of income. We decided to flee from the area [of Al-Salif], fearing we would either die by starvation or that the aircrafts would kill us”).
• The OIS were civilian objects that were unlawfully targeted

As set out in Part F, Section 1.2.2.1, Article 14 of AP II does not include an explicit exception for attacks on OIS that may also qualify as a military objective.\footnote{Additional Protocol II, Article 14.} However, under the principle of distinction, an object may qualify as a military objective and lose protection from attack during a NIAC, when by its nature, location, purpose or use it makes an effective contribution to military action and its destruction, capture or neutralization would offer a definite military advantage under the circumstances at the time.\footnote{ICRC Customary IHRL Rules 8–9. See also Part F, Section 1.2.2.3(i).} Nature refers to the intrinsic military characteristics of the objects. Location refers to where the object is “a site which is of special importance for military operations” either because it “is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it.”\footnote{ICRC, supra note 144 at para. 2021.} Purpose refers to the intended future use of an object in support of military operations\footnote{ICRC, supra note 624 at pp. 9-10.} and use to the object’s current usage.\footnote{“ICRC Commentary of 1987: General Protection of Civilian Objects (Additional Protocol I, Article 52),” ICRC, para. 2022, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5F27276CE1BBB79DC12563CD00434969.}

The principle of distinction is subject to the principle of proportionality, which stipulates that an attack against a lawful military target may not be permissible if the damage to the civilian population or civilian objects is excessive to the concrete and direct military gain anticipated.\footnote{See Part F, Section 1.2.3.3(ii).} It is also subject to the principle of precautions in attack which requires, among other things, advance warning of attacks on military objectives which may cause collateral damage and the choice of means and methods of warfare which will minimize it.\footnote{See Part F, Section 1.2.3.3(iii).}
Hajjah – Farms and agricultural infrastructure

The Jalhouf and Al-Taweel farms in the Abs district, an agricultural area, were, by their nature, civilian. They were a significant distance from the frontlines, with military targets approximately 30 and 35 km away from the farms respectively. This significantly limits the possibility that, by their location, the farms contributed to military action.

The information available also indicates the Jalhouf and Al-Taweel farms made no contribution to military action by their purpose or use. They were used for the cultivation of food supplies for the sustenance of the farms’ owners and their employees as well as local and regional markets, as discussed above. Similarly, the water pump and irrigation networks targeted by the airstrikes were used to support the agricultural activities of the farms, and did not serve as “dual-use” objects.

The information available also indicates that there were no enemy forces present on the farm or in the area at the time of the attack that might have otherwise constituted lawful targets. The destruction of OIS does not, therefore, constitute collateral damage arising from the lawful targeting of a military objective.

On the basis of the above, the farms were civilian objects and as such were protected from attack under the principle of distinction. They did not qualify as military objectives by virtue of their nature, location, purpose or use, and their destruction offered no definitive military advantage under the circumstances at the time. Accordingly, no further assessment under the principles of proportionality and precaution is required.

645 See Section 5.2.1.1(i)(a).

646 As discussed in Part F, Section 1.2.2.3(ii), dual-use objects are objects which qualify as military objectives, but also simultaneously serve civilian functions. See M. Cotter, ‘Military Necessity, Proportionality and Dual-Use Objects at the ICTY: A Close Reading of the Prlić et al. Proceedings on the Destruction of the Old Bridge of Mostar’ [2018] 23(2) Journal of Conflict and Security Law 283.
The information available regarding the attacks on the Al-Nushoor and Al-Hamazat water facilities indicates that the infrastructures were, by their nature, civilian, and therefore constituted civilian objects protected from attack. The Al-Nushoor Water Facility is located in a largely uninhabited area, with the exception of some Bedouin settlements nearby. Similarly, the Al-Hamazat Water Facility is located on a hill about six kilometres northeast of Saada City in a region home to many IDPs. The facilities did not provide water to military facilities or sites and no military objectives were at the sites on the days the attacks occurred. On this basis, they were civilian objects protected from attack in accordance with the principle of distinction, such that their targeting constituted an unlawful attack under IHL per se.

When reporting on the attack on the Al-Nushoor Water Facility in 2019, the PoE stated that the water borehole and solar panels were civilian objects protected from attack and the water supply system an OIS. The PoE noted that the coordinates of the Al-Nushoor Water Facility had been shared with the Saudi/UAE-led Coalition to be put on the no-strike list prior to the attack, a tool specifically meant to help ensure parties are aware of, and avoid, attacks on civilian objects. The PoE added that it “could not find any reason why the [Saudi/UAE-led Coalition] would consider a water borehole as a military objective.”

Nevertheless, in case of any doubt, and to present a comprehensive legal analysis, we pre-emptively assess the possible location of military objectives nearby or on the site at the time of, or temporally proximate to, the attacks, and the possibility that the water facilities were targeted due to the location of military objectives below.

• Al-Nushoor Water Facility

The information provided indicates that there is a military checkpoint located 500 meters away from the Al-Nushoor Water Facility. Given the distance of the facility from the checkpoint, it is unlikely its destruction would have constituted collateral damage had the Saudi/UAE-led Coalition been targeting the checkpoint. Notably, Image 4 shows...
the clear line of sight the aircraft would have had if they had attempted to target the checkpoint. If the military checkpoint was the object of the attack, the Saudi/UAE-led Coalition should have undertaken a proportionality assessment to determine whether the damage to the water facility was excessive compared to the military advantage gained. In addition, the Saudi/UAE-led Coalition was required to take precautionary measures, including in terms of its choice of weaponry, to ensure its targeting capacity was sufficiently precise. As discussed in Sections 1 and 2.3, the Saudi/UAE-led Coalition has precision weaponry in its arsenal, which enables the coalition to accurately strike targeted objects. To the extent that the damage to and destruction of the water facility was the result of the use of means of warfare that is not sufficiently precise, the incident indicates that the coalition failed to take precautions to minimize collateral damage, which would amount to an indiscriminate attack in violation of IHL.  

The GEE has raised concerns about the Saudi/UAE-led Coalition’s failure to adopt effective precautionary measures, including with respect to their choice of weapons.

In any event, given the Al-Nushoor Water Facility was targeted three times, twice in 2018 and again in 2019, it is unlikely that the checkpoint was the intended target.

The information available also indicates that an Ansar Allah community supervisor (a “mushrif”) may have been present the day prior to the second attack on the Al-Nushoor Water Facility. Mushrifs generally serve in administrative positions and would be protected from attack unless they were directly participating in hostilities based on their role at the time. In the latter case, the damage to the facility could constitute collateral damage only if the mushrif was present at the facility at the time of the attack, which Mwatana’s research conclusively did not find.

Even if the mushrif was present at the time of the attack, the Saudi/UAE-led Coalition would have to conduct a proportionality assessment in which the concrete and direct military advantage of targeting the community supervisor on the one hand (e.g. the profile and importance of the community supervisor and impact their death may have on the ability to Ansar Allah to engage in hostilities) outweighed the anticipated damage to OIS on the other hand (including the impact that destruction of the facility would have

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649 If the checkpoint was the target and the coalition determined to proceed to target with the use of indiscriminate weapons, it was required to undertake a proportionality analysis to determine whether the damage to the water facility was excessive compared to the military advantage gained.

650 GEE, supra note 88 at para. 38(c).

651 See Part F, Section 1.2.2.3(i), for a discussion of direct participation in hostilities under IHL.
on the civilian population and its ability to survive without water). In this respect, the Saudi/UAE-led Coalition should have been aware of the significant civilian harm that would flow from damaging the water infrastructure, particularly given the coordinates of the facility had been shared with the Saudi/UAE-led Coalition for inclusion on the no-strike list. The Saudi/UAE-led Coalition would also have had to take all feasible precautionary measures to minimize collateral damage. This would have included, for example, carrying out an attack after the mushrif left the facility, rather than while he was in or near an OIS, if the mushrif was the target of the attack. As noted above, Mwatana’s research indicated the mushrif may have been present the day prior to the second attack, but was not present at the time of the attack. This legal analysis is included for the sake of completeness. The GEE has also raised concerns about the coalition’s timing of attacks in the context of the effectiveness of any precautionary measures.652

• Hamazat Water Facility

Following the second airstrike on the Al-Hamazat water facility, UNICEF issued a statement calling on parties to the conflict to refrain from launching attacks on or near water facilities or other critical infrastructure. As for the Al-Nushoor facility, even if the Saudi/UAE-led Coalition was attempting to target military objectives nearby—which is not supported by the evidence set out in this report—the Saudi/UAE-led Coalition was obligated to conduct a proportionality assessment. Based on this assessment, if they determined the military advantage outweighed the impact on civilians and civilian infrastructure in the particular circumstances applicable at the time, they must have taken all feasible precautions to minimize collateral damage, including by using precision weaponry. The fact that the facility was targeted twice indicates it was unlikely that military objects nearby were the intended target.

Al-Hudaydah - Fishing boats and equipment

The fishing boats and equipment, were, by their nature, civilian. They were used solely by the civilian population of the Alluheyah District to fish and ensure access to a source of food, and were therefore civilian objects protected from attack. Based on the

652 GEE, supra note 88 at para. 38(c).
information documented by Mwatana, the destruction of the fishing boats and equipment could not constitute collateral damage given Al-Badeea’ Island is an uninhabited area with no military sites on it or nearby. No military vessels or other military objects were present at the time of the attack near the Aqaban Islands. There is also no evidence to suggest any of the fishermen themselves constituted military objectives.

- Al-Badeea’ Island

As discussed in Section 4.2, JIAT claimed that the attacks on fishermen, fishing boats and fishing equipment on Al-Badeea’ Island targeted (i) three boats for transporting and smuggling weapons that had arrived from the western Red Sea (allegedly attacked with two bombs), and (ii) “a gathering of elements from the Houthi armed group” in two boats that had arrived from the Yemeni shore (allegedly attacked with one bomb). This conclusion was purportedly based on a “reconnaissance mission” and “reliable intelligence sources” indicating weapons smuggling operations were imminent in the Alluheyah area.\(^{653}\) JIAT’s statement indicates that JIAT considered the group of fishermen and fishing boats military targets, and that they believe the Saudi/UAE-led Coalition attack complied with the principle of distinction.

With respect to JIAT’s first claim, (i), which would necessarily have involved persons to smuggle weapons to Ansar Allah, even if such persons were smuggling weapons as JIAT claims (but which Mwatana’s research did not find), such persons would not have been directly participating in hostilities and would not lose protection from attack. Although “direct participation in hostilities” includes “measures preparatory to the execution of a specific act of direct participation,” the smuggling of weapons per se is not sufficiently linked to a specific hostilities-related act or operation.\(^{654}\) ICRC guidance on the notion of direct participation in hostilities explicitly excludes the smuggling and

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\(^{653}\) Saudi Press Agency, supra note 339. The coalition has more generally claimed that airstrikes have been carried out on fishermen in the context of enforcing the naval blockade and preventing arms smuggling to the Ansar Allah (Houthi) armed group by sea, claiming that fishermen have been recruited by Ansar Allah to smuggle arms, including from Iran. See “Revealed: How Iran smuggles weapons to the Houthis” Arab News (October 1, 2020), https://www.arabnews.com/node/1742621/middle-east. See also PoE (2020), supra note 45 at pp. 2-3.

\(^{654}\) Melzer, supra note 176 at p. 65.
hiding of weapons. 655 Nothing else in the JIAT statement indicates that the persons JIAT claims were in the three boats were engaged in any other activities that would lead to a conclusion that, based on the circumstances prevailing at the time, these people lost their protection from attack.

With respect to JIAT’s second claim, (ii), that the purported “armed elements from the Houthi armed group” were present on the island, according to the information documented by Mwatana, no such Ansar Allah (Houthi) armed group members were present. Even if they were present and constituted a lawful military target by virtue of having a continuous combat function, the Saudi/UAE-led Coalition was required to apply the principles of proportionality and precautions. In the event that weapons were stored in the fishing boats anchored on the beach of the Al-Badeea’ Island—a fact that Mwatana’s documentation does not support—the weapons could constitute lawful military objectives, but the Saudi/UAE-led Coalition was required to apply the principles of proportionality and precautions to any attack on them. Similarly, if the boats were being used to smuggle weapons—which Mwatana’s documentation also does not support—the boats could also constitute “dual-use” objects to which such principles must have been applied.

More specifically, the coalition was required to take precautionary measures to assess the status of all anticipated targets, then weigh the concrete and direct military advantage of targeting members of Ansar Allah and/or weapons (e.g. the impact their death and destruction respectively may have had on Ansar Allah’s overall ability to engage in hostilities) against the anticipated damage to civilians—whether smuggling weapons or not—and OIS on the other hand (including the death of civilians and the impact that destruction of the OIS would have on the civilian population and its ability to survive). Had the coalition decided that the anticipated military advantage outweighed the harm to civilians and OIS, the Saudi/UAE-led Coalition would also have had to take all feasible precautionary measures to minimize collateral damage, which would have required them, at a minimum, to wait until any members of Ansar Allah after they had left the island with the weapons to return to the Yemeni mainland before targeting them.

655 Ibid, at p. 66. Conversely, “the loading of bombs onto an airplane for a direct attack on military objectives in an area of hostilities constitutes a measure preparatory to a specific hostile act and, therefore, qualifies as direct participation in hostilities.” See p. 65. An alternative conclusion would lead to the perverse result that members of States and corporations providing arms to the coalition become lawful targets.
• Conclusion

On the basis of the information available and the above analysis, the Saudi/UAE-led Coalition airstrikes on farms and agricultural infrastructure, the water facilities and the fishing boats and fishing equipment constitute unlawful attacks on OIS under IHL. Accordingly, the airstrikes violated the prohibition on attacking and destroying OIS under Article 14 of AP II and Rule 54 of Customary IHL.

I The airstrikes deprived civilians of OIS under ICL

As set out in Part F, Section 2.2.1, the only actus reus element of starvation as a war crime is depriving civilians of OIS. As documented in the case-studies and the above analysis, the Saudi/UAE-led Coalition airstrikes destroyed and damaged farms, agricultural infrastructure, water infrastructure, fishing boats and fishing equipment, which constituted OIS, thereby depriving civilians of them. The attacks on fishermen, which reduced their ability to fish, also contributed to a reduced fish supply in Yemen and accordingly deprived civilians of OIS. Accordingly, members of the Saudi/UAE-led Coalition committed the actus reus requirement of starvation as a war crime.

The airstrikes were carried out with the requisite intent

As discussed in Part F, Section 1.2.1, to constitute a violation of Article 14 of AP II, the airstrikes on OIS must have been carried out “for the purpose” of starving the civilian population. While the purposive requirement does not necessitate a motive, it requires intent, the standard for which is unclear under IHL. In any event, given the mens rea standard under ICL should not be less onerous than the standard under IHL, this report examines whether both a violation of the IHL prohibition under Article 14 of AP II and customary IHL, as well as starvation as a war crime, has been committed in the context of the intent standard that applies under Article 30 of the Rome Statute. As discussed in Part F, Section 2.3, the intent standard that applies to indirect attacks on civilian objects per se as a war crime under customary international law is equivalent to the standard under Article 30 of the Rome Statute, such that the intent standard for the war crime of starvation under customary international law may also be equivalent.
Part F, Section 2.2.2 of the report sets out in detail the intent standard applicable to starvation as a war crime under Article 30 of the Rome Statute, namely that the perpetrator(s) must have intentionally deprived civilians of OIS or were aware that their actions would almost certainly lead to such deprivation in the ordinary course of events. By doing so, they must have either intended to starve civilians or been aware that starvation would almost certainly result in the ordinary course of events. Intent to starve need not be the perpetrator(s)' sole intent, but may be one of a number of other lawful or unlawful goals.656

Intent may be demonstrated by both direct evidence and indirect—or circumstantial—evidence.657 While there is ample direct (witness and satellite) evidence that the actus reus elements of the crime of starvation have been committed, there is limited direct evidence with respect to mens rea elements. Direct evidence about intent, in particular, is difficult to obtain, and in the context of international prosecutions has often required extensive criminal investigations involving access to insider witnesses and classified documents held by State or non-State actors. Accordingly, indirect evidence based on the underlying circumstances, including the pattern of attacks, is assessed to determine whether the perpetrator(s) may have had the desire to commit the prohibited conduct with the intention to starve civilians or it would be practically impossible for them to envisage that the consequence would not occur (the virtual certainty requirement).658 Each of the mens rea elements is discussed in turn below.

I Attributing responsibility for air strikes to the Saudi/UAE-led Coalition

As a preliminary matter, it is difficult to attribute the intent to starve to perpetrators without envisaging precisely who might hold such intent or knowledge in their minds. This report does not document the conduct of specific members of the Saudi/UAE-led Coalition responsible for committing violations, but refers more generally to the conduct of the Saudi/UAE-led Coalition as a whole.

656 See Part F, Section 2.3.
657 See Part F, Section 2.6.
658 See Part F, Sections 2.2.2.4 and 2.6.
In the context of the violations documented in this report and the relevance of the pattern of attacks to making inferences about intent to starve the population, the perpetrators responsible for violations of IHL and crimes under ICL would likely include members of the Saudi/UAE-led Coalition who are responsible for making general or specific determinations about targeting with respect to airstrike and for ordering them to be carried out. Such persons may be held liable under modes of liability (discussed in Part F, Section 2.5) including co-perpetration, indirect perpetration and indirect co-perpetration (where acting pursuant to a common criminal plan), complicity or ordering. Civilian and military superiors of perpetrators who are responsible under any mode of liability may also be liable as superiors insofar as they failed to prevent or punish crimes committed by persons under their effective command, where they had the requisite knowledge and failed to act.\(^\text{659}\) This would include members of the Yemeni military and government due to their role in Coalition military operations, including through modes of liability that require acting pursuant to a common criminal plan.

I Members of the Saudi/UAE-led Coalition intentionally deprived civilians of OIS (the first mens rea element)

As discussed in Section 5.2.1 above, the Saudi/UAE-led Coalition conducted airstrikes on OIS which damaged, destroyed and rendered them useless and thereby deprived civilians of them. As discussed in Part F, Section 2.2.2, the material elements of war crimes under the Rome Statute must have been committed with intent and knowledge.\(^\text{660}\) Accordingly, the perpetrator must have deprived civilians of OIS—here through damage to or destruction of OIS—intentionally, and with knowledge that the objects of which he or she is depriving the civilian population are OIS. Given the nature of airstrikes, as well as the repetition of attacks in the case of the water facilities in Saada and the number of bombs deployed in the case of artisanal fishing in Al-Hudaydah, the persons responsible for carrying them out—whether as direct or indirect perpetrators—appear to have intended to carry them out. Additionally, those responsible must have been aware of the virtual certainty that they would destroy or damage the farms, agricultural infrastructure, water infrastructure, fishing boats and fishing equipment and therefore, would damage or destroy OIS. In the case of fishing in particular, it was a virtual certainty that bombs dropped on artisanal fishing boats, fishing equipment and fishermen would

\(^{659}\) See Part F, Section 2.5, for more detail about the precise elements of each of these modes.

\(^{660}\) Rome Statute, Article 30(1).
have destroyed or damaged the objects and killed or injured the fishermen.

The deprivation of OIS does not appear to be the result of mistaken targeting, mischaracterization of the objects as military objectives or, with respect to the water facilities, an attempt to conduct an attack on military objects which resulted in collateral damage. Indeed, as discussed below, the pattern of attacks suggests the opposite. With respect to the fishing boats and equipment, based on the information available, there is no evidence that the fishermen were engaging in arms smuggling or that they otherwise constituted military objectives that could be lawfully targeted. Even if their destruction was collateral damage relating to the armed Ansar Allah members JIAT claimed were present (Mwatana’s research found no credible indication that this was the case), the persons responsible for carrying out the airstrikes should have known that by destroying fishermen’s fishing boats and equipment they could no longer catch fish essential to feeding themselves and their communities, and therefore that they were destroying OIS, particularly had they taken the necessary precautions.

Accordingly, based on the information available, it appears that the airstrikes were intentionally carried out to deprive civilians of the OIS.

Members of the Saudi/UAE-led Coalition had intent to starve the civilian population or knowledge it would almost certainly occur in the ordinary course of events (the second mens rea element)

In the context of the attacks documented in the report, given the nature of the crime of starvation as a method of warfare and in the absence of a full criminal investigation, it is difficult, although not impossible, to establish that a single attack on one OIS was carried out with intent to starve civilians. For example, with respect to the attack on the Al-Nushoor Water Facility in Saada Governate, persons responsible for the deliberate attack on the water infrastructure must have had some awareness that its destruction would mean those reliant on the water distributed by the facility could starve, particularly in the context of acute and widespread water shortages in Yemen at the time and civilians’ reliance on such types of infrastructure. The question is whether they intended to starve those civilians or were aware of the virtual certainty that they would starve in the ordinary course of events.
As set out in Part F, Section 2.2.2.4, of this report, the broader pattern of attacks on agricultural infrastructure alone, and then again more broadly on water infrastructure and other OIS in Yemen, provides evidence that those responsible for the attacks did so with such intent or knowledge. In other contexts, but specifically with respect to genocide (which requires specific intent), international courts and tribunals have relied upon an accused’s pattern of conduct to infer intent in the absence of direct evidence. In the Rutaganda case, for example, the Appeals Chamber of the International Criminal Tribunal for Rwanda noted that “explicit manifestations of criminal intent are ... often rare in the context of criminal trials,” such that intent “may be determined, on a case by case basis, through a logical inference from the material evidence submitted to it, and which establish a consistent pattern of conduct on the part of the Accused.” In the Saudi/UAE-led Coalition’s broader pattern of conduct may similarly be relied on to infer an intention to starve Yemeni civilians.

In addition to the pattern of attacks, numerous other factors may be considered, many of which are relevant to the Saudi/UAE-led Coalition’s airstrikes on OIS in Hajjah, Saada and Al-Hudaydah governates from 2015 to 2019 specifically, and more broadly the destruction of OIS in Ansar Allah-controlled territory since 2015. These factors are discussed below. While further investigations and analysis are needed, based on the information available and such factors, it is possible to conclude that members of the Saudi/UAE-led Coalition intentionally carried out airstrikes to starve civilians as a method of warfare, or that they were aware in the ordinary course of events that the airstrikes would almost certainly cause the starvation of civilians.

661 The Prosecutor v. Georges Anderson Nderubumwe Rutaganda, ICTR-96-3-A, Appeal Judgment, 26 May 2003, paras. 525-526, citing Georges Anderson Nderubumwe Rutaganda v. The Prosecutor, ICTR-96-3, Trial Judgment, 6 December 1999, para. 63. In the Karadžić case at the International Criminal Tribunal for the Former Yugoslavia, for example, the trial chamber stated: “Indications of genocidal intent are rarely overt, and thus intent must often be inferred on the basis of the totality of the evidence, taking into account such factors as the scale of atrocities and the systematic targeting of victims on account of their membership in a particular group.” See Prosecutor v. Karadžić, supra note 226 at para. 5669. See also Sylvestre Gacumbitsi v. The Prosecutor, ICTR-2001-64-A, Appeal Judgment, 7 July 2006, paras. 40-41 (“The Tribunal’s jurisprudence conclusively establishes that genocidal intent can be proven through inference from the facts and circumstances of a case. By its nature, intent is not usually susceptible to direct proof”); Prosecutor v. Popović et al., supra note 226 at para. 1103; Prosecutor v. Omar Hassan Ahmad Al Bashir, supra note 233 at para. 119. Contrast this with the Separate and Partly Dissenting Opinion of Judge Anita Usócka in Prosecutor v. Al Bashir, ICC-02/05-01/09-3, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, Dissenting Opinion of Judge Anita Usócka, 4 March 2009, para. 19, fn. 26.
• The general context in which the acts were committed

Before examining the pattern of attacks, it is important to bear in mind the general context in which they occurred, which must have been known to and in the mind of the persons responsible for the documented airstrikes, as well as the broader range of attacks on OIS in Yemen. As discussed in Part E, Section 2.1, Yemen faced high levels of food insecurity at the commencement of the conflict. The pervasive food and water scarcity prior to the conflict and the increase in scarcity throughout the conflict has been widely reported on, as demonstrated by numerous reports by OCHA and WFP, among others, prior to and during the conflict. Humanitarian organizations, as well as UN bodies such as the PoE and GEE, have engaged directly with members of the Saudi/UAE-led Coalition and Yemeni government on food and water security-related issues, including to advocate for humanitarian access to ameliorate the devastating impacts the war has had on the civilian population.662

Members of the Saudi/UAE-led Coalition likely knew that segments of the civilian population were entirely reliant on access to specific agricultural produce and fishing and the markets they supplied, as well as on water provided by certain water infrastructure, and that the destruction of such objects would mean these civilians would be unable to access affordable food and clean water. By November 2015,663 it is inconceivable that Saudi Arabia, for example, was not aware of the acute food insecurity crisis in Yemen and the looming famine threatening areas in which it was carrying out air strikes. As an example of this awareness, in 2015, Saudi Arabia committed to meeting a UN donation request of US$274 million to fund humanitarian efforts, but delayed payment for five months.664 In 2018, Saudi Arabia “ordered the deposit of $2 billion to be paid


663 The month of the first attack documented in this report. See the Hamazat Water Facility case study in Section 3.2. Despite this show of goodwill, Saudi Arabia delayed the donation through five months of negotiations, during which it reportedly tried to coordinate its relief efforts through a government-run charity as well as trying to bar the donation of goods to Houthi-controlled areas. See Colum Lynch, “Exclusive: As Air War Intensifies, Saudi Arabia Launches Charm Offensive Before U.N. Summit,” Foreign Policy (September 23, 2015), https://foreignpolicy.com/2015/09/23/saudi-arabia-launches-charm-offensive-to-describe-yemen-assault-before-u-n-summit/.

into Yemen’s central bank ... to shore up the weak Yemeni currency,” just “a day after the Yemeni prime minister issued a public pleas for funds to prop up the riyal and help stave off hunger.”

- The manner, timing and repetition of the airstrikes documented in Hajjah, Saada and Al-Hudaydah, in the context of the broader attacks on OIS

The manner, timing and repetition of the attacks on agricultural infrastructure in Hajjah, water infrastructure in Saada and artisanal fishing in Al-Hudaydah documented in this report, when considered in the context of the broader attacks on OIS in Yemen throughout the duration of the conflict, provide evidence to suggest that those responsible for the airstrikes had the requisite intent or knowledge when carrying out the attacks.

  a. Repeated Attacks on agricultural infrastructure

  As discussed in Section 2.3 above, the attacks on the Jalhouf and Al-Taweel farms in the Abs District are part of a broader pattern of widespread Saudi/UAE-led Coalition attacks on agricultural infrastructure in Ansar Allah-controlled territory in Yemen. Ahmed Jalhouf, one of the Jalhouf farm owners interviewed by Mwatana, said that the Saudi/UAE-led Coalition had “targeted many farms in Al-Jar.” An Al-Taweel farm worker also said that “[m]any other farms were bombed,” recalling that “eight farms in [the] area were bombed by the [Saudi/UAE-led Coalition].” Mwatana has also documented 90 other Saudi/UAE-led Coalition airstrikes on farms, livestock, agricultural land, agricultural tools and equipment, and food in stores and vehicles in Yemen since 2015, 31 of which occurred in Hajjah Governate. Many of the airstrikes in Hajjah specifically occurred in the Abs District, with particular concentration in Al-Jar village where many large farms are situated due to its fertile land and access to irrigatable water.


667 Mwatana for Human Rights interview with Khaldoun (a pseudonym) on December 14, 2020.

668 See Part G, Section 2.1.
### Saudi/UAE-led Coalition Airstrikes

<table>
<thead>
<tr>
<th>Year</th>
<th>Farms, Livestock, Agricultural Land, Tools, Equipment, and Food</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>78</td>
</tr>
<tr>
<td>2020</td>
<td>27 in Hajjah Governorate,</td>
</tr>
</tbody>
</table>

Source: Mwatana

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The body of a cow that was killed in an air strike on a cow farm in Al-Kadan Area, Bajil District, Al-Hudaydah Governorate. January 2, 2016.
The GEE has investigated and reported on unlawful airstrikes on agriculture, including “19 incidents of airstrikes hitting farms or agricultural workers between 2015 to 2019.” 669 The NRC, relying on CIMP data, reported that airstrikes struck farms 348 times between January 2018 and September 2020 alone. 670 The PoE, Amnesty International and YDP have also reported on attacks, including airstrikes, on agricultural infrastructure throughout the conflict by the Saudi/UAE-led Coalition. 671 The study by Martha Mundy, Professor Emeritus in Anthropology at the London School of Economics, found that agricultural land was the most frequent target of airstrikes across all governates documented by YDP, such that the Saudi/UAE-led Coalition would have had to intentionally target agricultural land to hit it as frequently as it did between March 2015 and August 2016. 672

The manner in which such attacks were carried out indicates intent to destroy not only the food sources themselves, such as crops grown on agricultural land and livestock, but all possibility of farming the land in the future without a considerable influx of capital to repair the damage to the farms’ infrastructure. As documented in the case studies of the Jalhouf and Al-Taweel farms, the farm owners did not have such capital, 673 a situation which is likely to reflect the circumstances of others whose farms were destroyed given the relative poverty in Yemen. 674 As Ahmed Jalhouf stated, “most of the farms [in Al-Jar] have become empty” due to the Saudi/UAE-led Coalition airstrikes on them. 675

b. Repeated Attacks on water infrastructure

With respect to Saada, the fact that the Saudi/UAE-led Coalition airstrikes hit the Al-Nushoor Water Facility three times (though the third airstrike did not cause damage) and the Al-Hamazat Water Facility twice indicates that those responsible intended to deprive the beneficiary population of access to water. The timing of the second airstrikes after the facilities had been repaired and, in the case of Al-Nushoor, after it had just

669  GEE, supra note 88 at para. 755. See also Part G, Section 2.2.
670  NRC, supra note 86.
671  See Part G, Section 2.3.
672  Mundy, supra note 415.
673  See Part G, Section 2.2, Case Study 1.
674  See Part E.
started functioning again, also demonstrates those responsible sought to deprive the beneficiaries of access to water. While this alone may not be enough to demonstrate an intent to starve per se, knowledge that the destruction of or damage to the facility would almost certainly cause deprivation of access to water, and therefore would cause starvation in the ordinary course of events given the necessity of water to survive, meets the standard of intent. As discussed above, the information documented indicates that the attacks were direct attacks on water facilities which served the civilian population and were civilian in status, violating the principle of distinction. But, even if the attacks were disproportionate or indiscriminate attacks carried out for military purposes, knowledge of the virtual certainty that the beneficiary populations would have no access to water and therefore would starve as a result of the damage caused by the attack would still meet the standard of intent.

When situated in the broader pattern of Saudi/UAE-led Coalition attacks on water sources in Yemen, which were widespread throughout the territory and over the duration of the conflict, it is arguable such attacks were intended to deprive civilians of water necessary to survive. Mwatana has documented at least 25 Saudi/UAE-led Coalition airstrikes on water sites, water infrastructure and means of transporting water in Yemen since 2015. Of those, 17 occurred in Saada Governate, with 12 hitting water facilities. According to YDP, the Saudi/UAE-led Coalition has carried out 121 airstrikes on water facilities across Yemen since the commencement of the conflict.

In addition to attacks on water facilities, the PoE, GEE and others have also reported on attacks on other water sources or objects necessary to access water, including a water pump factory, water bottling factories, water tanker/s, a water truck, water wells, a water drilling site and a seawater desalination plant. Abdul Salam (a pseudonym), a 37-year-old engineer working in water facilities in Saada, said that “[t]he targeting of water sources in Saada was a common pattern, especially in 2015 and 2016.” During his work, he “found more than eight water facilities that were targeted by airstrikes in

--- Starvation Makers ---

676 In the case of the Al-Nushoor facility, the attack was carried out 2 months after UNICEF, in partnership with OCHA, restored the facility. In the case of the Hamazat facility, the second attack took place within a month from when Oxfam purchased a solar energy system for the facility.

677 See Part F, Section 3.1.

678 See Part G, Section 3.1.

679 See Part G, Section 3.3.

680 See Part G, Section 3.3.
With respect to the attacks on artisanal fishing, the number of bombs in each attack documented—a minimum of three on Al-Badeea’ Island and a minimum of four near Aqaban Island—indicates that those responsible intended to completely destroy any possibility that the fishermen could catch fish thereafter. As set out in Section 5.2.1.1(ii) above, attacks on fishing not only destroyed fishing boats and fishing equipment, but killed fishermen and instilled fear which limited or prevented fishermen from continuing to fish, both of which impacted the supply of Al-Hudaydah residents’ primary source of food.

The aforementioned airstrikes are part of a broader pattern of widespread attacks on artisanal fishing, as well as on access to sources of fish, in Yemen. Mwatana has documented at least 16 Saudi/UAE-led Coalition airstrikes on fishermen, fishing boats, and fish markets between March 2015 to December 2020, 13 of which occurred in Al-Hudaydah Governorate, and seven of which occurred in Alluheyah District.682 YDP has recorded 55 Saudi/UAE-led Coalition airstrikes on boats between September 2015 and October 2019 (38 in Al-Hudaydah Governate), 34 of which were identified as fishers’ boats.683 The PoE, the GEE and others have documented attacks on fishermen in Al-Hudaydah Governate, the Bab-al-Mandab (straight between Yemen and Djibouti/Eritrea) and the Red Sea, as well as on fish markets and the Al-Hudaydah port.684

Samar (a pseudonym), a 40-year older health worker in Alluheyah interviewed by Mwatana, said:

“The attacks against fishermen at sea have been repeated many times; so have air attacks targeting the fish market in the district, the fish landing centre, an ice factory and a shrimp farming company.”685

681 Mwatana for Human Rights interview with Abdul Salam (a pseudonym) on December 10, 2020.
682 See Part G, Section 4.1.
683 Yemen Data Project, https://yemendataproject.org/data.html (where the attack’s target was unknown or the target was food storage/transportation has not been included; it is extremely likely further attacks have occurred beyond that outlined above).
684 See Section 4.3 above.
• The Saudi/UAE-led Coalition’s imposition of other barriers to accessing food and water, including economic policies and the de facto naval and aerial blockade

Attacks on OIS documented in this report, as well as the broader pattern of related attacks, must be viewed in the context of other conduct of the Saudi/UAE-led Coalition, as well as of the internationally recognized Yemeni government—whose forces fight with the Saudi/UAE-led Coalition, including participating in airstrikes686—that has impacted Yemenis’ food and water security. As discussed in Part E, Section 3, the Saudi/UAE-led Coalition has imposed a partial de facto naval and aerial blockade on Yemen since 2015, which has restricted the flow of aid and commercial goods including food into the territory, even at particularly critical moments of food insecurity. Although the Saudi/UAE-led Coalition alleges the blockade is necessary to prevent the distribution of arms to Ansar Allah, the Saudi/UAE-led Coalition’s persistent inspection of shipments, including shipments of humanitarian aid, has continued to obstruct the movement of goods despite the imposition of a UN verification system to prevent adverse impacts on the humanitarian situation of the civilian population. Such conduct indicates the blocking of arms is not its only objective in imposing the blockade.

At the same time, targeted economic policies imposed both by the Saudi/UAE-led Coalition and by the coalition-backed internationally recognized Yemeni government (as well as by Ansar Allah) have further exacerbated the impact of attacks on OIS. These include the movement of the Central Bank to Sana’a and the non-payment of government salaries, which has impacted purchasing power, and restrictions on fuel imports, which have impacted the transportation of food and operation of water infrastructure as well as civilians’ ability to travel to reach markets.687

686 The coalition operates in Yemen with the consent of the internationally recognized government of Yemen. As Human Rights Watch reported, there are Coalition operation centres in Yemen, and Yemen’s armed forces participate in Saudi/UAE-led Coalition military operations, including by providing intelligence to Coalition forces to identify targets for aerial attacks. The coalition’s investigative mechanism, JAT, has frequently pointed to the role of intelligence from Yemeni forces, in particular airstrikes. In 2017, then-US Secretary of State told Congress that: “The Coalition has informed us it also has placed stricter protocols for strikes called in by Yemeni government forces, which led to problems in the past; now Yemeni government forces’ calls for airstrikes must go through the aforementioned vetting process led by the coalition joint force commander.” See Beckerle, supra note 24.

687 See Part E, Section 3.
• The Saudi/UAE-led Coalition’s systematic striking of civilians and civilian objects, including other OIS, throughout the conflict

Consistent reports indicate the Saudi/UAE-led Coalition has persistently hit civilians as well as other civilian objects throughout the conflict. As discussed in Part 3, Section 1, the Saudi/UAE-led Coalition has committed serious violations of IHL and violations and abuses of IHRL in connection with the conflict, including direct, indiscriminate and disproportionate attacks on civilians. As discussed in Section 1 above, the Saudi/UAE-led Coalition has also attacked and destroyed and damaged other critical infrastructure, some of which may also constitute OIS in the circumstances, including roads and bridges, electricity supplies and markets. The Saudi/UAE-led Coalition has also targeted health facilities, which are necessary to access life-saving treatment, including to prevent wasting and death from malnutrition. As already mentioned, YDP reported that 31% of the 20,624 air raids carried out by the Saudi/UAE-led Coalition since March 2015 had hit “non-military civilian sites,” including farms, food storage sites, water and electricity, oil and gas, residential areas and IDP settlements.

• Conclusion

The Saudi/UAE-led Coalition’s airstrikes have persistently

(i) destroyed crops and livestock and prevented further farming on the impacted land through destruction of its infrastructure and

(ii) destroyed fishing boats and equipment, killed fishermen and instilled fear in the fishermen which limited or prevented them from continuing to fish, despite that agricultural production and fishing provided the primary or only source of food in Hajjah and Al-Hudaydah, respectively. Airstrikes and other attacks also destroyed or rendered useless water infrastructure and other water sources, in a context in which sources of potable water are extremely limited and the high cost of purchasing water is prohibitive for many civilians.

688 As the Yemen Data Project explains: “The dataset lists target category and subcategory for each incident, where information on the target is available. When listing permanent structures the target category refers to the original use of the target e.g. a school hit by an air raid is referred to as a school building with no further assessment made on its use at the time of the air raid, or any possible change of use over the course of the conflict.” See Yemen Data Project, supra note 336.
The manner of such attacks left no doubt that objects would be destroyed, and thereby would be unable to support the civilian population’s food and water needs. In the context of widespread reporting on food and water insecurity and on the adverse impacts of the conduct of the warring parties, including Saudi/UAE-led Coalition airstrikes, throughout the duration of the conflict, those responsible for the attacks must have known that those reliant on the farms and on fishing for food and on water infrastructure for water would almost certainly starve in the ordinary course of events—that is, without external intervention through humanitarian assistance.

Based on the timing, repetition and pattern of attacks on OIS and broader attacks on civilians and civilian objects, their widespread manner, and the context in which they were committed, including the fact that the Saudi/UAE-led Coalition and the internationally recognized Yemeni government restricted humanitarian assistance—through the imposition of a de facto naval and aerial blockade, including at times of acute need, and through the imposition of economic measures that adversely impacted purchasing power and the distribution of and access to food, and by other means of humanitarian obstruction—it is possible to conclude that persons responsible for the airstrikes on OIS in Hajjah, Saada and Al-Hudaydah governates documented in this report intended to starve the affected civilians, or were aware that their conduct would almost certainly cause the starvation of civilians in the ordinary course of events. This is the case particularly for those at the highest levels of authority who contribute to development and implementation of Saudi/UAE-led Coalition strategies in the context of the conflict in Yemen. Without any assistance, certainly civilians would starve in this context, and have indeed starved to death in Yemen. Even if members of the Saudi/UAE-led Coalition had multiple objectives when carrying out the attacks on OIS documented in this report, those responsible could still be held liable provided they still had the requisite knowledge or intent.

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Other violations of IHL and IHRL

The focus of this report is on documenting the conduct of the warring parties that could constitute the use of starvation as a method of warfare as a violation of IHL or a war crime under ICL. However, as documented in the case studies in Sections 2 to 4, the conduct of the Saudi/UAE-led Coalition may also constitute other violations of IHL and other international crimes, including other war crimes, and could also constitute violations of IHRL.690

The coalition’s airstrikes may have violated other prohibitions under IHL, which could constitute crimes under ICL

When investigating the Saudi/UAE-led Coalition airstrikes, investigators may consider the extent to which such conduct constituted other violations of IHL and related war crimes under ICL, in particular direct attacks on civilians and civilian objects and violence aimed at spreading terror among the civilian population.

The Saudi/UAE-led Coalition airstrikes on the farms and on fishermen resulted in civilian deaths691 and injuries692 and destruction of and damage to civilian objects,693 which violated CA 3, Article 13(2) of AP II and Rules 1, 7, 14 and 15 of Customary IHL. As described above, based on the information obtained in the context of the investigation for this report, there is little doubt the farms and the fishermen were targeted intentionally, and those responsible should have known, based on the absence of military objectives

690 While it is not discussed below, Ansar Allah’s seizure of the farms may have violated the property rights of displaced persons under Rule 133 of customary IHL and the displaced farm owners and workers’ right of return to their home or place of habitual residence under Rule 132 of customary IHL.

691 In the attack on Al-Badeea’ Island, nine fishermen were killed. In the attack on Aqaban Island, seven fishermen were killed, including three children, and seven fishermen are still missing. See Section 4.2.

692 Four civilians, including a child, were injured in the airstrike on the Jalhouf farm, and the beekeeper on the Al-Taweel farm sustained serious burns and other injuries as a result of the airstrike. See Section 2.2. In the attack on Al-Badeea’ Island, five fishermen were injured and six survived and in the attack on Aqaban Island, two fishermen were wounded and six survived. See Section 4.2.

693 OIS are a more specific category of civilian objects. For an overview of the destruction of and damage to civilian objects, see Section 5.2.2.1(ii) above.
nearby, that civilians were onsite and that the locations themselves and objects onsite constituted civilian objects. With respect to the fishermen in particular, as stated in Section 5.2.1.1(iii) above, the fishermen retained their civilian status even if they were supplying weapons to the Ansar Allah (Houthi) armed group as JIAT claims (evidence for which Mwatana’s investigation did not find). Even if the fishing boats could be considered “dual use” objects, and even if they could be targeted under the principle of proportionality, the application of the principle of precautions meant that the Saudi/UAE-led Coalition should prevented collateral damage by waiting until the purported members of Ansar Allah left the Island with the weapons.

As discussed in Section 5.2.2.1(ii), the airstrikes by the Saudi/UAE-led Coalition on fishermen instilled fear in the fishing community, inhibiting their ability to fish in Yemeni waters or preventing it entirely. Those that chose to return to fishing, even for limited periods, because they were completely reliant on fishing for food and a source of income, did so in constant fear and knowledge that they could be targeted by a Coalition airstrike. On the basis of the above, the Saudi/UAE-led Coalition’s targeting of fishermen could amount to a violation of the prohibition on spreading terror to the civilian population under Article 13 of AP II and Rule 82 of customary IHL. 694

Further investigation would be required to determine whether (i) civilians or civilian objects were the primary object of the attack under article 8(2)(e)(i) of the Rome Statute with respect to civilians695 and customary international law with respect to both civilians and civilian objects696 and (ii) whether the perpetrators had the specific intent to spread terror among the civilian population under customary ICL,697 and therefore a finding that

694 ICRC Customary IHL Rule 82.

695 For example, intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities. See Rome Statute Elements of Crimes, Article 8(2)(e)(i) Elements 1-3. See also Prosecutor v. Katanga, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, paras. 270, 392-393; Prosecutor v. Katanga, supra note 249 at paras. 799, 802, 805, 807. The ICTY also found that civilians must be the object of the attack, whether direct or indiscriminate. See Prosecutor v. Galić, IT-98-29-A, Appeals Judgement, 30 November 2006, para. 132. There is no general war crime of attacking civilian objects in NIAC per se under the Rome Statute.

696 See e.g., Prosecutor v. Kordić, supra note 258 at paras. 47-57; Prosecutor v. Galić, supra note 257 at para. 132.

697 The mens rea of this crime is composed of the specific intent to spread terror among the civilian population, however, the purpose of the unlawful acts or threats to commit such unlawful acts needs not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration. See Prosecutor v. Galić, supra note 257 at para. 104.
such acts constituted the war crimes attacking civilians and/or terrorizing the civilian population. Intent to starve may constitute one of a number of purposes for which starvation-related conduct is carried out and, as such, is not inconsistent with a finding that multiple purposes underlying conduct may co-exist simultaneously.

The airstrikes may also have violated the coalition and Yemeni Government’s obligations under IHRL

The airstrikes on farms and agricultural infrastructure, water infrastructure and artisanal fishing by the Saudi/UAE-led Coalition also violated IHRL obligations to respect the rights to food and water, health (physical and mental) and property, all of which continue to apply during armed conflict, though with some exceptions with respect to adverse combatants or persons directly participating in hostilities. Yemen is a party to the ICESCR and ICCPR and the internationally recognized Yemeni government, and therefore the Saudi/UAE-led Coalition is thus bound to not only respect such rights,

698 See Part E, Section 3.

699 UDHR, Article 3; UN General Assembly, supra note 295 at para. 52; CESC, supra note 297 at para. 14; OHCHR, “CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant),” UN Doc. E/1991/23 (December 14, 1990), para. 10, https://www.refworld.org/pdfid/4538838e10.pdf. See also FAQ, supra note 295 at Guideline 16; Hutter, supra note 224; Hutter, supra note 284. Given the number of landmine deaths reported by Mwatana and others, this right is particularly pertinent, over and above the intrinsic link between the right to food and the right to life.


702 UDHR, Article 17; ICESCR, Article 11; UN Economic and Social Council, “CESCR Draft General Comment No. 26 (2021) on land and economic, social and cultural rights,” UN Doc. E/C.12/69/R.2 (May 3, 2021), para. 1, https://ohchr.org/EN/HRBodies/CESCR/Pages/CESCR-draft-GC-land.aspx (“Access to land is an important precondition for the realization of several Covenant rights, particularly the rights to adequate food, water and housing as part of the right to an adequate standard of living, as well as the right to health and the protection against non-discrimination contained in several of the Covenant rights”).

703 In the attack on Al-Badeea’ Island, nine fisherman were killed. In the attack on Aqaban Island, seven fisherman were killed, including three children, and seven fisherman are still missing. See Section 4.2

704 Four civilians, including a child, were injured in the airstrike on the Jalhouf farm, and the beekeeper on the Al-Taweel farm sustained serious burns and other injuries as a result of the airstrike. See Section 2.2. In the attack on Al-Badeea’ Island, five fishermen were injured and six survived and in the attack on Aqaban Island, two fisherman were wounded and six survived. See Section 3.2.

705 OIS are a more specific category of civilian objects. For an overview of the destruction of and damage.
but to protect and fulfil them.

The destruction of QIS exacerbated the already dire food and water security situation of the affected civilians and directly violated the obligation to refrain from taking action that would interfere with their rights to food and water. Such rights can also be violated through the destruction of livelihoods necessary to access food and water.\textsuperscript{706} The UN Committee on Economic, Social and Cultural Rights (CESCR), has recognized that a core component of the right to food is that it is not only adequate and available, but accessible, and that the obligation to fulfil the right requires States to strengthen peoples’ access to means of livelihood.\textsuperscript{707} In the context of examining the conduct of Hezbollah and Israel during their 2006 conflict in Lebanon, Israel and the Golan Heights, the Special Rapporteur on the right to food also recognized that the right “is not primarily about food aid; it is the right to be able to feed oneself through an adequate livelihood.”\textsuperscript{708} Accordingly, the devastating impacts that the airstrikes had on farmers’, farm workers’ and fishermen’s capacity to earn income could also constitute a violation of their rights to food and water, and therefore a violation by members of the Saudi/UAE-led Coalition to refrain from taking action that would interfere with such rights.

With respect to the killing of fishermen in the attacks on Al-Badeea’ Island, the Saudi/UAE-led Coalition violated the right to life of the fishermen.\textsuperscript{709} As noted in Part F,

\textsuperscript{706} See also UN Human Rights Council, supra note 630 at p. 2. See also paragraph 31(h), recommending the “government of Lebanon...should design programmes to support all those whose livelihoods have been devastated by the war, especially farmers, agricultural labourers and fisherfolk. The right to food and water must be a central part of the reconstruction effort.” See also UN General Assembly, “UN Declaration on the Rights of Peasants and Other People Working in Rural Areas,” UN Doc. A/RES/73/165 (January 21, 2019), Article 21(2) and (3), https://undocs.org/en/A/RES/73/165 (“Persons working in rural areas are entitled to access water and water management systems for productive uses, farming, fishing, livestock keeping and other water-related livelihoods”).

\textsuperscript{707} CESCR, supra note 297 at paras. 8, 15. It has also been recognized that the right to work under Article 6 of the ICESCR is fundamental to the right to food, and that Article 11 protecting the right to food “incorporates a broad range of concerns relating to the lives and livelihoods of residents of States parties;” see “Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights,” CESCR, pp. 7 and 10, https://www.ohchr.org/Documents/Publications/FactSheet16rev1en.pdf.

\textsuperscript{708} UN Human Rights Council, supra note 630 at p. 2 (discussing the damage to the coastal ecosystem and the adverse impacts it had on not only access to food but the livelihoods of the fisher). See also paragraph 31(h), recommending the “government of Lebanon...should design programmes to support all those whose livelihoods have been devastated by the war, especially farmers, agricultural labourers and fisherfolk. The right to food and water must be a central part of the reconstruction effort.”

\textsuperscript{709} See UN Human Rights Council, supra note 305 at para. 64 (“practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, [...] would [...] violate article 6 of the Covenant”).
Section 3, the coalition imposed a partial de facto naval blockade in the area to prevent arms smuggling to the Ansar Allan (Houthi) armed group. When enforcing the arms embargo under UN Security Council Resolution 2216 (2015), states are still bound to comply with their obligations under the ICCPR and customary international law with respect to the rights to life, food and water, which continue to apply during armed conflict. Furthermore, where invited to intervene, intervening States are bound by the international and domestic law obligations of the host State in addition to their own.

In such contexts, the operation on civilian fishermen, even if they were smuggling arms (which Mwatana’s research did not find), should have been characterized as a law enforcement operation to which the rules on the use of force under international law would be applied. Under such rules, the use of firearms against persons must be limited to “self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. As for the obligation to take precautions to minimize collateral damage, the use of force in this context—namely the bombs on fishermen—

710 The Yemeni government imposed a ban on innocent passage by foreign vessels in the territorial sea, which it authorized the Saudi/UAE-led Coalition to enforce. World Maritime News, supra note 99. According to publicly available information, Yemen has not made a formal declaration to give effect to the ban. See UN Convention on the Law of the Sea, Article 45; “Suspension of Innocent Passage,” Division for Ocean Affairs and the Law of the Sea (DOALOS), https://www.un.org/depts/los/convention_agreements/innocent_passages_suspension.htm; Fink, supra note 98 at p. 301.


712 See Part F, Section 3.

713 See Part F, Section 3.2.2.


715 Basic Principles on the Use of Force, supra note 714; Code of Conduct for Law Enforcement Officials, supra note 714 at para. (c) of the Commentary to Principle 3.
was not a measure of last resort. Even if the coalition were enforcing an arms embargo imposed by the UNSC, the attacks on fishermen violated the right to life of the fishermen.

The internationally recognized Yemeni government is bound by the ICESCR as a treaty party, and has international legal obligations to respect, protect, and fulfil the human rights of those within its territory. The internationally recognized Yemeni government is obligated to protect against third parties interfering with rights, including members of the Saudi/UAE-led Coalition. As Mwatana and Columbia Law School noted in a submission to the CESCR:

**International law requires Yemen to protect against abuses by [members of the coalition operating in Yemen with Yemen’s consent]. Yemen cannot consent to acts on its territory that would be unlawful if Yemen itself carried out such acts. Yemen also cannot provide aid or assistance to other states, including to the Saudi/UAE-led Coalition, where such assistance contributes to breaches of human rights law. Yemen must take appropriate measures to protect individuals against violations by other states or non-state actors operating in Yemen, including by making adequate inquiries and putting in place sufficient safeguards to ensure that such acts on Yemeni territory comply with human rights law.**

To the extent the internationally recognized Yemeni government is responsible for airstrikes carried out by the Saudi/UAE-led Coalition as well as other actions attributable to the Saudi/UAE-led Coalition (such as the naval and aerial blockade), this would also violate their human rights obligations.

With respect to their obligation to fulfil these rights, the internationally recognized Yemeni government is obligated to proactively take steps to strengthen the population’s socioeconomic rights, including access to and utilization of food and water and means to ensure their livelihoods, which would include taking steps to ensure the passage of humanitarian aid. Even if Ansar Allah assumes IHRL obligations by virtue of its de facto territorial control, this does not imply that the de jure authorities are relieved of their obligations.

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716 Mwatana for Human Rights and Columbia Law School Human Rights Clinic, supra note 90.

717 See Part F, Section 3.3.
IDPs collecting fodder, Hays District, Al-Hudaydah Governorate. April 7, 2021.
Ansar Allah (Houthi) armed group military tactics impacting objects indispensable to the survival of the civilian population
Introduction


UN bodies and other credible organisations have also documented a range of violations committed by Ansar Allah, the principal armed non-State actor (ANSA) operating in Yemen. See e.g., UN Panel of Experts on Yemen; UN GEE; Human Rights Watch; Yemen Data Project; Yemeni Archive; Amnesty International.


See e.g., UN Panel of Experts on Yemen; UN GEE; Human Rights Watch; Yemen Data Project; Yemeni Archive; Amnesty International.

Photo: Landmines that were cleared from Dhubab District, Taiz Governorate. June 2018.
As with the Saudi/UAE-led Coalition, Ansar Allah has directly and indirectly impacted food security in Yemen. There has been extensive documentation of a range of Ansar Allah patterns of attack and conduct impacting food and water security in Yemen,\footnote{GEE, supra note 23 at paras. 116, 118, 138; GEE, supra note 22 at para. 4; PoE (2016), supra note 331 at para. 132, 134, 184 (looting food aid), Annex 47.} including ground shelling affecting access to food; food vehicles being shelled; civilians being shot by snipers whilst seeking food or safety;\footnote{GEE, supra note 88 at paras. 173, 305.} the sustained and deadly siege in Taiz that hindered access to water and the functioning of markets relied upon by 90% of the population for their food needs, whilst only allowing in minimal food, leading to a severe rise in acute malnutrition and consequential deaths;\footnote{“The Story Of 1-Year-Old Abdullah Is The Story Of Yemen,” NPR (December 2020), https://www.npr.org/sections/goatsandsoda/2020/12/23/946756089/hope-and-hopelessness-in-the-hunger-wards-of-yemen?i=1622449866700; The Global Humanitarian Overview 2021 figures note 131,000 indirect deaths, including from hunger, across Yemen; see OCHA, supra note 41; Save the Children reported an estimated 85,000 children under 5 to have died from hunger according to their analysis, November 2018; see “Yemen: 85,000 children may have died from starvation since start of war,” Save the Children (November 21, 2018), https://www.savethechildren.net/news/yemen-85000-children-may-have-died-starvation-start-war; HRW, supra note 113; Global Rights Compliance and World Peace Foundation, supra note 87 at p. 3.} the imposition of further siege-like conditions in Hajour in Hajjah Governorate in 2018, including through the use of checkpoints; and the imposition of humanitarian access restrictions, including on food, water and aid.\footnote{GEE, supra note 88 at para. 775.}

The following two sections describe Ansar Allah’s conduct in relation to wilful humanitarian obstructions and the laying of landmines across two governorates in Yemen.

In Section 2, we discuss Ansar Allah-imposed restrictions on humanitarian relief action, focusing on Saada Governorate. A cornerstone to IHL and the protection of civilians is the unimpeded passage of humanitarian relief and the absolute prohibition on wilful obstruction of relief. For a country such as Yemen, which was already food insecure prior to the most recent conflict,\footnote{“Comprehensive Food Security Survey (CFSS): Yemen,” World Food Programme (November 2014), https://reliefweb.int/sites/reliefweb.int/files/resources/wfp269771.pdf.} humanitarian aid has been an essential lifeline for many communities.
Credible and consistent reporting corroborates Mwatana’s documentation that in areas under their control, Ansar Allah has: blocked the movement of critical supplies within Yemen; looted and diverted aid; imposed regulations excessively restricting aid agencies operations; blocked needs assessments and interfered with beneficiary lists; blocked aid group movements; and intimidated, arrested and acted with violence against aid workers. The repetition and sustained manner of such impediments led to the suspension of aid operations in Ansar Allah controlled territories by the WFP in 2019 and 2020. Impediments remain and these tactics continue in 2021.

In light of Ansar Allah’s de facto authority over Saada Governorate at the time of the documented cases of humanitarian obstruction, and given the humanitarian affairs coordination groups that Ansar Allah created and managed, it is inconceivable that Ansar Allah was not aware of the scale of need and the consequences of denying, diverting, looting and otherwise impeding the free passage of aid.

In Section 3, we analyse the extensive documentation collected by Mwatana of the widespread manner in which Ansar Allah has used landmines and the consequential impact upon OIS and food security in Taiz Governorate. Ansar Allah’s use of landmines in Yemen has been documented since the start of this conflict. While there is no comprehensive figure for how many mines Ansar Allah has laid across Yemen since

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725 Mwatana interviews with 31 individuals regarding specific incidents of humanitarian obstruction in Saada Governorate, including Monitoring, Evaluation, Accountability and Learning (MEAL) officers, health workers, humanitarian aid beneficiaries, project coordinators, and other aid workers from June 2018 to April 2021. See PoE (2018), supra note 331 at p. 2, para. 192; GEE, supra note 88 at paras. 773-775; GEE, supra note 23 at paras. 127-135; Abdi, supra note 95; Global Rights Compliance and World Peace Foundation, supra note 87.

726 GEE, supra note 23 at para. 128, citing “World Food Programme begins partial suspension of aid in Yemen,” World Food Programme (June 20, 2019), https://www.wfp.org/news/world-food-programme-begins-partial-suspension-aid-yemen. See also “Yemen: Aid Obstruction Puts Millions at Risk,” Human Rights Watch (September 14, 2020), https://www.hrw.org/news/2020/09/14/yemen-aid-obstruction-puts-millions-risk (“The Houthis on July 14 and August 13 responded to a letter setting out the Human Rights Watch findings, saying that aid obstruction allegations were baseless and that aid agencies alleging obstruction were following “political orders” from the US. Human Rights Watch has not received replies from the Yemeni government or the Southern Transitional Council”).

727 The UN Panel of Experts documented as late as July 2020 that Ansar Allah was still obstructing the safe and rapid passage of aid; noting some progress but also that substantial hurdles remain. See UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at para. 156. The UN in May 2021 called on Ansar Allah to ensure the rapid passage of aid, expressing concern over the offensive and bureaucratic impediments in Marib, which were having a devastating effect. See “Urging Parties in Yemen to Make Concessions, Conclude Peace Deal, Briefers Caution Security Council of Impending Humanitarian, Ecological Catastrophes [Press release],” UN Security Council (May 12, 2021), https://www.un.org/press/en/2021/sc14520.doc.htm.
2014, estimates are in the hundreds of thousands.\textsuperscript{728}

Ansar Allah has laid mines extensively across agricultural areas, logging sites, grazing land and water sources, blocking access to homes and farms, causing displacement and a devastating loss of livelihoods and OIS.\textsuperscript{729} Mwatana has repeatedly documented landmine explosions killing and wounding farmers, shepherds (often children) and fishermen whilst at work.

The particularly insidious nature of landmines is their hidden nature, instilling terror and fear across communities. Landmines have been broadly laid without warning and no maps of mine locations have been provided; they have been disguised as rocks and tree trunks or otherwise hidden.\textsuperscript{730} This failure to warn or to seek to minimize the indiscriminate effects of these landmines upon civilians violates IHL,\textsuperscript{731} and leads to the conclusion that OIS and civilians were indiscriminately targeted.

In a Governorate with crisis-level food insecurity and high rates of acute malnutrition in 15-20% of the child population,\textsuperscript{732} the impact of landmines targeting OIS has been devastating, and unless cleared, will leave a deadly legacy which will continue to undermine future reconciliation and stability.

The two tactics used by Ansar Allah are related. The use of landmines in Taiz has blocked numerous districts and communities from humanitarian aid and services due to the inability to safely access Suspected Hazardous Areas (SHA) and confirmed mine


\textsuperscript{731} As also noted by the GEE, supra note 88 at paras. 344, 576.

fields.733

In Sections 2 and 3 below, Ansar Allah’s restrictions on humanitarian relief action and the laying of landmines, and their impacts, are analysed by assessing the nature of the objects destroyed or rendered useless or the nature of conduct preventing access to OIS; by assessing the indiscriminate nature of the use of landmines; and by assessing how similar pattern evidence, in the context of other Ansar Allah conduct, can be used to infer intent on the part of Ansar Allah members.734 In both cases, it is possible to conclude that members of Ansar Allah intended to use starvation as a method of warfare, in that they deprived civilians of OIS with knowledge of the virtual certainty that such deprivations and conduct would, in the ordinary course of events, lead to starvation.735 The possible that responsibility for Ansar Allah’s conduct could be attributed to individual members of the group is also briefly discussed below. The section concludes with brief analysis of the internationally recognised Government of Yemen’s obligations under IHL, IHRL and other treaties pertaining to landmines.

As a preliminary matter, to show that Ansar Allah conduct documented below constituted a violation of IHL constituted a war crime under ICL, the chapeau elements must be met: namely, that (i) the conduct was carried out in the context of, and was sufficiently connected to, an armed conflict, and (ii) the direct perpetrator or other relevant actor must have been aware of factual circumstances that established the existence of the armed conflict.736 With respect to (i), the Ansar Allah-imposed impediments to humanitarian access documented by Mwatana occurred between 2015 and 2021 when hostilities were ongoing, and were carried out in the context of the group’s conflict with the Yemeni government (which is supported by the Saudi/UAE-led Coalition), and were inextricably connected to it. It was widely accepted that the hostilities constitute an armed conflict to which IHL applies. Similarly, Ansar Allah’s laying of landmines took place in the context of, and was sufficiently connected to, an armed conflict. With respect to (ii), the direct and indirect perpetrators (discussed in

733 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020. A detailed list is included in Annex 2.5; GEE, supra note 88 at paras. 336-341; Human Rights Watch, supra note 730.

734 See Part F, Section 2.6.

735 See Part F, Section 2.2.

736 See Part F, Section 2.1. See also Rome Statute, Article 8(2)(e)(xix) The same requirements will apply to the prohibition on starvation as a method of warfare under NIACs when it is in force under the Rome Statute.
Sections 2.4.1.3(i) and 2.4.2.2(i) below) must have been aware that the Ansar Allah (Houthi) armed group was engaging in hostilities with the Yemeni Government and the Saudi/UAE-led Coalition, and that such hostilities rose to the level of an armed conflict. Ansar Allah has issued statements affirming its involvement in the armed conflict and its purported right to engage in combat activities,\textsuperscript{737} including in a response to the GEE on whether “any Houthi-affiliated individual has been found responsible for violations of international human rights law or international humanitarian law,” where Ansar Allah stated that they respect their obligations under IHL.\textsuperscript{738} Accordingly, both of the chapeau requirements are met.

\textsuperscript{737} GEE, supra note 23 at para. 46 (Ansar Allah claimed responsibility for an attack on Saudi Aramco facilities); “Houthi leader says group developing its military capabilities,” Reuters (April 13, 2018), https://www.reuters.com/article/us-yemen-security-idUSKBN1HK2D1.

Restrictions on humanitarian access by the Ansar Allah (Houthi) armed group

Reliance and restrictions on humanitarian aid in Yemen

Humanitarian aid alone cannot address nor remedy the significant food and water insecurity people across Yemen face, but it is critical to meeting the population’s basic needs.

According to OCHA’s latest assessment, **20.7 million of Yemen’s 29-million-person population** relied on humanitarian assistance to survive.\(^{739}\)

Warring parties in Yemen have repeatedly failed to allow and facilitate the rapid and unimpeded passage of humanitarian relief, both into and within the country, throughout the conflict. Much of this, including the grave impacts of the Saudi/UAE-led Coalition’s de facto naval and aerial blockade, the ongoing dispute over fuel imports, and Ansar Allah’s use of siege-like warfare, has been examined by the GEE, the PoE, and others elsewhere.\(^{740}\)

Warring parties have impeded humanitarian relief in Yemen in a variety of ways, including, but not limited to: restrictions on food, fuel, and other imports; blocking the movement of critical supplies within Yemen; looting; diversion of aid; regulations excessively restricting aid agencies; delays or bars to distribution of aid; blocking assessments and interfering with beneficiary lists; blocking aid group movement; and intimidation, arrest and violence against aid workers.\(^{741}\) The diverse forms of humanitarian obstruction have had a grave impact on civilians’ food and water security.\(^{742}\) As outlined in the landmines legal analysis in Section 3.4 below, these impediments resulted in the suspension of humanitarian operations in one area in 2019 and 2020, impacting an estimated 8.5 million beneficiaries.\(^{743}\)

Adequately capturing the impact of the myriad of frequent and insidious forms of humanitarian obstruction is extremely difficult. Aid agencies have repeatedly cited these diverse practices as severely undermining their ability to ensure food, water and other critical relief supplies reach civilians in need.


\(^{741}\) Mwatana interviews with 31 individuals from June 2018 to April 2021; PoE (2018), supra note 331 at para. 192; GEE, supra note 88 at para 772; GEE, supra note 23 at paras. 127-135.

\(^{742}\) GEE, supra note 88 at paras. 772, 786.

\(^{743}\) Aditya Sarkar and Sama’a al Hamdani, “Once we control them, we will feed them”: Mass Starvation in Yemen,” in Global Rights Compliance and the World Peace Foundation (eds), Mass Starvation Practitioners Text (OUP forthcoming 2021).
In 2021, OCHA found that “nearly 16.5 million people in need [of 20.7 million total people in need] were estimated to be living in areas that humanitarian organizations consider to be Hard to Reach,

i.e., where safe, sustained and principled humanitarian access for the delivery of assistance and services at a scale commensurate with the assessed needs were challenged by bureaucratic impediments, armed conflict and insecurity and logistical impediments.”

Aid agencies told Human Rights Watch they “spent vast amounts of their time and energy struggling to get approvals country-wide to provide assistance in accordance with humanitarian principles and without the [Houthis’ and other] authorities’ interference.”

Restrictions on humanitarian aid by the Ansar Allah (Houthi) armed group

The Ansar Allah (Houthi) armed group has significantly hampered access to, and the distribution of, humanitarian aid in areas under the group’s control. Mwatana has documented incidents in which Ansar Allah committed violence against humanitarian workers; delayed distribution of aid; interfered with humanitarian operations; prevented humanitarian workers from reaching civilians in need; looted humanitarian supplies and provided them to fighters and supporters; and re-directed aid to their fighters and supporters.

744 OCHA, supra note 118 at p.22.
745 Human Rights Watch, supra note 95.
746 GEE, supra note 23 at paras. 133-135; GEE, supra note 88 at paras. 774-775 and 782-784; GEE, supra note 98 at paras. 61-64; UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at paras. 156-157; PoE (2018), supra note 331 at para. 193; PoE (2016), supra note 331 at Annex 50.
747 Mwatana interviews with 31 individuals regarding specific incidents of humanitarian obstruction in Saada Governorate, including Monitoring, Evaluation, Accountability and Learning (MEAL) officers, health workers, humanitarian aid beneficiaries, project coordinators, and other aid workers from June 2018 to April 2021.
The UNGEE has investigated several instances in which Ansar Allah arrested and/or detained aid workers,\(^\text{748}\) or in which they conducted raids on organizations to hamper aid distribution.\(^\text{749}\) According to the UNGEE, the World Food Programme has “repeatedly complained of interference with and diversion of humanitarian aid by the Houthis” since 2017.\(^\text{750}\) In 2019, the WFP “partially suspend[ed]” aid operations in Ansar Allah-controlled areas of the country due to “the Houthis’ refusal to negotiate an agreement” regarding aid diversion.\(^\text{751}\)

The PoE has also reported on several forms of obstruction and prevention of humanitarian assistance by Ansar Allah,\(^\text{752}\) and has suggested that some of these actions may have amounted to IHL violations.\(^\text{753}\) At the start of the conflict, the PoE found that the obstruction of aid was “part of the Houthi strategy to expand influence and control of all resources and institutions in the area [of Amran], including humanitarian aid.”\(^\text{754}\) Amnesty International and Human Rights Watch have also detailed the impacts of Ansar Allah’s humanitarian aid obstruction, which has included aid agencies cutting aid programs.\(^\text{755}\)

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\(^{748}\) GEE, supra note 23 at para. 134.

\(^{749}\) Ibid, at para. 133.

\(^{750}\) Ibid, at para. 128.

\(^{751}\) Ibid, citing World Food Programme, supra note 726; See also Human Rights Watch, supra note 726 (“The Houthis on July 14 and August 13 responded to a letter setting out the Human Rights Watch findings, saying that aid obstruction allegations were baseless and that aid agencies alleging obstruction were following ‘political orders’ from the US. Human Rights Watch has not received replies from the Yemeni government or the Southern Transitional Council”).

\(^{752}\) PoE (2018), supra note 331 at para 192 (“In 2017, Houthi-Saleh forces continued to obstruct the distribution of humanitarian assistance and prevented humanitarian access. The Panel investigated obstructions, which included (a) aid diversion; (b) delays or refusals that affect timely distribution; (c) arrests, detentions, intimidation and torture of humanitarian staff and confiscation of equipment; (d) interference in the selection of beneficiaries, areas of operation and implementing partners; (e) declaration of areas as military zones, making them inaccessible to humanitarians; (f) extortion and demands for payment under threats of violence; (g) obstruction of the delivery of cholera response material; (h) issues relating to customs clearance; and (i) delays in clearing the importation of medicine from Sana’a International Airport”). UN Security Council (“Letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 45 at para. 126.

\(^{753}\) PoE (2016), supra note 331 at paras. 166-167 and Annexes 48, 50.


\(^{755}\) Amnesty International, supra note 108 at p. 5; Human Rights Watch, supra note 95 (Human Rights Watch reported that by August of 2020, aid agencies in Yemen had only received about a quarter of the $3.4 billion they had requested “partly in response to the obstruction of aid”).
Ansar Allah’s humanitarian obstruction has been particularly severe in Saada Governorate, an area which the group tightly controls.

Between March 2015 and March 2021, Mwatana documented at least 216 incidents of Ansar Allah-committed humanitarian obstruction across Yemen. Of the 216 incidents, 118 occurred in Saada Governorate. Humanitarian obstruction appeared particularly acute in two specific districts—Saada and Sahar districts—in which 84 of the Ansar Allah obstruction incidents documented by Mwatana occurred.

For this report, Mwatana interviewed 31 people regarding specific incidents of humanitarian obstruction in Saada Governorate, including Monitoring, Evaluation, Accountability and Learning (MEAL) officers, health workers, humanitarian aid beneficiaries, project coordinators, and other aid workers. In a few cases, Mwatana was able to identify intended beneficiaries for projects that had been stopped or suspended. Due to the significant security concerns and fear of reprisals by both those interviewed
as well as aid agencies operating in Yemen more broadly, this report provides an overview of the key concerns that arose from these interviews, along with heavily anonymized descriptions of certain incidents. Accordingly, the descriptions of incidents of humanitarian obstruction differ from the other sections of this report, which provide more detailed descriptions of specific incidents of conduct by the parties to the conflict.

As described in Part G, Section 3, Saada Governorate is located in the far north of Yemen, about 250 kilometres north of the capital, Sana’a. Saada is one of the poorest governorates in Yemen, with a poverty rate of 84.5% before the start of the war. As of the last population census in 2004, the population of Saada Governorate was approximately 695,033 people, while the populations of Saada and Sahar districts were approximately 58,695 and 133,764, respectively.

Saudi/UAE-led Coalition airstrikes in Saada Governorate have repeatedly damaged and destroyed OIS, including water sources (as detailed in Part G, Section 3.2), food sources and markets. Humanitarian workers told Mwatana that Coalition airstrikes on civilian objects had contributed to growing humanitarian needs in the Governorate, including for urgent interventions to supply safe water in various areas.

OCHA has identified Saada as one of the governorates with the highest concentrations of people in need of humanitarian assistance, with more than 800,000 people—at least 83% of the governorate’s population—in need in 2019. According to OCHA, northern Yemen, where Saada is located, is where both most “Hard-to-Reach” areas for humanitarian organizations are located, and also “where most of the people in acute need of humanitarian assistance were located.”

In November 2017, the Ansar Allah (Houthi) armed group issued a decree establishing the National Authority for the Management and Coordination of Humanitarian Affairs.

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756 Berghof Foundation, supra note 435 at p. 63.


760 OCHA, supra note 118 at p. 22.
and Disaster Response (NAMCHA). NAMCHA had a mandate similar to that of the International Cooperation Sector at the Ansar Allah-controlled Ministry of Planning and International Cooperation (MOPIC), including supervising and coordinating the work of non-profit organizations with regard to humanitarian aid, and presiding over the granting of licenses to all local and international organizations in Ansar Allah-controlled areas. It quickly became clear that Ansar Allah was using NAMCHA as a tool to further other interests, including that of interfering with the implementation of projects and seeking access to organizations’ information and data.

In November 2019, Ansar Allah replaced NAMCHA with the Supreme Council for the Management and Coordination of Humanitarian Affairs and International Cooperation (SCMCHA). SCMCHA became the Ansar Allah administrative authority responsible for managing and coordinating humanitarian affairs and international cooperation. Under SCMCHA, impediments to humanitarian aid continued and, in some cases, increased. In 2020, the GEE stated that they had investigated instances in which SCMCHA had “conditioned and restricted the grant of operation permits for humanitarian aid projects.”

Ansar Allah has impeded, restricted, and interfered with civilians’ access to humanitarian aid across all territories under their control, including through these bodies. This obstruction has had an especially severe impact in Saada Governorate. In particular, Ansar Allah has imposed excessive and arbitrary restrictions on the ability of organizations to operate in Saada and interfered in their work, including by imposing lists of beneficiaries. Such restrictions have limited civilians’ access to food and water, amongst other critical life-saving goods.

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763 Supreme Council for the Management and Coordination of Humanitarian Affairs and International Cooperation, supra note 761.

764 GEE, supra note 23 at para. 132.

Restrictions on tender and procurement processes, and closure of offices

Humanitarian workers told Mwatana that NAMCHA and SCMCHA had interfered with organizations’ tender and procurement processes in Saada, including that SCMCHA had forced organizations to partner with local service providers and implementers of their choice—often organizations owned by members of Ansar Allah. Aid workers explained that Ansar Allah had required organizations to utilize Ansar Allah-linked organizations for the delivery of relief supplies and the implementation of relief projects. Ansar Allah has also interfered with organizations’ recruitment of employees in Saada. In one case documented by Mwatana, Ansar Allah forced an international organization to appoint a director of their choice in their Saada office.

This type of interference has directly impacted food security. For example, in the first quarter of 2021, SCMCHA suspended the implementation of an international organization’s food security project, which aimed to distribute food baskets to more than 4,000 beneficiaries, including displaced families, very low-income families, families headed by children, and disabled individuals across several districts, including Saada and Sahar districts. SCMCHA suspended the project because of the organization’s refusal to hire Ansar Allah-affiliated individuals and their refusal to purchase relief materials from a merchant Ansar Allah had tried to impose on the organization. The beneficiaries of the project had relied on the aid for survival.

One of the beneficiaries, 46-year-old Talal, said:

"My family does not have any source of income. We are currently dependent on whatever food our neighbours provide us with. If the suspension of the..."
Two humanitarian aid workers described another case in 2021 for which they had direct knowledge, in which Ansar Allah imposed a local partner organization—owned by a leading figure of Ansar Allah—onto a humanitarian aid organization to manage the transportation and warehousing of aid for the organization in Saada.\textsuperscript{772} One of the aid workers told Mwatana that, in an incident in 2021, Ansar Allah required the beneficiaries to hand over about 70% of the materials that they received. The local partner would then return the materials back to Ansar Allah–run warehouses for Ansar Allah to dispose of as they wanted.\textsuperscript{773} He added that one of the food items their organization had intended to include in relief baskets was taken by Ansar Allah, with Ansar Allah members saying they needed the item to feed fighters on the front lines.\textsuperscript{774}

Aid agencies that spoke to Mwatana described significant fears of retaliation, including their operations being shut down, if they did not accept Ansar Allah demands made through SCMHA and through other means. Since 2016, Mwatana has documented Ansar Allah closing at least three international organizations’ offices in Saada that worked on food security, displacement and health.\textsuperscript{775} Ansar Allah also closed at least five local humanitarian organizations’ operations, expelled office managers, and blocked the implementation of projects and activities, including in the cases documented below, as well as other projects focused on water access, education, health, and women’s empowerment.\textsuperscript{776} This has resulted in beneficiaries being denied access to desperately needed humanitarian aid.

Beneficiaries also reported feeling worried about their information being shared with Ansar Allah through humanitarian agencies. One beneficiary told Mwatana they were afraid to use humanitarian hotline numbers that were used for making complaints about aid distribution, including possible exploitation, because Ansar Allah officials had

\begin{footnotesize}
\textsuperscript{771} Mwatana for Human Rights interview with a beneficiary (Talal- a pseudonym) on April 22, 2021.
\textsuperscript{772} Mwatana for Human Rights interviews with two humanitarian workers on March 2, 2021.
\textsuperscript{773} Mwatana for Human Rights interview with a humanitarian worker on March 2, 2021.
\textsuperscript{774} Mwatana for Human Rights interview with a humanitarian worker on March 2, 2021.
\textsuperscript{775} Mwatana for Human Rights interviews with four Humanitarian workers in Saada on April 13, 14 and 19, 2021.
\textsuperscript{776} Ibid.
\end{footnotesize}
warned them that their calls would be monitored.???

Interviewees noted three particular forms of humanitarian obstruction in Saada governorate which they said had a particular impact on civilians’ food and water security, namely: preventing organizations from carrying out humanitarian needs assessments; blocking humanitarian “cash aid” projects intended to help beneficiaries purchase vital goods, including food; and redirecting aid to Ansar Allah loyalists, including by imposing their own lists of beneficiaries for humanitarian assistance projects.

### Diverting and redirecting aid to Ansar Allah loyalists

Ansar Allah has worked to control where aid is distributed as much as possible, and has used various tactics to divert aid to its fighters, its supporters, and their family members. Such tactics include blocking independent needs assessments, blocking the provision of cash assistance, and directly imposing beneficiary lists composed of Ansar Allah loyalists on humanitarian organizations. Mwatana has documented repeated instances in Saada Governorate where Ansar Allah has engaged in such tactics and diverted humanitarian aid away from its intended beneficiaries.

#### Blocking independent needs assessments

In Saada Governorate, Ansar Allah has severely impeded organizations’ ability to independently assess needs. Organizations rely upon needs assessments and other data collection tools to, amongst other things, determine who is most in need of assistance and where to distribute it, and in order to plan and respond to food and water security needs.

Humanitarian workers told Mwatana that in Saada, NAMCHA and SCMCHA officials had refused to allow organizations, including those working in food security, to carry out needs assessments, surveys and other forms of data collection to measure levels of hunger in the governorate. Ansar Allah has also blocked organizations from carrying out assessments aimed at determining those most in need of relief, and what types of relief they require. A humanitarian worker said Ansar Allah also prevented their organization

from announcing hotline numbers for making complaints about aid distribution to beneficiaries in Saada. Ansar Allah has often accused organizations conducting assessments, surveys and other data collection of being affiliated with the Saudi/UAE-led Coalition, and have alleged that their actions constitute military intelligence.

Multiple humanitarians told Mwatana that organizations working in Saada either had to accept the group’s restrictions on their assessment activities, or were forced to re-plan and implement projects in other governorates.

In one case in 2017, the Ansar Allah (Houthi) armed group prevented an international agency from carrying out a survey to study the population’s food, shelter and water needs across several districts, including Saada and Sahar districts, in Saada Governorate. Ansar Allah demanded that the assessment be done through governmental bodies controlled by the group. Without being able to conduct needs assessments, the agency could not identify those in the greatest need of assistance, and had to delay the project. A person who worked with the agency at the time, Ayman (a pseudonym), said:

“The obstruction of the survey postponed the project for a period of six months, during which the beneficiaries were denied aid.”

Along with blocking humanitarian organizations from conducting needs assessments, Ansar Allah has made humanitarian organizations rely on information provided by the group, including information that determines where aid is distributed. For example, a food security project officer said that their organization has no actual data on beneficiaries, nor even a total number of real beneficiaries they are assisting, as Ansar

780 Ibid.
781 Mwatana for Human Rights interviews with a Health worker and a Humanitarian worker on September 3 and 4, 2018.
783 Ibid.
Allah had forced the organization to rely solely on needs assessments conducted by community leaders who are loyal to the group.784

In Saada Governorate, Ansar Allah has also rejected the presence of “third party” monitoring and evaluation organizations, which conduct evaluations of completed projects, including ensuring that implementing partners completed their tasks and conducting spot checks to see if aid in fact reached beneficiaries.785

I Blocking Cash Assistance

Cash assistance has been an important way in which organizations in Yemen have supported beneficiaries in meeting their various food, water, shelter and health needs.

Mwatana has documented specific instances in which Ansar Allah blocked cash payment projects. In Saada Governorate, Ansar Allah has prevented a number of organizations from providing humanitarian relief through cash payments.786 Humanitarian workers told Mwatana that Ansar Allah perceived the distribution of humanitarian cash payments as limiting their ability to recruit fighters.787 Ansar Allah took advantage of the dire economic situation, including the non-payment of public employee salaries, to recruit fighters (including children) by offering small payments in cash or essential items like food to the families of those they recruited. Humanitarian organizations’ cash assistance to such families disincentivizes recruitment.788

Those that had worked on humanitarian cash assistance projects in the governorate said Ansar Allah had accused humanitarian organizations of corruption, while demanding that cash assistance projects only be implemented in Saada through organizations run by Ansar Allah-affiliated individuals.789

787 Ibid.
788 Mwatana for Human Rights interview with two Humanitarian workers on April 14, 2021.
789 Mwatana for Human Rights interviews with two humanitarian workers on April 14 and 15, 2021.
In two cases in early 2021, Ansar Allah suspended cash assistance projects in response to humanitarian agencies’ refusal to use lists of beneficiaries provided by the group.

In one case, SCMCHA suspended a cash payment project financed by a humanitarian agency, through which cash payments were to be provided to thousands of beneficiaries, including displaced families and families and individuals suffering from health problems. SCMCHA said the reason for the suspension was that the lists of beneficiaries were not prepared through SCMCHA. Ultimately, this resulted in the deprivation of critical cash aid to many of those the organization had identified as requiring assistance.

One of the project’s workers, 40-year-old Saif (a pseudonym), said:

“We were asked to transfer the money intended for cash payments to beneficiaries who were imposed by the group and who are not amongst those groups we had identified as needing assistance.”

In the other documented case, Ansar Allah stopped a project aimed at economically empowering hundreds of poor families through vocational training and cash grants because the organization rejected the Ansar Allah-imposed lists of beneficiaries. Individuals who had hoped the aid would provide them with a means to earn an income were devastated.

One of the intended beneficiaries of the project, 30-year-old Taqwa (a pseudonym), said:

One of the workers in the organization met with me after this happened. She was crying and told me that my name was no longer on the list of beneficiaries. I had dreamed of getting a sewing machine and being able to support my family instead of begging.

790 Mwatana for Human Rights interviews with two beneficiaries and a humanitarian worker on April 13 and 14, 2021.
791 Mwatana for Human Rights interview with a humanitarian worker (Saif - a pseudonym) on April 13, 2021.
793 Mwatana for Human Rights interview with a beneficiary (Taqwa - a pseudonym) on April 15, 2021.
Mwatana documented another case in 2018 in which NAMCHA suspended a project in Saada aimed at assisting those with malnutrition. The project was meant to include financial payments for around 2,000 beneficiaries to help them purchase food and other critical goods. NAMCHA sought to justify the suspension by claiming the names of the beneficiaries had to be submitted by the NAMCHA office and not by health centres, and demanded that NAMCHA be involved in the process of distributing financial payments, rather than financial institutions. The organization responsible had to suspend the project, which meant all of the beneficiaries—including hundreds of families with malnourished children—were deprived of the intended aid.794

*One of the project’s intended beneficiaries, 57-year-old Khairallah (a pseudonym), said:*

> My children were malnourished because I could not provide them with varied and healthy food. Public sector salaries and social security payments stopped and many other sectors were disrupted due to the war. It’s not easy to get a job and we were in desperate need of that aid.795

## Imposing beneficiary lists composed of Ansar Allah loyalists

In Saada Governate, Ansar Allah has repeatedly imposed beneficiary lists, which determine who should receive aid, upon aid organizations. These lists include the families of Ansar Allah-affiliated fighters and the families of deceased fighters.796

Mwatana spoke to people who had received, or were meant to receive, humanitarian aid in Saada Governorate.

One person said that after being denied humanitarian aid, they went to ask a community leader who was responsible for preparing the lists of beneficiaries what had happened. The community leader told the person that he was not included on the list because he was not loyal to Ansar Allah.

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794 Mwatana for Human Rights interviews with seven humanitarian workers and a beneficiary on June 3, 4 and 25, 2019, February 20 and 21, 2019, and April 14 and 15, 2021.

795 Mwatana for Human Rights interview with a beneficiary (Khairallah - a pseudonym) on April 15, 2021.

796 Mwatana for Human Rights interviews with eleven humanitarian workers on April 14, 15, 16, 18, 21 and 22, 2021.
Another person in Saada who had received cash aid and then been dropped from the list in 2021 told Mwatana that it was difficult for families whose members did not fight with Ansar Allah, or who had not died fighting for them, to obtain aid.  

In one case, a local Ansar Allah-affiliated partner distributed aid to ten beneficiaries and photographed that distribution to demonstrate to donors that the organization had in fact delivered the aid. Ansar Allah then asked the local partner to deliver the remainder of the aid to individuals they claimed were representatives of intended beneficiaries.

_**one of the humanitarian workers said:**_

> “I don’t trust that this aid will reach the beneficiaries,”

_**Another said:**_

> “The community [in Saada Governorate] includes some of the neediest groups: the displaced, the disabled, and those unable to provide for themselves. In spite of that, the aid was disbursed to people who do not need it but who are affiliated with the [Ansar Allah] group.”

The Ansar Allah (Houthi) armed group has also made organizations transfer humanitarian aid to entirely different districts than those originally intended in their distribution schemes, including to ensure aid reached their loyalists.

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797 Mwatana for Human Rights interviews with a beneficiary on March 1, 2021.

798 Mwatana for Human Rights interview with a humanitarian worker on April 20, 2021.

799 Ibid.

800 Ibid.


802 Mwatana for Human Rights interviews with five humanitarian workers on April 14, 15 and 21, 2021.
In one case in mid-2020, for example, SCMCHA forced an international organization to transfer a relief project from Saada and Sahar districts in Saada Governorate to other districts in the governorate. Ansar Allah then tried to impose a list of beneficiaries for the project, which included families of Ansar Allah fighters who had died.803

*One of the individuals working with the project, Omran (a pseudonym), said:*

> The aid was intended for more than 1,000 beneficiaries from health-affected families. We categorically refused to deliver the aid to the list of beneficiaries that had been imposed by the [Ansar Allah] group, but this resulted in the group obstructing the project, which in turn subjected the NGO to high storage expenses.

Ultimately, due to the costs of storage and the fear that food items would spoil, the organization complied with Ansar Allah’s demands in the hope that they would at least then be able to assist some of the intended beneficiaries. However, Omran stated that this meant that they “had to deliver aid to those who are not deserving of it.”804

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804 Mwatana for Human Rights interview with a humanitarian worker (Omran- a pseudonym) on April 20, 2021.
Violations of International Law by Ansar Allah

The applicable legal framework

Ansar Allah’s imposition of restrictions on and impediments to humanitarian access in Saada Governate took place in the context of the NIAC between the Yemeni government and the Houthis, in which the Saudi/UAE-led Coalition intervened on the side of the internationally recognised government of Yemen. As detailed in Part F, Section 1.1, the applicable rules of IHL are CA 3, AP II, and customary IHL.

In addition, as set out in Part F, Section 3.3, the obligations to respect, protect and fulfil the human rights enshrined in the ICESCR are applicable, to varying degrees, to Ansar Allah.805 Their obligation “to respect” the right to food and water by not impeding people’s access to it applies irrespective of their level of territorial control.806 In addition, considering that Ansar Allah constitutes the de facto authority in north-west Yemen,807 the armed non-State actor (ANSA) is also under the obligation—to the extent possible—to “facilitate” the enjoyment of the right to food and water by individuals subject to its control.808

Violations of IHL and IHRL may constitute crimes under ICL, including war crimes and crimes against humanity, provided individual responsibility can be established. In addition to customary international criminal law, in certain circumstances (discussed further in Part F, Section 2) the Rome Statue of the ICC may apply to the conduct of the warring parties.

805 GEE, supra note 23 at para. 29.
806 Hutter, supra note 284 at p. 750.
807 GEE, supra note 23 at para. 29.
808 Fortin, supra note 321 at p. 166; Rodenhäuser, supra note 318 at pp. 192-193; Hutter, supra note 284 at 750.
The use of starvation as a method of warfare through impeding humanitarian aid

I The intersection of the prohibitions under IHL and the war crime of starvation under ICL

In order to assess whether Ansar Allah-imposed restrictions on humanitarian relief actions constituted a violation of the prohibition on the use of starvation as a method of warfare under IHL and the corollary war crime under ICL, it is necessary to understand the relationship between the prohibitions on impeding relief action on the one hand and the prohibition on the use of starvation as a method of warfare under IHL and the war crime of starvation under ICL on the other. Each of these is discussed in turn below prior to turning to an analysis of the Ansar Allah conduct described above.

• Impeding impartial humanitarian relief action

As discussed in Part F, Section 1.1.1, CA 3 and Rule 55 of Customary IHL provide that humanitarian bodies may offer humanitarian relief action which is “impartial in character and conducted without any adverse distinction, subject to their right of control”809 to parties to the conflict, and may proceed upon the relevant party’s consent.810 While such provisions permit States to provide consent to humanitarian relief operations, they also conversely impose an obligation to permit relief actions which are impartial in nature and conducted without any adverse distinction.811 Although Article 18(2) of AP II adopts a “state-centric approach,”812 “if the State party to the conflict is unable to or otherwise does not discharge its obligations” to facilitate humanitarian aid,813 including because of a non-State actors’ assumption of territorial control, the non-State actor is also

809 ICRC Customary IHL Rule 55. The obligation to “allow and facilitate” relief operations is not explicitly provided for in Additional Protocol II or Common Article 3. See ICRC Commentary to Additional Protocol II Article 18, para. 4888.

810 ICRC Commentary to Common Article 3 (2016), para. 827; Sassoli and Nagler, supra note 173 at p. 578.

811 ICRC Customary IHL Rule 55.


813 Akande and Gillard, supra note 195 at p. 13.
obligated to consent to such relief operations.\textsuperscript{814}

Accordingly, parties to a conflict may be held to have violated such obligations imposed by CA 3, Article 18 of AP II and Customary IHL where they:

- (i) arbitrarily withhold consent required for relief operations,\textsuperscript{815} or
- (ii) fail to comply with the obligation to “allow and facilitate the rapid and unimpeded passage of humanitarian relief, which is impartial in character and conducted without any adverse distinction.”\textsuperscript{816}

\begin{itemize}
  \item The prohibition on starvation as a method of warfare under IHL
\end{itemize}

As set out in Part F, Section 1.2, the use of starvation as a method of warfare is prohibited under Article 14 of AP II and customary IHL.\textsuperscript{817} Although the prohibition under Article 14 of AP II (and customary IHL) does not explicitly refer to the obstruction of humanitarian aid as conduct giving rise to a violation of the provision, such conduct may constitute the use of starvation as a method of warfare under Article 14 of AP II and Rule 54 of Customary IHL where carried out for the purpose of starving the civilian population.

As set out in Part F, Section 1.2.1.1, the first sentence of the prohibition under Article 14 of AP II is lex generalis, under which a range of conduct not constituting attacks on OIS could fall. Indeed, the ICRC commentary to Article 18 of AP II, which imposes an obligation on States Parties to consent to relief actions (discussed further below) explicitly states that refusal of relief where the survival of the population is threatened “without good grounds...would be equivalent to a violation of the rule prohibiting the use of starvation as a method of combat...[under] article 14 of the [AP II].”\textsuperscript{818}

\begin{itemize}
  \item The prohibition on starvation as a method of warfare under IHL
\end{itemize}

As set out in Part F, Section 1.2, the use of starvation as a method of warfare is

\textsuperscript{814} See Part F, Section 1.1.1.
\textsuperscript{815} Akande and Gillard, supra note 195 at p. 48.
\textsuperscript{816} ICRC Customary IHL Rule 55; Akande and Gillard, supra note 195 at p. 48.
\textsuperscript{817} ICRC Customary IHL Rule 53.
\textsuperscript{818} ICRC Commentary to Additional Protocol II Article 18, para. 4885.
• The war crime of using starvation as a method of warfare under ICL

Wilfully impeding relief supplies forms part of the actus reus of the war crime of starvation as a method of warfare under ICL. As discussed in Part F, Section 2.2.1, the only actus reus element of starvation as a war crime is depriving civilians of OIS. Wilfully impeding relief supplies is an explicit example of how this deprivation may be carried out.\textsuperscript{819}

As set out in Part F, Section 2.2.2, with regard to the mens rea elements, the perpetrator must have intentionally deprived civilians of OIS; and the perpetrator must have intended to starve civilians as a method of warfare or must have known that starvation would almost certainly occur in the ordinary course of events (the virtual certainty test).

I Impediments to humanitarian relief action deprived civilians of OIS

Ansar Allah has imposed impediments to carrying out humanitarian relief operations. As detailed above, they closed down offices of local humanitarian organisations and expelled office managers, and interfered with humanitarian organisations’ tender, procurement and recruitment processes, including by imposing implementation partners and forcing organisations to appoint individuals or acquire relief material from persons affiliated with Ansar Allah. They also attempted to redirect aid to beneficiaries composed of Ansar Allah loyalists, including by: refusing to allow humanitarian organisations to carry out independent needs assessments; preventing them from traveling to areas of concern and forcing humanitarian organizations to rely on information and assessments provided by Ansar Allah or persons loyal to them; suspending and blocking cash aid projects; and imposing lists of beneficiaries on humanitarian organizations. Such actions have led to the suspension of several cash assistance projects, which were key to supporting and assisting the local population in meeting their basic needs.

It is well documented that these actions led to the deprivation of OIS intended for civilians. The impediments constituted direct or effective arbitrary refusals to permit

humanitarian relief actions and obstructed the rapid and unimpeded passage of humanitarian relief, which is impartial in character and conducted without any adverse distinction in violation of accordant prohibitions under treaty and customary IHL. By doing so, Ansar Allah’s actions impeding relief activities were a form of depriving civilians of OIS, such that the actus reus element of the war crime of starvation is also met.

• Ansar Allah arbitrarily withheld consent to humanitarian relief action

A party’s obligation to consent to humanitarian relief action under Article 18 of AP II is triggered when the civilian population is “suffering undue hardship.”820 When assessing “undue hardship...it is appropriate to take into account the usual standard of living of the population concerned and the needs provoked by hostilities.”821 Offers for humanitarian relief activities need to be considered in good faith by the party concerned.822 Consent may only be denied “for valid and compelling reasons,”823 and cannot be withheld arbitrarily.824 According to the ICRC, “[w]hen a party to a conflict is unable or unwilling to meet its primary obligation to meet the needs of its population and when offers of services have been made by impartial humanitarian organizations, there are no more valid/lawful grounds to withhold or deny consent to the undertaking of humanitarian activities.”825 Accordingly, the term “arbitrary” has been interpreted to refer to “the situation in which a party to an armed conflict rejects a valid offer of services triggered by the existence of needs to be fulfilled.”826 Where refusal to consent to humanitarian relief action results in the starvation of civilians, as prohibited by treaty and customary IHL,827 such refusal would be deemed arbitrary.

820 Additional Protocol II, Article 18(2).
821 ICRC, supra note 818 at para. 4881.
822 ICRC, supra note 810 at para. 834.
823 Bothe et al., supra note 5 at p. 485.
825 International Review of the Red Cross, supra note 132 at pp. 359, 369.
826 Ibid. See also Akande and Gillard, supra note 195 at p. 23 (providing examples of the circumstances under which the withholding of consent may constitute a violation of IHL and IHRL).
827 Ibid.
Ansar Allah effectively withheld consent for humanitarian relief operations when it closed down the offices of and expelled office managers from local humanitarian organizations that were providing impartial relief, and when it suspended cash aid projects. In addition, by refusing to allow humanitarian organizations to carry out needs assessments, blocking cash aid and imposing beneficiary lists, Ansar Allah also effectively withheld consent for such organizations to carry out needed humanitarian relief actions in Saada Governate. Notwithstanding the fact that such humanitarian organizations were present in the country, the scale of restrictions and arbitrary refusals to operate were so widespread that they constituted an effective denial of consent. As such, Ansar Allah directly and indirectly withheld consent for humanitarian relief actions that were necessary for many in Saada Governorate to be able to meet their basic needs.

Ansar Allah’s withholding of consent was arbitrary for the following reasons.

**First**, the threshold of “undue hardship” under article 18 of AP II was unquestionably met. OCHA identified Saada as one of the governorates with the highest concentrations of people in need of humanitarian assistance, with at least 675,915 individuals in the governorate identified as being in need in 2021.\(^{828}\) In addition, Saada is among the areas “where most of the people in acute need of humanitarian assistance were located.”\(^{829}\) As set out in Part G, Section 3, Saudi/UAE-led Coalition airstrikes in Saada Governorate have repeatedly damaged and destroyed OIS,\(^{830}\) increasing the dependence of civilians on humanitarian assistance in the governorate.\(^{831}\)

**Second**, given its territorial control and status as the de facto authority in Saada Governate throughout the conflict, Ansar Allah assumed responsibilities not only under IHL, but also under IHRL, to protect and fulfil civilians’ right to food and water, as well as their livelihoods.\(^{832}\) Considering that the civilian population was inadequately supplied,\(^{833}\) that Ansar Allah was either unable to provide the necessary assistance or did not help

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828 OCHA, supra note 118 at p. 89.
829 Ibid, at p. 22.
830 See Part G, Section 5.2.1.1(ii).
832 Akande and Gillard, supra note 195 at p. 23. See also International Review of the Red Cross, supra note 132 at pp. 359, 369; Sassoli and Nagler, supra note 173 at p. 579.
833 OCHA, supra note 118 at pp. 22, 89.
the population meet the needs where they were able, and that humanitarian relief operations were accordingly the only lifeline for the civilian population.\textsuperscript{834} withholding consent and obstructing the implementation of relief activities was arbitrary.

**Third,** the obstruction of humanitarian access by Ansar Allah, which amounts to the withholding of consent for humanitarian relief action—namely through the actions described above—was motivated by political considerations and was discriminatory insofar as it sought to redirect aid to (perceived) Ansar Allah loyalists and their families. The withholding of consent was therefore based on adverse distinction rather than need\textsuperscript{835} resulting in discriminatory effects, and was therefore arbitrary.\textsuperscript{836}

In light of the above analysis, the obstruction of humanitarian assistance by Ansar Allah constitutes an arbitrary denial of consent to humanitarian relief operations in violation of CA 3, Article 18 of AP II, and customary IHL.

- **Ansar Allah obstructed the rapid and unimpeded passage of humanitarian relief**

As discussed in Part F, Section 1.1.2 above, once relief actions have been permitted, under CA 3, Article 18 of AP II and customary IHL, parties to a conflict must "allow and facilitate the rapid and unimpeded passage of humanitarian relief, which is impartial in character and conducted without any adverse distinction."\textsuperscript{837} By carrying out the actions described above, Ansar Allah attempted to control who received humanitarian aid in Saada Governate. Even if such actions did not constitute an effective refusal to consent to humanitarian relief, by interfering in the operation of humanitarian organizations and attempting to divert—and actually diverting—aid to Ansar Allah loyalists, Ansar Allah imposed impediments to impartial humanitarian relief operations in violation of IHL.


\textsuperscript{835} ICRC, supra note 810 at para. 837; See also Akande and Emanuela-Chiara Gillard, ‘Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare, The Underlying Rules of International Humanitarian Law’ [2019] 17 JICJ 753, 775.

\textsuperscript{836} ICRC, supra note 810 at para. 837; Akande and Gillard, supra note 195 at pp. 24 and 29; Emanuela-Chiara Gillard, ‘The Law Regulating Cross-Border Relief Operations’ [2013] 95(890) International Review of the Red Cross 351, 361. See also Schwendimann, supra note 197 at pp. 993, 997.

\textsuperscript{837} ICRC Customary IHL Rule 55; Akande and Gillard, supra note 195 at p. 48.
Ansar Allah’s conduct failed to respect the mandate and modalities of operation of humanitarian organisations responsible for aid delivery, and more generally the principles upon which humanitarian assistance is grounded. Although assigning the supervision of the delivery of humanitarian assistance to a local organisation is among the conditions that Ansar Allah can impose, the organisation selected must be impartial—a pre-requisite not fulfilled in the present case. Based on the information documented by Mwatana, the local partners and personnel imposed on humanitarian organizations were affiliated with a party to the conflict. The measures imposed by Ansar Allah therefore did not aim to ensure the impartial and humanitarian character of the relief operations. Moreover, the imposition of beneficiary lists by Ansar Allah, as well as the refusal to permit needs assessments, effectively blocked aid from reaching a segment of the civilian population in need.

In light of the above, the obstruction of humanitarian assistance by Ansar Allah constitutes an unlawful impediment of humanitarian relief operations in violation of CA 3, Article 18 of AP II, and customary IHL.

- **The restrictions on humanitarian relief actions deprived civilians of OIS under ICL**

As set out in Part F, Section 2.2.1, the only actus reus element of starvation as a war crime is depriving civilians of OIS. As documented in the above analysis, Ansar Allah’s effective refusal to allow humanitarian relief actions and impediments to the distribution of humanitarian aid to a segment of the civilian population deprived civilians of OIS—namely food and water—as well as cash intended to purchase food and water or to build or maintain livelihoods by which to do so. Accordingly, the actus reus requirement of starvation as a war crime is met.

838 International Review of the Red Cross, supra note 132 at pp. 359, 374.


840 Akande and Gillard, supra note 195 at p. 29.

841 Ibid. See also Muller, supra note 203 at pp. 264-265.
Ansar Allah intended to starve the civilian population or had knowledge starvation would almost certainly occur in the ordinary course of events

As discussed in Part F, Section 1.2.1, to constitute a violation of Article 14 of AP II, restrictions on humanitarian relief actions and the resultant deprivation of OIS must be carried out “for the purpose” of starving the civilian population. While the purposive requirement does not necessitate a motive, it requires intent, the standard for which is unclear under IHL. In any event, given the mens rea standard under ICL should not be less onerous than the standard under IHL, this report examines whether both a violation of the IHL prohibition under Article 14 of AP II and customary IHL, as well as starvation as a war crime, have been committed in the context of the intent standard that applies under Article 30 of the Rome Statute.

As a preliminary matter, the use of the wording “wilfully impeding relief supplies” under Article 8(2)(e)(xix) of the Rome Statute does not introduce a lower mental standard compared to the mens rea required when depriving civilians of OIS. Instead, the impediment of relief supplies should be interpreted as “an express illustration of a relevant deprivation of OIS, rather than a material element of the crime that may be fulfilled through recklessness, rather than intent.”

Intent may be demonstrated by both direct evidence and indirect, or circumstantial, evidence. Direct evidence about intent, in particular, is difficult to obtain, and, accordingly, indirect evidence based on the underlying circumstances is assessed to determine whether the perpetrator/s may have desired to commit the prohibited conduct with the intention to starve civilians or where it would be practically impossible for them to envisage that the consequence (starvation) would not occur (the virtual certainty requirement).

842 Ohlin, supra note 154.
843 Part F, Section 2.2.2, of the report sets out in detail the intent standard applicable to starvation as a war crime under Article 30 of the Rome Statute.
844 Global Rights Compliance and World Peace Foundation, supra note 819 at p. 7.
845 Ibid, at pp. 7-8; Jordash et al., supra note 6.
846 See Part F, Section 2.6.
847 See Part F, Section 2.2.2.2.
• Attributing responsibility for humanitarian access restrictions to Ansar Allah

As for the other unlawful conduct documented in this report, the conduct of specific members of Ansar Allah responsible for violations is not described; the report refers more generally to the conduct of the ANSA as a whole.

In the context of the violations documented in this report and the relevance of the pattern of obstruction of humanitarian access, the perpetrators responsible for violations of IHL and crimes under ICL would likely include Ansar Allah members who are responsible for consenting to, allowing and facilitating relief activities; in particular, members of NAMCHA and SCMCHA. Such persons may be held liable under various modes of liability, including co-perpetration, indirect perpetration and indirect co-perpetration (where acting pursuant to a common criminal plan), complicity or ordering. Civilian and “military” superiors of perpetrators who are responsible under any mode of liability may also be liable as superiors insofar as they failed to prevent or punish crimes committed by persons under their effective command, where they had the requisite knowledge and failed to act.848

• Ansar Allah intentionally deprived civilians of OIS

As discussed in Part F, Section 2.2.2, the material elements of war crimes under the Rome Statute must have been committed with intent and knowledge.849 Accordingly, the perpetrator must have deprived civilians of OIS—here through restrictions on humanitarian relief—intentionally, and with knowledge that the objects of which he or she is depriving the civilian population are OIS. As discussed above, members of Ansar Allah effectively and arbitrarily withheld consent for humanitarian relief actions and unlawfully impeded relief operations. Given the decisive and repeated nature of the restrictions imposed by Ansar Allah members, it can be inferred that such actions must have been carried out intentionally. Further, given the nature of the restricted aid and the context of the dire humanitarian situation, as well as the civilian population’s dependence on humanitarian assistance, the persons responsible for restricting humanitarian relief actions must have been aware of the virtual certainty that the

848 See Part F, Section 2.5, for more detail about the precise elements of each of these modes.
849 Rome Statute, Article 30(1).
impediments imposed would deprive civilians of OIS, particularly when considering that the civilian population sought to receive them through humanitarian aid. Accordingly, based on the information available, it appears that the restrictions on humanitarian action were intentionally carried out to deprive civilians of OIS, with knowledge of the circumstances that existed at the time.

• Members of Ansar Allah may have had intent to starve civilians

Given the nature of the crime of starvation as a method of warfare and in the absence of a full criminal investigation, it is difficult, although not impossible, to establish that any single impediment to relief operations was carried out with the intent to starve civilians. For example, preventing a humanitarian organization from carrying out a needs assessment may not necessarily give rise to knowledge that civilians are deprived of OIS and would almost certainly starve in the ordinary course of events, without other impediments being imposed, and therefore would not necessarily give rise to an inference that the person responsible intended to starve them. However, imposing restrictions on one or more humanitarian organizations which, in effect, ensured that Ansar Allah loyalists would receive aid in a given area rather than the original intended beneficiaries of the aid, may lead to an inference that the persons responsible were aware of the virtual certainty that starvation of a segment of the population (the original intended beneficiaries of the aid) would result in the ordinary course of events. The pattern of restrictions is particularly relevant to assessing such knowledge, and therefore also whether intent to starve can be inferred.

As set out in Part F, Section 2.2.2.4, of this report, the broader pattern of restrictions on humanitarian access provides evidence that those responsible for such acts did so with such intent or knowledge. As discussed in Part G, Section 5.2.2.3, international courts and tribunals have relied upon an accused’s pattern of conduct to infer intent in the absence of direct evidence. Here, Ansar Allah’s broader pattern of conduct, in addition to other factors—including the general context in which the restrictions were imposed, the discriminatory nature of the restrictions and the imposition of other measures impacting access to food and water in Saada Governate and Yemen more

850 Prosecutor v. Rutaganda, supra note 661 at paras. 525-526. See also Prosecutor v. Gacumbitsi, ICTR-01-64, Appeal Judgement, 7 July 2006, para. 40 (“The Tribunal’s jurisprudence conclusively establishes that genocidal intent can be proven through inference from the facts and circumstances of a case. By its nature, intent is not usually susceptible to direct proof”).
broadly—could lead to an inference that members of Ansar Allah intended to starve Yemeni civilians.

a. The general context in which restrictions were imposed

As discussed in Part G, Section 3, above, the civilian population in Saada Governate suffered from severe food insecurity throughout the conflict, and was reliant on humanitarian aid to meet food and water needs. The severe food and water insecurity in Saada Governate, and Yemen more broadly, has been widely reported on, as demonstrated by numerous reports by OCHA and WFP, among others. As documented in Sections 2.2 and 2.3 above, humanitarian organizations, as well as UN bodies such as the WFP, PoE and GEE, have engaged directly with Ansar Allah on food and water security-related issues, including to advocate for humanitarian access to ameliorate the devastating impacts the war has had on the civilian population. 851

Members of Ansar Allah, and specifically NAMCHA and SCMCHA—the authorities responsible for the supervision, management, and coordination of humanitarian aid projects—must have had knowledge of the dire humanitarian situation, the dependence of the civilian population on humanitarian assistance and the offers by humanitarian organisations and agencies to alleviate the food insecurity prevailing in the region and ensure the survival of affected civilians.

b. The range, nature and pattern of restrictive measures imposed by Ansar Allah

The restrictions imposed by Ansar Allah to deprive civilians of OIS, as discussed above, were broad-ranging, from the closure of humanitarian organizations, interference in organizations’ human resources and operational procedures and suspension of humanitarian operations, to measures that prevented humanitarian organizations from assessing aid needs and distributing aid to civilians in need. Such measures were intended to—or did—divert aid from civilians in need to Ansar Allah loyalists and their families, and therefore were carried out with adverse distinction.

851 See e.g., GEE, supra note 23 at para. 128.
In addition to the instances of restrictions documented in this report, such conduct has been widely reported in Saada Governate and elsewhere by the GEE, the PoE, WFP, OCHA and others, as shown in Section 2.2, indicating a pattern of conduct which is intended to restrict civilians’ access to humanitarian aid, including food and water.

c. The imposition of other barriers to access of food and water, including economic policies and siege warfare

The restrictions on access to humanitarian aid imposed by Ansar Allah must be viewed in the context of their other actions. As discussed in Part E, Section 3, Ansar Allah’s banning of the use of new money printed by the CBY in Aden and the resultant inflation, as well as the imposition of high taxes and other tariffs (such as on fuel) and the resulting increase in prices, have adversely impacted the transportation of food and the operation of water infrastructure, as well as civilians’ purchasing power. In Taiz, Ansar Allah also engaged in siege warfare, confiscating food critical for meeting the besieged population’s needs, and prevented the movement of civilians and forced them to hand over large sums of money at checkpoints, which would undoubtedly impact access to essential needs.\footnote{See Human Rights Watch, supra note 113 (Human Rights Watch reported that the siege of Ta’izz left the population suffering severe and acute malnutrition).}\footnote{Emily Thornberry, “The Famine Facing Yemen Is a War Crime – It Must Be Investigated,” The Guardian (November 22, 2018), https://www.theguardian.com/commentisfree/2018/nov/22/famine-yemen-war-crime-civilians-saudi-coalition.}\footnote{See Human Rights Watch, supra note 113 (Human Rights Watch reported that the siege of Ta’izz left the population suffering severe and acute malnutrition).}\footnote{UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at para. 135; Human Rights Watch, supra note 46; “Yemen: People still killed and maimed daily two years since Stockholm Agreement,” Norwegian Refugee Council (NRC) (December 10, 2020), https://www.nrc.no/news/2020/december/yemen-people-still-killed-and-maimed-daily-two-years-since-stockholm-agreement/.

Siege-like conditions elsewhere, such as in Hajour in Hajjah Governate,\footnote{GEE, supra note 88 at para. 775.}\footnote{GEE, supra note 88 at para. 775.} as well as other checkpoints, also contributed to food insecurity.\footnote{See Human Rights Watch, supra note 113 (Human Rights Watch reported that the siege of Ta’izz left the population suffering severe and acute malnutrition).}

d. Other violations of IHL committed by Ansar Allah

Reports by credible organizations, including the GEE and PoE, indicate that Ansar Allah has also directly targeted civilians and civilian objects or carried out indiscriminate attacks killing or injuring civilians and destroying or damaging civilian objects.\footnote{GEE, supra note 23 at p. 2, paras. 87, 420(d) & (e); PoE (2019), supra note 331 at Annex 35; UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at para. 135; Human Rights Watch, supra note 46; “Yemen: People still killed and maimed daily two years since Stockholm Agreement,” Norwegian Refugee Council (NRC) (December 10, 2020), https://www.nrc.no/news/2020/december/yemen-people-still-killed-and-maimed-daily-two-years-since-stockholm-agreement/.

\footnote{See Human Rights Watch, supra note 113 (Human Rights Watch reported that the siege of Ta’izz left the population suffering severe and acute malnutrition).}
discussed in Section 3.4.2.2(iii), Ansar Allah has shelled areas affecting access to food—including a civilian vehicle laden with food—and has used snipers to kill civilians in Taiz, including those seeking food or safety. Ansar Allah also planted landmines in wholly civilian areas, leading to the killing and maiming of civilians, and deprivation of OIS, namely agricultural land and essential firewood. In Section 3.4.2.2, we outline why there are good grounds to conclude that members of Ansar Allah had the requisite intent to commit starvation as a violation of IHL and a war crime or had knowledge that it would almost certainly occur in the ordinary course of events when they laid such landmines.

856 GEE, supra note 88 at paras. 173, 305.
• Conclusion

The restrictions on humanitarian access imposed by members of Ansar Allah constitute an arbitrary denial of consent to and an unlawful impediment of humanitarian relief, which ultimately deprived civilians of OIS. Members of Ansar Allah, and NAMCHA and SCMCHA in particular, involved in the restrictive actions discussed above must have been aware that the needs of civilians would not be met, and that virtually no other options were available to the civilians to cover their needs. They accordingly must have been aware that at least some of these individuals would starve in the ordinary course of events, but they nevertheless imposed, and continue to impose, such restrictions. Based on the pattern of conduct, and the context in which it was committed, including economic policies and Ansar Allah’s broader pattern of IHL violations, it may be possible to conclude that some members of Ansar Allah had the intent to starve civilians who were not loyal to them or who weren’t their family members or affiliates. Even if Ansar Allah members had multiple objectives when impeding relief operations documented in this report, those responsible could still be held liable provided they had the requisite intent or knowledge.

Accordingly, it is possible to conclude that Ansar Allah restrictions on humanitarian access violated the prohibition on the use of starvation as a method of warfare under IHL and constituted a war crime under ICL.

Ansar Allah-imposed restrictions on humanitarian relief actions violated IHRL

As set out in Part F, Section 3.3, the obligations to respect, protect and fulfil the human rights enshrined in the ICESCR are applicable, to varying degrees, to Ansar Allah. The impediments to humanitarian relief activities by the ANSA violated its obligations under IHRL, specifically the obligations to respect and fulfil the rights to food and water.

Pursuant to General Comment No. 12 on the right to adequate food, “prevention of

857 Akande and Gillard, supra note 195 at pp. 23, 24 and 48.
858 GEE, supra note 88 at paras. 466-467, 782-791.
859 Additional Protocol II Article 14; ICRC Customary IHL Rule 53.
860 GEE, supra note 23 at para. 29.
861 ICESCR Article 11; OHCHR, supra note 317.
access to humanitarian aid in internal conflicts” constitutes a violation of the right to food. By redirecting humanitarian aid to other districts within Saada Governorate, and away from intended beneficiaries towards Ansar Allah supporters, front-line fighters, and their families, Ansar Allah obstructed people’s access to essential supplies and therefore violated the obligation to respect the civilian population’s rights to food and water.\textsuperscript{862}

In addition, Ansar Allah, through the exercise of government-like functions in Saada Governate and their creation of NAMCHA\textsuperscript{863} (later replaced by SCMCHA\textsuperscript{864}) had the capacity to fulfil, or at least facilitate, the population’s right to food by allowing the undertaking and implementation of relief operations,\textsuperscript{865} and therefore had an obligation to do so. As specific information as to how this de facto control manifested itself in relation to assuming government-like functions is not currently available, no firm conclusions can be made as to whether Ansar Allah also failed to respect the positive obligation to facilitate people’s access to food. However, it is possible to conclude based on the information that Ansar Allah may have failed their respect an obligation to facilitate people’s access to food through their withholding of consent and obstructing of the implementation of humanitarian projects and activities despite the fact that part of the local civilian population was inadequately supplied and that relief operations were the only means available to alleviate their suffering and ensure their survival was not at risk.

As such, Ansar Allah’s withholding of consent for and imposition of impediments to humanitarian relief violated the right to food and water under Article 11 of the ICESCR.\textsuperscript{866}

\textsuperscript{862} OHCHR, supra note 701 at p. 18, https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf. See also UN General Assembly, “Human Rights Situation in Palestine and Other Occupied Arab Territories,” UN Doc. A/HRC/10/22 (May 29, 2009), para. 50, https://123series.ru/series/father-brown-np47m/jvo31w2. The Special Rapporteur on the right to food, when reporting on the human rights situation in Palestine and other occupied Arab territories, stated that obstacles to delivering food aid to the civilian population of Gaza “were further exacerbated by incidents of confiscation of food parcels destined for distribution to beneficiary families reportedly by Hamas police personnel,” and reminded the parties concerned to abstain from action that impedes people’s access to food in line with the obligation to respect the right to food.


\textsuperscript{865} Hutter, supra note 284 at p. 750; Rodenhäuser, supra note 318 at p. 191.

\textsuperscript{866} ICESCR, supra note 297 at para. 17; Gillard, supra note 836 at p. 361. See also Akande and Gillard, supra note 195 at pp. 23 and 48.
Laying of landmines by the Ansar Allah (Houthi) armed group

Landmines affecting access to food in Taiz

As described in prior sections of this report, Yemen has been food and water insecure for decades, and the current conflict has gravely exacerbated both food and water insecurity.

867 World Food Programme, supra note 725; Oxfam, supra note 421.

Photo: Landmines that were cleared from Dhubab District, Taiz Governorate. June 2018
Parts G and H of this report examine the impact of coalition airstrikes on farming in Hajjah Governorate and on water facilities in Saada Governorate. Other forms of attack, and other warring parties, have also severely affected food and water security during the conflict. The use of landmines by the Ansar Allah (Houthi) armed group is exemplary of this, which we have highlighted below using two case studies.

In this report, the term landmine is used to broadly refer to explosive ordinances placed in the ground that, when detonated, cause indiscriminate harm to civilians and civilian objects. This includes remotely-delivered and victim-activated munitions like anti-personnel mines, as well as Improvised Explosive Devices (IEDs), Unexploded Ordnances (UXOs), booby-traps, and anti-vehicle mines.

Ansar Allah’s widespread use of landmines has caused scores of civilian deaths and injuries across Yemen, and has been a critical impediment to civilians’ abilities to access a range of OIS, including: food, water, and medical and humanitarian supplies and services. The GEE has repeatedly documented Ansar Allah’s use of landmines. According to the GEE’s 2019 report, “[t]he Houthis’ widespread use of landmines along Yemen’s western coast since mid-2017 has killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities,” noting that “[t]he Secretary-General documented 728 child casualties alone (149 killed and 579 injured, mainly boys) from landmines between 2013 and 2018.”

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868 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020. A detailed list is included in Annex 2.5. See also, Human Rights Watch, supra note 869.

869 GEE, supra note 88 at paras. 344 and 576; GEE, supra note 23 at paras. 90-96.

870 GEE, supra note 88 at paras. 344.
and 2018.” The GEE found that Ansar Allah had used both anti-personnel landmines and anti-vehicle mines in contravention of IHL, and had laid landmines in unmarked locations in civilian areas and broadly failed to warn civilians.

The fear of landmines is pervasive, preventing agricultural areas from being accessed and cultivated. Residents live knowing that the simple act of leaving their homes, both walking and driving, is dangerous.

"In an interview, a witness stated:

"There have been many incidents of landmine explosions, which have killed many residents and livestock. We were greatly affected by the landmines and suffered in obtaining our livelihood."

Ansar Allah has laid landmines throughout several governorates, including, but not limited to, Aden, Al-Hudaydah, Lahj and Taiz governorates. The impact of landmines on food security has been particularly acute on the western coast of Yemen. In Taiz Governorate, for example, witnesses described landmines as being "everywhere," stating they are often concentrated on land that is being used for farming, grazing, and herding—common and essential occupations for many Yemenis. Ansar Allah-laid landmines have cut off communities from their sources of livelihood and worsened food security.

Taiz has been one of the conflict’s epicentres. Oxfam stated in 2020 that “[t]here are few other places in Yemen where the conflict has so dramatically affected the lives of

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872 GEE, supra note 88 at para. 344.


874 GEE, supra note 110 at para. 45.


876 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020. A detailed list is included in Annex 2.5.
ordinary Yemenis than Taiz Governorate.” Oxfam also stated that the greatest number of landmines have been recorded in Taiz, resulting in around 160 people being killed and around 1,040 people injured or disabled from 2015-2019.

Both food and water security have been dire in Taiz. In 2020, an IPC assessment across Yemen found that Taiz had almost 600,000 individuals facing food “crisis” (IPC Phase 3)

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879 IPC “crisis” is phase 3 of the 5-phase classification system, “and means food consumption gaps with high or above usual acute malnutrition or are marginally able to meet minimum food needs only with accelerated depletion of livelihood assets that will lead to food consumption gaps.” See “On World Food Day CARE Warns of Worsening Hunger for Vulnerable Yemenis,” CARE (October 14, 2020), https://www.care.org/news-and-stories/press-releases/on-world-food-day-care-warns-of-worsening-hunger-for-vulnerable-yemenis/.
or “emergency” (IPC Phase 4)\textsuperscript{880} out of a population of about 1.5 million.\textsuperscript{881} A separate IPC analysis done in February 2021 that was focused on malnutrition found that, across Taiz, nearly 200,000 children under the age of five were in need of treatment for global acute malnutrition (GAM)—also known as wasting—which constituted more than a quarter of children aged 0-5 in the area.\textsuperscript{882} A GAM value of more than 10 percent indicates an emergency.\textsuperscript{883} The UN bodies conducting the analysis projected that Taiz was one of the areas in Yemen expected to have the “highest number of GAM cases during 2021.”\textsuperscript{884}

Landmines laid across the governorate have had a disastrous impact on access to food as well as to livelihoods. Anti-personnel mines have been laid in fields and alongside roads often without marking, blocking access to urban infrastructure, homes, grazing land and water sources.\textsuperscript{885} Many in the governorate, especially on the western side, are dependent on farming, herding, and fishing as a source of income and as a source of food. Landmines have obstructed the communities’ ability to continue these activities, and left many without their main sources of livelihood and food.\textsuperscript{886} Since 2019, Mine Action Operators affiliated with the

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Landmines.png}
\caption{Landmines that were cleared from Dhubab District, Taiz Governorate. June 2018.}
\end{figure}

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880 IPC “emergency” is phase 4 of the 5-phase classification system, ”and means that even with humanitarian assistance at least one in five households in the area have large food consumption gaps resulting in very high acute malnutrition and excess mortality, or extreme loss of livelihood assets that will lead to food consumption gaps in the short term.” See Ibid.
881 Integrated Food Security Phase Classification (July 2020), supra note 75 at p. 2.
882 Integrated Food Security Phase Classification, supra note 75.
884 Integrated Food Security Phase Classification, supra note 75.
885 Republic of Yemen, supra note 729 at p. 10.
886 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020. A detailed list is included in Annex 2.5.
\end{flushleft}
National Mine Action Authority in Yemen have carried out around 45 Non-Technical Surveys (NTS) in Al-Mukha and Mawza districts of Taiz Governorate. In an interview with Global Rights Compliance, they assessed that:

[M]any of the villages from Taiz Governorate might be considered under confinement due to the movement restraints and movement restrictions due to the fear of entering a hazardous area (Suspected Hazardous Area (SHA) & Confirmed Hazardous Area (CHA)). Close to 90% of the NTS reports showed that these communities have expressed restrictions or blockages to access key areas where they used to carry out agricultural, hunting, grazing and livestock breeding activities. These [activities provide them with] their only source of daily sustenance [through the food they produce and through the livelihoods they provide,] and thus affect their food security. Similarly, accessing water sources and fire wood areas are restricted and limited by Explosive Ordnance (EO).887

Landmines have had the effect of further reducing the already limited, arable land in Yemen (only 2.6 percent of the country) and frequently have resulted in the death or disabling of farmers, herders (often children) and livestock essential for agricultural production and the resumption of basic economic activities. Returning to these areas risks a landmine explosion, which might kill, injure or maim those engaging in the activity or their livestock. This has pushed many to remain displaced rather than return and risk losing their lives to landmines. Mwatana has repeatedly documented landmine explosions killing and wounding farmers, shepherds and fishermen while they were trying to do their work, demonstrating that landmines scattered across agricultural and grazing land, and near fishing areas, have exacerbated an already dire situation in the region.888

In addition, landmines in Taiz Governorate have also blocked humanitarian aid groups from being able to provide food and needed medical supplies and care to Yemenis living in various parts of the governorate, furthering the impacts on food and water security that the landmines have had on the population.889

888 Human Rights Watch, supra note 730.
889 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020. A detailed list is included in Annex 2.5; HRW, supra note 730.
The use of mines in Yemen prior to 2014

In order to assess the use of landmines through the prism of starvation as a method of warfare, it is essential to understand the extent of mine contamination before the current conflict began. In understanding pre-existing mined areas and SHA, we can attempt to reach conclusions as to whether landmines have been a new tactic of war used by Ansar Allah since 2014. In addition to assessing the extent of contamination prior to 2014, further investigations are needed to assess the possible use of landmines by a number of different actors, including ANSAs such as Al Qaeda in the Arabian Peninsula (AQAP), known to be operating in various parts of Yemen.890

Yemen ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction (Ottawa Convention) on 1 September 1998, and the Convention entered into force on 1 March 1999.891 Under the auspices of the National Mine Action Committee (NMAC), the Yemen Executive Mine Action Centre (YEMAC) was established with the aim of coordinating all mine-related activities in the country.

In its report requesting an extension of time to comply with its mine-clearance obligations under the Ottawa Convention in December 2013,892 YEMAC highlighted how, prior to 2014, landmines and explosive remnants of war (ERW) had “a serious impact on access to critical resources, blocking access to grazing land, agricultural land and water sources for drinking and irrigation. It has also impeded infrastructure development and the implementation of social development projects in affected communities.”893 Nevertheless, YEMAC reported that it had made progress clearing landmines from Taiz between 2000 and 2013. Through its Landmine Impact Surveys (LIS) and collection of


892 The original deadline to declare Yemen mine free was 2015. Yemen has filed three requests for extension (in 2008, 2014 and 2019), pursuant to their Article 7 (transparency) requirements.

893 Republic of Yemen, supra note 729 at p. 2.
reports from the population and local authorities, YEMAC had identified 1,398 landmines in total and 115 SHAs in Taiz during that period, and surveyed and cancelled or reduced 102 out of such 115 SHAs in the Taiz area. Through these technical surveys, as of 2013, 55 minefields were identified in Taiz where the majority of the area had been addressed or cleared, while two minefields remained to be addressed. Dhubab District—discussed in the case studies below—was not listed as one of the areas in Taiz in which the two minefields were yet to be addressed, nor was it one of the 13 SHAs that still remained to be surveyed at the time of the Yemeni Government’s 2013 report. NMAC’s 2019 transparency report on the Mine Ban Convention, which stated that, before the current conflict, “Yemen was almost AP [anti-personnel] mine free from the high impacted areas,” seems to support the conclusion that the Taiz area—being one area impacted by mines during the most recent conflict—had been largely cleared prior to the conflict’s commencement.

The obligations of Ansar Allah to respect IHL and IHRL are discussed in more detail in Part F, Section 3.3 and Part H, Section 3.4.3.2. In short, Ansar Allah is bound as a party to the conflict by CA 3 and AP II. Pursuant to IHRL, Ansar Allah must respect the human rights obligations enshrined in the ICESCR, which are applicable, to varying degrees; to the extent it exercises territorial control, Ansar Allah must also protect and fulfil ICESCR rights. This is the case with regard to the negative obligation “to respect” the right to food by not impeding people’s access to it.

**Landmines in Dhubab District, Taiz Governorate**

Since the start of the conflict in 2014, UNDP has supported YEMAC. YEMAC has

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894 Ibid, at pp. 4-6.
895 Ibid, at pp. 6 and 13.
896 Ibid, at p. 12.
897 GEE, supra note 23 at para. 29; OHCHR, supra note 317. For an overview of the practice of the UN Human Rights Council regarding IHRL obligations of ANSAs, see Geneva Academy, supra note 316; See also, Hutter, supra note 284 at p. 750.
898 Rodenhäuser, supra note 318 at pp. 192-193; Hutter, supra note 284 at p. 750.
899 Republic of Yemen, supra note 890 at p. 2.
continued to conduct clearance operations, but has noted that the conflict has “produced a large amount of new mine contamination” and that “the exact locations and extent are not known due to the inability to access these areas to conduct surveys while the old survey data are considered outdated.” 900 The latter is compounded by previously cleared areas being re-contaminated. 901 In its 2018 transparency report on the Mine Ban Convention, the Yemeni government noted there is no clear picture of the level of contamination across the country, while identifying six SHAs since 2014 in Taiz, located in the Maqbanah and Shar‘ab Al Salam districts. 902

Dhubab District is the largest district in Taiz Governorate, located in the far southwest corner of Yemen. The district has an estimated area of about 1557 square kilometres and, as of the last population census in 2004, it had a population of about 18,115. 903 The people of the district work mainly in herding, collecting firewood, agriculture, and fishing. 904 The 2019 transparency report lists Dhubab as a contaminated area. 905

Due to Dhubab’s geography—it contains approximately 78 kilometres of Yemen’s western coastline, including the Bab al-Mandab Strait, which acts as a strategic link between the Indian Ocean and the Mediterranean Sea via the Red Sea and the Suez Canal—Yemen’s various warring parties have fought to control the district. Ansar Allah took control of Dhubab District in 2015. Fighting between Ansar Allah and the UAE-backed Joint Forces on the western coast (“Joint Forces”) over the district began in November 2015. In May 2018, the Joint Forces took control of the district. 906

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900 Ibid, at p. 3.
901 Republic of Yemen, supra note 729 at p. 9.
902 Republic of Yemen, supra note 890 at p. 21. The same data on six SHAs can be found in Republic of Yemen, supra note 729 at pp. 53-54.
903 At the time the census was taken, the population growth rate estimated was estimated to be 2.47%, meaning that the estimated population of the district in 2021 is approximately 27,627 people. However, it is unclear how accurate this estimate might be due to the impact the conflict has had on the area.
904 Mwatana for Human Rights interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker on 20/21/22 December 2020.
906 Mwatana for Human Rights interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker on 20, 21 and 22 December 2020.
When the Joint Forces started to enter parts of the district in 2015, Ansar Allah began planting landmines; they then laid many additional mines between January 2017 and May 2018 as they began exiting the district. The Joint Forces were stationed on the coast of Dhubab District when Ansar Allah laid mines throughout the areas in the case studies described below, but they were at minimum seven and twelve kilometres, respectively, away from where the landmines exploded. Ansar Allah has not provided any maps of the mine locations, nor did they provide signage or otherwise indicate the mined areas to warn civilians.

Mwatana has documented at least 269 landmine explosions in Yemen since 2014, which have killed 214 civilians, and injured 282 civilians. Mwatana’s investigations and interviews concluded that Ansar Allah laid these mines. Of these cases, Mwatana documented at least 83 explosions caused by Ansar Allah-planted landmines that specifically impacted civilians accessing sources of food, water, or pastures across Yemen.

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<tr>
<th><strong>269</strong></th>
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<td>landmine explosions</td>
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<td>Killed</td>
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Source: Mwatana

907 Ibid.
Ansar Allah-laid landmines threaten the lives of civilians in Dhubab district, including by limiting their access to food both directly (due to the risks posed by landmines located in areas with food and fresh water sources) and indirectly (due to the risks posed by landmines in fields and pastures that form the bases of residents’ livelihoods).

One of the shepherds in the area, 50-year-old Zaid Ahmed, said:

“The Houthis had been planting landmines across all of our land the entire time they controlled Dhubab. All areas have become insecure. We go out of our homes and we know that at any moment we may be a victim of these landmines.”

Landmines remain widespread in the district, particularly in areas of the district that contain fresh water, pastures, firewood, and agricultural lands. According to Mwatana interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker, these include the Al-Omari, Al-Dosh, Al-Ghayber and Kahboob areas.

The residents of the district, whose lives and livelihoods are largely tied to, and dependent on, the land, have been unable to continue their work as shepherds and farmers due to the landmines.

A 27-year-old shepherd in Dhubab, Mansour Ahmed, said:

“Landmines are spread all over the district. There are no areas that are clear of landmines, and they are more concentrated in places of water and pastures and where there is firewood.”

The landmines also pose a constant threat to livestock.


909 Mwatana for Human Rights interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker on 20, 21 and 22 December 2020.


911 Ibid.
Since the Joint Forces took control of Dhubab more than three years ago, they have removed landmines from the main roads in the district that the forces pass through and the areas in which the forces are stationed, but have not cleared landmines from the areas where landmines are impacting civilians, local residents told Mwatana.\textsuperscript{912} As of the time of writing this report, large areas of the district remain heavily mined.\textsuperscript{913}

One of the areas in Dhubab District where landmines are particularly widespread is the Al-Omari area, which is considered one of the most important areas in the district for residents due to its agricultural land, firewood, and pastures.

Almost all residents have been displaced from their homes in this area. In January 2017, Ansar Allah forcibly displaced residents of the Al-Omari area and planted landmines across it, which prevented residents from returning to their land and accessing their sources of food, water, and livelihoods.\textsuperscript{914}

Many in the Al-Omari area moved to the Al-Mojalia area, about 20 kilometres south, due to its relative safety and proximity to Al-Omari area.\textsuperscript{915} Al-Mojalia became home to an IDP camp that currently houses nearly 1,800 people from 300 families.\textsuperscript{916} Saeed Hassan, a 50-year-old former resident of Al-Omari area who is currently residing in Al-Mojalia IDP camp, said: “What happened to the residents of Al-Omari was not an evacuation or voluntary displacement, but a forced deportation. They [Ansar Allah] deported us from our homes and didn’t provide us with any alternative place to live or alternative supplies of food and water.”\textsuperscript{917}

From 2017 to 2019, humanitarian organizations were unable to provide aid to the area due to the risks involved in visiting such heavily mined areas, and their subsequent lack of information and assessments regarding the relief needed.\textsuperscript{918} Some relief organizations

\textsuperscript{912} Mwatana for Human Rights interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker on 20, 21 and 22 December 2020; Mwatana for Human Rights interview with Ali Mohamed on December 21, 2020.

\textsuperscript{913} Ibid.

\textsuperscript{914} Mwatana for Human Rights interviews with seven IDPs from Al-Omari area on December 20, 2020.

\textsuperscript{915} Mwatana for Human Rights interviews with five shepherds from different areas in Dhubab on 20, 21 and 22 December 2020.

\textsuperscript{916} Mwatana for Human Rights interview with a Humanitarian worker on December 20, 2020.

\textsuperscript{917} Mwatana for Human Rights interview with Saeed Hasan on December 20, 2020.

\textsuperscript{918} Mwatana for Human Rights interview with a Humanitarian worker on December 20, 2020.
were finally able to reach the Al-Mojalia area at the beginning of 2019 to provide relief and shelter to the households who had been displaced to the IDP camp. However, the relief aid was not provided on a regular basis, and the camp’s location in an area that is semi-arid does not support residents’ work as shepherds, woodworkers, and farmers. For this reason, other former residents of Al-Omari area eventually moved to other areas within the district or in the neighbouring districts in search of water and pasture.

In October 2019, five families from the Al-OMari area hired a demining team to clear landmines from their farms and the road leading to them. Demining is incredibly costly—the team charged about $350 per working day, and landmines could take anywhere from ten minutes to one hour to remove. The team found many landmines scattered across the land, including anti-vehicle and anti-personnel mines as well as explosive cans. After the area was cleared of landmines, the five families were able to return to their homes and farms, and were also able to restart one of the water facilities to begin pumping water to their farms again and to some limited areas north of Al-OMari area. The rest of the area remains heavily mined, and other families have not been able to return.

Later, in 2020, relief organizations were able to reach other areas of Dhubab District, including Mojalish and Hojariah areas, to provide humanitarian aid to the displaced inside the district. However, displaced residents in IDP camps said that the humanitarian aid reaching camp residents is insufficient and does not meet their basic needs. Though aid organizations set out to offer monthly baskets to residents that contained wheat, oil, beans, sugar, salt, and rice, the baskets were often only distributed every other month or every three months, or less in some cases. A 35-year-old IDP from Al-OMari, Ahmed bin Ahmed, said: “Since our displacement in January 2017, we have been struggling to meet our basic survival needs. Last year, we got a few organizations to offer us some aid, but it was not enough.” Displaced residents in other areas of the district have

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920 Mwatana for Human Rights interviews with five shepherds from different areas in Dhubab on 20, 21 and 22 December 2020.
922 Mwatana for Human Rights interviews with seven IDPs from Al-OMari area on December 20, 2020.
924 Mwatana for Human Rights interview with Ahmed bin Ahmed on December 20, 2020; also echoed by Mwatana for Human Rights interview with Mohammed Ali on December 20, 2020.
found it challenging, if not impossible, to access humanitarian aid.  

An explosive device found in Al-Qurayshiah District, Al-Bayda Governorate. September 26, 2020.

925 Mwatana for Human Rights interviews with three IDPs from Al-Omari area on December 20, 2020.
Case Study 1
Landmine explosion in Jabal Al-Muthalath area

Ansar Allah-laid landmine explosion on a shepherd,
April 11, 2019, Jabal Al-Muthalath area, Dhubab District, Taiz Governorate

On Thursday, April 11, 2020, at approximately 3:30 p.m., a landmine exploded while a shepherd was grazing sheep in Jabal Al-Muthalath area, of Al-Omari area, Dhubab District, Taiz Governorate. The shepherd had to have his right leg amputated.\textsuperscript{926} The Jabal Al-Muthalath area is located in the south of Al-Omari area and is important to the residents of Al-Omari area and is important to the residents of Jabal Al-Muthalath area.\textsuperscript{926}

The shepherd’s brother, 35-year-old Saleh Ahmad, described how Ansar Allah had planted landmines in areas that were critical to the population’s access to food and water, including his family. He said:

“[A]nti-personnel and anti-vehicle landmines are spread everywhere, and are concentrated in areas containing water and pastures. Ansar Allah has controlled these areas for years and they know of their importance to the population, but they do not care about our lives.”\textsuperscript{927} A shepherd in the area, 28-year-old Muhammad Ali, added: “Ansar Allah planted landmines everywhere, and landmines are found in abundance in herding areas and near areas that provide water.”\textsuperscript{928}

\textsuperscript{926} Mwatana for Human Rights interview with Saleh Ahmed on December 22, 2020.
\textsuperscript{927} Mwatana for Human Rights interview with Saleh Ahmed on December 22, 2020.
\textsuperscript{928} Mwatana for Human Rights interview with Mohammed Ali on December 20, 2020.
The landmines are spread across the area, with no sign postings or maps of their whereabouts to help civilians avoid them.

*The friend who rescued Awad, Waheed Zaid, said:*

"Landmines have become a threat to all of us—they are everywhere and there are no signs or maps showing their whereabouts. We have to work, graze, find water and move around, and these landmines injure or kill us or our livestock every day."^{929}

*Saleh added:*

"Landmines are not distinguishable, and they can’t be detected unless they’re uncovered by torrents or bored by winds. They are not guarded or monitored, and they are not protected by visible fences. They didn’t even tell us that the area is mined."^{930}

Saleh said landmines had significantly impacted his family’s access to food, water and livelihood.

*He added:*

"We did not suffer from starvation or water scarcity before the mines were planted, and our livelihood was fine. Al-Omari area means everything for us, and there are no alternative places where we can herd, gather wood, and fetch water. We have stopped herding, logging, and agriculture, and our water has been cut off. We lack the lowest standard of livelihood."^{931}

The landmines have also caused displacement. Saleh and his brother’s family were displaced from Al-Omari by Ansar Allah when Ansar Allah mined the area. At the time the mines were laid, the nearest military frontlines were on the coast, at least seven

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929 Mwatana for Human Rights interview with Waheed Zaid on October 15, 2019


931 Ibid.
kilometres from the area where the landmine exploded on Awad.

Saleh said:

“Ansar Allah forced us to leave our homes and planted landmines everywhere in our area. They never provided us with any food, water, shelter or medicine. However, other places are not safe. No area is clean of landmines.” 932 He added: “The Joint Forces didn’t do any demining for the sake of the civilians; they only demined the roads they used to pass through to get to Hudaydah in the north.” 933

While they might be safer from landmines, displaced residents struggle to access food and water, as well as to continue working.

Saleh said:

“We have moved from the Al-Omari area to a nearby area that is considered less dangerous, but we suffer from a scarcity of pastures and from the presence of landmines as well.” 934 He added: “Many landmines have exploded. One of them hit my brother, but we have no choice but to take risks and go out to herd. This is what we do for a living.” 935

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932 Ibid.
933 Ibid.
935 Ibid.
Case Study 2
Landmine explosion in Al-Moddiah Mountain

Ansar Allah-laid landmine exploded, severely injuring a child shepherd

April 20, 2019, Al-Moddiah Mountain, Dhubab District, Taiz Governorate

On Saturday, April 20, 2019, at approximately 10:00 a.m., a landmine exploded while a 14-year-old boy was herding sheep in Al-Moddiah Mountain, Dhubab District, Taiz Governorate—an area close to Al-Omari area that Al-Omari residents rely on for water, herding, and firewood.

The boy lost both his legs as a result of the explosion.

The 14-year-old boy, Haidari Ibrahim, described the day of the explosion, and the impact it has had on his life. He said:

"I was accompanied by my cousin, shepherding sheep. When I stepped on my left foot with a landmine, because of which I lost both feet, I became handicapped. I cannot play, herd or go to school anymore."

Even after the incident, Haidari said his family continued to enter areas that had been mined, including Al-Omari and Kahboob, to try and meet their basic needs because they were unable to find other areas where they could feed their cattle, in spite of the risk of not knowing when another landmine might explode.

In a follow-up interview, Haidari said:

"We have no choice but to take risks and go out to search for a living. I took the risk and lost my feet, and just today my father went out looking for firewood."
After being displaced from the land they used for herding, Haidari’s family has struggled to access food or fresh water, or to continue their livelihoods.

_Haidari’s mother, 50-year-old Salma Qassem, said:_

“Ansar Allah forcibly deported us from the Al-Omari area, and they did not provide us with food, water, medicine, or even tents. We work in herding and collecting firewood. There is no other source of food for us, and areas other than Al-Omari do not have drinkable water and firewood and pasture is very scarce.”

_Haidari said no area in the district is safe from landmines:_

“We were displaced from the Al-Omari area to Al-Saiman because there are less landmines in Al-Saiman, but there is no safe place in Dhubab. The Ansar Allah (Houthi) group planted landmines everywhere.”

Landmines remain spread out across the district, and civilians have no way of knowing where exactly mines might be located.

_Haidari said:_

“Landmines are not guarded. No signs of their whereabouts are posted and no efforts have been made to remove them.”

_Salma explained the danger this poses, saying:_

“Landmines explode constantly, threatening our lives and the lives of our livestock. There are no maps of these landmines and there are no signs that distinguish them. We do not discover where they are until they explode or when they are exposed by torrents or winds.”

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940 Ibid.
The place where the landmine exploded is not a military area, and is at least 12 kilometres away from where the Joint Forces were stationed at the time the area was mined.

Describing the overall impact that the landmines have had on their lives, "Salma said:

"Our suffering started with landmines since 2015, and our suffering continues until now. We can no longer cultivate, herd or log wood."  

941 Ibid.
Violations of international law by Ansar Allah

The applicable legal framework

The landmines laid in the Taiz region and their effects on OIS are taking place in the context of the NIAC between the internationally recognised government of Yemen and the Houthis, in which the Saudi/UAE-led Coalition intervened on the side of the Yemeni government. As detailed in Part F, Section 1.1, the applicable rules of IHL are CA 3, AP II and customary IHL. Additionally, non-detectable anti-personnel mines, as well as non-self-destructing and non-self-deactivating mines outside fenced, monitored and marked areas, are prohibited in both IACs and NIACs. At as a treaty party to the Ottawa Convention, Yemen is bound not to use, produce, stockpile or transfer antipersonnel landmines. Ansar Allah has acknowledged the application of the Convention, and mentioned it when referring to their obligations under IHL.

In addition, as set out in Part F, Section 3.3, the obligations to respect, protect and fulfil the human rights obligations enshrined in the ICESCR are applicable, to varying degrees, to Ansar Allah. This is most definitely the case with regard to the negative obligation “to respect” the right to food by not impeding people’s access to it.

Violations of IHL and IHRL may constitute crimes under ICL, including war crimes and crimes against humanity, provided individual responsibility can be established. In addition to customary ICL, in certain circumstances (discussed further in Part F, Section 2) the Rome Statue of the ICC may also apply to the conduct of the warring parties.

942 Amended Protocol II to the Convention on Certain Conventional Weapons, Articles 4, 5.
943 GEE, supra note 88 at para. 343.
944 Ibid, at para. 344.
945 Ibid, at para. 29.
946 Rodenhäuser, supra note 318 at pp. 192-193; Hutter, supra note 284 at p. 750.
Landmines and the deliberate use of starvation as a method of warfare

As set out in Part F, Section 1.2, the use of starvation as a method of warfare is prohibited under Article 14 of AP II and customary IHL. Article 14 of AP II stipulates that “it is ... 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.” 947 The prohibition provides a non-exhaustive list of objects indispensable to the survival of the civilian population (OIS), and additional objects not included on the list may also be indispensable in applicable circumstances. The prohibition on the use of starvation as a method of warfare during a NIAC is firmly accepted as part of customary IHL. 948

In the context of landmines laid in agricultural areas documented in this report, to constitute a violation of the prohibition under IHL:

(i) the objects targeted must constitute OIS;
(ii) the objects must have been attacked, destroyed, removed or rendered useless;
(iii) the objects must retain their civilian status or be otherwise unlawfully targeted; and
(iv) the OIS must have been attacked, destroyed, removed or rendered useless for the purpose of starving civilians.

The elements of starvation as a method of warfare under ICL are substantially similar. Where the first three of the above elements under IHL have been met, the actus reus requirement under ICL that the perpetrator must have “deprived civilians of OIS” may also have been met. Further, where OIS are attacked, destroyed, removed or rendered useless for the purpose of starving civilians, the perpetrator may have

(i) intentionally deprived civilians of OIS and

948 ICRC Customary IHL Rules 53-54.
(ii) intended to starve civilians as a method of warfare or was aware that it would almost certainly occur in the ordinary course of events (through the intent or knowledge standards discussed in Part F, Section 2.2.2, and further below).

The relationship between the elements of the prohibition under IHL and the actus reus and mens rea elements under ICL in the context of the landmines are discussed in more detail below.

I. The landmines deprived civilians of OIS

- The landmines rendered useless OIS under IHL

As discussed below, Ansar Allah’s use of landmines attacked, damaged and destroyed OIS, namely agricultural areas (fields and pastures used for grazing, logging for firewood and collecting water) and livestock. Furthermore, the laying of landmines in these areas, prevented the land from being adequately used and therefore accessed for their regular purposes without compromising the physical integrity of civilian farmers, rendering these OIS useless in practice. The objects retained their civilian status and were unlawfully targeted. As such, the use of landmines constituted an attack on, damage to and/or destruction and rendering useless of OIS under Article 14 of AP II and customary IHL. By doing so, Ansar Allah deprived the civilians of OIS, such that the actus reus element of the war crime of starvation is also met.

a. The objects rendered useless constituted OIS protected under IHL

Both case studies in the Jabal Al-Muthalath area of Al-Omari and Al-Moddiah Mountain, within the Dhubab District of Taiz Governorate, feature landmines exploding on agricultural areas with civilian shepherds being severely injured, resulting in single and double amputations (in the latter case the shepherd was a child aged 14). The agricultural area in which the shepherds were grazing sheep and civilians were logging for firewood, its water sources and livestock are explicitly protected by Article 14 of AP II. The areas used for herding and collecting firewood constitute either “agricultural areas for the production of foodstuffs,” which must be understood in the broadest
sense,949 or "objects of basic importance for the population from the point of view of providing the means of existence."950 The landmines not only destroyed the OIS in the cases documented, but instilled fear in the farming community, inhibiting their ability to farm agricultural areas and thereby rendering areas useless.

Both areas are critical to the local population for providing pastures, water, agriculture and essential firewood.951 Interviewees spoke of there being no alternative places to herd, gather wood or fetch water,952 activities which residents of Dhubab described themselves as being "completely dependent upon" as sources of income.953 In the Jabal Al-Muthalath case study, the shepherd’s brother, Saleh Ahmad, emphasised the importance of these areas to their livelihoods and said that, prior to the mines being laid, their needs were met and they did not suffer from "starvation or water scarcity."954 In both case studies, following the laying of landmines in the area (but before the explosions documented), the families were displaced from the lands they cultivated to an area where humanitarian access was limited and they struggled to access food, water or maintain any semblance of their livelihoods.955 Those affected retained an inescapable fear and real risk of landmines in the areas they were displaced to, with one interviewee stating "there is no safe place in Dhubab, Ansar Allah planted landmines everywhere."956

In describing the broader impact that landmines have had, the GEE commented that "[t]he widespread use of landmines by Houthis poses a constant threat to civilians and contributes to displacement,"957 and has disproportionately affected civilians.958 Human

949 ICRC Commentary to Additional Protocol II Article 14, para. 4805.
950 ICRC Commentary to Additional Protocol II Article 14, paras. 4802-4803. See also Dinstein, supra note 624 at p. 132.
951 Mwatana for Human Rights interview with Saleh Ahmed on December 22, 2020 (Jabal Al-Muthalath area) and Mwatana for Human Rights interview with Salma Qassem on December 22, 2020 (Al-Saiman April 2019).
955 Mwatana for Human Rights interview with Saleh Ahmed on December 22, 2020 (Jabal Al-Muthalath area) and Mwatana for Human Rights interview with Salma Qassem on December 22, 2020 (Al-Saiman area).
957 UN Security Council ("Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council"), supra note 35 at p. 3.
958 Ibid.
Rights Watch stated that “[l]andmines laid on farms and grazing lands killed or seriously injured civilians and prevented others from obtaining food or earning money,” and more generally that “mines have made it more difficult for villagers to feed themselves and maintain their income.”

b. The landmines constituted an attack on, and destroyed, damaged and rendered useless, OIS

The significant scale of landmines laid across agricultural areas in Dhubab, also reported on by the PoE, constitutes an attack on OIS. The destruction of livestock and the farmers’ inability to safely access the land to cultivate, graze their livestock and access water sources and firewood, has rendered the land useless. While some have chosen to try and return to the areas despite the risks, it is clear they “have no choice” if they are to maintain their livelihoods. The importance of the area to the civilians in Dhubab and the lack of alternative areas to carry out such essential activities is also demonstrated by the private demining activity that occurred in October 2019. A small group of residents hired a demining team to clear landmines from their farms and the roads leading to them, which enabled some civilians to return to their homes and farms. The pervasive use of landmines across Dhubab District constitutes an attack on and has destroyed and rendered useless OIS.

c. The OIS were indiscriminately targeted

As set out in Part F, Section 1.2.2.1, Article 14 of AP II establishes a prohibition on attacks on OIS without exception for objects that may also qualify as a military objective.

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959 Human Rights Watch, supra note 730.
961 One of the shepherds in Dhubab, 50-year-old Zaid Ahmed, said: «I lost more than fifty sheep. Some of them were killed by mine explosions, and others died because of the salinity of the water.” Mwatana for Human Rights interview with Zaid Ahmed on December 20, 2020.
962 Mwatana for Human Rights interview with Haidari Ibran on December 22, 2020 (Jabal Al-Saiman area); Mwatana for Human Rights interview with Saleh Ahmed on December 22, 2020 (Jabal Al-Muthalath area).
963 Mwatana for Human Rights interviews with three farmers in Al-Omari area on December 21, 2020.
964 Additional Protocol II, Article 14.
However, under the principle of distinction, an object may qualify as a military objective and lose protection from attack during a NIAC when by its nature, location, purpose or use it makes an effective contribution to military action and its destruction, capture or neutralization would offer a definite military advantage in the circumstances at the time.\(^965\) Nature refers to the intrinsic military characteristics of the objects. Location is particularly relevant in the context of landmines, and refers to “a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it.”\(^966\) Purpose refers to the intended future use of an object in support of military operations\(^967\) and use to the object’s current usage.\(^968\) It is “indisputable” that laying mines over large areas used by civilians would clearly constitute an indiscriminate attack and may even constitute a direct attack on civilians.\(^969\) The use of landmines “in agricultural areas or in irrigation works with the specific purpose of precluding their use for the sustenance of the civilian population would likewise constitute a violation of [the prohibition on starvation].”\(^970\)

The principle of distinction is subject to the principle of proportionality, which stipulates that an attack against a lawful military target may not be permissible if the damage to the civilian population or civilian objects is excessive to the concrete and direct military gain anticipated.\(^971\) It is also subject to the principle of precautions in attack which requires—among other things—advance warning of attacks on military objectives which may cause collateral damage and the choice of means and methods of warfare which will minimize it.\(^972\)

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967 Dinstein, supra note 624 at pp. 9-10.
968 ICRC Commentary to Additional Protocol I Article 52, para. 2022.
970 Pejic, supra note 144 at pp. 1097, 1099.
971 See Part F, Section 1.2.2.3(iii). See also Additional Protocol I, Article 54 (3)(b), which stipulates that the prohibition on attacks DIS does not extend to objects that are used “in direct support of military action” but that “in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water so as to cause its starvation or force its movement.”
972 See Part F, Section 1.2.2.3(iii).
In addition to the principles of distinction and proportionality, and the obligation to take all feasible precautions in attack—which apply to the use of antivehicle and antipersonnel mines where not entirely prohibited—Ansar Allah is also bound by the customary IHL obligations to take care to minimise the indiscriminate effects of landmines, 973 record their placement 974 and place warnings, 975 and undertake mine clearance at the end of hostilities. 976

The information available indicates that the fields and pastures where the landmines were laid made no contribution to military action by their nature, purpose or use. They were used by the civilian population for grazing and logging for firewood, as well as collecting water, and, as mentioned above, the local population’s livelihoods were linked to these activities. The agricultural and grazing lands therefore constitute civilian objects under the principle of distinction.

With regard to location and the presence of military objectives in the Al_Moddiah Mountain and Jabal Al-Muthalath areas, the Joint Forces were located on the coast of Dhubab District when Ansar Allah laid mines, at a minimum of seven and twelve kilometres, respectively, away from where the landmines exploded. 977 While it has been too risky to concretely map the coordinates of these mined areas, information from Mwatana’s field researchers and national and international mine clearance organizations indicates that the locations where the mines exploded in the two case studies below were purely agricultural areas known to be used for sheep grazing, away from any main roads which had been relied upon by the Joint Forces. This suggests that these mines were not laid with a clear military objective in sight.

973 ICRC Customary IHL Rule 81.
974 ICRC Customary IHL Rule 82. This Rule is arguably applicable in NIAC.
977 See Section 3.3.
The placement of landmines on agricultural and pastural lands therefore constitutes an indiscriminate attack, as the mines were not directed against a specific military objective.\textsuperscript{978}

In the event that the areas used by the civilian population for grazing could qualify as military objectives due to their location or proximity to the roads that were used by the Joint Forces, and provided that the placing of mines would offer a definite military advantage,\textsuperscript{979} the laying of landmines by Ansar Allah should have been assessed in light of the principle of proportionality, pursuant to which Ansar Allah should have weighed the anticipated incidental harm to civilians in relation with the anticipated concrete military advantage.\textsuperscript{980} The qualification of the agricultural and pastural land as OIS, and the civilian population’s reliance on activities that require access to and use of the aforementioned lands, should have been factored into any proportionality assessment to determine the lawfulness of the conduct in question.

If Ansar Allah determined that the landmines could have been laid under the principle of proportionality, as discussed above, all feasible precautions should have been adopted to minimise the effects of the placement of mines on the civilian population. With landmines in particular, which will often equally affect civilians and civilian objects, particular care must be taken to minimise their indiscriminate effects\textsuperscript{981} by—as stated above—recording their location, placing warnings about their presence and by removing or neutralizing them at the end of active hostilities.\textsuperscript{982}

The information documented in the case studies highlights that no maps, posts or warnings were provided to the civilian population about the exact location of landmines.\textsuperscript{983} The extensive placement of landmines in areas used by civilians, with no

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\textsuperscript{978} ICRC Customary IHL Rule 12. According to Rule 81 of the ICRC Customary IHL Study, the principles of distinction, proportionality and precautions in attack apply to the use of landmines.

\textsuperscript{979} ICRC Customary IHL Rule 8.

\textsuperscript{980} ICRC Customary IHL Rule 14.

\textsuperscript{981} ICRC Customary IHL Rule 81. Whether a weapon is indiscriminate by nature depends on “whether the weapon, when used in its normal or designed circumstances, will inevitably be indiscriminate, in the sense that it is incapable of being directed at a specific military objective and its effects are incapable of being limited as required by law.” Boothby, supra note 975 at p. 70.

\textsuperscript{982} ICRC Customary IHL Rules 82-83. Rule 82 is arguably applicable in NIAC. See also Sassoli and Nagler, supra note 173 at pp. 390-392; Technical Annex to Amended Protocol II to the Convention on Certain Conventional Weapons, para. 4; Boothby, supra note 975 at pp. 171-172.

\textsuperscript{983} See Section 3.3.
signs or other forms of warnings to help alert residents of their locations, underlines their indiscriminate use and failure to take precautions against their indiscriminate effects by Ansar Allah.984 The failure by Ansar Allah to take precautions to minimise the indiscriminate effects of landmines is further evidenced by the high number of civilian deaths and injuries reported.985 The indiscriminate use of landmines by Ansar Allah has also been documented by the GEE, who in 2019 reported that “[the GEE] has reasonable grounds to believe that the Houthi-Saleh fighters used anti-personnel and anti-vehicle landmines in violation of international humanitarian law, notably in the way the mines were placed in unmarked locations frequented by civilians, with no warning, which rendered their use indiscriminate.”986

On the basis of the above analysis, the laying of landmines by Ansar Allah constitutes indiscriminate attacks, due to the failure to direct their use to specific military objectives and take care to minimise their indiscriminate effects on the civilian population and civilian objects, including by failing to sufficient mark and record the landmines.

• The landmines deprived civilians of OIS under ICL (the actus reus)

As set out in Part F, Section 2.2.1, the only actus reus element of the war crime of starvation that must be satisfied is the act of depriving civilians of OIS. As documented in the case-studies and the above analysis, the landmines damaged agricultural areas used for grazing livestock and collecting firewood and water, all of which constituted OIS, thereby depriving civilians of them. The landmines not only destroyed the OIS, but instilled fear in the farming community, inhibiting their ability to farm the land and thereby rendering such farms useless. By virtue of the injuries sustained, neither shepherd is able to herd sheep anymore. The 14-year-old boy injured in the Al-Moddiah Mountain case study stated: “I cannot play, herd or go to school anymore.”987 Accordingly,

984 See Technical Annex to Amended Protocol II to the Convention on Certain Conventional Weapons, para. 4; Boothby, supra note 975 at pp. 171-172.


986 See GEE, supra note 88 at para. 209.

987 Mwatana for Human Rights interview with Haidari Ibrahim on October 17, 2019.
the actus reus requirement of starvation as a war crime is satisfied.

I The landmines were laid with the requisite intent

Having considered that the chapeau elements and actus reus of the war crime of starvation are satisfied above, this section assesses the criminal responsibility of Ansar Allah under ICL, focussing on:

(i) attributing responsibility and

As discussed in Part F, Section 1.2.1, to constitute a violation of Article 14 of AP II, the airstrikes on OIS must have been carried out “for the purpose” of starving the civilian population. While the purposive requirement does not necessitate a motive, it does require intent, the standard for which under IHL is unclear. The mens rea standard under ICL cannot be less onerous than the standard under IHL,988 as such this report examines whether both a violation of the IHL prohibition under Article 14 of AP II and customary IHL, as well as starvation as a war crime, has been committed in the context of the intent standard that applies under Article 30 of the Rome Statute.

As outlined in Part F, Section 2.2.2, a trier of fact would need to satisfy two mental elements in order to prove that Ansar Allah intentionally starved civilian as a method of warfare. Namely, they would need to prove that Ansar Allah:

(i) intentionally deprived civilians of OIS;

(ii) and, by doing so, either intended to starve civilians or were aware that it would almost certainly result in the ordinary course of events. As a matter of principle and practice, ICL recognises that crimes do not occur in a vacuum and that alleged perpetrators may often harbour an intent to pursue a range of objectives simultaneously, some criminal and some lawful. Thus, an intent to starve need not be the perpetrator/s’ sole intent.989

988 Ohlin, supra note 154.
989 See Part F, Section 2.3.
While further investigations and analysis are needed, based on the information available, including the manner in which landmines were laid and the pervasiveness of their use, it is possible to conclude that Ansar Allah intentionally used landmines to starve civilians as a method of warfare, or that they were aware in the ordinary course of events, that their use of landmines, would almost certainly cause the starvation of civilians.

**Attributing responsibility for the use of landmines to Ansar Allah**

It is important to note at the outset that Ansar Allah is not the only party to the Yemen conflict using landmines. Al-Qaeda in the Arabian Peninsula (AQAP) have also reportedly used them, although it is important to note their use appears to be incomparable in scale with Ansar Allah. This analysis should also be read in the context of Section 3.2 above, which discusses the legacy of landmines in Yemen prior to 2014. Notwithstanding that, Mwatana’s investigations corroborate the majority view that the primary responsibility for landmine proliferation and use can be attributed to Ansar Allah, particularly in Dhubab District of Taiz Governate on which this report focuses. The GEE has consistently and exclusively found Ansar Allah to be responsible for relevant use in their landmines investigations.

Ansar Allah took control of Dhubab District in 2015, eventually losing it to the Joint Forces in 2018. During these three years, Mwatana interviewees noted how widespread the mines were, with a significant amount laid as Ansar Allah withdrew. Saleh Ahmed, the victim’s brother in the first case study, for example, said that Ansar Allah “planted landmines everywhere in our area.” Human Rights Watch has also reported that Ansar Allah themselves have boasted about their use of landmines across their military mediaoutslets.

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991 GEE, supra note 88; GEE, supra note 23.


993 Human Rights Watch, supra note 730.
Individual criminal responsibility for the use of landmines by Ansar Allah could come under a range of different modes of liability (as discussed in Part F, Section 2.5). Military superiors responsible for making general or specific decisions about the number, type and location of landmines, in addition to responsibilities to warn civilians, adequately map and clear (remove or neutralize mine fields) when they retreated in 2018, are likely to be those identified as perpetrators with the greatest responsibility, and warranting further investigation.

Military superiors of perpetrators who are responsible under any mode of liability may also be liable as superiors insofar as they failed to prevent or punish crimes committed by persons under their effective command, where they had the requisite knowledge and failed to act.994 Thus in cases where Ansar Allah field soldiers laid mines across vast areas of agricultural and civilian areas gratuitously (and not pursuant to direct or indirect orders) as they controlled Dhubab, their military (or civilian) superiors may be investigated and held responsible.

- **Members of Ansar Allah intentionally deprived civilians of OIS (the first mens rea element)**

With respect to the first mens rea element, Ansar Allah must “mean” (i.e., desire) to engage in conduct which deprives civilians of OIS. Proving that Ansar Allah intended to lay landmines across agricultural and civilian areas with the aim of depriving civilians of OIS, without direct knowledge of their desires and intentions, will require an assessment largely based upon indirect or circumstantial evidence.995 This can be derived from the underlying circumstances that prevailed in Taiz Governorate at the time and the pattern of attacks involving landmines, which together can demonstrate whether the perpetrators/s may have intended to deprive civilians of OIS or it would be practically impossible for them to envisage that the consequence—the deprivation—would not occur in the ordinary course of events (the virtual certainty requirement).996 Thus, where Ansar Allah may have laid some mines in a defensive manner as a barrier against the Joint Forces, but in so doing, also laid them extensively across civilian and agricultural areas, with no warning to civilians and with no actions taken to fence them off, they may

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994 See Part F, Section 2.5, for more detail about the precise elements of each of these modes.

995 See Part F, Section 2.6.

996 See Part F, Section 2.2.2.4.
still be held individually criminally responsible for starvation as a war crime.

The GEE has repeatedly documented Ansar Allah’s widespread use of landmines, along Yemen’s western coast since mid-2017, stating they have “killed and injured hundreds of civilians and prevented aid groups from reaching vulnerable communities.” 997 They noted that mines were placed in houses, gardens and farmlands. 998 The PoE has also documented Ansar Allah’s use of landmines in Taiz between 2015-2018. 999 While there is no comprehensive figure for how many mines Ansar Allah has laid across Yemen since 2014, estimates are in the hundreds of thousands. 1000

It is impossible that the scale of such mine activity, across the OIS—namely the agricultural sites used for water, pastures and firewood—would not render those areas useless. There is ample evidence contained in the case studies and corroborated by other investigations and reporting that civilians were prevented from accessing these areas and that OIS were also destroyed or damaged.

It is essential that further investigations are conducted to assess the extent of available direct evidence from Ansar Allah military documents, statements or orders given at the time relating to the use of landmines.

• Ansar Allah intentionally laid landmines with the intent to starve the civilian population or with knowledge it would almost certainly occur in the ordinary course of events (the second mens rea element)

In the context of the landmine use documented in this report, given the nature of the crime of starvation as a method of warfare and in the absence of a full criminal investigation, it is difficult to establish that a single landmine destroying, damaging or rendering useless a farm or agricultural area was carried out with intent to starve civilians. However, as set out in Section 3.1, the broader pattern of Ansar Allah’s laying of landmines could provide evidence that they did so with knowledge of the virtual

997  GEE, supra note 88 at para. 570.
998  GEE, supra note 88 at para. 336.
1000  ACLED, supra note 728.
certainty that starvation would occur in the ordinary course of events.¹⁰⁰¹

For the reasons set out below, and while further investigation and analysis is needed, it is possible to infer from the circumstances that Ansar Allah intended to starve civilians by deploying landmines indiscriminately across large swaths of Yemeni agricultural land known to be utilised for food and water production activities, and containing objects indispensable to the survival of specific communities. As outlined above and in Section 3.1, Mwatana has documented 269 landmine explosions in Yemen since 2014, which have killed 214 civilians, and injured 282 civilians. Of these cases, Mwatana documented at least 83 explosions caused by Ansar Allah-planted landmines that specifically impacted civilians accessing sources of food, water, or pastures across Yemen. Many other organizations have documented the widespread use of landmines by the Ansar Allah (Houthi) armed group, including their specific impact on civilians’ food and water security.¹⁰⁰²

Such a conclusion is also made possible when the pattern of Ansar Allah’s laying of landmines is assessed in relation to the general context in which they were laid and Ansar Allah’s imposition of other barriers to accessing food and water and humanitarian relief.

a. The general context in which the acts were committed

At the time of the cases documented above—2019—Yemen had been embroiled in a deadly conflict for five years, with consequential severe food insecurity as outlined in Part E, Section 2.2. By the end of 2018, over 1.5 million people were severely food insecure, with 63,500 people categorized as in IPC 5 – Catastrophe / Famine.¹⁰⁰³ In addition to landmines, Yemeni civilians were subject to a broad range of attacks on OIS, including airstrikes and a blockade severely limiting their access to OIS. Moreover, and as set out in Section 2 above, Ansar Allah repeatedly impeded humanitarian relief action, refusing, suspending and obstructing the undertaking of humanitarian relief

¹⁰⁰¹ See Part G, Section 5.2.2.3.

¹⁰⁰² See also, ACLED, supra note 728. Human Rights Watch documented Ansar Allah’s use of landmines in several Yemeni governorates, including Taiz, from 2015 to 2018, including five incidents on farmland. Human Rights Watch also found through interviews with aid organizations that landmines had left “at least three” water facilities on the western coast of the country inaccessible. See Human Rights Watch, supra note 730.

¹⁰⁰³ Integrated Food Security Phase Classification, supra note 65.
activities in violation of AP II, customary IHL and ICL.

In 2015, Ansar Allah imposed a siege on Taiz city, hampering access to food and drinking water; civilians were only allowed to enter with sufficient food for their households. As noted by the GEE, the absence of wells inside Taiz “rendered the situation even more precarious.”1004 The siege was accompanied by indiscriminate shelling and attacks on civilian targets (including when they were attempting to buy food or seek shelter),1005 contributing to the dire humanitarian situation in the city. The GEE concluded that “[t]he impact of the ‘siege’ by the Houthis on the civilian population’s access to food, water and essential medical items to run hospitals and provide vital medical assistance was devastating... In such a context of dire humanitarian needs, there are legitimate concerns as to whether such acts are contributing to starvation.... evidence indicates that the Houthi-Saleh fighters may have used the siege as a form of collective punishment on the civilian population residing inside Taiz, for their perceived support of the Popular Resistance and Government-affiliated groups.”1006

Since 2015, Taiz has been a perennial frontline. Different anti-Ansar Allah militias have vied for control of key areas while battling against Ansar Allah and clashing amongst themselves,1007 amidst Saudi/UAE-led Coalition airstrikes in Taiz that hit essential infrastructure including agricultural and transportation centres, livestock, and markets. Critically for food security, the carving up of Taiz into competing fiefdoms increased the cost of business and fuelled inflation, driving down purchasing power, as civilians were extorted and taxed by different armed factions, including Ansar Allah. Four months before the case studies featured above, Dhubab District in January 2019 was in IPC 3—crisis1008—and in Taiz at the time there were very high rates of GAM in 15-20% of the child population.1009

The extent of food insecurity across Yemen during the periods in which Ansar Allah laid the mines and by 2019 would have been self-evident to members of Ansar

1004 GEE, supra note 88 at para. 346.
1005 GEE, supra note 88 at paras. 302-365 (discussion of the siege of Taiz is at paras. 345-358).
1006 GEE, supra note 88 at paras. 357-358.
1008 Integrated Food Security Phase Classification, supra note 65.
1009 World Food Programme, supra note 732.
Allah, who were physically present across large swathes of Yemen, and would have been aware of the numerous reports on food insecurity as well as UN action and food security programmes servicing upwards of 14 million people across Yemen. Moreover, it would have been obvious to Ansar Allah when laying mines across agricultural areas, including in and near farms, water sources, pastures and logging sites, that it was a virtual certainty that civilians would be indiscriminately impacted and prevented from accessing areas of critical importance to their livelihoods and existence.

b. Ansar Allah’s failure to take care to minimize the indiscriminate effects of the landmines

Ansar Allah were obligated under treaty and customary IHL to take particular care to minimise the indiscriminate effects of landmines by recording their placement and by removing or neutralizing them as they retreated.1010 Noting the operational reality of mine clearance and neutralization by a retreating force under pressure, more weight is likely to be placed upon their failure to fence, mark, map and share where the mines were laid in the aftermath of their conflict with the Joint Forces.1011 This failure to take precautionary measures has been noted by the GEE, who found that Ansar Allah had used landmines in contravention of IHL, and had laid them in unmarked locations in civilian areas and broadly failed to warn civilians.1012 This is also echoed by those interviewed by Mwatana for this report, who indicated “they are everywhere and there are no signs or maps showing their whereabouts.”1013 Landmines often remain hidden until they explode or when they are exposed by torrents or winds.1014 Others have reported that these mines have been disguised as rocks or as parts of tree trunks,1015 clearly violating the rules designed to warn and protect civilians. In this context, members of Ansar Allah must have known of the virtual certainty that the placement of mines in agricultural areas would prevent civilians from farming the land, destroy their sources of livelihood

1010 Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(10)(b) (General restrictions on the use, of mines, booby-traps and other devices).
1012 GEE, supra note 88 at para. 344.
1014 Ibid.
1015 Human Rights Watch, supra note 730.
and therefore lead to starvation in the ordinary course of events.

c. Ansar Allah’s imposition of other barriers to accessing food, water and humanitarian supplies

The use of landmines documented and analysed in this report must also be viewed in the context of other Ansar Allah conduct that has impacted Yemeni civilians’ access to food, water and humanitarian supplies.

As discussed in Part E, Section 3, Ansar Allah promulgated and engaged in hugely detrimental economic policies, including the withholding of salaries; funnelling taxes collected from the population to fund their war efforts; imposing additional taxes and levies;\textsuperscript{1016} diverting large sums of money collected from fuel imports and creating monopolies over the distribution of fuel;\textsuperscript{1017} and diverting 50 billion Yemeni riyals from the CBY in March 2020.\textsuperscript{1018} These policies have also triggered economic retaliation by the Saudi/UAE-led Coalition, contributing to broader food, fuel and water insecurity.

As documented by Mwatana and reported by others, in Sections 2.4.1.2 and 2.4.2, we conclude that Ansar Allah wilfully impeded relief supplies in Saada Governate contrary to IHL and IHRL, and that it is possible to conclude that such conduct constituted a violation the prohibition of starvation under ICL. This wilful impediment has taken a variety of forms, documented in this report and by the GEE and others, including: refusing to allow humanitarian organisations and agencies to carry out independent needs assessments; obstructing the implementation of humanitarian projects and activities; redirecting aid to communities loyal to Ansar Allah; arresting and intimidating humanitarian workers; blocking aid convoys; restricting access to already-imported humanitarian supplies; creating administrative and bureaucratic impediments; and illegally seizing the property of humanitarian organizations and workers.\textsuperscript{1019} These impediments resulted in the suspension of humanitarian operations in Ansar Allah-controlled areas by the WFP

\textsuperscript{1016} Sana’a Center for Strategic Studies, supra note 96 at 33, 41.
\textsuperscript{1017} Ibid.
\textsuperscript{1018} UN Security Council (“Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 35 at para. 115, fn 62; Middle East Eye, supra note 95.
in 2019, with this partial suspension impacting an estimated 850,000 beneficiaries, and again in 2020. In March 2020 the US Agency for International Development were also forced to suspend their operations. This conduct infers a pattern when viewed alongside the impact landmines have had in Taiz in relation to blocking humanitarian aid groups from accessing areas in need. Indeed, Mwatana has documented such obstruction in 2019, during the time-frame of the case studies, and again in 2020. Ansar Allah has also taken more direct actions that have impacted civilians’ food security, including: shelling areas affecting access to food; shelling a civilian vehicle laden with food; killing civilians in Taiz, including those seeking food or safety, using snipers; and, laying mines inside the Red Sea Mills in Al-Hudaydah, which are critical mills that previously contained enough wheat to feed 3.7 million people for one month (a quarter of WFP’s in-country stock).

- Conclusion – Ansar Allah intentionally used landmines to starve civilians

The principle of distinction, proportionality and precaution are, as outlined above, all applicable to the use of landmines, with a clear obligation to minimize their indiscriminate effects. The landmines in both cases had been laid across large areas that were and are used and relied upon as indispensable areas for the production of foodstuffs and for access to water and firewood, and to enable the means to maintain livelihoods.

1020 World Food Programme, supra note 726.


1022 Mwatana for Human Rights interviews with 26 individuals in Taiz Governorate, conducted between 2016 and 2020 (A detailed list is included in Annex 2.5); Human Rights Watch, supra note 730.

1023 Mwatana documented a mine explosion in the village of Al-Siman Dhu in Bab District, Taiz Governorate, on Wednesday January 13, 2021 at approximately 9:30 a.m. A landmine exploded when a bull stepped on it while some citizens were driving by from the coast of the center of Dhu Bab District towards the village of Al-Sayman. When the mine exploded, it tore the bull to shreds, and two other bulls next to it were killed. Three citizens who were driving the bulls were injured.

1024 Mwatana documented a mine explosion in the village of Al-Anin in Jabal Habashi District, Taiz Governorate, on Monday, January 25-2021, at 9:30 a.m., in which a landmine exploded, injuring a woman in the right foot while she was grazing in the area. The woman was forced to amputate her leg below the knee. causing her to be amputated below the knee.

1025 GEE, supra note 88 at paras. 173, 305.

1026 GEE, supra note 88 at paras. 510, 787.

1027 IUCRC Customary IHL Rule 81.
Thereby, the use of landmines in this manner appears to constitute indiscriminate attacks, impacting civilians, civilian objects and any perceived military objectives without distinction.\(^{1028}\)

It is important to assess whether the agricultural areas in the two case studies may constitute a legitimate military objective by virtue of their nature, location, purpose or use. As set out above, the areas did not constitute military objectives by their nature, purpose or use. Additionally, they did not constitute military objectives by their location. The Joint Forces were located on the coast of Dhubab District when Ansar Allah laid mines throughout the areas in the case studies, at a minimum of seven and twelve kilometres away from where the landmines exploded. The information documented by Mwatana and national and international mine clearance organizations shows that the mines exploded in purely agricultural areas known to be used for sheep grazing, and some distance away from any main roads which were previously relied upon by the Joint Forces. This suggests that the mines were not laid with a clear military objective in sight and therefore fall foul of the prohibition contained in Article 14 of AP II and customary IHL.\(^{1029}\)

As discussed above, Ansar Allah failed to meet their obligations under IHL to take particular care to minimise the indiscriminate effects of the landmines by recording their placement, by removing or neutralizing them as they retreated and by placing warnings signs for the civilian population.\(^{1030}\) This failure to warn or seek to minimize the indiscriminate effects of these landmines upon civilians violates IHL.\(^{1031}\)

Based on the above, it can be concluded that Ansar Allah was:

(i) aware of the risk that interference with these OIS would affect civilians’ ability were indispensable activities for the local communities’ survival;

(ii) failed to respect the full range of fundamental IHL prohibitions as outlined above (also relevant here may be the prohibition against attacks on civilians

\(^{1028}\) Doswald-Beck and Herby, supra note 969.

\(^{1029}\) Ibid.

\(^{1030}\) Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(10)(b) (General restrictions on the use, of mines, booby-traps and other devices).

\(^{1031}\) As also noted by the GEE, supra note 88 at paras. 344 and 576.
and civilian objects and terrorising the civilian population\textsuperscript{1032} below in Section 3.4.3.1);\textsuperscript{1033}

(iii) failed to implement positive obligations flowing from IHL principles, such as precaution, applicable in the context of the conduct of hostilities;\textsuperscript{1034} and

(iv) failed to take steps to alleviate civilian suffering, especially in the context of their obstruction of humanitarian aid outlined in Section 2.

Accordingly, based on the pattern of attacks involving landmines, the widespread manner in which they were laid, and the context in which they were used, it is possible to conclude that persons within Ansar Allah responsible for the strategies behind and the usage of landmines on OIS in Dhubab District that are documented in this report, intended to starve the affected civilians, or were aware that their conduct would almost certainly cause the starvation of civilians in the ordinary course of events. Even if members of Ansar Allah had multiple objectives when engaged in laying mines, those responsible could still be held liable provided they still had the requisite knowledge or intent.

\textsuperscript{1032} See Additional Protocol, Article 13(2); ICRC Customary IHL Rule 2.

\textsuperscript{1033} See also Geneva Convention IV, Article 49; Additional Protocol II, Article 17; ICRC Customary IHL Rule 129.

\textsuperscript{1034} For further detail see Part F, Sections 1.2.2.2 and 1.2.2.3(iii).
Other violations of IHL and IHRL by Ansar Allah

The focus of this report is on documenting the conduct of the warring parties that could constitute the use of starvation as a method of warfare as a violation of IHL or as a war crime under ICL. The depth of Mwatana’s investigations, as supported by other credible bodies and UN agencies, suggest that a range of other violations of IHL, international crimes and IHRL abuses have occurred. As outlined in the Part F, Section 2.3, any prospective prosecution could charge the alleged perpetrators with a range of alternative offences in addition to starvation as a method of warfare.

Ansar Allah’s use of landmines may have violated other prohibitions under IHL, which could constitute other war crimes under ICL

When investigating the use of landmines by Ansar Allah, investigators may consider the extent to which such conduct constituted other violations of IHL and related war crimes under ICL, in particular direct attacks on civilians and civilian objects and violence aimed at spreading terror among the civilian population.

The landmines resulted in civilian deaths and injuries, and damage to agricultural and pastural land, which constitute civilian objects and, as such, may have violated CA 3, Article 13(2) of AP II and Rules 1, 7, 14 and 15 of Customary IHL.1035

The indiscriminate use of landmines by Ansar Allah also instilled fear in the farming community, inhibiting their ability to farm agricultural areas. Ansar Allah’s failure to adopt measures to minimise the landmines’ indiscriminate effects caused the civilian residents of the area to live with constant fear and knowledge that the simple act of leaving their homes, walking and farming might compromise their physical integrity. The fear of landmines was pervasive.1036 Widespread and indiscriminate shelling and sniping has been found to be demonstrative of terrorisation by the UN General

1035 See also, e.g., Prosecutor v. Kordić, supra note 258 at paras. 47-57. See also Prosecutor v. Galić, IT-98-29-A, Appeals Judgement, 30 November 2006, para. 130.

1036 See Sections 3.3 and 3.4.2.1(i).
Assembly and the ICTY. The indiscriminate use of landmines by Ansar Allah could amount to a violation of the prohibition on spreading terror to the civilian population under article 13 of AP II and Rule 82 of Customary IHL.

Further investigation would be required to determine whether

(i) civilians or civilian objects were the primary object of the attack under article 8(2)(e)(i) of the Rome Statute with respect to civilians and customary international law with respect to both civilians and civilian objects and civilian population under customary ICL, DQGWKUHIRUHDQGLQJWKDWVFK acts constituted the war crimes of attacking civilians and/or terrorizing the civilian population. Intent to starve may constitute one of a number of purposes for which starvation-related conduct is carried out and, as such, is co-exist simultaneously.


1038 Prosecutor v. Dukic, IT-96-20-I, Initial Indictment, 29 February 1996, para. 7; see also Prosecutor v. Milosević, supra note 231 at paras. 208, 937 (in the context of the siege of Sarajevo). According to the Trial Chamber in Galić, the elements of the war crime of terrorizing a civilian population or civilians are: a) acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing the victims to suffer grave consequences; b) the offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts or threats of violence; and c) the above acts or threats of violence were committed with the primary purpose of spreading terror among the civilian population. See Prosecutor v. Galić, supra note 263 at paras. 100-102.

1039 ICRC Customary IHL Rule 82.

1040 For example, intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities. See Rome Statute Elements of Crimes, Article 8(2)(e) (i) Elements 1-3. See also Prosecutor v. Katanga, ICC-01/04-01/07, Decision on the Confirmation of Charges, 30 September 2008, paras. 270, 392-393; Prosecutor v. Katanga, supra note 249 at paras. 799, 802, 805, 807. The ICTY also found that civilians must be the object of the attack, whether direct or indiscriminate. See Prosecutor v. Galić, IT-98-29-A, Appeals Judgement, 30 November 2006, para. 132. There is no general war crime of attacking civilian objects in NIAC per se under the Rome Statute.

1041 See e.g., Prosecutor v. Kordić, supra note 258 at paras. 47-57; Prosecutor v. Galić, supra note 257 at para. 132.

1042 The mens rea of this crime is composed of the specific intent to spread terror among the civilian population, however, the purpose of the unlawful acts or threats to commit such unlawful acts needs not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration. See Prosecutor v. Galić, supra note 263 at para. 104.
Ansar Allah’s use of landmines on the farms may also have violated the property rights of displaced persons under Rule 133 of customary IHL and the displaced farm owners and workers’ right of return to their home or place of habitual residence under Rule 132 of customary IHL.

1 The Ansar Allah’s use of landmines likely also abused IHRL

- The obligation to respect under IHRL

As outlined above, where Ansar Allah exercises government-like functions or de facto control over a territory, they must respect, protect and in some instances fulfil, the human rights of individuals and groups.1043

The use of landmines across large areas of agricultural land that was essential for the production of foodstuffs and for other activities indispensable to survival, and the resulting injuries and deaths and terror felt, may have violated a number of IHRL obligations, including but not limited to, the rights to food, water1044 and life,1045 as well as work,1046 health (physical and mental)1047 and property,1048 all of which continue to apply during an armed conflict. For the purposes of this section, we consider only the right to food and water, highlighting that human rights are interdependent and that the infringement of one right will often impact others.1049

1043 See Part F, Section 3.3.
1044 See Part F, Section 3.1.
1045 UDHR, Article 3; UN General Assembly, supra note 295 at para. 52; CESCR, supra note 297 at para. 14; CESC General Comment No. 3, supra note 699 at para. 10. See also FAO, supra note 295 at Guideline 16; Hutter, supra note 224; Hutter, supra note 284. Given the number of landmine deaths reported by Mwatana and others, this right is particularly pertinent, over and above the intrinsic link between the right to food and the right to life.
1046 ICESCR, Articles 6 and 11; CESC, supra note 700.
1047 OHCHR, supa note 701.
1048 UDHR, Article 17; ICESCR, Article 11; CESC, supra note 702 at para. 1 ("Access to land is an important precondition for the realization of several Covenant rights, particularly the rights to adequate food, water and housing as part of the right to an adequate standard of living, as well as the right to health and the protection against non-discrimination contained in several of the Covenant rights").
Ansar Allah’s use of landmines, which have rendered useless a range of OIS, directly violates Ansar Allah’s obligation to refrain from taking action that would interfere with civilians’ rights to food and water.\textsuperscript{1050} As discussed in the context of airstrikes in Part G, Section 5.3.2, such rights can also be violated through the destruction of livelihoods necessary to access food and water, described as a core component of the right to food.\textsuperscript{1051} As such, the devastating impacts that the landmines had, and continue to have, on farmers and the communities’ capacity to earn income—caused by Ansar Allah’s conduct—could also constitute a violation of their rights to food and water. The conclusion that the destruction of farmland, food production facilities, water for drinking or irrigation, and other measures which inevitably exacerbated the economic and humanitarian crisis, violated the right to food and water is supported by the GEE’s findings.\textsuperscript{1052}

The landmines also violate the negative IHRL obligation to refrain from any action that could create famine.\textsuperscript{1053} As highlighted by the former Special Rapporteur on the Right to Food, destroying crops or forcibly displacing people from their land or means of subsistence, would violate the negative obligation not to interfere with peoples access to food.\textsuperscript{1054} Moreover, the destruction of agricultural areas and the rendering of them useless due to the fear landmines cause which prevent access to these areas cannot be viewed in isolation from other Ansar Allah conduct relating to OIS. This appears to

\textsuperscript{1050} OHCHR, supra note 862 at p. 18.

\textsuperscript{1051} CESC, supra note 297 at paras. 8, 15. They have also recognized that the right to work under Article 6 of the ICESCR is fundamental to the right to food, and that Article 11 protecting the right to food “incorporates a broad range of concerns relating to the lives and livelihoods of residents of States parties;” see CESC, supra note 707 at pp. 7 and 10. See also Human Rights Council, supra note 630 at p. 2 (discussing the damage to the coastal ecosystem and the adverse impacts it had on not only access to food but the livelihoods of the fisherman. See also para. 31(h), recommending the “Government of Lebanon...should design programmes to support all those whose livelihoods have been devastated by the war, especially farmers, agricultural labourers and fisherfolk. The right to food and water must be a central part of the reconstruction effort”).

\textsuperscript{1052} GEE, supra note 88 at paras. 805 and 807.

\textsuperscript{1053} Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (January 22-26, 1997), Guideline 14(e).

\textsuperscript{1054} Human Rights Council, supra note 308 at para. 44. The African Commission on Human Rights in the SERAC v. Nigeria case (2001), found that the then military government of Nigeria had, through action and inaction, violated the rights of the Ogoni community. The African Commission on Human Rights held that by destroying and contaminating the people’s food sources and arbitrarily evicting them from their homes, the Nigerian authorities had breached their negative obligation not to interfere with people’s access to food. See African Commission on Human and People’s Rights, Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria, Communication No. 155/96 (May 27, 2002).
indicate a wider pattern of the “calculated obstruction of or halt to, the progressive realisation of a right protected by the Covenant” amounting to a violation of ICESCR.\textsuperscript{1055}

- **The obligation to fulfil under IHRL**

According to Mwatana’s investigations, Ansar Allah controlled Dhubab District for approximately three years between 2015-2018, during which time they laid a vast number of landmines. During this period, the population undoubtedly suffered hardship\textsuperscript{1056}, placing an obligation upon Ansar Allah to fulfil the right to food by distributing supplies (subject to resources). Interviewees in the case studies noted that when they were displaced from their homes into IDP camps, some relief supplies reached them, but that the supplies were generally insufficient and very sporadic\textsuperscript{1057}. As specific information as to how this de facto control manifested itself in relation to assuming government-like functions is not currently available, no firm conclusions can be made as to whether Ansar Allah also failed to respect the positive obligation to facilitate people’s access to food. It is important though, to view this specific conclusion in the context of the broader findings made in this report and elsewhere regarding Ansar Allah’s routine obstruction, diversion and destruction of humanitarian aid, as set out in Section 2.

### Violations of IHL and IHRL by the Yemeni Government

- **Failure to remove the landmines may violate the IHL obligation to remove or neutralise landmines**

As set out in Part F, Section 1.2.2.2, demining activities must be undertaken by the party which has used landmines;\textsuperscript{1058} in this case, Ansar Allah. However, as Ansar Allah lost control over the area to coalition-backed forces, the Government of Yemen resumed the duty to remove or destroy landmines. The internationally recognised Government of

\textsuperscript{1055} Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (January 22-26, 1997), Guideline 14(f).

\textsuperscript{1056} Fortin, supra note 321 at p. 166; Rodenhäuser, supra note 318 at pp. 192-193.

\textsuperscript{1057} Mwatana for Human Rights interview with Ahmed bin Ahmed on December 20, 2020; Mwatana for Human Rights interview with Mohammed Ali on December 20, 2020; Mwatana for Human Rights interviews with seven IDPs from Al-Omari area on December 20, 2020.

\textsuperscript{1058} ICRC Customary IHL Rule 83.
Yemen must also comply with a number of obligations stemming from their ratification of the APMB Convention. This interpretation is supported by the latest report of the GEE, according to which "the [GEE] also recalls the obligation of authorities to [...] destroy or ensure the destruction of all anti-personnel landmines under their jurisdiction and control as soon as possible, and to make every effort to identify areas under their jurisdiction in which mines are known to be or suspected and undertake requisite perimeter-marking, monitoring and protecting by fencing/other mean." 1059

Following the establishment of control in the Al-Omari region, the Joint Forces removed landmines from the main roads they were using. The internationally recognised Government of Yemen has submitted transparency reports and engaged in some mine action with YEMAC and other Mine-Action Operators, but it is essential that mine action is safe and complies with International Mine Action Standards, and occurs in civilian areas. 1060 For example, as highlighted by Mwatana’s documentation, efforts in demining must not be limited to main roads which military forces rely upon, but also occur in the vast areas of agricultural land urgently needed by civilians to survive in Dhubab and Yemen more broadly. 1061 According to interviewees, the Joint Forces did not undertake mine clearance in the agricultural and pastural areas that constitute OIS and were used by the civilian population.

The fact that the Joint Forces already removed landmines from the main roads underlines that they have the capacity to undertake demining activities. In light of the above, it is submitted that the Government of Yemen have failed to comply with the obligations under Rule 83 of customary IHL.

Yemen’s transition to stability and peace will be interlinked with a legacy of landmines laid across its agricultural land, which, if not urgently dealt with, will impede recovery, shatter resilience and continue to contribute to food and water insecurity for years to come. It is essential that urgent and compliant mine action is taken.

1059 GEE, supra note 23 at para. 95.
1061 Mwatana for Human Rights interviews with six local residents of Dhubab, two landmine victims, four relatives of landmine victims, six shepherds, farmers and loggers in Dhubab district, a health worker and a humanitarian worker on 20, 21 and 22 December 2020; Mwatana for Human Rights interview with Ali Mohamed on December 21, 2020.
• **Failure to remove landmines may also violation obligations to protect and fulfil rights under IHRL**

Yemen is a party to the ICESCR and ICCPR and is bound to not only respect such rights, but to protect and fulfil them. The Saudi/UAE-led Coalition also has obligations under IHRL while operating in Yemen.\(^{1062}\) The internationally recognized Yemeni Government is obligated to protect against third party interference with rights and therefore must take appropriate measures to protect individuals against violations by other states and ANSAs like Ansar Allah.\(^{1063}\)

Even where Ansar Allah assumes IHRL obligations by virtue of its de facto territorial control, this does not imply that the de jure authorities are relieved of their obligations.\(^{1064}\) A failure to remove landmines so as to protect the population from their indiscriminate effects may constitute a violation of the obligation to protect the rights to food, water, life, work, health and property, as mentioned above, and fulfil them. How these obligations would manifest in practice is outside the scope of this report.\(^{1065}\)

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1062 The right to be free from hunger is also protected by customary international law applicable to members of the Saudi/UAE-led Coalition, such that all members of the Saudi/UAE-led Coalition, whether or not they have ratified the ICESCR, have a negative obligation to refrain from taking action which would interfere with civilians’ rights to food and water. See Part F, Section 3.1.


1064 GEE, supra note 88 at para. 81.

1065 See e.g., Geneva Academy, supra note 316 at p. 15; See also Giacca, supra note 319 at p. 125 (“In this respect, it is important to repeat that under Article 2(1), ICESCR, each state party remains under an obligation to seek international assistance for those territories and populations in need, which is not limited to the narrow content of humanitarian assistance governed by IHL rules. Along these lines, the central government has the duty to ensure that international agencies and programmes in the field of co-operation and assistance are able to operate without any sorts of administrative obstacles.” Noting however, on the ICESCR Committee – “As to the reduced scope of obligations relating to the lack of effective territorial control on certain areas, the CESCR has been rather inconclusive. It has affirmed in a few rare cases the continuing international obligations of the territorial state, although they have been expressed in a rather weak and unforceful manner”).
A landmine that was cleared from Al-Qurayshiah District, Al-Bayda Governorate, September 26, 2020.
Accountability for IHL and IHRL violations and abuses and crimes committed in Yemen
As discussed in Parts G and H, the Saudi/UAE-led Coalition and the Ansar Allah (Houthi) armed group have engaged in starvation-related conduct that constitutes violations of IHL and violations and abuses of IHRL, which could amount to crimes under ICL. Under international law, including the ICCPR, the Convention Against Torture and other forms of cruel, inhuman or degrading treatment or punishment, and the Arab Charter, victims of violations of IHL and human rights violations have the right to a remedy, which includes the right to justice, the right to truth and the right to reparations. Remedies must be effective, which means they must be prompt, accessible, available before an independent body, result in reparation and, where applicable, cessation of the wrongdoing. All victims must be able to access remedies without discrimination.

The right to a remedy requires states to ensure victims can access a competent judicial or non-judicial body to file a claim for the harm suffered. Accordingly, states must develop a legal and institutional framework facilitating access to independent and effective judicial and adjudicatory mechanisms. This includes establishing functioning courts or tribunals and enacting laws to criminalise gross human rights violations and abuses and serious violations of IHL, as well as enforcing laws and judicial decisions granting remedies by such courts and tribunals.

As a corollary to making remedies accessible to victims, states have an obligation to

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1066 ICCPR, Article 2(3); Convention against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), Article 14; Arab Charter, Articles 12 and 23. The right to a remedy and reparation was affirmed by all States under the UN General Assembly, “Resolution 60/147: 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,” UN Doc. A/RES/60/147 (March 21, 2006) (“Basic Principles and Guidelines on the Right to a Remedy and Reparation”), Principle II, para. 3 and Principle VII, para. 11. https://www.un.org/ruleoflaw/files/BASICP~1.PDF.


investigate violations of IHL and violations and abuses of IHRL and, where appropriate, prosecute those responsible.\textsuperscript{1072} In situations of sufficient evidence, the state has the obligation to investigate, prosecute and punish irrespective of whether the victim wishes to proceed with a complaint.\textsuperscript{1073} Investigations must be prompt, effective, thorough, independent, impartial and transparent, and any criminal proceedings must be compliant with the rights to liberty and a fair trial under international law.\textsuperscript{1074} Victims and their relatives have a right to be involved in, and informed about, any investigations and prosecutions.\textsuperscript{1075}

Victims and their families—as well as impacted groups and communities—also have a right to the truth about violations of IHL and gross human rights violations and abuses committed against them, including the “circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.”\textsuperscript{1076} The obligation is on the State “to ensure the inalienable right to know the truth about violations,” which may be met through a diverse and complementary range of mechanisms, including national and international criminal proceedings, truth commissions, national human rights institutions and administrative and civil proceedings.\textsuperscript{1077} Any proceedings must ensure fair trial rights and other due process requirements are upheld, including the participation of victims and other relevant persons, as well as the transparency of proceedings.

\textsuperscript{1072} ICCPR, Article 2(3); Human Rights Committee ("General Comment No. 31"), supra note 283 at paras. 15, 18. The ICRC has also held that this obligation is a customary international law norm applicable in both international and non-international armed conflicts. See ICRC Customary IHL Rule 158. See also Updated Set of Principles to Combat Impunity, Principle 19; Council of Europe Committee of Ministers Guidelines on Eradicating Impunity for Serious Human Rights Violations (March 30, 2011), Guideline VIII.1.

\textsuperscript{1073} Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle II, paras. 3(b) and 4.

\textsuperscript{1074} ICCPR, Articles 9, 14; Arab Charter, Articles 13, 14. See also UN Human Rights Committee, “General Comment No. 32 on Article 14: Right to Equality before the Courts and a Fair Trial,” UN Doc. CCPR/C/ GC/32 (August 23, 2007), https://www.refworld.org/docid/479b2b2f2.html.

\textsuperscript{1075} Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle II, para. 3(b) and Principle III, para. 4.

\textsuperscript{1076} Updated Set of Principles to Combat Impunity, Principle 2. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle X, para. 24; Geneva Convention IV, Article 136 et seq; ICRC Customary IHL Rule 117.

Access to reparations proportional to the gravity of the violation is a key component of the right to a remedy.\textsuperscript{1078} States must provide reparations for acts and omissions of de jure or de facto organs of the state which constitute violations of IHL or IHRL,\textsuperscript{1079} and must enforce judgements for reparation against individuals and entities.\textsuperscript{1080} All forms of reparation must be made available to victims, namely: compensation (financial payment); rehabilitation (e.g. medical and psychological care); restitution (re-establishment of the prior situation); satisfaction (e.g. measures to hold perpetrators accountable and end violations, formal apology); and guarantees of non-repetition (e.g. strengthening the importance of the judiciary) to other states, entities, or individuals.\textsuperscript{1081}

To date, the warring parties have failed to meet these obligations.

Challenges to achieving justice for victims include the legal and practical obstacles to investigations and prosecutions of alleged crimes at the domestic level,\textsuperscript{1082} the unwillingness of the parties to the conflict to effectively investigate and prosecute violations of IHL and IHRL,\textsuperscript{1083} the fact that key states involved in the conflict—including Yemen, Saudi Arabia, the UAE and Iran—have so far failed to ratify the Rome Statute, and the lack of political will at the UNSC to refer the situation to the ICC. In addition, victims’ abilities to exercise their right to an effective remedy for violations of IHRL at the

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\textsuperscript{1078} Human Rights Committee (“General Comment No. 31”), supra note 283 at para. 16; Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle IX, paras. 15, 18 and 20.


\textsuperscript{1080} Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle IX, paras. 15 and 17. States should endeavour to establish national programmes for reparation and other assistance in the event that the liable party or entity is unable or unwilling to meet their obligations. See Principle 16.

\textsuperscript{1081} Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle IX, paras. 19-23. See also Responsibility of States for Internationally Wrongful Acts, Article 34.


\textsuperscript{1083} Beckerle, supra note 24.
\end{tiny}
international level is limited.\textsuperscript{1084} UN treaty bodies, such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights cannot consider individual complaints by victims of alleged violations of IHRL or recommend appropriate remedies to many of the relevant state parties, including Yemen, Saudi Arabia, the UAE and Iran, in this specific context.\textsuperscript{1085}

Further steps should be taken by States to ensure perpetrators of starvation-related conduct are held accountable and that victims can effectively access remedies and reparations.

With limited precedent in pursuing accountability for starvation-related conduct, it is imperative that any future mechanism ensures that the harm caused by starvation is “taken seriously, not neutered as mere malnutrition, and not neglected in favour of more traditional atrocity crimes.”\textsuperscript{1086} In addition, the accountability and redress strategy for Yemen must be both credible and holistic, and encapsulate both Yemeni and non-Yemeni parties to the conflict.\textsuperscript{1087}

There are a range of tools to achieve these ends, including, but not limited to, international monitoring mechanisms and investigations, criminal prosecutions and transitional justice measures, which are outlined below.

\textsuperscript{1084} See e.g., ICCPR, Article 2.

\textsuperscript{1085} “Treaty Bodies’ Individual Communications Procedures: Providing Redress and Reparations to Victims of Human Rights Violations,” Geneva Academy (May 2019), p. 18, https://www.geneva-academy.ch/joomlatools-files/docman-files/UN\%20Treaty\%20Bodies\%20Individual\%20Communications.pdf. Saudi Arabia and the UAE are neither parties to the ICCPR, nor to the ICESCR. Yemen and Iran are parties to the ICCPR and the ICESCR, but have not ratified the Optional Protocols allowing victims to submit complaints to the HRC and CESCR Committees respectively. For more information, see https://indicators.ohchr.org/.

\textsuperscript{1086} Global Rights Compliance and World Peace Foundation, supra note 819 at para. 130.

Accountability and redress at the domestic level

There has been no progress at the domestic level in ensuring accountability for starvation conduct committed in the context of the conflict in Yemen. Despite calls by the GEE for concerned States to investigate and prosecute alleged violations documented by the Group, no trials appear to have been completed and no effective remedies have been provided to victims.\(^{1088}\) Perpetrators responsible for serious violations of IHL and gross human rights violations and abuses have faced no real consequences and victims have been denied justice and redress.

\(^{1088}\) GEE, supra note 22 at para. 94; GEE, supra note 23 at paras. 373 and 376.
Domestic judicial systems: Yemen, Saudi Arabia and the UAE

Yemen has not ratified the Rome Statute, and Yemen’s Republican Decree for Law No. 12 of 1994 Concerning Crimes and Penalties does not encompass international crimes. Only Law No. 21 of 1998 relative to military offences and penalties makes a reference to war crimes, but it does not penalize the deliberate starvation of civilians as a method of warfare. Further, this law applies only to Yemeni military personnel.

With regard to Yemen’s judicial system, “[c]ourts in Yemen are at best ineffective against warring parties and, at worst, captured by those same parties.” In 2020, the GEE reported that, “[i]n many areas of the country, the justice system is virtually paralysed.” The judicial system has been weakened by the conflict, with resultant insecurity, attacks on and threats against justice system actors, the destruction of judicial infrastructure, insufficient budgets and, in some areas, the complete absence

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1090 “Yemen: Republican Decree for Law No 12 for the Year 1994 Concerning Crimes and Penalties,” Republic of Yemen, https://www.refworld.org/docid/3fecd6217.html. The decree penalizes some starvation-related conduct, including intentional impairment to agricultural products that lead to severe damage to production or noticeable shortage of consumer goods (Article 150); poisoning or damaging water to the extent that it causes severe damages to public health (Article 140); intentional destruction of a structure leading to the collapse of the national economy (Article 147); or intentional slaughter of or infliction of severe harm to, without any reason, someone else’s livestock (Article 320).


1092 Mwatana for Human Rights, supra note 1087.

1093 GEE, supra note 22 at para. 87.
of judicial and law enforcement institutions impacting access to justice.\footnote{OHCHR, supra note 1082 at para. 18; UN Security Council ("Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council"), supra note 35 at p. 3 ("Since the beginning of the conflict, there has been no significant initiative to hold perpetrators of violations to account. The absence of the rule of law and the dysfunction of the judicial system give leeway to impunity and contribute to the recurrence of violations"); Alshuwaiker and Kozak, supra note 1082 at p. 3; "A Passage to Justice, Selected Yemeni Civil Society Views for Transitional Justice and Long-Term Accountability in Yemen," Open Society Foundation (February 2021), p. 11, https://www.opensocietyfoundations.org/uploads/4ee5f81c-51d1-40bc-a01a-ec1e9a03c11b/a-passage-to-justice-20210208.pdf ("The current capacity of the justice system in Yemen to promote accountability for human rights and IHL violations has been significantly curtailed by the ongoing armed conflict. Yet even before the current conflict, there were already serious concerns about judicial independence and the ability of courts to render justice in an impartial manner. Various substantive and procedural laws are also at odds with international standards").} The GEE described the Specialised Criminal Court in Sana’a as “perhaps the most active judicial body in Yemen,”\footnote{GEE, supra note 22 at para. 91.} and found that “specialized criminal courts, particularly in Sana’a, are being used as an instrument to suppress dissent, intimidate political opponents and/or develop political capital to be used in negotiations.”\footnote{Ibid, at para. 86.}

Mwatana, describing a case in which the Specialized Criminal Court in Sana’a sentenced four journalists to death, found that the trial was “patently unfair—including failing to inform their lawyers of the dates of hearings, and refusing to provide them copies of the case files.”\footnote{Mwatana for Human Rights, supra note 1087.} Other violations of the right to a fair trial across Yemen, at the specialized criminal courts and otherwise, include the denial of access to a lawyer, as well as the use of torture as a means of obtaining confessions.\footnote{GEE, supra note 22 at para. 91.} According to the GEE, “serious violations of international human rights law are occurring within the administration of justice in Yemen, in particular through the politicization of the system, the regular denial of fair trial rights, attacks on judicial officers and the imposition of the death penalty in a manner contrary to international law.”\footnote{Ibid, at para. 87.} Mwatana has also previously noted that “even if the national court system were to be rehabilitated, significant reforms, likely extending over many years, would be required to align substantive and procedural rules with international standards.”\footnote{Mwatana for Human Rights, supra note 1087.} Accordingly, Yemen’s domestic justice system, as it stands, is not an appropriate place to seek justice for conflict-related violations which

\footnote{\textsuperscript{1094} OHCHR, supra note 1082 at para. 18; UN Security Council ("Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council"), supra note 35 at p. 3 ("Since the beginning of the conflict, there has been no significant initiative to hold perpetrators of violations to account. The absence of the rule of law and the dysfunction of the judicial system give leeway to impunity and contribute to the recurrence of violations"); Alshuwaiker and Kozak, supra note 1082 at p. 3; "A Passage to Justice, Selected Yemeni Civil Society Views for Transitional Justice and Long-Term Accountability in Yemen," Open Society Foundation (February 2021), p. 11, https://www.opensocietyfoundations.org/uploads/4ee5f81c-51d1-40bc-a01a-ec1e9a03c11b/a-passage-to-justice-20210208.pdf ("The current capacity of the justice system in Yemen to promote accountability for human rights and IHL violations has been significantly curtailed by the ongoing armed conflict. Yet even before the current conflict, there were already serious concerns about judicial independence and the ability of courts to render justice in an impartial manner. Various substantive and procedural laws are also at odds with international standards").}
haveoccurred in Yemen.1101

With regard to Saudi Arabia, the country’s domestic law penalizes international crimes, in particular war crimes, crimes against humanity and genocide.1102 While the Law of Criminal Procedure in Saudi Arabia includes some rights which are mandatory under international law, such as the right to legal counsel,1103 fair trial rights are routinely violated in practice in Saudi Arabia, including in proceedings before the Specialised Criminal Court.1104 The Court has been described as an “instrument of repression to silence dissent”1105 and its trials as a “mockery of justice.”1106

In the trial against persons allegedly responsible for the killing of Jamal Khashoggi, the Criminal Court in Riyadh sentenced the accused to death following closed proceedings in which even the identities and the charges brought were not disclosed to the public.1107

1101 GEE, supra note 22 at para. 98 (“Although the Yemeni justice system bears the largest potential caseload in relation to violations committed in Yemen, the Group of Eminent Experts is concerned that it presently lacks the means and capacity to conduct prosecutions in a manner consistent with international human rights law. Even prior to the current conflict, the system’s operation was compromised by the legacy of executive control experienced during the regime of former President Ali Abdullah Saleh. It faced issues with respect to, inter alia, corruption, inadequate protection of fair trial rights, discrimination against women and attacks and serious threats to judicial actors. The conflict has only exacerbated the situation. Additionally, victims, witnesses and judicial actors lack sufficient protection against reprisals in politically sensitive cases. On a technical level, Yemeni law requires reform to be able to address the full range of violations amounting to international crimes and applicable modes of liability. While less information is available in relation to the military justice system, the Group considers it would in all likelihood be even less compliant with human rights than its civilian counterpart”).


1106 “Saudi Arabia: Spy Trial a Mockery of Justice,” Human Rights Watch (May 17, 2016), https://www.hrw.org/news/2016/05/17/saudi-arabia-spy-trial-mockery-justice. According to Amnesty International, judges prosecute defendants on opaque charges, or “vague charges that do not constitute recognizable crimes,” and most defendants are held incomunicado with no access to a lawyer or without a charge or trial for a significant period of time. See Amnesty International, supra note 1105 at p. 10.

Courts at the highest level of the judicial system have endorsed capital punishment following hearings held in camera, without informing the lawyers and the families of the individuals concerned of the dates of the proceedings,\textsuperscript{1108} or following confessions obtained by coercion or torture,\textsuperscript{1109} in violation of the international standards of due process and the right to fair trial. Based on the politicization of cases of perceived dissidents and its routine failure to comply with international fair trial standards, the Saudi justice system is also unable to ensure accountability for conflict-related crimes committed in Yemen.

The UAE adopted legislation on war crimes, crimes against humanity, genocide, and crimes of aggression when it adopted Federal Decree-Law No. 12 of 2017 on International Crimes.\textsuperscript{1110} However, the death penalty may still be imposed on persons convicted of war crimes,\textsuperscript{1111} as well as other crimes, contrary to a developing norm proscribing its imposition.\textsuperscript{1112} With regard to the domestic judicial system, while the UAE Constitution states that “judges shall be independent and shall not be subject to any authority but the law and their own conscience,”\textsuperscript{1113} the system is subject to the

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control of the Executive.\textsuperscript{1114} The UN Special Rapporteur on the independence of judges and lawyers raised concerns about “reports and allegations of pressure exerted by members of the executive, prosecutors and other State agents, in particular members of the State security apparatus,” on judicial authorities.\textsuperscript{1115} She also raised concerns regarding information about a range of fair trial violations, including arbitrary detention, the use of torture to extract confessions, limited access to counsel, and violations of the right to equality of arms.\textsuperscript{1116} As just one example, the prosecution of 94 individuals on the basis of having committed crimes against State security raised serious concerns about the legal representation of the persons detained, the principle of equality of arms and the use of torture to obtain evidence.\textsuperscript{1117} Such concerns significantly reduce the UAE’s justice system’s credibility and its viability as an option for pursuing accountability for conflict-related crimes committed in Yemen.

With regard to Iran, the country’s criminal justice system similarly does not provide a basis for the effective investigation and prosecution of crimes committed in Yemen in line with international law and standards. The Penal Code of the Islamic Republic of Iran does not penalize international crimes,\textsuperscript{1118} and permits judges to exercise considerable discretion to convict persons based on non-codified law or for exercising their fundamental rights.\textsuperscript{1119} The criminal procedure framework does not guarantee


\textsuperscript{1116} Ibid.

\textsuperscript{1117} International Commission of Jurists, supra note 1114 at pp. 3, 5, 18, 24, 28-29 and 31-34.


the right to a fair trial, and fair trial rights are routinely violated in practice.\footnote{1120} While the independence of the judiciary is purportedly guaranteed by the Constitution of the Islamic Republic,\footnote{1121} the head of the judiciary is appointed by the Supreme Leader and judges are expected to adhere to “state-sanctioned political and religious ideologies.”\footnote{1122} In such circumstances, it is unlikely that the criminal justice system provides an appropriate forum for investigating and prosecuting Iranian or other perpetrators of crimes committed in the context of the conflict in Yemen.

National Commission of Inquiry

The Yemeni National Commission of Inquiry (NCI) was established by Presidential Decree No. 140 of 2012 to “investigate all alleged violations of human rights and [IHL] that have taken place since 2011 and to identify the perpetrators.”\footnote{1123} The NCI is composed of nine commissioners appointed by the President of Yemen, and staffed by a secretariat and field monitors.\footnote{1124} Since it commenced its work in October 2015, the NCI has released a number of reports on incidents of violations and abuses of IHL and IHRL that it found “reasonable grounds to believe” were committed by parties to the conflict, including the Houthi-Saleh forces, the “Arab coalition” forces, the Yemeni armed forces

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1122 Amnesty International, supra note 1119 at pp. 65-66. See also FIDH, supra note 1120 at p. 7.

1123 OHCHR, supra note 1082 at para. 4; Presidential Decrees No. 13 of 2015, No.s 66 and 97 of 2016, No. 50 of 2017, and No. 30 of 2019 revised the mandate of the National Commission of Inquiry.

1124 As of September 2020. See OHCHR, supra note 1082 at paras. 6 and 8. The nine commissioners are constituted by four judges, three lawyers and two academics, four of which are representatives from northern governorates and five from southern governorates.
and their affiliates.\textsuperscript{1125} As of July 2020, the NCI also reported submitting around 1,500 investigation files to the Office of the Attorney-General for further investigation and prosecution.\textsuperscript{1126}

The NCI has faced significant obstacles to carrying out its investigative mandate. These have included: “security and political constraints, which ... significantly impeded its ability to safely and freely conduct comprehensive investigations;”\textsuperscript{1127} restrictions on access to territory by the de facto authorities and by coalition-aligned forces;\textsuperscript{1128} and the disruption of public facilities and services impacting communication with relevant stakeholders and access to documents throughout the conflict. The NCI has also had significant challenges associated with their lack of structural independence, as the NCI commissioners and staff are appointed by and report to the coalition-backed internationally recognized Yemeni President (Hadi).\textsuperscript{1129} Such challenges undoubtedly impact the NCI’s capacity to substantiate and report on allegations of violations and abuses of IHL and IHRL.

Additionally, investigations that the NCI has completed have not resulted in the prosecution of alleged perpetrators. According to OHCHR, despite the announcement of the provision of case files by the NCI, no criminal investigation has been initiated or completed by the Attorney General’s Office.\textsuperscript{1130} As mentioned above, the impact


\textsuperscript{1126} OHCHR, supra note 1082 at para. 18.


\textsuperscript{1128} OHCHR, supra note 1082 at para. 12; NCI Preliminary Report, supra note 1127 at p. 82.

\textsuperscript{1129} OHCHR, supra note 1082 at para. 20; NCI Preliminary Report, supra note 1127 at p. 82.

\textsuperscript{1130} OHCHR, supra note 1082 at para. 18.
of the conflict on the judicial system,\textsuperscript{1131} the latter’s polarization,\textsuperscript{1132} and the lack of independence and impartiality of prosecutions reported by the UN and non-government organizations\textsuperscript{1133} significantly impact the extent to which NCI investigations can result in meaningful justice for victims in the short or medium term. Significant reforms would be required to align substantive and procedural rules governing the domestic criminal justice systems with international standards.\textsuperscript{1134}

Joint Incidents Assessment Team

In 2016, the Saudi/UAE-led Coalition created the Joint Incidents Assessment Team (JIAT), composed of 14 individuals from the coalition member states with military and legal expertise\textsuperscript{1135} to “investigate the facts, collect evidence, and produce reports and recommendations on ‘claims and accidents’ during coalition operations in Yemen.”\textsuperscript{1136} The precise scope of JIAT’s mandate, the methodology it employs and the details of its findings are unclear, despite requests by the GEE and NGOs for such information.\textsuperscript{1137} In 2020, the PoE reported that it had been told that eight cases investigated by JIAT were

\textsuperscript{1131} Open Society Foundation, supra note 1094 at p. 11.

\textsuperscript{1132} Alshuwaiter and Kozak, supra note 1082 at p. 13.


\textsuperscript{1134} Mwatana for Human Rights, supra note 1087.

\textsuperscript{1135} GEE, supra note 88 at para. 112; Beckerle, supra note 24.

\textsuperscript{1136} Beckerle, supra note 24. The JIAT does not have the mandate to provide remedies, but can recommend that the Saudi/UAE-led Coalition takes steps in this direction. For more information, see “Amnesty International response to the Saudi Arabia-led coalition’s investigations,” Amnesty International (January 16, 2017), https://www.amnesty.org/download/Documents/MDE3154942017ENGLISH.pdf.

\textsuperscript{1137} GEE, supra note 98 at Annex III, para. 3; GEE, supra note 88 at para. 889; Amnesty International, supra note 1136.
referred to a military prosecutor, however the details of these cases and any other cases that may have been referred have not been made publicly available. In its releases, JIAT rarely identifies any particular state, other than the Yemeni government, as being involved in an attack, and the status of its recommendations vis-a-vis Saudi/UAE-led Coalition members remains unclear. JIAT lacks the transparency necessary to meet international standards governing the investigation of crimes under international law.

In addition, reports by UN bodies and NGOs indicate that JIAT lacks the independence and impartiality necessary of investigative mechanism. In a 2018 report, Human Rights Watch found:

"Over the past two years, JIAT has failed to meet international standards regarding transparency, impartiality, and independence. Established in the wake of mounting evidence of coalition violations, the body has failed even in its limited mandate to assess “claims and accidents” that occurred during coalition military operations. JIAT has not only conducted its investigations without a transparent methodology, but appears to have regularly failed to conduct a thorough laws-of-war analysis in its investigations."

After reviewing summaries of 71 incidents investigated by JIAT, the GEE found that JIAT generally justified airstrikes on the basis that: (i) they were an accident or due to technical fault, (ii) the Saudi/UAE led coalition was not responsible, or (iii) the struck object was a military objective.

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1139 GEE, supra note 23 at para. 376.
1140 See e.g., Beckerle, supra note 24.
1141 Ibid.
1142 GEE, supra note 88 at para. 889; GEE, supra note 98 at Annex III, para. 19.
1143 See e.g., Beckerle, supra note 24; Amnesty International, supra note 1136.
1144 GEE, supra note 98 at paras. 4-19. See Part G, Section 5.2.1.1(iii).
Conclusion

The avenues for accountability and redress on the domestic level, to date, have not, and are unlikely to, meet the standards applicable to investigations and prosecutions under international law. Grave concerns related to the administration of justice in Yemen and the politicisation of the judicial system limit the possibility that the investigations carried out by the NCI can result in meaningful justice for victims in the short or medium term. Saudi Arabia’s, the UAE’s and Iran’s domestic justice systems are also unfeasible options for pursuing accountability for IHL and IHRL violations and abuses committed during the conflict in Yemen, either due to the absence of laws penalizing starvation-related conduct or other international crimes, the judiciary’s lack of independence and/or the failure to comply with fair trial standards in criminal proceedings to date. JIAT lacks the transparency, independence and impartiality necessary to credibly investigate violations of IHL and IHRL and crimes under international law. Notably, neither NCI nor JIAT investigations have led to any criminal prosecutions of starvation-related conduct committed during the conflict in Yemen or other remedies in the form of reparations for victims.

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1145 GEE, supra note 22 at para. 93.
1146 OHCHR, supra note 1082 at para. 18; Mwatana for Human Rights, supra note 1087.
1147 Ibid.
1148 The SCL has made some payments to victims of airstrikes, including in airstrikes where JIAT recommended payments. However, these payments are not legally mandated and are described as humanitarian assistance. See GEE, supra note 22 at para. 374, according to which: “[...] in addition to legal proceedings, the JIAT recommended that monies be paid to families of victims and/or relevant persons in respect of material damage.”
International Mechanisms

Given the shortcomings at the domestic level, options for holding perpetrators accountable for starvation-related conduct appear to be more viable at the international level, including through existing mechanisms and/or the adoption of additional mechanisms. Such options are outlined below.

The Committee on Economic, Social and Cultural Rights

UN human rights monitoring bodies have little jurisdiction over human rights violations and abuses committed by the parties to the conflict in Yemen. The Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body of the ICESCR, can examine communications from individuals or groups of individuals claiming a State...
party to the Optional Protocol to ICESCR\textsuperscript{1149} violated their rights under the Covenant, including the right to food. Where the CESC\textsuperscript{r} determines that an individual’s or group of individuals’ rights were violated, it can recommend appropriate remedies to be adopted by the State party.\textsuperscript{1150} An individual complaint can only be submitted following the exhaustion of domestic remedies.\textsuperscript{1151} Neither Saudi Arabia nor the UAE are parties to the Covenant\textsuperscript{1152} and, although Yemen is a party to ICESCR, it has not ratified the Optional Protocol allowing victims to submit complaints to the CESC\textsuperscript{r}.\textsuperscript{1153}

Other UN treaty bodies, such as the UN Human Rights Committee (HRC), which monitors implementation of the International Covenant on Civil and Political Rights, are also available to make determinations regarding relevant violations of IHRL following a complaint by a victim.\textsuperscript{1154} Yemen is party to ICCPR but has not signed the relevant optional protocol permitting victims to submit a complaint to the HRC.

The UN Group of Eminent Experts on Yemen

In 2017, following a sustained advocacy campaign by civil society organizations, including Mwatana, the UN Human Rights Council (HRC) adopted HRC Resolution 36/31, requesting OHCHR establish the GEE to:

monitor and report on the situation of human rights, to carry out a comprehensive examination of all alleged violations and abuses of international human rights and

\begin{footnotesize}
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\item Geneva Academy, supra note 1085 at p. 18.
\item Ibid.
\item Optional Protocol to the International Covenant on Civil and Political Rights (December 16, 1966), Article 1; Convention Against Torture, Article 22.
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other appropriate and applicable fields of international law committed by all parties to the conflict since September 2014, including the possible gender dimensions of such violations, and to establish the facts and circumstances surrounding the alleged violations and abuses and, where possible, to identify those responsible.\textsuperscript{1155}

In October 2020, when renewing the GEE’s term for another one-year period, the HRC strengthened the GEE’s mandate to include the collection and preservation of information regarding violations and abuses of IHRL and violations of IHL, and “to explore and report on recommended approaches and practical mechanisms of accountability to secure truth, justice and redress for victims, in coordination with relevant mandates of the special procedures of the Human Rights Council.”\textsuperscript{1156} In implementing its mandate, the GEE analyses the information it collects in the context of IHRL and IHL, as well as ICL and international refugee law.\textsuperscript{1157}

As is shown throughout the discussion in Part G, Sections 2.3, 3.3 and 4.3, and Part H, Sections 2.2 and 3.1, of this report, the GEE has reported on the warring parties’ starvation-related conduct, finding that “[a]ll parties to the conflict in Yemen used and conducted attacks impacting objects indispensable to the survival of the civilian population.”\textsuperscript{1158} The GEE has also extensively reported on the warring parties’ obstruction of humanitarian access, stating in 2019 that the Group “... has reasonable grounds to believe that all parties to the conflict are violating their obligations to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.”\textsuperscript{1159} In 2020, the GEE further noted that “the dire humanitarian situation in Yemen could be substantially mitigated if parties to the conflict begin to respect and comply with their obligations under international law.”\textsuperscript{1160}

After noting that it had made repeated calls for the domestic authorities to conduct prompt investigations and prosecute perpetrators in line with their obligations under international law, and noting that it was not aware of any prosecutions of perpetrators

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\item GEE, supra note 98 at para. 3.
\item GEE, supra note 88 at para. 760.
\item Ibid, at para. 791.
\item GEE, supra note 22 at para. 59.
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of violations it had documented,\textsuperscript{1161} the GEE called on the international community to do more to “help bridge the acute accountability gap” in Yemen.\textsuperscript{1162} It recommended inter alia that parties to the conflict “cooperate fully with the [NCI];” “support reform of the justice system to ensure impartial and independent administration of justice;” and “conduct prompt, transparent, independent, impartial, thorough, credible, effective and gender-sensitive investigations of all violations and crimes committed during the conflict, and ensure accountability and respect for the right of victims to an effective remedy.”\textsuperscript{1163} Noting the failure of the warring parties, including Yemen, to fulfil their accountability-related obligations to date, the GEE also recommended that other States refer the situation in Yemen to the ICC, that the list of persons subject to UNSC sanctions be expanded and that universal jurisdiction prosecutions be undertaken where appropriate, and supported calls for the “establishment of a criminally focused investigation body, similar to the International, Impartial and Independent Mechanism [for Syria].”\textsuperscript{1164}

While the GEE does not have the mandate to prepare case files like the independent investigative mechanisms for Syria and Myanmar,\textsuperscript{1165} and cannot hold perpetrators accountable, its investigation of and preservation of information about starvation-related conduct, amongst other violations and abuses of IHRL and IHL, lays the groundwork, and has potential to support, other future accountability mechanisms should they be adopted.

\section*{Sanctions}

\section*{The UN Security Council and the UN Panel of Experts on Yemen}

In 2014, the UNSC, under Resolution 2140 (UNSC 2140), established a Sanctions

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\item \textsuperscript{1161} Ibid, at para. 94.
\item \textsuperscript{1162} Ibid, at para. 99.
\item \textsuperscript{1163} Ibid, at paras. 107(l)-(n).
\item \textsuperscript{1164} Ibid, at paras. 99, 108(b) and 109(b).
\end{itemize}
Committee to designate “individuals or entities who engage in or provide support for acts that threaten the peace, security and stability of Yemen” to be the subject of sanctions and oversee their implementation.1166 The following year, the UNSC resolved under Resolution 2216 (UNSC 2216) to additionally impose an arms embargo on Ansar Allah (Houthi) armed group leaders and any individuals and entities designated by UNSC 2140, and determined that a violation of the arms embargo may constitute violations of “acts that threaten the peace, security and stability of Yemen” which attract sanctions under UNSC 2140, and which could be determined by the UNSC 2140 Sanctions Committee.1167 When issuing UNSC 2216, the UNSC urged “all parties to facilitate the delivery of humanitarian assistance, as well as rapid, safe and unhindered access for humanitarian actors to reach people in need of humanitarian assistance.”1168

The information made available to the Sanctions Committee to make determinations about the designation of individuals has been limited by the parties to the conflict. The PoE, which supports the sanctions committee and which is tasked with reporting annually any information “relevant to the potential designation of individuals and entities,”1169 has not been granted access to Ansar Allah-controlled areas in Yemen.1170 Ansar Allah has also indicated its unwillingness to cooperate with the PoE “on the basis of perceived inaccuracies contained in the [2018] report of the Panel.”1171 With regard to requests to visit the areas under the control of the Government of Yemen, the Government and Saudi Arabia provided delayed responses, which prevented Panel visits from taking place, although the Panel has subsequently been able to visit areas of Yemen under government control.1172 Although it has had access to Saudi Arabia and the UAE, amongst other States, it has not been granted permission by Saudi Arabia to


1167 Ibid, at para. 9.


inspect some items, “such as flight recorders or guidance systems, that are significant to ongoing investigations.”\textsuperscript{1173} With respect to the inspection of weapons’ systems, “in numerous cases, seized and recovered items were not made available to the Panel in a timely manner or critical components were held back by Member States,” which presented a challenge to maintaining chain of custody.\textsuperscript{1174} Questions or requests for additional information addressed to JIAT have also often remain unanswered.\textsuperscript{1175}

As discussed in Part G, Sections 2.3, 3.3 and 4.3, and Part H, Section 2.2, of this report, the PoE has reported on starvation-related conduct by both the Saudi/UAE-led Coalition and Ansar Allah to the UNSC. Nevertheless, the Sanctions Committee has, to date, imposed arms embargoes, travel bans and asset freezes only on Ansar Allah leaders and those acting on their behalf through UNSC 2140 and UNSC 2216.\textsuperscript{1176} The selectivity with which the Sanctions Committee has acted could be attributed to the support of UNSC permanent members—specifically the United Kingdom, which is the penholder on Yemen at the UNSC, the United States and France—provides to the Saudi/UAE-led Coalition, including through the supply of arms. Sanctions do not appear likely anytime soon. As noted above, the GEE has called on the UNSC to expand the current sanctions list to include all parties to the conflict, stating that no party to the conflict has “clean hands.”\textsuperscript{1177}

\textsuperscript{1173} UN Security Council (“Letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 45 at para. 71. See also PoE (2019), supra note 331 at paras. 5-7.

\textsuperscript{1174} PoE (2019), supra note 331 at paras. 5-7.

\textsuperscript{1175} PoE (2017), supra note 331 at Appendix A to Annex 49, E, para. 9; UN Security Council (“Letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 45 at para. 93.


\textsuperscript{1177} “UN Group of Eminent International and Regional Experts on Yemen Briefs the UN Security Council Urging an end to impunity, an expansion of sanctions, and the referral by the UN Security Council of the situation in Yemen to the International Criminal Court,” Human Rights Council (December 3, 2020), https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26563&LangID=E.
While the UNSC should heed the GEE’s recommendations on sanctions, sanctions are meant to be a preventative measure, and are not an alternative to credible justice, nor an adequate response to the harms caused by the warring parties. With respect to impunity for violations and abuses of IHL and IHRL committed during the conflict, the GEE also recommended the UNSC refer the situation in Yemen to the ICC. The PoE has recommended that the UNSC include in its monthly agenda “a focused discussion on the issue of accountability for international humanitarian law and human rights violations and abuses, including exploring mechanisms of accountability to secure justice and redress for victims, and consider including in this discussion relevant Yemeni stakeholders.” It further stressed “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.”

### Domestic and regional sanctions regimes

Targeted sanctions have been imposed unilaterally, including by the US and the UK. As was the case for UNSC, these have only been imposed on Ansar Allah.

The European Union (EU) Global Human Rights Sanctions Regime, adopted by the EU in December 2020, allows the EU to impose financial sanctions and/or travel bans on individuals, entities and bodies—including State and non-State actors—responsible for, involved in or associated with serious human rights violations and abuses worldwide. War crimes are not explicitly included, though the European Commission has suggested

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that the EU consider expanding the listing criteria to include serious IHL violations.\textsuperscript{1182} Sanctions may only be imposed upon a unanimous decision of member States, which seems unlikely given the relationship of some European states within the Saudi/UAE-led Coalition, such as France, through their supply of arms to members of the Saudi/UAE-led Coalition.

\section*{International Criminal Court}

The International Criminal Court (ICC) has jurisdiction over “the most serious crimes of concern to the international community as a whole:” genocide, war crimes, crimes against humanity, and aggression.\textsuperscript{1183} Yemen, along with Saudi Arabia, the UAE and Iran, have not ratified the Rome Statute. A UNSC referral of the situation in Yemen would allow the Court to exercise jurisdiction over crimes committed by their nationals or on their territory.\textsuperscript{1184} In their latest report, the GEE called on the UNSC to refer the situation in Yemen to the ICC,\textsuperscript{1185} stating that such a referral “would send a powerful message to the conflicting parties.”\textsuperscript{1186} However, likely vetoes by UNSC members such as France, the UK and the US pose political obstacles to doing so.\textsuperscript{1187}

Non-governmental actors have submitted communications under Article 15 of the Rome Statute to the ICC.\textsuperscript{1188} In 2017, a UK-based organization submitted a communication to the Office of the Prosecutor (OTP) alleging that State Party nationals from Australia,  

\begin{itemize}
\item \textsuperscript{1183} Rome Statute, Article 5.
\item \textsuperscript{1184} Rome Statute, Article 13(b).
\item \textsuperscript{1185} UN Security Council (“Letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council”), supra note 45 at para. 99.
\item \textsuperscript{1186} Human Rights Council, supra note 1177.
\item \textsuperscript{1188} Pursuant to Article 15 of the Rome Statute, any individual, group, or organisation can submit information on alleged or potential ICC crimes to the Office of the Prosecutor (OTP) of the ICC. Before an OTP investigation can open, the ICC prosecutor is responsible for determining whether a situation meets the legal criteria laid out by the Rome Statute.
\end{itemize}
Chile, Colombia, El Salvador, Panama, and South Africa acting as mercenaries for the UAE had committed war crimes within the ICC’s jurisdiction during the conflict in Yemen.\textsuperscript{1189} While the ICC may exercise personal jurisdiction over nationals of States Parties responsible for crimes in Yemen, acting under Article 12(2)(b) of the Rome Statute, the OTP determined that there was insufficient information about whether State Party nationals engaged as mercenaries had been involved in the alleged crimes in UAE-operated prisons and detention sites in Yemen.\textsuperscript{1190}

In December 2019, a group of organizations (including Mwatana) submitted an Article 15 Communication to the ICC calling on the OTP to investigate whether arms companies’ executives, as well as political and economic actors, committed war crimes by authorising and exporting arms to members of the Saudi/UAE-led coalition.\textsuperscript{1191} The OTP stated in its 2020 report on preliminary examination activities that it is “finalising its response to senders of communications … including with respect to … Yemen (arm exporters),” which it plans to issue later in 2021.\textsuperscript{1192} In July 2019, another organization submitted an Article 15 Communication calling on the Prosecutor to investigate potential war crimes committed by the Saudi/UAE-led Coalition in Yemen on the basis that Jordan, a state party to the ICC, has contributed to “the common plan adopted by the Coalition as a whole.”\textsuperscript{1193} It is unclear whether the OTP has acted on this communication.

\bibitem{note1190} ICC Office of the Prosecutor, supra note 208 at paras. 54-55.
\bibitem{note1192} ICC Office of the Prosecutor, supra note 208 at para. 35.
Proceedings relating to arms sales

Criminal proceedings: Complicity of Italian arms manufacturers

Mwatana, together with the European Center for Constitutional and Human Rights (ECCHR) and Rete Italiana per Il Disarmo (in cooperation with Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa, OPAL), filed a complaint with Italy’s Public Prosecutor against Directors of RWM Italia S.p.A., an Italian arms manufacturer, and Italian government officials in relation to arms exports to Saudi Arabia and other members of the Saudi/UAE-led Coalition in contravention of EU law and the Arms

Photo: An explosive device found in Al-Qurayshiah District, Al-Bayda Governorate. September 26, 2020.
Trade Treaty. The Italian Public Prosecutor’s Office in Rome requested a dismissal of the case in October 2019, however Mwatana and the other applicants appealed the decision. In February 2021, the Court ruled that the Public Prosecutor must continue to investigate the role of the aforementioned arms manufacturer and senior officials of Italy’s National Authority for the Export of Armament relating to their licensing of arms sold to the Saudi/UAE-led Coalition.

Administrative proceedings: United Kingdom government’s licensing of arms sales

As discussed in Part E, Section 1, following an application by Campaign Against Arms Trade (CAAT), the UK Court of Appeals ruled that the Government’s failure to conduct due diligence on arms exports to Saudi Arabia was unlawful in June 2019. After the UK Government claimed to have implemented the Court’s order, in July 2020, the UK government announced it was resuming arms sales to Saudi Arabia. The Campaign Against Arms Trade (CAAT) recently filed and was granted an application for judicial review of the UK government’s decision to resume arms sales to Saudi Arabia. Mwatana, supported by the Global Legal Action Network (GLAN), has intervened in the case.


1199 Campaign Against Arms Trade, supra note 1197.
Future accountability options

Given the considerable gaps in the measures adopted or currently available at the domestic and international levels—including the complete absence of credible criminal prosecutions of perpetrators or provision of reparations to victims—significantly more needs to be done to uphold States’ obligations to ensure access to remedies and reparations for victims of violations of IHL and violations and abuses of IHRL committed by parties to the conflict in Yemen.

One of the first steps that should be taken to support current and future accountability options includes the renewal of the mandate of the GEE by the HRC.¹²⁰⁰

¹²⁰⁰ Mwatana for Human Rights, supra note 1087.
States should also, as recommended by the GEE in its September 2020 report, support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings. Whether through the United Nations General Assembly (UNGA) or the HRC, an independent investigative mechanism for Yemen, similar to those established for Syria and Myanmar, could go further than the GEE and be mandated to prepare files for criminal prosecution, in accordance with international law standards. To the extent the United Nations implements a system for sharing such information with domestic and international criminal justice authorities, subject to their compliance with fair trial and other applicable standards, this could fill some of the current evidentiary gaps. It could also remedy the likely loss of evidence that arises where investigations are not conducted promptly or warring parties obstruct the pursuit of justice.

Evidence preservation would also facilitate another of the GEE’s recommendations: the exercise of universal jurisdiction. States may exercise universal jurisdiction to prosecute “core international crimes committed in a foreign state, by a foreign citizen, against foreign victims, when neither has a personal link to the forum state.” The number of cases being brought in European jurisdictions based on universal jurisdiction has increased in recent years. For example, in 2019, German courts upheld the conviction and life sentence of Ibrahim Al-F, and convicted and sentenced Mohammed K. to over four years imprisonment, both of whom had committed war crimes as members of non-State armed groups in Syria. Germany’s War Crimes Unit has been particularly forward-thinking in initiating “structural investigations,” which are opened “where there is evidence that a crime has taken place but potential perpetrators have not yet been identified.” Given Yemen, and other relevant States’ refusal to ratify the

1201 GEE, supra note 22 at para. 99.
1202 Ibid.
1204 Global Rights Compliance and World Peace Foundation, supra note 87.
1205 TRIAL International, supra note 1195 at p. 50.
1206 Ibid, at p. 50.
1207 Ibid, at pp. 50-51.
Rome Statute, and the stalemate at the UNSC with respect to the ICC, as well as the limited likelihood that effective justice could be served by warring parties at the domestic level, universal jurisdiction cases present one of the few opportunities presently available to hold perpetrators accountable. An international criminally-focused investigative mechanism could play an important role in supporting domestic prosecutions based on universal jurisdiction or other forms of extra-territorial jurisdiction, assisting domestic authorities who may lack the resources and international expertise required to efficiently document violations with a view to a successful prosecution.1209

Future accountability options should also take due account of the right to remedy and reparation and should include support for transitional justice measures. As described above, in line with the 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, full and effective reparation can take various forms, such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.1210 Transitional justice mechanisms incorporate a wide range of judicial and non-judicial measures, including, amongst other things, truth seeking, prosecutions, reparations, or a combination thereof.1211

Transitional justice in Yemen remains a long-term accountability goal—with the conflict ongoing, it is premature to envision a full transitional justice process. While the lessons learned from the National Dialogue Conference (NDC), a forum for political negotiation that was established in 2012,1212 provide some useful insights that can inform future transitional justice process, ultimately the NDC recommendations—including those regarding transitional justice—were not implemented, and a draft law on transitional justice that was being discussed at the time was never passed.1213 According to the Open


1210 Basic Principles and Guidelines on the Right to a Remedy and Reparation, Principle 18.


Society Justice Initiative, major differences among NDC participants as to the exact scope and approach of the Conference, including which conflicts to address and which types of mechanisms to prioritise, meant that instead of promoting reconciliation, it “deepened the divisions” between them.\textsuperscript{1214} The UN reported that one of the lessons learned from the process was that “greater representation of victims and affected communities and forging a Yemeni vision on accountability, redress and transitional justice” was needed.\textsuperscript{1215}

For transitional justice to have meaningful impact and ultimately lead to non-recurrence of armed conflict, it must benefit from a context-specific approach that addresses the root causes of the conflict, identifies vulnerable groups and ensures local ownership of the process.\textsuperscript{1216} Such root causes include structural drivers—particularly the absence of the rule of law—which will require constitutional and legislative reform, judicial reform, disarmament, demobilization and reintegration and security sector reform. This, in turn, requires the vetting of electoral and judicial candidates, as well as (reintegrated) members of the armed forces for human rights compliance—a process that can only be achieved with stronger accountability measures.

\textsuperscript{1214} Open Society Foundation, supra note 1094 at pp. 17-18.
\textsuperscript{1215} Ibid, at pp. 17-18; Atlantic Council, supra note 1213 at p. 18.
\textsuperscript{1216} United Nations, supra note 1211 at pp. 5 and 9; Atlantic Council, supra note 1213.
Recommendations
In light of the findings that the parties to the conflict in Yemen—namely the Saudi/UAE-led Coalition, the internationally recognized Yemeni Government and the Ansar Allah (Houthi) armed group—have committed violations and abuses of IHL and IHRL, and that members of such groups may have committed international crimes, Mwatana for Human Rights and Global Rights Compliance make the following recommendations with a view to the cessation of further violations and abuses—particularly with respect to those that have contributed to starvation amongst the civilian population—and accountability for those that have occurred.

**All parties to the conflict**

To cease all violations of IHL and IHRL and war crimes, to ensure that civilians and civilian objects, including OIS, are protected and to facilitate full and accessible humanitarian aid, including food and water, the warring parties should:

1. Agree to a cessation of hostilities with a view to ensuring a sustainable and inclusive peace;

2. Immediately cease all violations and abuses of IHL and IHRL, including acts of violence committed against civilians and civilian infrastructure, including OIS, as well as other actions that impede access to food and water and exacerbate the humanitarian crisis, including those that restrict the delivery of and access to humanitarian relief for civilians.

3. Take proactive steps to adhere to the fundamental principles of IHL, including the prohibition on the use of starvation as a method of warfare; the prohibitions on attacks on civilians and civilian objects, that do not discriminate between civilians and military objectives, and that cause disproportionate harm to civilian and civilian objects; and the obligations to take all feasible precautions to avoid and, in any event, to minimize harm to civilians and civilian infrastructure;

4. Facilitate unimpeded access and movement of humanitarian aid, medical supplies, humanitarian workers, and life-saving commercial goods without interference or discrimination throughout Yemen, including supplies needed to maintain food
production, water, health facilities, and fuel needed to operate water pumps and generators;

5. Resume and ensure uninterrupted civil servant salary payments to all civil servants throughout the country, with a priority for health, education, sanitation, and other essential workers;

6. In the context of the COVID-19 pandemic and the persistent outbreaks of other communicable and water-borne diseases in Yemen, contribute to and cooperate with efforts aimed at limiting the spread of COVID-19 and other diseases, as well as the spiral of other pandemic and disease-aggravated humanitarian crises, while complying with IHL and IHRL obligations;

7. Support, cooperate fully with, and contribute to efforts to ensure prompt, effective and adequate reparations, as well as other forms of amends, to impacted civilians; and

8. Cooperate fully with the GEE, the POE, UN special procedures mandate holders, including the UN Special Rapporteur on the Right to Food and the UN Special Rapporteur on the human rights to safe drinking water and sanitation, and other UN entities, as well as the International Criminal Court and other criminal investigators, where appropriate, so that allegations of violations and abuses committed by all parties to the conflict in Yemen can be properly investigated, documented and the perpetrators thereof brought to account.

Saudi Arabia, UAE, other members of the Saudi/UAE-led Coalition and the internationally recognised Government of Yemen

1. Refrain from attacking, destroying, removing and rendering useless OIS, and refrain from carrying out attacks with explosive weapons with wide area effects in populated areas;
2. Cease restrictions and impediments to the flow of goods and people into Yemen, including by allowing Sana’a International Airport to open for humanitarian and commercial flights and ending restrictions on the flow of humanitarian aid and other critical, life-saving goods through Al-Hudaydah seaport and other entry points to Yemen;

3. Protect and fulfil Yemenis’ rights to food, water and sanitation, adequate standard of living and health, and refrain from acts or omissions that are likely to have a negative impact on Yemenis’ enjoyment of economic, social, and cultural rights; and


### Ansar Allah (Houthi) Armed Group

1. End the of use of antipersonnel and antivehicle mines, and take care to minimize the indiscriminate effects of landmines that have already been laid, including by signposting warnings of the location of landmines, by providing maps of mine-affected areas to facilitate de-mining, and by removing, otherwise rendering harmless to civilians, and facilitating the removal of landmines, with a priority on those laid in and around food and water sources;

2. End all humanitarian obstruction, including by facilitating unimpeded access for humanitarian workers to and through all areas under the control of Ansar Allah so that humanitarian workers can identify humanitarian needs and impartially assist people in need; facilitating the movement of humanitarian aid, medical supplies and life-saving commercial goods without interference or discrimination throughout areas under Ansar Allah control, including supplies needed to maintain food production, water, health facilities, and fuel needed to operate water pumps and generators; and ending all unnecessary obstacles and interference in the humanitarian response, in particular those that hamper the delivery of and access to OIS; and cease, among other abuses, aid diversion, siege-like warfare and economic impediments to accessing OIS; and
3. Refrain from placing military targets in, or carrying out hostilities on or near, civilian objects and populated civilian areas.

**Internationally recognized Government of Yemen:**

1. Resume and ensure uninterrupted civil servant salary payments to civil servants throughout the country, with a priority for health, education, sanitation, and other essential workers;

2. Support the establishment of a mechanism to rebuild critical civilian infrastructure damaged or destroyed during the armed conflict in a timely manner, including health care facilities, schools, and essential water and food production facilities;

3. Clear landmines in areas under the government’s control, with a focus on those that are on or fall along paths to, or are otherwise near, water and food sources;

4. Take proactive steps to prevent further harm to civilians, including by proactively seeking to prevent further damage to OIS, including by working to ensure the coalition’s no-strike list is up-to-date and includes essential food, water, and health facilities, as well as functioning educational facilities; by raising specific cases of civilian harm with the Saudi/UAE-led Coalition, including those documented in this report;

5. Extend an invitation to relevant UN entities, including the GEE and UN special procedures mandate holders, including the UN Special Rapporteur on the right to food and the UN Special Rapporteur on the human rights to safe drinking water and sanitation, to visit Yemen, and cooperate with these entities; and

6. Ensure that any transitional justice mechanism established to address violations and abuses of IHL and IHRL during the current conflict addresses economic, social, and cultural rights, as well as the impact of the conflict on groups disproportionately affected by it, including women and girls; adopts transparent, inclusive and fair procedures, and gender-aware and intersectional approaches
to peace-building and accountability processes, with sufficient information publicly released for independent monitoring; and offers meaningful reparations and amends to civilians.

### United Nations Security Council

To facilitate a range of preventative and accountability-oriented tools available under UN Security Council (UNSC) Resolution 2417, as well as other relevant UNSC resolutions, the UNSC should:

1. Refer the situation in Yemen to the ICC to conduct a full investigation into alleged international crimes committed by the parties to the conflict and into actors that may be complicit in them;

2. Call for and provide support to independent, impartial, full, prompt, and effective investigations into alleged violations and abuses of IHRL and IHL by all parties to the conflict, as well as those providing support to such parties, pursuant to international standards;

3. Examine the extent to which other actors are responsible for “engaging in or providing support for acts that threaten peace and security,” “planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses,” and “obstructing the delivery of humanitarian assistance to Yemen or access to, or distribution of, humanitarian assistance in Yemen” as well as acts falling under UNSC Resolutions 2410 and 2216, with a view to extending sanctions to all parties responsible for starvation-related conduct, including individual Security Council member states supporting the Saudi/UAE-led Coalition through arms supply;

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1217 Including UN Security Council, “Resolution 2451 (2018),” UN Doc. S/RES/2451 (December 21, 2018), paras. 8, 10, https://undocs.org/S/RES/2451(2018); UN Security Council, supra note 711 at paras. 9, 14 and 19; UN Security Council, supra note 1166 at paras. 11, 14-15, 17, 18 and 28. See also Resolution 2204 (2015), supra note 1176 at para. 2; Resolution 2266 (2016), supra note 1176 at para. 2; Resolution 2342 (2017), supra note 1176 at para. 2; Resolution 2402 (2018), supra note 1176 at para. 2; Resolution 2456 (2019), supra note 1176 at para. 2; Resolution 2511 (2020), supra note 1176 at para. 2.
4. Appoint a special envoy on UNSC Resolution 2417 to monitor and quickly inform the UNSC about conflict-induced food insecurity in armed conflicts, including Yemen, with a view to facilitating and encouraging the safe and reliable reporting of information to the UN Secretary General within 30 days after emerging situations;

5. Establish an independent body of experts, building on the Famine Review Committee (FRC) of the Integrated Food Security Phase Classification process, to collect and channel sensitive information and equip the Special Envoy, the UNSC and the Secretary-General to take action;

6. Include in the agenda of the monthly meeting on Yemen focused discussion on accountability for IHL and IHRL violations and abuses, exploring mechanisms of accountability to secure justice and redress for victims and including relevant Yemeni stakeholders, specifically representatives of victims, in the discussion;

7. Ensure the proactive integration of the human rights dimensions of the conflict into all decision making, as well as discussions seeking a political solution to the conflict, including by:

   • Hosting Yemeni human rights defenders to brief the UNSC, inviting the GEE to formally present its annual report to the Council, and adopting a resolution regarding ongoing violations of international law in Yemen, based on the findings of the GEE and POE; and

   • Demanding an immediate cessation of hostilities and clearly stating that the accountability of perpetrators of violations and abuses of IHL and IHRL, and international crimes, as well as reparations to impacted civilians, constitute essential components of any peace and transitional justice processes.
United Nations Human Rights Council

To ensure justice and redress for violations and abuses of IHL and IHRL, as well as contribute to accountability for international crimes, at the 48th regular session in 2021, the UN Human Rights Council (UN HRC) should:

1. Support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings.

2. Call on parties to the conflict to comply with their obligations under international law, including IHL and IHRL, including by refraining from depriving civilians of OIS and guaranteeing unimpeded humanitarian access and otherwise respecting, protecting and facilitating civilians’ right to food and water.

3. Ensuring the continuity of the GEE’s operations through an ongoing or multi-year mandate to continue investigating the warring parties’ violations and abuses of IHL and IHRL in Yemen, including with respect to the impact these violations have had on starvation, and preserve the information from these investigations for future use, including efforts towards accountability and reparation, and renew the GEE’s mandate to advise states on practical steps to ensure justice and redress; and

4. Remain seized of the matter.

States

To combat food insecurity and famine, prevent further violations and abuses of IHL and IHRL and secure justice and redress for victims, States, where appropriate, should:

1. Support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence,
and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings;

2. Conduct independent, impartial, full, prompt, and effective investigations into alleged international crimes, including in relation to the starvation of civilians, and hold the perpetrators accountable, including through the exercise of universal or other forms of jurisdiction;

3. Ensure the effective criminalization of starvation as a method of warfare, including through widespread ratification of the amendment to the Rome Statue making it a crime in NIACs and penalization of the offence in domestic law;

4. Support the integration of human rights into peace negotiations, avoiding any steps which would undermine respect for human rights and accountability and supporting processes towards effective transitional justice;

5. Support initiatives to increase understanding of the legal framework governing starvation as a method of warfare, including of justice system actors, with a view to supporting the investigation and prosecution of starvation-related conduct at the domestic level;

6. Support the capacity building of civil society organisations, non-government organizations and domestic and international human rights monitoring and criminal investigation bodies to develop expertise on evidence collection techniques and engagement with accountability mechanisms as appropriate;

7. Immediately cease activities perpetuating the conflict and potentially contributing to violations in Yemen, including by ceasing arms sales and transfers to the warring parties; and

8. Continue donations and fundraising to support critical life-saving humanitarian efforts.
United States, United Kingdom and France

1. Support, and actively call for a referral of the situation in Yemen to the ICC to conduct a full investigation into alleged international crimes committed by the parties to the conflict and into actors that may be complicit in them;

2. Support the establishment of an international criminally-focused investigative mechanism with a mandate to collect, consolidate, preserve and analyse evidence, and to prepare case files in order to facilitate and expedite fair and independent criminal proceedings; and

3. Immediately cease all sales of arms to the warring parties.

Iran

1. Immediately cease the transfer of weapons and the provision of logistical Support and other military support to the Ansar Allah armed group (Houthi).
Annex 1

Airstrikes recorded by Yemen Data Project
### Airstrikes on agriculture

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The use of starvation by warring parties in Yemen
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### Airstrikes on artisanal fishing and fishing infrastructure

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Annex 2
Interviews conducted by Mwatana for this report
List of interviews related to airstrikes on agricultural infrastructure in Hajjah Governorate (See Part G, Section 2)

<table>
<thead>
<tr>
<th>Sr.</th>
<th>Name of interviewee</th>
<th>Case</th>
<th>Interview date</th>
<th>Note</th>
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<tbody>
<tr>
<td>1</td>
<td>Othman Abdo Mohmmed Taweel</td>
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<td>Farmer and eye-witness</td>
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<td>Victim</td>
</tr>
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<td>The farm’s owner’s son</td>
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<td>Yusef Ashram</td>
<td>Taweel Farm</td>
<td>20 July 2019</td>
<td>Victim</td>
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<td>5</td>
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<td>A victim’s brother</td>
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<td>Ahmed Jalhouf</td>
<td>Jalhouf farm</td>
<td>15 December 2020</td>
<td>Farmer and eye-witness</td>
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<td>Jalhouf farm</td>
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<td>Farmer and eye-witness</td>
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<td>Ahmed Hamoud Jalhouf</td>
<td>Jalhouf farm</td>
<td>04 August 2017</td>
<td>Farmer and eye-witness</td>
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<td>A victim’s brother</td>
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<td>An eye-witness and a victim’s brother</td>
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<td>Aqeel Ahmed Ati</td>
<td>A farm’s cook and an eye-witness</td>
<td>16 December 2020</td>
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<td>Aidh Rabee’ Ati</td>
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<td>04 September 2020</td>
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<tr>
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<td>17 December 2020</td>
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<tr>
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<td>Khalid Ibraheem Mohammed Hussain</td>
<td>Health worker</td>
<td>14 December 2020</td>
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<td>Muhammad Siddiq</td>
<td>Health worker</td>
<td>13 December 2020</td>
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# List of interviews related to airstrikes on water facilities and water sources in Saada Governate

(See Part G, Section 3)

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<th>Note</th>
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<td>Humanitarian Worker</td>
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<td>Former worker at Al-Nushoor Water Facility</td>
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<td>Rajeh (a pseudonym)</td>
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<td>Interviewee 14</td>
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## List of interviews related to airstrikes on artisinal fishing in Al-Hudaydah Governorate (See Part G, Section 4)

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<td>Survivor</td>
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<tr>
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<tr>
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<td>Date</td>
<td>Role or Status</td>
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<td>Aqaban Island</td>
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<td>Abdullah Alaallah Mohammed</td>
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<td>Survivor</td>
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<td>19 December 2020</td>
<td>Local resident and a fisherman</td>
</tr>
<tr>
<td>18</td>
<td>Hazza’a Heba Ali</td>
<td>Aqaban Island</td>
<td>12 January 2021</td>
<td>IDP</td>
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<tr>
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<td>Al-Badeea` Island and Aqaban Island</td>
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<td>A worker in the fish market</td>
</tr>
<tr>
<td>20</td>
<td>Abdul Jabbar (a pseudonym)</td>
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<td>21 December 2020</td>
<td>Humanitarian Worker</td>
</tr>
<tr>
<td>21</td>
<td>Samar (a pseudonym)</td>
<td>Al-Badeea` Island and Aqaban Island</td>
<td>11 January 2021</td>
<td>Health Worker</td>
</tr>
<tr>
<td>22</td>
<td>Huda (a pseudonym)</td>
<td>Al-Badeea` Island and Aqaban Island</td>
<td>9 January 2021</td>
<td>Humanitarian Worker</td>
</tr>
<tr>
<td>23</td>
<td>Lamees Ismail Mohammed</td>
<td>Al-Badeea` Island and Aqaban Island</td>
<td>10 January 2021</td>
<td>A Humanitarian Worker</td>
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</table>
List of interviews related to restrictions on humanitarian access by the Ansar Allah (Houthi) armed group in Saada Governorate (See Part H, Section 2)

<table>
<thead>
<tr>
<th>Sr.</th>
<th>Name of interviewee</th>
<th>Interview date</th>
<th>Note</th>
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<tbody>
<tr>
<td>1</td>
<td>Interviewee 18</td>
<td>14 April 2021</td>
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<tr>
<td>2</td>
<td>Interviewee 19</td>
<td>15 April 2021</td>
<td>Humanitarian worker</td>
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<tr>
<td>3</td>
<td>Khairallah (a pseudonym)</td>
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<td>Beneficiary</td>
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<td>4</td>
<td>Interviewee 20</td>
<td>3 June 2018</td>
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</tr>
<tr>
<td>5</td>
<td>Interviewee 21</td>
<td>4 June 2018</td>
<td>Humanitarian worker</td>
</tr>
<tr>
<td>6</td>
<td>Interviewee 22</td>
<td>25 June 2018</td>
<td>Humanitarian worker</td>
</tr>
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<td></td>
<td>Interviewee</td>
<td>Date</td>
<td>Position</td>
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<td>7</td>
<td>Interviewee 23</td>
<td>20 February 2019</td>
<td>Humanitarian worker</td>
</tr>
<tr>
<td>8</td>
<td>Interviewee 24</td>
<td>21 February 2019</td>
<td>Humanitarian worker</td>
</tr>
<tr>
<td>9</td>
<td>Interviewee 25</td>
<td>14 April 2021</td>
<td>Humanitarian worker</td>
</tr>
<tr>
<td>10</td>
<td>Interviewee 26</td>
<td>15 April 2021</td>
<td>Humanitarian worker</td>
</tr>
<tr>
<td>11</td>
<td>Interviewee 27</td>
<td>16 April 2021</td>
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<tr>
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<td>Interviewee 29</td>
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<tr>
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<td>Saif (a pseudonym)</td>
<td>13 April 2021</td>
<td>Humanitarian worker</td>
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<tr>
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<td>Interviewee 30</td>
<td>13 April 2021</td>
<td>Humanitarian worker</td>
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<tr>
<td>16</td>
<td>Interviewee 31</td>
<td>14 April 2021</td>
<td>Humanitarian worker</td>
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<td>Interviewee 32</td>
<td>15 April 2021</td>
<td>Humanitarian worker</td>
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<td>Taqwa (a pseudonym)</td>
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<tr>
<td>19</td>
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<td>Interviewee 35</td>
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<td>Talal (a pseudonym)</td>
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<td>19 April 2021</td>
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<td>24</td>
<td>Interviewee 37</td>
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<td>25</td>
<td>Interviewee 38</td>
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<tr>
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<td>Omran (a pseudonym)</td>
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<td>Humanitarian worker</td>
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<td>27</td>
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<td>Interviewee 40</td>
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<td>29</td>
<td>Ayman (a pseudonym)</td>
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<td>Humanitarian worker</td>
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<td>30</td>
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<tr>
<td>31</td>
<td>Interviewee 42</td>
<td>2 March 2021</td>
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</table>
List of interviews related to the laying of landmines by the Ansar Allah (Houthi) armed group in Taiz Governorate (See Part H, Section 3)

<table>
<thead>
<tr>
<th>Sr.</th>
<th>Name of interviewee</th>
<th>Job</th>
<th>Interview date</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Waheed Zaid Mohammed Hasan</td>
<td>Handyman</td>
<td>22 December 2020</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Ali Mohammed Abdullah</td>
<td>Logger</td>
<td>22 December 2020</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Saeed Abdullah Mohammed</td>
<td>Shepherd</td>
<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Ahmed Ahmed Saeed</td>
<td>Shepherd</td>
<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Faid Zaid Ahmed Hassan</td>
<td>Shepherd</td>
<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Aish Morshid Mohammed</td>
<td>Shepherd</td>
<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Ameera Modhish Mohammed</td>
<td>Shepherd</td>
<td>22 December 2020</td>
<td>Relative of a victim</td>
</tr>
<tr>
<td>8</td>
<td>Fahd Mohammed Ahmed</td>
<td>Shepherd</td>
<td>22 December 2020</td>
<td>Victim</td>
</tr>
<tr>
<td>9</td>
<td>Haidari Ibraheem Ahmed</td>
<td>Shepherd</td>
<td>22 December 2020</td>
<td>Victim</td>
</tr>
<tr>
<td>10</td>
<td>Salma Qasim Khader</td>
<td>Shepherd</td>
<td>22 December 2020</td>
<td>Relative of a victim</td>
</tr>
<tr>
<td>11</td>
<td>Saleh Ahmed Ali Al-Kiri</td>
<td>Logger</td>
<td>22 December 2020</td>
<td>Relative of a victim</td>
</tr>
<tr>
<td>12</td>
<td>Fouad Mohammed Ahmed</td>
<td>Logger</td>
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<td>Relative of a victim</td>
</tr>
<tr>
<td>13</td>
<td>Mohammed Ali</td>
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<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Zaid Ahmed</td>
<td>Logger</td>
<td>20 December 2020</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Abdo Saleh Mohammed</td>
<td>Fisherman</td>
<td>20 December 2020</td>
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</tr>
<tr>
<td>16</td>
<td>Ali Mohammed Saeedi</td>
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<td>21 December 2020</td>
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<tr>
<td></td>
<td>Name</td>
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<td>Date</td>
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<tr>
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<tr>
<td>17</td>
<td>Mansoor Ahmed Ali</td>
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<td>21 December 2020</td>
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<tr>
<td>18</td>
<td>Faiz Ali Thabet</td>
<td>Farmer</td>
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<tr>
<td>19</td>
<td>Saeed Alwan Ahmed</td>
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<td>20 December 2020</td>
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<tr>
<td>20</td>
<td>Salah Saleh Zaid</td>
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<td>20 December 2020</td>
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<td>21</td>
<td>Awad Ahmed Ali Al-Kiri</td>
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<td>Haidari Ibraheem Ahmed</td>
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<td>24</td>
<td>Ali Saleh Mohammed</td>
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<tr>
<td>25</td>
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<td>26</td>
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<td>Shepherd</td>
<td>17 October 2019</td>
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Cover: Destruction in Al-Jahmali neighborhood, one of the oldest residential neighborhoods in the city of Taiz, which was famous for the coexistence of its diverse population. Taiz City, Taiz Governorate. July 20, 2019.
Starvation Makers

The use of starvation by warring parties in Yemen

Starvation Makers, co-authored by Mwatana for Human Rights and Global Rights Compliance, documents the devastating impact that warring party attacks and other conduct by the Saudi/UAE-led coalition and the Ansar Allah (Houthi) armed group has had on access to OIS (objects indispensable to the survival of the civilian population). Using case studies, the report highlights and provides legal analysis regarding five patterns of attack or conduct across four particular geographic areas between 2015 and 2021 in which Mwatana repeatedly documented the specific pattern impacting food and water, namely: airstrikes by the Saudi/UAE-led coalition on farms in Hajjah Governorate, on water facilities in Saada Governorate, and on fishermen and fishing facilities in Al-Hudaydah Governorate; and landmines laid by Ansar Allah impacting food and water security in Taiz Governorate, and humanitarian obstruction by the group in Saada Governorate.

The report follows six years of research and documentation of attacks and conduct impacting civilians in Yemen, in addition to a year-long investigation in which Mwatana researchers conducted an additional 101 interviews specific to the report. The interviews focused on individuals’ and communities’ access to food, water, and other objects indispensable to survival and how specific attacks and incidents affected such access, including by impacting livelihoods. The individuals interviewed for this report included victims, family members of victims, witnesses, individuals working at or near the objects or areas impacted, residents of the impacted areas, and others.

Starvation is one of the greatest threats to peace and stability in Yemen. In the quest for greater accountability for the civilians caught in the crosshairs of the war in Yemen, the following report can serve as a prelude to examining the ways in which the conduct of parties to this war has been a cause of starvation, and the impacts that this has had on the population.