

# Some recent remarks to the UN Security Council on the Situation in Yemen by the United Nations Group of Eminent International and Regional Experts on Yemen

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On 3 December 2020, the United Nations (UN) Group of Eminent International and Regional Experts on Yemen (the Group) presented its third annual report to members of the UN Security Council to help integrate the human rights dimension of the conflict in Yemen more fully into its agenda. On 29 September 2017, the UN Human Rights Council (HRC) requested the UN High Commissioner for

Human Rights to establish the Group. The Group is mandated to investigate and report on violations of international human rights law and international humanitarian law committed by all parties to the conflict in Yemen since its outbreak in 2014. This past September, the 3-member Group, with Kamel Jendoubi (Tunisia) as Chair, Melissa Parke (Australia) and Queen's Law Professor Ardi Imseis (Canada), released its third annual report, "Yemen: A Pandemic of Impunity in a Tortured Land" supplemented by a more detailed "Conference Room Paper". The Report contains the Group's latest findings and recommendations after a thorough investigation into the multi-party civil war that has created the world's worst humanitarian crisis. As a result of the war: approximately 80 per cent of the population require humanitarian aid to survive (24 million people, 18 million of whom are women and children); over 112,000 people have been killed, including 12,000 civilians; and over 3.5 million people have been displaced from their homes. There are no clean hands in the conflict, with all sides responsible for violations of international human rights law and international humanitarian law, including attacks affecting civilians or civilian objects, arbitrary deprivation of life, starvation as a weapon of war, torture and enforced disappearances, sexual and gender-based violence, and recruitment of child soldiers. Among its recommendations, the Group recommends that the Security Council refer the situation in Yemen to the International Criminal Court and also to create an investigative body such as the ones established for Syria and Myanmar to gather evidence for the prosecution of offenders before domestic and international courts. The Group also calls on third states to exercise their universal jurisdiction over such crimes. A Backgrounder to the meeting can be found here. A Press Release issued by the sponsoring UN Member States followed the meeting here. A Press Release from the UN Office of the High Commissioner for Human Rights can be found here.

The Chair, Kamel Jendoubi delivered the following remarks to the Security Council, providing an overview of the humanitarian crisis in Yemen and the Group's conclusion that the fact that new means of assessing responsibility for the breaches of human rights parties suffered by the people of Yemen caused by the parties to the continuing conflict are needed:

« Monsieur le Président,

Excellences,

Au nom de mes collègues, je vous adresse mes remerciements de nous avoir donné l'occasion de vous présenter le travail que nous avons réalisé durant trois ans.

Voici maintenant six ans que la guerre sévit au Yémen tel un conflit sans fin. Comme dans ses précédents rapports, le Groupe d'experts a continué à enquêter et à tirer des conclusions sur les violations qui démontrent que toutes les parties au conflit causent sans discontinuité des préjudices aux civils. Qu'il s'agisse des frappes aériennes illégales, des bombardements aveugles, des obstacles mis à l'aide humanitaire, des mines terrestres, des détentions arbitraires, de la torture, des violences sexuelles et des disparitions forcées, des attaques contre les journalistes, les défenseurs des droits de l'homme et les minorités, des violations des droits des femmes, des hommes, des migrants et des enfants (notamment les enfants soldats). L'impunité est endémique et le Yémen, un

pays ravagé. Tel est d'ailleurs le titre de notre troisième rapport « le Yémen : la pandémie de l'impunité dans une terre torturée ».

Les hostilités y sont permanentes et s'intensifient périodiquement (Ma'rib , Hodeïda…), parallèlement à une fragmentation croissante de l'autorité militaire et politique. Le climat de peur pour tous ceux qui vivent au Yémen s'est encore alourdi en dépit des accords politiques et discussions à haut niveau entre les principaux acteurs placés sous l'égide de l'envoyé spécial du Secrétaire général, Mr Martin Griffiths.

Les défis politiques et militaires se sont décuplés avec l'apparition de la COVID-19. Bien que le Secrétaire général des Nations unies ait appelé à un cessez-le-feu mondial afin de concentrer tous les efforts sur la prévention de ce nouveau danger de la COVID-19 - suivi d'un appel spécifique à un cessez-le-feu au Yémen - cela ne s'est pas concrétisé sur le terrain.

En fin de compte, les civils au Yémen continuent de payer le prix le plus fort survivant dans une situation de conflit sans fin et de danger permanent encore aggravée par l'arrivée de cette épidémie de la COVID-19. Celle-ci est survenue dans un contexte où à peine la moitié des établissements de santé au Yémen sont fonctionnels. Quant aux établissements encore opérationnels, ils sont sous-équipés pour faire face à la maladie. A la malnutrition viennent s'ajouter des épidémies liées aux maladies infectieuses, telles que le choléra, la dengue et le virus Chikungunya, ainsi qu'une vulnérabilité particulière de certains groupes en raison du déplacement et du mauvais accès aux services sanitaires (par exemple, les personnes déplacées et les réfugiés).

Tout cela est encore aggravé par les mesures inadéquates adoptées par les autorités yéménites, par les Houthis et par le Conseil de transition du sud soutenu par les Emirats Arabes Unis, la mauvaise collecte de données et les tentatives avérées de dissimuler les informations concernant les taux d'infection. En conséquence, il est très difficile de connaître le nombre exact de personnes mortes de la COVID-19, les chiffres officiels ne reflétant pas la réalité. Le groupe d'experts a demandé à plusieurs reprises la libération des détenus, exposés à un risque accru d'infection.

Le Groupe d'experts reste préoccupé par les dégâts massifs causés aux hôpitaux et aux établissements médicaux du fait du comportement des parties au conflit, ce qui aggrave la crise humanitaire au Yémen. Au cours des périodes précédentes, le Groupe d'experts a enquêté sur des cas d'utilisation militaire d'hôpitaux et sur les dommages causés par ces attaques.

Dans un contexte d'insécurité alimentaire aiguë, d'obstacles à l'aide humanitaire et de destruction de l'économie, les taux de malnutrition et de faim parmi les enfants sont extrêmement élevés. Ces chiffres ont augmenté depuis l'épidémie du virus Covid-19. Quand bien même le virus épargne davantage les enfants, l'épidémie augmente le risque pour ceux-ci de perdre des aidants et des soutiens de famille adultes ainsi que des services de santé et d'éducation vitaux. Ce qui par conséquent augmente le recours à des stratégies de survie économique telles que le recrutement d'enfants, le travail et les mariages forcés et précoces. L'UNICEF et le Groupe de la santé yéménite

ont pointé l'interdépendance de l'épidémie, l'impact cumulatif d'années de conflit sur le système de santé yéménite et les contraintes de financement qui entraîne une diminution drastique des services de santé infantile et parfois même l'arrêt des programmes de vaccination contre le tétanos, la diphtérie et la polio ainsi que la fermeture d'écoles (affectant 7,8 millions d'enfants).

Le Groupe d'experts a trouvé des motifs raisonnables de croire que les Houthis, le gouvernement du Yémen et la coalition arabe dirigée par l'Arabie Saoudite continuaient de violer le droit des enfants à l'éducation et avaient recruté des enfants pour les utiliser dans des hostilités en violation du droit international des droits de l'homme et du droit international humanitaire. Le recrutement d'enfants de moins de 15 ans dans des forces ou groupes armés ou leur utilisation pour participer activement aux hostilités est un crime de guerre. Le groupe d'experts conclut également que l'utilisation militaire des écoles et les violations contre les enseignants limitent l'accès des enfants à l'éducation pendant les conflits, tandis que les activités d'endoctrinement menées par les Houthis sapent les objectifs corrects de l'éducation visant à développer le respect des droits de l'homme et à préparer les enfants à une vie responsable dans une société libre. Le Groupe d'experts a également constaté que les Houthis avaient violé le droit des éducateurs à la liberté et à la sécurité personnelle, ainsi que leur droit à la liberté d'expression.

(ma collègue Melissa Parke présentera abordera dans son intervention les violations graves qui touchent la population civile)

Un élément clé de notre mandat a trait à rechercher l'établissement de la responsabilité pour les violations et abus du droit international des droits de l'homme et les violations du droit international humanitaire commises au Yémen depuis 2014.

Dans ses différents rapports, le Groupe d'experts a souligné l'impunité qui prévaut et l'absence de mise en responsabilité pour les graves violations qu'il a identifiées. Il a examiné en détail les systèmes d'enquête mis en place au Yémen et à l'extérieur du Yémen : en particulier les travaux de la Commission nationale d'enquête du gouvernement du Yémen et de l'équipe conjointe d'évaluation des incidents de la Coalition arabe (JIAT), et dans une moindre mesure, le enquêtes des autorités houthies/*de facto* (en raison des informations limitées mises à la disposition du GEE par les Houthis).

Le Groupe d'experts est parvenu à la conclusion que le fait que les parties n'aient reconnu aucune responsabilité pour les violations constatées ainsi que leur refus de prendre des mesures significatives pour remédier à la situation avait entraîné une absence de responsabilité généralisée. Le Groupe d'experts a établi une liste confidentielle des auteurs qu'il a déposée auprès de la Haute-Commissaire aux droits de l'homme.

Après six ans de conflit - la situation ne s'améliorant pas sur le terrain pour les civils - et l'impunité prévalant, le Groupe d'experts est fermement convaincu que de nouvelles initiatives sont nécessaires pour traiter la question de la responsabilité.

( mon collègue Ardi Imseies présentera nos conclusions et recommandations en matière de responsabilité )

Le manque actuel de financement de l'aide humanitaire internationale aggrave la crise humanitaire dans le pays. L'écart entre les promesses faites par les pays donateurs et leur concrétisation est très préoccupant. « Les Yéménites ne souffrent pas de la faim. Ils sont affamés » avait déclaré Mr. Lowcock, le 11 novembre 2020, devant votre Conseil rejoignant nos craintes que les parties au conflit aient utilisé la famine comme méthode de guerre au Yémen en attaquant des biens indispensables à la survie de la population, en imposant des sièges ou encore en empêchant l'acheminement de l'aide humanitaire. Les effets de ces actions ont été exacerbés par le non-respect des droits économiques, sociaux et culturels, en particulier le droit à un niveau de vie suffisant et le droit au travail.

Dans ce contexte, il convient de soutenir l'appel du Secrétaire général des Nations-Unies, Mr Antonio Guterres, à la Communauté internationale à agir d'urgence pour sauver les gens de la famine. Il est aussi impératif de réitérer l'appel vigoureux lancé par le Conseil de sécurité dans la résolution 2417 qui exhorte les États à mener des enquêtes indépendantes, complètes, impartiales et efficaces relevant de leur juridiction sur les violations du droit international humanitaire liées à l'utilisation de la famine comme méthode de combat.

Je vous remercie.

Je passe la parole à ma collègue Melissa Parke. »

Melissa Parke delivered the following remarks, focusing particularly on the plight of women and children in Yemen:

"The Group of Eminent Experts on Yemen has endeavoured in each of its reports in the last three years to focus on the plight of civilians in Yemen – to portray the impact of years of conflict and ongoing serious human rights violations from the perspective of the ordinary person in Yemen. In this spirit, I'd like to read out to honourable council members a message from a typical young girl in Yemen.

*My name is Amal, it means hope, although it is my bad luck to be a girl in Yemen. The UNDP gender inequality index says this is the worst country on earth to be female, but I already knew that in my heart. I am 11 years old. I haven't been to my local school for 3 years as it has been taken over by militants from one side and bombed by the other side, and anyway I have to help my mother find food and clean water every day to care for my younger siblings and our grandmother. We are all starving as a result of the blockade on the ports and the actions of the parties to the conflict to restrict humanitarian aid being distributed to the population. I don't understand why they are doing this to the people and I wasn't surprised to learn that Yemen is the worst humanitarian crisis in the world, with 80% of our population – that is* ***24 million*** *people - dependent on aid just to survive. My mother has already sold everything we owned to buy food and now there is nothing left.*

*I used to love school and would like to go back once the war is over, but it will be up to my husband to decide. I am to be married tomorrow to a businessman my uncle knows, whose wife died last year as a result of not being able to access medical treatment for cancer. I don't want to marry this man and leave my family but I have no choice.*

*The dowry from my marriage will bring my family a little money, which we desperately need, although with the depreciation of the Yemeni Rial, it may not amount to much in the end. My mother and my uncle have also decided the marriage is necessary to protect my honour – they are worried about me being raped, as happened to my poor friend Rashida – she is from the minority Muhamasheen community who are always being persecuted – she and her family have now fled to Ma'rib along with many of their community and are living in a tent in an IDP camp - they must be so cold and scared.*

*Life has been especially hard for us as well, since my father was arrested and disappeared. We don't know where he has been taken or why. It is probably because he is a journalist and was writing stories about the authorities, which they didn't like. My mother has been regularly joining other women in demonstrations calling for information about their loved ones. At last week's demonstration she was threatened and assaulted by men wearing balaclavas, but she said she would still go to the demonstrations. She is so brave, my mother.*

*My uncle was released from prison 2 months ago. He doesn't talk about what happened to him in there but he now has a limp and always looks as if he is in pain. Once I accidentally caught sight of the wounds and scars on his body. He must have been tortured. His son, my 12 year old cousin Bilal, has joined an army brigade against my uncle's wishes. He's done it to try and earn some money for the family. We are all so worried about my father and Bilal, and also what will become of us.*

*Every day is a struggle and we live all the time in fear. It feels as though there is nowhere to be safe, as people can be kidnapped off the streets or they can be killed by rockets in their own homes or at the market, or at funerals or weddings. Those who are not killed are often left severely disabled and cannot get proper treatment. Hospitals can't even get enough fuel to run the generators to keep the lights on. Our cousin Raida in Taiz trod on an anti-personnel landmine last year when she was playing in the field next to her home and lost both her legs. She doesn't have a wheelchair to get around and is confined to bed.*

*I thought there were supposed to be rules of war to protect civilians, but I've never heard of anyone being punished in this war for killing or hurting innocent people, even for bombing a busload of children or hospitals.*

*When we heard about the Coronavirus going around the world we thought perhaps the parties to the conflict would take the opportunity to call a face-saving end to the war. Sadly, the conflict has only increased this year, and so has our misery. Covid-19 is just another threat to add to the many we are already coping with.*

*I heard there is an ageing oil tanker with more than a million barrels of crude oil that might spill into the Red Sea – if that happens the world's worst humanitarian catastrophe will become an even bigger nightmare for Yemen and the whole region.*

*I don't understand why so many countries are continuing to sell weapons to parties to the conflict, including western countries that say they believe in human rights. They must know their weapons are killing and hurting innocent people. They must know after six years about the disproportionate impact upon civilians of airstrikes and the use of indiscriminate weapons in populated areas. My uncle says the last six years have proven that the world doesn't care about Yemen, even though it is an ancient and proud land with beautiful natural and cultural heritage.*

*However I still cradle a small hope in my heart that the world does care, that somewhere there are people – maybe you - who will listen to my story and take the messages to your people and governments that you can do something good; that rather than paying lip service to human rights and doing nothing, or worse, delivering bloodshed via rockets, you can instead bring hope and peace to a battered land and a shattered people. Surely you want to leave a positive legacy to tell your grandchildren – that you helped to save a girl like me?*

*I have to go now. Wish me luck for my wedding tomorrow and afterwards. I will need it. In case you forgot, my name is Amal, it means hope. Thank you.*

The message from Amal, which could have been from any girl in Yemen, reminds us that large-scale violations of human rights and humanitarian law have a consequence for families, communities and regions. Violations lead to displacement, starvation and insecurity. Impunity for violations leads to further and worse violations being committed, creating further insecurity, especially for women and children.

Of the more than 3.5 million internally displaced persons in Yemen, most are women and children.

Yemeni society was already patriarchal before the war, but the situation of women has become far more precarious with the conflict and the associated displacement, poverty and indiscriminate violence. The already limited support against violence provided by the criminal justice system has collapsed and now law enforcement actors pose a direct threat to women's security. Sexual violence is rampant in the conflict, being deliberately used by the parties to humiliate and create fear. Our group verified cases of sexual violence against male and female migrants by the Security Belt forces backed by the UAE; against women held in secret Houthi detention facilities; and against boys and men by the Govt of Yemen and UAE forces.

All of the parties to the conflict have demonstrated a continued **un**willingness to bring this conflict to an end, to comply with international law, or to alter their behaviour in the slightest to protect civilians.

After 6 years it is now the collective responsibility of the international community to intervene.

The human rights crisis in Yemen squarely pertains to matters on the UN Security Council's agenda, including threats to international peace and security, the situation in the Middle East, Protection of civilians in armed conflict; Starvation as a method of warfare; Impediments to the delivery of humanitarian assistance; Women and Peace and Security: sexual violence in conflict; Children and armed conflict: recruitment and use of children in hostilities. We note that UNSC resolution 2417 (2018) acknowledges that using the starvation of civilians as a method of warfare may constitute a war crime and UNSC Resolution 2511 (2020) rightly condemns sexual violence and the use of children in conflict in Yemen as sanctionable acts.

However, for too long there has been an artificial divide between what happens in NY under the rubric of peace & security and development, and what happens in Geneva pertaining to human rights. In reality, the three pillars of the United Nations, namely human rights, peace & security, and development, are interconnected, interdependent and mutually reinforcing. Violations of human rights need to be called out for what they are — threats to peace, security and development, and a key driver of conflict.

Strong support for the rule of law and human rights are central to achieving sustainable peace and development in Yemen, and ought to be addressed by the international community in a coordinated, inclusive and integrated manner. Supporting an immediate ceasefire and stopping the flow of arms to the parties to the conflict should be part of this, as should establishing processes of accountability.

I will hand over to my colleague Dr Imseis to address these issues. Thank you."

Professor Imseis's remarks to the Security Council focused on the issue of accountability:

"Mr. President, Your Excellences.

After six unremitting years of conflict it is an understatement to say that a pandemic of impunity prevails in Yemen. For all of the political capital spent in the still elusive effort to find a peaceful resolution to the conflict, it is now self-evident that no peace, let alone a sustainable one, can be achieved in the absence of accountability. The bitter and festering wounds of this war, ever exacerbated by the passage of time, have made this a reality that must be reckoned with. In the absence of the ability or willingness of local authorities in Yemen to suitably address issues of accountability, the responsibility to ensure justice for war crimes, crimes against humanity and other violations of international law necessarily falls to the international community.

Given its mandate to ensure international peace and security, the Security Council is uniquely empowered to take concrete steps to help ensure accountability in Yemen. Despite claims that doing so would necessarily complicate the political track, we are now well beyond any such threshold. In the face of the findings made by the Group of Eminent Experts, that argument cannot reasonably be sustained. On the contrary, the longer the people of Yemen continue to be ravaged by violations of international human rights and humanitarian law without redress, the harder it will be for the Council to restore and maintain international peace and security.

In our earlier reports, we had foreshadowed the need for further international initiatives to deal with impunity in Yemen. This year we elaborated on what concrete shape those international initiatives might take by highlighting five separate options, as follows:

a. **First**, the Security Council must refer the situation in Yemen to the International Criminal Court without delay. The ICC was established to ensure that the most serious crimes of concern to the international community as a whole should not go unpunished. The Group has reasonable grounds to believe that such crimes have and are being perpetrated in Yemen. There is no principled reason for the Security Council not to shoulder its burden in this respect, as it has done in other difficult contexts.

b. **Second**, the Security Council must expand its list of persons subject to sanctions under its resolution 2140 (2014). The Group recognizes the importance of this sanctions regime as part of the international community's response to the ongoing violations. However, only a small number of individuals are currently on the list (5), and from only one party to the conflict. Given that the existing criteria allow for designations of individuals on the basis of their involvement in human rights and humanitarian law violations of the sort the Group has investigated, the Group urges the Security Council to expand the list. Failure to apply this sanctions regime uniformly to all parties to the conflict only undermines its legitimacy.

c. **Third**, third States – including each individual member of the Security Council – must investigate war crimes over which they have jurisdiction and, where appropriate, prosecute such crimes domestically. Third States must also fulfil their duties to prosecute or extradite that arise under international human rights law. The invocation of the domestic jurisdiction of third states is a potential avenue for redress for victims in Yemen, and one that must be encouraged by the Security Council as a body, and by its Members individually.

d. **Fourth**, there is a need for the establishment of an independent international investigative mechanism for Yemen, similar to those established for Syria and Myanmar. Such a body would be empowered to carry out further investigations, using criminal justice-focused methodologies and prepare case files to be shared with relevant authorities in the future, whether at the national, regional or international levels. Support for the establishment of such a body by members of the Security Council would go a long way to help in the fight against impunity in Yemen.

e. **Fifth**, in the longer term, the international community and the Yemeni authorities should engage in dialogue about the creation of a special tribunal such as a "hybrid tribunal" to prosecute individuals most responsible for war crimes and other violations. Support for this idea is but one additional option available to the Council in helping ensure accountability.

The Group remains deeply concerned with the continued **transfer of arms** to the parties to the conflict, including by certain Members of the Security Council. But for this supply of arms, the disastrous humanitarian situation in the country would not be where it is today. All States, including those supplying arms, have an obligation to respect and ensure respect for international humanitarian

law. This responsibility to take measures to ensure respect increases with the level of influence that a specific State has over the parties to the conflict. In view of the horrific toll the war continues to have on the people of Yemen – all of which is a matter of public record, including as documented in the Group's reports – it does not stand to reason that Member States of the United Nations all of whom ostensibly support the international rule of law and the fight against impunity for core international crimes and other violations of human rights, continue to supply the parties to the conflict with the tools of war. The flow of arms must stop now.

In conclusion, the quest for peace is not incompatible with the requirements of justice. On the contrary. It is axiomatic that the longer injustice is allowed to fester, the more compounded will be the political, social, and economic circumstances that give rise to it. There is no reason for us to treat Yemen as immune from the lessons of other prolonged and intractable conflicts. If the war in Yemen has demonstrated anything, it is that justice is a prerequisite for peace. Effective foreign policies can be pursued in ways that do not
require us to postpone, overlook or set aside justice for larger, ostensibly 'pragmatic' purposes at home or abroad, including peacemaking, or geopolitical or economic interest. Lives are at stake. Countless millions of men, women and children are relying upon us to take our responsibilities seriously. To act with purpose and conviction. And to do so because it is the fundamentally right and decent thing to do. At bottom, our humanity is just as much on the line in Yemen as that of the civilians caught in the war's unforgiving grip. The time to act is now."

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**About the Group**

**Mr Kamel Jendoubi (Chairperson)(Tunisia)**


Kamel Jendoubi

Mr Kamel Jendoubi served as the President of the Independent Higher Electoral Commission (ISIE), which organized the first free and democratic elections in Tunisia, in October, 2011. He has served as a member and president of several human rights associations, including the Euro-Mediterranean Human Rights Network and Cairo Institute for Human Rights Studies. He was also a member of the executive council of the World Organization Against Torture. Jendoubi spent 17 years in exile as a result of his human rights activism in Tunisia.

**Ms Melissa Parke (Australia)**


Melissa Parke

Ms Melissa Parke was a federal member of parliament from 2007 to 2016 and was appointed as minister for international development in 2013. Parke spent eight years working for the UN as a senior lawyer, including with UNMIK in Kosovo and UNRWA in Palestine. She has served in UN headquarters in the Office of the Under-Secretary-General for Management where she helped to

establish the UN Ethics Office. Parke also served as Deputy Chief of Staff and legal adviser to the UN Independent Investigation Commission into the assassination of former Lebanese Prime Minister Rafik Hariri.

**Dr. Ardi Imseis (Canada)**

Ardi ImseisDr Ardi Imseis is a professor of public international law in the Faculty of Law, Queen's University, and a barrister and solicitor. From 2002-2014, he served in senior legal and policy capacities with UNRWA and UNHCR in the Middle East, covering operations in Egypt, Jordan, Lebanon, Palestine, and Syria. An expert in international humanitarian and human rights law, he has been invited to address the Security Council in his personal capacity on various occasions, including on the protection of civilian persons in time of war and the 2014 Gaza conflict. He is former Harlan Fiske Stone Scholar and Human Rights Fellow, Columbia Law School, Visiting Research Scholar, Department of Law, American University in Cairo, and Senior Legal Counsel to the Chief Justice of Alberta.