



\*Sherpa



EUROPEAN CENTER  
FOR CONSTITUTIONAL  
AND HUMAN RIGHTS



Mwatana  
for Human Rights

## **Criminal complaint against French arms manufacturers for the export of war materials in the context of the Yemen conflict**

Questions and answers – September 2022

How did the conflict in Yemen begin?

In 2011, popular uprising broke out in Yemen, forcing former President Ali Abdullah Saleh to step down after 33 years in power, through a political agreement initiated by the Gulf Cooperation Council.

Ali Abdullah Saleh was replaced by his vice president, Abd Rabbu Mansour Hadi. Following two years of transitional period, including ten months of consultations as part of the “National Dialogue Conference”, the war started in September 2014 when the Ansar Allah armed group (also known as the Houthis) took control by force over the capital Sana’a, after aligning themselves with the former president Ali Abdullah Saleh, who they subsequently assassinated three years later.

In early 2015, the Houthi-Saleh forces placed the government of President Hadi under house arrest, announced a “constitutional declaration,” and dissolved the parliament. President Hadi fled to Aden, which he declared the country’s temporary capital. Houthi-Saleh forces took over large swathes of territory, eventually entering Aden, leading President Hadi to flee to Riyadh.

On 26 March 2015, at the request of the Yemeni president, a coalition of nine states led by Saudi Arabia and the United Arab Emirates (UAE) (hereafter "the Coalition") intervened in support of the internationally recognized government of President Hadi against the Houthi-Saleh forces. In the years that followed, the conflict spread throughout the country, and the warring parties proliferated. Despite numerous UN efforts to broker peace, including ceasefires and peace talks, Yemen has been in conflict since.

What are the accusations against the Coalition led by Saudi Arabia and the UAE, and against other parties to the conflict?

Since the beginning of its intervention, the Coalition has carried out dozens of disproportionate and indiscriminate airstrikes that have injured and killed civilians and destroyed or damaged homes, hospitals, schools, markets, and other civilian infrastructure. Several NGOs, including Mwatana for human rights, Human Rights Watch, Amnesty international have repeatedly reported on the Coalition’s violations in Yemen, which in many cases may amount to war crimes.

The Yemen Data Project, a non-profit organisation that collects data on the Yemen conflict in the absence of official military records, reports an estimated 25,054 airstrikes, of which 8,121 were against military targets and 7,055 against non-military targets<sup>1</sup>. It was unable to determine whether there was a legitimate military target for the remaining 9,878 airstrikes<sup>2</sup>.

In its four reports, the Group of Eminent Experts (GEE) on Yemen, the only impartial international fact-finding mechanism on Yemen established in 2017 by the UN Human Rights Council, has documented violations of international law by the Coalition as well as by other parties to the conflict. In particular, the GEE noted that Coalition's airstrikes in violation of the principles of distinction, proportionality and precaution may constitute war crimes<sup>3</sup>.

In April 2015, the UN Security Council adopted Resolution 2216 which established an arms embargo on pro-Houthi and pro-Saleh loyalist fighters. Based on this resolution, the Coalition implemented an illegal naval and air blockade that has impeded access to humanitarian aid and basic necessities, preventing civilians from accessing essential goods and services, such as food and clean water, which greatly aggravated the humanitarian crisis. This critical situation is exacerbated by the Houthi authorities who are obstructing the delivery of humanitarian aid inside Yemen. The GEE stressed that "the continuous deterioration of the humanitarian situation in Yemen is directly attributable to the conduct of the parties to the conflict"<sup>4</sup>.

Finally, the GEE called on third states, such as France, to refrain from supplying weapons that could be used in the conflict and thus contribute to the conflict<sup>5</sup>. The GEE emphasized that "such support may amount to aiding and assisting internationally wrongful acts in contravention of international law"<sup>6</sup>. It further stressed the urgency of enforcing the right of victims to obtain reparations and of holding perpetrators accountable, including by encouraging third States to undertake universal jurisdiction prosecutions<sup>7</sup>.

## How is the humanitarian situation in Yemen?

As the conflict enters its eighth year, Yemen continues to endure one of the worst man-made humanitarian crises. According to the United Nations Development Programme, at least 377,000 people have been killed, the vast majority of which resulting from indirect consequences of the fighting, such as starvation and disease<sup>8</sup>.

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<sup>1</sup> Yemen Data Project, [www.yemendataproject.org](http://www.yemendataproject.org) (last consulted on 14 June 2022).

<sup>2</sup> *Ibid.*

<sup>3</sup> *See*, UNHRC, Report of the Group of Eminent International and Regional Experts on Yemen, Situation of human rights in Yemen, including violations and abuses since September 2014, A/HRC/45/6, 28 September 2020, para. 105(a) (accessible online:

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F6&Language=E&DeviceType=Desktop&LangRequested=False>).

<sup>4</sup> *Ibid.*, para. 46.

<sup>5</sup> *Ibid.*, para. 25.

<sup>6</sup> *Ibid.*, para. 102.

<sup>7</sup> *Ibid.*, paras. 94, 99.

<sup>8</sup> UNDP, Assessing the impact of war in Yemen: Pathways for recovery, November 2021 (accessible online: [www.undp.org/yemen/publications/assessing-impact-war-yemen-pathways-recovery](http://www.undp.org/yemen/publications/assessing-impact-war-yemen-pathways-recovery)).

More than 4 million people have been internally displaced<sup>9</sup>. In January 2022, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that more than 20 million people needed humanitarian assistance, along with more than 12 million in need of emergency assistance.

Furthermore, according to OCHA, half of the population suffers from acute hunger, and half of the children under five (an estimated 2.3 million children) are at risk of malnutrition and over one million pregnant or lactating women suffer from acute malnutrition and risk giving birth to newborns with severely stunted growth<sup>10</sup>.

This humanitarian crisis is exacerbated by attacks that destroy or damage homes, medical facilities, and other civilian infrastructure. These attacks and the obstacles to the deployment of humanitarian aid have amplified the spread of the COVID-19 pandemic, and millions of civilians are facing disease, hunger and destitution.

### What is the purpose of the complaint filed before French courts?

Numerous reports (UN GEE on Yemen, NGOs, etc.) point to serious violations of international law, as well as potential war crimes and crimes against humanity, committed by means of airstrikes by the Coalition led by Saudi Arabia and the UAE, in many cases using military equipment provided by other states. Yet, despite this damning evidence, several countries, including France, have continued to supply arms to the Coalition, thereby flouting their obligations under the Arms Trade Treaty (ATT), European law, as well as their own national legislation.

Since 2014, France has been among the top arms suppliers of Saudi Arabia and the UAE, according to annual data compiled by the Stockholm International Peace Research Institute (SIPRI). Since the conflict began in 2015, French companies have continued to supply war materials as well as associated services.

The complaint seeks to expose the potential complicity in war crimes and crimes against humanity of companies that have continued to transfer weapons or provide maintenance services to Saudi Arabia and the UAE, despite their knowledge of the crimes committed by the Coalition.

The complaint documents numerous Coalition airstrikes targeting civilians and civilian infrastructure, including 26 airstrikes that unlawfully killed or injured civilians, and destroyed or damaged schools, hospitals, and other protected property, which may constitute potential war crimes and crimes against humanity.

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<sup>9</sup> See, IOM, Yemen Must Not Be Forgotten: IOM Requires USD 159 Million to Sustain Life-Saving Work, 16 March 2022 (accessible online: [www.iom.int/news/yemen-must-not-be-forgotten-iom-requires-usd-159-million-sustain-life-saving-work](https://www.iom.int/news/yemen-must-not-be-forgotten-iom-requires-usd-159-million-sustain-life-saving-work)).

<sup>10</sup> OCHA, Yemen Situation report, 11 January 2022 (accessible online: <https://reports.unocha.org/en/country/yemen>).

## Which arms companies are targeted by the complaint?

The complaint targets three arms companies.

Dassault Aviation S.A. is the supplier of the Mirage and Rafale fighter jets to the UAE. The company provides maintenance and supplies parts and components.

MBDA France S.A.S. is also targeted as the supplier of air-launched cruise missiles: the Black Shaheen to the UAE, the SCALP-EG/Storm Shadow to Saudi Arabia, as well as the Brimstone. These weapons are co-designed and manufactured in France and the United Kingdom.

Finally, Thales Group is the supplier of laser targeting pods for fighter aircrafts, to Saudi Arabia (Damocles targeting pods) and to the UAE (Shehab targeting pods). The company provides maintenance, along with parts and components.

These materials are used in the Yemen conflict.

## Which organisations are involved in the complaint?

The complaint was submitted by Mwatana for Human Rights, the European Centre for Constitutional and Human Rights (ECCHR), and Sherpa, with the support of Amnesty International France.

Mwatana for Human Rights is an independent Yemeni organisation whose mission is to promote the protection of human rights through research on the ground and documentation of violations committed by all parties to the conflict. It also provides support and legal assistance to victims of detention-related abuses, advocating for stricter adherence to the principles of international law, as well as for increased access to accountability and redress in the context of the Yemen conflict.

ECCHR, based in Germany, supports those affected by serious crimes such as torture and other crimes against international law. In its Business and Human Rights department, ECCHR has worked for many years on the arms trade, also focusing on the accountability of economic actors with respect to the conflict in Yemen. ECCHR is also involved in several criminal complaints submitted against companies based in various European states for their possible complicity in international crimes committed in the context of armed conflicts, including a communication submitted with the International Criminal Court in December 2019.

Sherpa is French non-profit organisation who uses the law to fight against new forms of impunity linked to globalization, as well as to defend communities that are victims of economic and corporate crimes. In order to bolster the accountability of economic actors, Sherpa carries out advocacy, litigation, legal research and capacity-building activities. Sherpa has been committed for several years to fighting against the impunity of companies that fuel armed conflicts and participate in international crimes – notably by submitting complaints against the company Lafarge for its activity in Syria during the civil war, and against the bank BNP for its potential complicity in the purchase of arms by the Rwandan government during the genocide.

Amnesty International France has advocated for many years against the shipment of weapons to the conflict region, in particular by lobbying political authorities within the executive branch of the French government.

Indeed, the export of war materials is unique in that it is prohibited on principle, and yet also authorized, as an exception, by the Prime Minister. Since the beginning of the conflict in Yemen, Amnesty International France has lobbied extensively halt arms transfers to the Coalition, notably Through the "Silence, we are arming" campaign, which ended in February 2022 with over 145,000 signatures delivered the French Presidency, calling for greater transparency and controls over arms sales.

What is the link between this complaint filed with the French courts and the communication submitted with the International Criminal Court?

The complaint filed in France is based on the facts presented to the International Criminal Court (ICC) in a communication filed on 11 December 2019 by the European Center for Constitutional and Human Rights (ECCHR) and Mwatana for Human Rights, together with Amnesty International and other organisations based in Europe. The communication calls for a preliminary investigation into the potential criminal liability of senior corporate and government officials from France, the United Kingdom, Italy, Spain, and Germany for complicity in war crimes for supplying arms to members of the Coalition accused of committing potential war crimes in Yemen. The 350-pages document includes evidence of 26 airstrikes that killed or injured civilians and destroyed or damaged schools, hospitals, and other protected property.

As the arms industry is characterized by its transnational and opaque structure, the NGOs brought the case to the ICC to initiate judicial cooperation between the investigating authorities of the respective countries. With this complaint in France, the NGOs call on the French justice system to launch an investigation into the potential accountability of French economic actors, as well as to engage in judicial cooperation efforts with the ICC and the national investigative authorities of other European countries that are engaged in the co-production of arms exported to the Coalition.

Can companies be held criminally liable for exporting arms if they obtained export licenses from the government?

The responsibility of companies to respect all human rights wherever they operate is explicitly recognized within international standards on business and human rights such as the UN Guiding Principles, unanimously adopted by the Human Rights Council in June 2011, and the OECD Guidelines for Multinational Enterprises, adopted in June 2000. According to the UN Guiding Principles, the issue of corporate complicity in human rights abuses “may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties”<sup>11</sup>.

Furthermore, in situations of armed conflict, companies must respect international humanitarian law and cannot rely on states to fulfil their obligations.

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<sup>11</sup> United Nations Guiding Principles on Business and Human Rights, Commentary art. 17, 2011.

Thus, the issuance of an export license by government authorities does not relieve businesses of their responsibility to refrain from engaging in the export of arms that may be used to commit crimes against international law. While the issuance of a license provides the opportunity to export at a given time it does not oblige the company to do so. The export of arms, even when sanctioned by export licenses, is not a neutral business transaction and does not exempt companies from their obligation to respect human rights throughout the entirety of their operations.

Moreover, the period covered by such export licenses often extends over several years, which requires companies to be more vigilant in consistently assessing the risks of facilitating violations of international humanitarian law that such exports may contribute to over time. Arms industry executives have had ample opportunity over the past seven years to review the extensive and reliable public information documenting violations of international humanitarian and human rights law in Yemen and, specifically the commission of possible crimes against humanity and war crimes by the Coalition.

Companies must take this information into account when deciding whether to export their products or to provide a maintenance service, or when re-evaluating their initial export decisions.

Can a company be liable for aiding and abetting an international crime while pursuing a commercial activity?

According to article 121-7 of the French Criminal Code, an accomplice is someone who knowingly, by aid or assistance, facilitated the preparation or commission of a crime.

The Cour de cassation, France's Supreme Court, held on 7 September 2021, in a decision regarding the activities of the Lafarge group in Syria, that a company could be complicit in crimes against humanity, even without having the intention of associating itself with the commission of said crimes or of approving the criminal plan. To be recognized as an accomplice, the court held that it is sufficient that the company had knowledge of the preparation or commission of the crimes by the principal perpetrator and that, by providing aid or assistance, it facilitated them.

The court stressed that the motive of the accomplice is irrelevant; thus, the fact that a company acted with the goal of pursuing a commercial activity does not prevent it from being an accomplice in a crime.

What evidence does the complaint rely on?

The facts presented in the complaint are the same as those put forward in the communication to the ICC, detailing 26 airstrikes, which could constitute war crimes.

At the outset, the complaint is supported by evidence collected by Mwatana for Human Rights during field research in Yemen, including visits to sites affected by airstrikes.

They collected testimonies of women and men who witnessed and were affected by the Coalition airstrikes against civilians, homes, cultural heritage, hospitals, and schools. These testimonies are supplemented by photos and satellite imagery, as well as many public documents and reports that have served as sources.

Furthermore, the complaint presents data on French arms exports to Saudi Arabia and the UAE. Government reports and other public documents were also included.

In addition, the complaint outlines and analyses the structure of the companies involved, their governance and their corporate social responsibility policies.

Have any legal proceedings been initiated in France or in other countries concerning arms sales to the Coalition?

In the United Kingdom, Amnesty International was involved in a Judicial Review brought by the NGO Campaign Against Arms Trade (CAAT) against the Secretary of State for International Trade, challenging the government's decision to continue licensing military equipment exports to Saudi Arabia. On 20 June 2019, the Court of Appeals found that the decision to grant these licenses was "irrational and therefore unlawful" as the government had failed to assess whether the Coalition had committed violations of international humanitarian law. In response, the British government suspended licenses for arms exports that could be used in the conflict in Yemen. However, the government was granted permission to appeal to the Supreme Court and eventually did resume exports. In October 2020, CAAT filed a new Judicial Review application into the legality of the resumption of arms exports.

In Italy, Mwatana for Human Rights, ECCHR, and Rete Pace e Disarmo filed a complaint on 17 April 2018 against the managers of RWM Italia S.p.A. and senior officials of the Italian national authority for arms exports. According to the plaintiffs, company executives and Italian authorities continued to export air-launched munitions to Coalition members with full knowledge of the risk that they could be used to commit violations of international humanitarian law. Six civilians were killed by an MK 80 bomb manufactured by RWM in an airstrike on 8 October 2016 in Deir al-Hajari, Yemen. The judicial investigation is still ongoing.

In France, several administrative recourses against war materials export licenses and customs exit permits to Coalition states have been filed. In 2018, the organisation Action Sécurité Ethique Républicaines (ASER), together with the NGOs Action des chrétiens pour l'abolition de la torture (ACAT-France), Médecins du Monde, Salam for Yemen, Action contre la faim and Sherpa, filed a submission before the administrative judge to obtain the suspension of French arms exports to States of the Coalition involved in the Yemen conflict. The action is still ongoing.

In Belgium, two NGOs (the Coördination Nationale d'Action pour la Paix et la Démocratie and the Ligue des Droits de l'Homme), initiated judicial reviews against decisions by the Minister-President of Wallonia that led to several decisions of the Conseil d'Etat (the highest administrative court) from 2018 to 2020 which suspended export licenses for various types of military equipment to Saudi Arabia.