

**February 2012**

**HUMAN RIGHTS COMMITTEE COUNTRY REPORT**

**Yemen**

**Independent information for the 104th session**

**of the Human Rights Committee (HRC)**

**DEMOCRACY SCHOOL YEMEN AND**

**HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC**

**AND HUMAN RIGHTS PROGRAM OF THE**

**UNIVERSITY OF MINNESOTA**

**CRITICAL ISSUES**

**Right to Life (Article 6)**

Excessive use of force with firearms by law enforcement and security forces

Due diligence to prevent killings and injuries with small arms by private actors

Transfer of small arms where they are likely to be used to violate the right to life

**PROPOSED QUESTIONS FOR THE GOVERNMENT OF YEMEN**

1. With regard to the “measures adopted to combat the pervasive incidents of extrajudicial killings and enforced disappearances committed by State agents,” in Item 10 on the List of Issues to be Taken up in Connection with the Consideration of the Fifth Report of Yemen (CCPR/C/YEM/5),<sup>1</sup> please explain what laws, regulations and training protocols are being implemented by military and police officials to prevent the misuse of force with small arms and light weapons (SALW) that results in violations of Article 6 of the International Covenant on Civil and Political Rights (ICCPR or Covenant).

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<sup>1</sup> List of Issues to be Taken up in Connection with the Consideration of Fifth Report of Yemen (CCPR/C/YEM/5) at 2, U.N. Doc. CCPR/C/YEM/Q/5 (2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcls104.htm>.

2. In light of the demonstrations which began in 2011 and have continued to the present in Sana'a, Taiz, Aden and other areas, please explain what steps are being taken to prevent the misuse of force with SALW by security forces.

3. Please describe what steps the government is taking to establish an impartial and independent investigation into the killings of unarmed protestors during the demonstrations in Yemen during 2011, particularly in the cities of Sana'a, Taiz, and Aden. Further, what measures are being taken to prosecute those security forces who have been found guilty of misusing SALW against unarmed protestors?

4. Please describe measures taken by the government to limit the illicit sale, possession, and use of small arms and light weapons by private parties within the country, and to ensure that transfers from Yemen to other States will not be used to violate the right to life by the ultimate end users in the Horn of Africa region (especially Somalia)?

## I. INTRODUCTION AND BACKGROUND

*"I have cannons, missiles, Kalashnikovs, anti-aircraft guns and hand grenades," said [a Yemeni] community leader, sitting cross-legged in his house in the Yemeni capital, Sana. "This is a part of our culture, and a tribesman can give up everything except his gun."*<sup>2</sup>

Yemen faces a number of challenges relating to SALW. These problems are both internal and external and are interdependent: the proliferation of SALW within the country allows for a greater volume of weapons transfers to locations outside of the country. A number of these problems have worsened since the development of the List of Issues by the Human Rights Committee in April 2011.

This introductory section provides general background information about SALW in Yemen. The subsequent three sections present the relevant facts with regard to three manifestations of the State's obligation to protect to the right to life under Article 6 of the Covenant: preventing misuse by state officials, using due diligence to prevent SALW abuses by private actors, and preventing transfer of SALW to third countries where they are likely to be used to commit atrocities.

Yemen has been the focus of international and domestic civil society efforts to decrease the proliferation of SALW and their use in human rights violations and the government has made some progress on these issues. Despite this, weapons-related violations continue to be carried out within Yemen's borders and illicit weapons continue to be transferred into East Africa.

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<sup>2</sup> IRIN News In-depth, *Guns Out of Control: The Continuing Threat of Small Arms* 30, May 2006, available at <http://irinnews.org/InDepthMain.aspx?InDepthId=8&ReportId=41050&Country=Yes>.

Estimates of small arms in Yemen vary. According to UN security briefings in 2004, Yemen had approximately 10–15 million weapons for about 18.5 million residents.<sup>3</sup> In 2003, Small Arms Survey used its own methodology to estimate that only 6–9 million weapons, rather than the popular estimates of near 50 million, were available at the local level.<sup>4</sup> IRIN's data from 2006 estimated 17 million weapons for about 19.7 million residents.<sup>5</sup> Recent estimates suggest there may be anywhere from 9.9 million<sup>6</sup> to 60 million<sup>7</sup> small arms for about 23.5 million residents.<sup>8</sup> Regardless of these variations, there is no doubt that SALW are abundant in Yemen and easy to access.

SALW are found in greater density in rural, tribal regions of the country, but they are by no means uncommon in the cities, even the capital Sana'a.<sup>9</sup> Firearms are an integral aspect of tribal life and culture. People rely upon personal weapons to exert power and settle inter-ethnic vendettas as well as to symbolize status, wealth, and even celebration (firing small arms to mark new marriages).<sup>10</sup> Further, the violent crime rate is high across the country with SALW playing a major role in many situations.<sup>11</sup> Inter-tribal conflict and the impact of scarce water and land resources also lead to lethal violence because of the prevalence of small arms and light weapons.<sup>12</sup>

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<sup>3</sup> Letter dated 11 August 2004 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 38, U.N. Doc. S/2004/604 (2004), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SOMALIA%20S2004604.pdf>.

<sup>4</sup> Derek B. Miller, *Demand, Stockpiles, and Social Controls: Small Arms in Yemen* vii (Small Arms Survey, Occasional Paper No. 9, May 2003), available at [http://www.humansecuritygateway.com/documents/SAS\\_SmallArmsInYemen.pdf](http://www.humansecuritygateway.com/documents/SAS_SmallArmsInYemen.pdf).

<sup>5</sup> IRIN News, *supra* note 2.

<sup>6</sup> IRIN News, *Yemen: Small Arms Sales Heading Underground*, Feb. 14, 2010, available at <http://www.irinnews.org/report.aspx?ReportId=88094>. This is close to the number (8 million) that the Yemeni government recently reported in its most recent submission under the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Doc. A/Conf.192/15, available at <http://www.poa-iss.org/poa/poa.aspx>.

<sup>7</sup> Arafat Madayash, *Weapons Proliferation in Yemen*, ASHARQ ALAWSAT, Sept. 2, 2010, available at <http://www.aawsat.com/english/news.asp?section=3&id=19818>.

<sup>8</sup> POPULATION DIVISION OF THE DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS OF THE UNITED NATIONS SECRETARIAT, *WORLD POPULATION PROSPECTS: THE 2008 REVISION Table A.1*, available at [http://www.un.org/esa/population/publications/wpp2008/wpp2008\\_text\\_tables.pdf](http://www.un.org/esa/population/publications/wpp2008/wpp2008_text_tables.pdf).

<sup>9</sup> IRIN News, *supra* note 2.

<sup>10</sup> *Id.*; Miller, *supra* note 4, at 40–44.

<sup>11</sup> IRIN News, *supra* note 2; Miller, *supra* note 4, at 30–34.

<sup>12</sup> See generally Small Arms Survey, *Under Pressure: Social Violence over Land and Water in Yemen*, 2 YEMEN ARMED VIOLENCE ASSESSMENT ISSUE BRIEF 1 (October 2010), available at <http://yemenviolence.org/pdfs/Yemen-Armed-Violence-IB2-Social-violence-over-land-and-water-in-Yemen.pdf>.

The proliferation of SALW in Yemen dates back to colonial times.<sup>13</sup> In the 19<sup>th</sup> and 20<sup>th</sup> centuries, first the Ottomans and later the British transferred many small arms and light weapons into Yemen. Weapons levels only increased with Soviet influence after the British withdrew in 1967. New influxes of SALW added to existing stockpiles during the civil conflicts between the North and South. When the northern Yemen Arab Republic won in 1994, southern stockpiles disappeared into the countryside. Additionally, a large number of people work as armed escorts for parliamentarians, dignitaries, and other officials.<sup>14</sup>

To this day, a large number of SALW continue to be transferred to the Yemeni government and security forces. Amnesty International reports that the United States alone approved nearly \$20 million worth of small arms sales to Yemen in 2008.<sup>15</sup> Recent major transfers have come from Bulgaria, Poland, and the United Kingdom, with Austria, Italy, Australia, and Turkey contributing sizeable portions as well.<sup>16</sup>

## **II. STATE OBLIGATIONS WITH REGARD TO SMALL ARMS AND LIGHT WEAPONS**

### **A. State Obligation Not To Violate the Right to Life with Small Arms and Light Weapons**

*A state's first duty under the SALW Principles is negative: not to violate the right to life in its officials' acts or omissions regarding the use of small arms and light weapons. Second, a state must regard the standard of necessity and proportionality in the use of force by law enforcement.*<sup>17</sup>

#### **1. Small Arms and Light Weapons in the Huthi Rebellion**

Since 2004, the Huthis, who are called after the family name of the man who initiated the rebellion, have been in conflict with the Yemeni government.<sup>18</sup> The conflict has gone through at least six “rounds” of violence and ceasefire<sup>19</sup> and has led to allegations of human rights

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<sup>13</sup> IRIN News, *supra* note 2, at 31; Miller, *supra* note 4, at 7–11.

<sup>14</sup> IRIN News, *supra* note 2, at 31.

<sup>15</sup> AMNESTY INTERNATIONAL, YEMEN: CRACKING DOWN UNDER PRESSURE 25 n.92, 2010, *available at* <http://www.amnesty.org/en/library/asset/MDE31/010/2010/en/da8bd0cc-37ab-4472-80b3-bcf8a48fc827/mde310102010en.pdf>; *see also* Miller, *supra* note 4, at 12 (giving 2003 statistics).

<sup>16</sup> *See id.*

<sup>17</sup> Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Com. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 8 (24 Aug. 2006) [*hereinafter* SALW Principles].

<sup>18</sup> HUMAN RIGHTS WATCH, ALL QUIET ON THE NORTHERN FRONT? UNINVESTIGATED LAWS OF WAR VIOLATIONS IN YEMEN'S WAR WITH HUTHI REBELS 10, March 2010, *available at* <http://www.hrw.org/en/reports/2010/04/07/all-quiet-northern-front>.

<sup>19</sup> *Id.* at 2.

violations by both sides. Because both sides rely almost entirely on SALW, these weapons are instrumental in the violations.<sup>20</sup>

The government is alleged to have violated human rights because of its indiscriminate attacks that injured or killed civilians and its recruitment and training in small arms use of child soldiers.<sup>21</sup> Although the government relies on airpower for its most devastating attacks, they have been known to employ small arms for both indiscriminate artillery attacks on civilians and civilian property<sup>22</sup> as well as training child soldiers to use Kalashnikovs and small rifles.<sup>23</sup> The government also conducted many enforced disappearances and arbitrary detentions,<sup>24</sup> relying on small arms to carry out these acts.<sup>25</sup>

## **2. *Small Arms and Light Weapons and the Southern Movement for Secession***

While the conflict in the north has officially ended, the movement for secession in the southern provinces continues. Led by the Yemeni Socialist Party in the areas of the formerly Soviet-backed People's Democratic Republic of Yemen, the Southern Movement has gained sympathy and support among many groups in South Yemen who are upset with the lack of investment, oil-revenue sharing, and other services in the south.<sup>26</sup> The movement engages in generally non-violent protests and demonstrations.<sup>27</sup> Since the movement started in 2007, security forces have responded to largely peaceful protests with "brutal force," routinely open firing on unarmed protestors.<sup>28</sup>

Since 2011, Yemenis in the Southern Movement, along with Yemenis in other cities, have participated in demonstrations in protest of President Saleh's regime.<sup>29</sup> Demonstrations in

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<sup>20</sup> *Id.* at 3 (noting the reliance on small arms but that the government's access to airpower gives it the upper hand).

<sup>21</sup> *Id.* at 22–33.

<sup>22</sup> *See id.* at 29–30.

<sup>23</sup> *See id.* at 31–33.

<sup>24</sup> HUMAN RIGHTS WATCH, DISAPPEARANCES AND ARBITRARY ARRESTS IN THE ARMED CONFLICT WITH HUTHI REBELS IN YEMEN, October 2008, *available at* <http://www.hrw.org/en/reports/2008/10/24/disappearances-and-arbitrary-arrests-armed-conflict-huthi-rebels-yemen>.

<sup>25</sup> *See id.* at 20, 28, 31.

<sup>26</sup> *See* HUMAN RIGHTS WATCH, IN THE NAME OF UNITY: THE YEMENI GOVERNMENT'S BRUTAL RESPONSE TO SOUTHERN MOVEMENT PROTESTS 15, December 2009, *available at* <http://www.hrw.org/en/reports/2009/12/15/name-unity>.

<sup>27</sup> *See id.* at 17–18.

<sup>28</sup> *See* HUMAN RIGHTS WATCH, DAYS OF BLOODSHED IN ADEN 5, March 2011, *available at* [http://www.hrw.org/sites/de\\_fault/files/reports/yemen0311webwcover.pdf](http://www.hrw.org/sites/de_fault/files/reports/yemen0311webwcover.pdf).

<sup>29</sup> *See id.* at 5.

the city of Aden, in the South of Yemen, were marked with massive bloodshed in February of 2011.<sup>30</sup> During these protest, Yemeni security forces used excessive force against largely peaceful demonstrators. Security forces used live ammunition and opened fired on protestors and in some instances, even reportedly used snipers.<sup>31</sup> According to Human Rights Watch, the majority of victims were wounded by “live ammunition, including bullets from AK-47s, sniper rifles, and 12.7 millimeter machine guns.”<sup>32</sup> The Yemeni government denied allegations that government security forces were responsible for the bloodshed in Aden in February, and blamed the violence on the Southern Movement.<sup>33</sup> Witness reports compiled by Human Rights Watch, however, state otherwise. Witnesses contend that the government took steps to hide the violence committed by security forces, such as preventing forensic examination of corpses, offering family members compensation for burying relatives immediately, requiring doctors to surrender extracted bullets from dead bodies, and closing the streets after shootings to collect bullets and cartridges.<sup>34</sup> President Saleh ordered the Council of Ministers to form a panel to investigate the violence in Aden.<sup>35</sup> As of January 2012, a report on the government investigation into the Aden killings has not yet been released.

### 3. *2011 Protests and Demonstrations*

Since February 3, 2011, Yemenis in the major cities of Sana’a, Aden, and Taiz, inspired by the popular protests in Tunisia and Egypt, have held peaceful demonstrations in which they demanded the resignation of Yemeni President Saleh.<sup>36</sup> The Yemeni government has responded with, among other violations of Article 6, the gross misuse of firearms in their actions against these peaceful demonstrators. According to Human Rights Watch, in 2011, 270 protestors were fatally shot by government security forces.<sup>37</sup> Hundreds of demonstrators have also been wounded.<sup>38</sup> Further, security forces have fired live bullets at unarmed peaceful women’s

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<sup>30</sup> *See id.* at 1.

<sup>31</sup> *See id.* at 1, 5.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *See id.* at 15.

<sup>34</sup> HUMAN RIGHTS WATCH, DAYS OF BLOODSHED IN ADEN 15–16, March 2011, *available at* <http://www.hrw.org/site/default/files/reports/yemen0311webwcover.pdf>.

<sup>35</sup> *See Yemeni President Orders Investigation into Aden Violence*, BBC MONITORING INTERNATIONAL REPORTS, March 1, 2011.

<sup>36</sup> *See* HUMAN RIGHTS WATCH, DAYS OF BLOODSHED IN ADEN 5, March 2011, *available at* <http://www.hrw.org/site/default/files/reports/yemen0311webwcover.pdf>.

<sup>37</sup> *See Yemen: Reject Immunity Law for President Saleh and Aides*, HUMAN RIGHTS WATCH (Jan. 10, 2012), <http://www.hrw.org/news/2012/01/10/yemen-reject-immunity-law-president-saleh-and-aides>.

<sup>38</sup> *See* Andy Soltis, *17 Protestors Slain and Yemeni Forces Open Fire*, NEW YORK POST, Apr. 5, 2011, at 8, *available at* 2011 WL 6571033 (400 wounded); Laura Kasinof, *Fighting Flares Anew in Yemen After Security Forces Fire on Demonstrators*, NEW YORK TIMES, Sept. 19, 2011, at A4, *available at* 2011 WL 18579697 (200 wounded).

demonstrations in Hadramawt and Lahij.<sup>39</sup> In the midst of this popular uprising, Yemen is also facing a power struggle between elite armed factors vying for control of the government.<sup>40</sup> This power struggle has led to the death of dozens of unarmed civilians, who have been killed in the exchange of heavy rifle and missile fire between government forces and opposition forces.<sup>41</sup> According to reports, a variety of SALW have been used to perpetrate crimes against unarmed protestors and civilians, including AK-47s, .50 caliber machine guns, and heavy caliber machine guns.<sup>42</sup>

The United Nations Security Council Resolution 2014 of October 2, 2011, called on the Saleh government to end human rights violations in Yemen, including attacks on civilians by security forces.<sup>43</sup> Despite the resolution, government forces have continued to kill civilians including women and children. For example, Human Rights Watch reported that in the city of Taiz, government forces “indiscriminately struck homes, a hospital, and a public square filled with protestors,” which resulted in 35 civilians being killed within a month after the resolution was passed.<sup>44</sup> The government of Yemen has announced that it will conduct a national investigation into human rights violations that have occurred during the uprising.<sup>45</sup> However, the Yemeni public lacks confidence in the ability of the government to conduct impartial investigations into human rights abuses.<sup>46</sup>

Recently, the situation in Yemen has taken a new turn. On January 22, 2012, President Saleh left Yemen for the United States to seek medical treatment.<sup>47</sup> President Saleh agreed to hand power over to his Vice President in exchange for immunity.<sup>48</sup> Human rights organizations, such as The Organization of Women Journalists without Chains, led by Nobel Laureate

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<sup>39</sup> See *Women Journalists Without Chains Condemns the Death of a Woman and the Injury of Two Women in Lahij and Hadramawt During Two Women’s Demonstrations*, WOMEN JOURNALISTS WITHOUT CHAINS (Jan. 15, 2011), [http://womenpress.org/news\\_details.php?sid=1943](http://womenpress.org/news_details.php?sid=1943).

<sup>40</sup> See Letta Tayler, *Yemen’s Hijacked Revolution*, HUMAN RIGHTS WATCH (Sept. 26, 2011), <http://www.hrw.org/news/2011/09/26/yemen-s-hijacked-revolution>.

<sup>41</sup> See *Yemen: Reject Immunity Law for President Saleh and Aides*, HUMAN RIGHTS WATCH (Jan. 10, 2012), <http://www.hrw.org/news/2012/01/10/yemen-reject-immunity-law-president-saleh-and-aides>.

<sup>42</sup> See Jeb Boone, *Yemeni Forces Open Fire on Protestors*, WASHINGTON POST, May 12, 2011, at A10, available at 2011 WL 9406407.

<sup>43</sup> *Yemen: Spate of Killings Defy UN Order*, HUMAN RIGHTS WATCH (Nov. 25, 2011), <http://www.hrw.org/news/2011/11/25/yemen-spate-killings-defy-un-order>.

<sup>44</sup> *Id.*

<sup>45</sup> *See id.*

<sup>46</sup> *See id.*

<sup>47</sup> See Laura Kasinof & Anemona Hartocollis, et al., *Yemen Leader Leaves for New York for Medical Care*, NEW YORK TIMES, Jan. 23, 2012, at A4, available at 2012 WLNR 1478052.

<sup>48</sup> *See id.*

Tawakkol Karman, have raised deep concerns about granting President Saleh immunity.<sup>49</sup> The concerned organizations want the regime to be held responsible for the countless deaths of unarmed protestors by security forces and pro-government militias.<sup>50</sup>

## **B. States' Due Diligence Obligation to Prevent Small Arms and Light Weapons Violations by Private Parties**

*The due diligence standard to protect the right to life from violence by small arms and light weapons includes the responsibility to take steps to prevent reasonably foreseeable abuses by private actors (occurring within a state's own territory).*<sup>51</sup>

### **1. Regulation of Private Ownership and Use of Small Arms and Light Weapons**

Yemen's current firearms law was adopted in 1992.<sup>52</sup> The law requires licensing for private ownership and for transfers; brokers are ostensibly required to be licensed by the government and report on their sales.<sup>53</sup> However, these regulations have been poorly enforced and therefore ineffectual.<sup>54</sup> Efforts by Yemeni civil society aimed at reform and the tightening of licensing and possession regulations began in 1999, but a draft bill did not pass. Increased public outcry and some political support led to a vote to review new legislation in 2005.<sup>55</sup> Although bills failed to pass through parliament in 2007 and 2009, an effort by the Interior Ministry since 2007 to enforce a weapons ban has met with some success. From 2007 to 2010, security forces have reduced the quantity of illicit small arms in Yemeni cities by more than 720,000, a major reduction of their availability.<sup>56</sup> Due to the escalation in violence during 2011, illicit arms proliferation may have increased significantly in Yemen; official estimates, however, are not

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<sup>49</sup> See *What Has the Regime of Saleh and His Men Committed Cannot Be Fallen by Any Political Compromise*, WOMEN JOURNALISTS WITHOUT CHAINS (Jan. 9, 2012) [http://womenpress.org/news\\_details.php?sid=2021](http://womenpress.org/news_details.php?sid=2021).

<sup>50</sup> See Laura Kasinof & Anemona Hartocollis, et al., *Yemen Leader Leaves for New York for Medical Care*, NEW YORK TIMES, Jan. 23, 2012, at A4, available at 2012 WLNR 1478052.

<sup>51</sup> SALW Principle 10, *supra* note 17, at 10.

<sup>52</sup> IRIN News, *supra* note 2, at 31.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; IANSA, *New Gun Law in Yemen: A Triumph for Campaigners*, available at <http://www.iansa.org/regions/nafrica/yemen-gun-law.htm>.

<sup>56</sup> Tom Finn, *Yemen in Need of Gun Control Law*, YEMEN TIMES, Oct. 3, 2010, available at [http://www.yementimes.com/DEFAULTET.ASPX?SUB\\_ID=34830](http://www.yementimes.com/DEFAULTET.ASPX?SUB_ID=34830).

available. Many feel comprehensive and updated legislation is necessary,<sup>57</sup> yet enforcement of licensing and other laws is key to reducing the availability and misuse of SALW.<sup>58</sup>

## 2. *Violence by Separatist Movements*

In the above mentioned civil conflicts, the rebels have also been involved in violations of human rights with SALW, in part because of the easy access to SALW under the current regulatory regime. The Huthis lack access to conventional weapons, thus nearly all documented human rights abuses committed by the Huthis are carried out with small arms or light weapons.<sup>59</sup> Huthi forces have committed summary executions of those who refused to fight with rocket-propelled grenades and other light weapons.<sup>60</sup> Huthis have been accused of using captured government soldiers as human shields.<sup>61</sup> They are also accused of using small arms to carry out attacks in the midst of densely populated civilian areas and villages.<sup>62</sup> Child soldiers have been recruited and trained to use SALW by the Huthis as well.<sup>63</sup>

While most protests by the Southern Movement have been peaceful, there has been some violence by the protesters (often in response to government crackdowns).<sup>64</sup> Additionally, there have been reports of armed clashes indicating that at least some elements in the Southern Movement may possess and carry out violence with small arms and light weapons as well.<sup>65</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> See Small Arms Survey, *Fault lines: Tracking Armed Violence in Yemen*, 1 YEMEN ARMED VIOLENCE ASSESSMENT ISSUE BRIEF 7–8 (May 2010), available at <http://www.yemenviolence.org/pdfs/Yemen-Armed-Violence-IB1-Tracking-armed-violence-in-Yemen.pdf>.

<sup>59</sup> See HUMAN RIGHTS WATCH, *supra* note 24, at 3.

<sup>60</sup> *Id.* at 35–37.

<sup>61</sup> *Id.* at 37–40.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 41.

<sup>64</sup> See HUMAN RIGHTS WATCH, *supra* note 26, at 17–18.

<sup>65</sup> *Id.* at 18–22.

### C. State Extraterritorial Obligation Regarding Transfers of Small Arms and Light Weapons

*The human rights rule of transfer requires both prevention of illicit transfers and due diligence regarding the small arms end use in human rights violations. It considers “1) the seriousness of the violation that results from the transfer; 2) the degree of knowledge of the transferring state regarding likely violations; and 3) the capacity of the transferring state to prevent the violations.”*<sup>66</sup>

Because of the unregulated flow of a large number of SALW in Yemen, the country serves as a regional hub for arms transfers. Yemen is responsible for a large number of weapons transfers across the Gulf of Aden into Djibouti, Sudan, and especially Somalia.<sup>67</sup>

A 2008 report (2008 UNSC Report) surveyed the United Nations Security Council’s sanctions and embargo<sup>68</sup> against small arms and other military material coming into Somalia in the context of the civil war there.<sup>69</sup> Yemen, as one of the major regional actors, is a major source of weapons flowing into Somalia. The report identifies the government of Yemen for its role in these weapons transfers as well as non-governmental agents from Yemen. The Monitoring Group established by UNSC Resolution 751 has reported on the embargo against Somalia each year since 2002,<sup>70</sup> and Yemen’s role in the failure of the embargo is highlighted in each year’s report, a description of which follows.<sup>71</sup>

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<sup>66</sup> Barbara Frey, *Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons*, 51–53 in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS (Mark Gibney and Sigrun Skodly, eds.): Univ. of Penn. Press (2010); see SALW Principles 13–15, *supra* note 17.

<sup>67</sup> See, e.g., IRIN News, *supra* note 2, at 31–32; Amnesty International, *Blood at the Crossroads: Making the Case for a Global Arms Trade Treaty: Executive Summary* 19 (Sept. 16, 2008), available at <http://www.amnesty.org/en/library/asset/ACT30/015/2008/en/c6b68b77-832a-11dd-8e5e-43ea85d15a69/act300152008en.pdf>; Amnesty International, *Somalia: International military and Policing Assistance Should Be Reviewed* 8 (Jan. 21, 2010), available at <http://www.amnesty.org/en/library/asset/AFR52/001/2010/en/86225a8e-1db3-427c-a2ca-03adb632e87/afr520012010en.pdf>; Matt Schroeder & Guy Lamb, *The Illicit Arms Trade in Africa: A Global Enterprise*, AFRICAN ANALYST QUARTERLY 69, 71 (Autumn 2006) available at <http://www.fas.org/asmp/library/articles/SchroederLamb.pdf>.

<sup>68</sup> United Nations Security Council Resolution 733 (Implementing an Arms Embargo on Somalia), S.C. Res. 733, 47 U.N. SCOR at 55, U.N. Doc. S/RES/733 (1992).

<sup>69</sup> Security Council Reports, *Anatomy of a Sanctions Regime: A Case Study of Sixteen Years of Failed Efforts to Effectively Implement Sanctions in Somalia*, 4 SPECIAL RESEARCH REPORT 1 (Sept. 16, 2008), available at [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.4504111/k.7FCA/Anatomy\\_of\\_a\\_Sanctions\\_Regime\\_A\\_Case\\_Study\\_of\\_Sixteen\\_Years\\_of\\_Failed\\_Efforts\\_to\\_Effectively\\_Implement\\_Sanctions\\_in\\_Somalia.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.4504111/k.7FCA/Anatomy_of_a_Sanctions_Regime_A_Case_Study_of_Sixteen_Years_of_Failed_Efforts_to_Effectively_Implement_Sanctions_in_Somalia.htm).

<sup>70</sup> *Id.* at 2 (discussing the establishment of a monitoring mechanism, first known as the Team of Experts in 2002, then the Panel of Experts in 2003, and finally the Monitoring Group from 2004 to present).

<sup>71</sup> For a list of relevant UN documents, including these yearly reports, see [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2876225/k.7F63/SomaliabrUN\\_Documents.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2876225/k.7F63/SomaliabrUN_Documents.htm).

In 2003, the Monitoring Group reported on Yemen's role in the transfer of arms to Somalia.<sup>72</sup> Officially, the government of Sudan provided some arms assistance to the Transitional National Government (TNG) of Somalia, transferring 300–400 small arms, mostly AK-47s, from the Yemeni police force to the TNG.<sup>73</sup> In addition, Yemen was also a source for private arms transfers by two methods. First, although officially denied by the government of Yemen, high Yemeni government officials were reported to provide Yemeni certification for illicit transfers to the TNG.<sup>74</sup> Second, Yemeni businessmen gathered weapons from sellers within the country and transported them to Somalia where prices were higher because demand was higher.<sup>75</sup> In fact, a UN Security Council committee recently released a list of private persons involved in the weapons trade in Somalia, including prominent Yemeni businessman Fares Mohammed Mana'a.<sup>76</sup> Although the Yemeni government included Mana'a on a blacklist of gun dealers for his activities transferring weapons both into and out of Yemen, the government released him from detention with no indications of prosecution of any charges.<sup>77</sup>

The UN Monitoring Group 2004 report highlighted the Yemeni government's commitment to limiting trafficking of weapons.<sup>78</sup> The Yemeni government cited the lack of resources and infrastructure to regulate civil aviation and guard the 2400 kilometers of coastline in Yemen. Although it promised to respond to UN requests for details of government and private activities, it did not do so in a timely manner.<sup>79</sup> The government did finally respond in time for the 2005 report, and Yemen even hosted a UN delegation to survey the role of SALW in Yemen.<sup>80</sup> In subsequent years, Yemen, "consistent with the spirit and substance of the

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<sup>72</sup> Letter dated 25 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 7, U.N. Doc. S/2003/223 (2003), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SOMALIA%20S2003223.pdf>.

<sup>73</sup> *Id.* at 7, 26.

<sup>74</sup> *Id.* at 7, 26–27 (quoting Somali official that Yemen through non-official channels provided about \$600,000 worth of small arms and ammunition).

<sup>75</sup> *Id.* at 7–8, 27 (discussing the case of a large shipment of small arms by the dhow *Alshadax*).

<sup>76</sup> See Security Council Committee on Somalia and Eritrea Issues List of Individuals Identified Pursuant to Paragraph 8 of Resolution 1844 (2008), U.N. Doc. SC/9904 (Apr. 12, 2010), available at <http://www.un.org/News/Press/docs/2010/sc9904.doc.htm>.

<sup>77</sup> Saddam Al-Ashmori, *Yemeni Weapons Dealer Released*, YEMEN TIMES (June 6, 2010).

<sup>78</sup> Letter dated 11 August 2004 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 38–39, U.N. Doc. S/2004/604 (2004), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SOMALIA%20S2004604.pdf>.

<sup>79</sup> *Id.*

<sup>80</sup> Letter dated 5 October 2005 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 48, U.N. Doc. S/2005/625 (2005), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SOMALIA%20S2005625.pdf>.

cooperation established between it and the Monitoring Group,” consistently has provided information about small arms trafficking and acknowledged some of the transfers it has made.<sup>81</sup> Yemen cooperated with the Monitoring Group, acknowledging some (such as the continuing private arms trade across the Gulf of Aden) but disputing others (such as a March 2007 transfer to the Somali Police Force) as well as the extent of the transfer of small arms from Yemen to Somalia.<sup>82</sup>

The 2008 UNSC Report concluded that the arms embargo of Somalia has been a failure. Even though the reports of the Monitoring Group show increased monitoring and information from Yemen and other surrounding states, the amount of transfers in small arms and light weapons has not decreased. The better information and tracking, rather, has highlighted the large numbers of weapons moving out of Yemen into East Africa. According to the 2010 UNSC Report, Yemen remained both Somalia’s and Somaliland’s principle commercial market for SALW.<sup>83</sup> The report noted that Puntland State was the primary gateway for arms and ammunition into Somalia because of its historical arms trading relationship with dealers in Yemen.<sup>84</sup> Further, arms markets existed in most major towns in Somalia and were often run by businessmen with connections to Yemen.<sup>85</sup>

The July 2011 UNSC Report noted that the Monitoring Group did not observe any “discernible change” in the flow of arms into Somalia compared with previous reports.<sup>86</sup> Somalis close to the arms trade contended that the majority of weapons in Somalia still came from Yemen through sea routes.<sup>87</sup> The government of Yemen, however, has denied these allegations.<sup>88</sup> In 2010, Yemen started imposing tough new restrictions on arms dealers in local markets.

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<sup>81</sup> Letter dated 4 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 15, U.N. Doc. S/2006/229 (2006), *available at* <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S2006229.pdf>.

<sup>82</sup> Letter dated 24 April 2008 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council at 24, U.N. Doc. S/2008/274 (2008), *available at* <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S2008274.pdf>.

<sup>83</sup> *See* Letter dated 10 March 2010 from the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addresses to the President of the Security Council at 47, 49, U.N. Doc. S/2010/91 (2010), *available at* [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2010/91](http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/91).

<sup>84</sup> *See id.* at 49.

<sup>85</sup> *See id.*

<sup>86</sup> Letter dated 18 July 2011 from the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council at 41, U.N. Doc. S/2011/433 (2011), *available at* [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2011/433](http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/433).

<sup>87</sup> *See id.*

<sup>88</sup> *See id.*

However, according to activists and military officials, these measures just pushed the arms trade market underground, resulting in arms dealers selling weapons secretly in their homes instead of openly in arms markets.<sup>89</sup>

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<sup>89</sup>See IRIN News, *Yemen: Small Arms Sales Heading Underground*, Feb. 14, 2010, available at <http://www.irinnews.org/report.aspx?ReportId=88094>.