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001-193

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG PROVINCIAL DIVISION, PRETORIA

Case no.: \_\_\_\_\_

In the matter between:

**TRUSTEES OF THE SOUTHERN AFRICAN  
HUMAN RIGHTS LITIGATION CENTRE TRUST**

First Applicant

**OPEN SECRETS NPC**

Second Applicant

And

**CHAIRPERSON OF THE NATIONAL CONVENTIONAL  
ARMS CONTROL COMMITTEE**

First Respondent

**MINISTER OF DEFENCE**

Second Respondent

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SUPPORTING AFFIDAVIT

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I, the undersigned,

**Radhya Almutawakel**

do hereby make oath and state:

- 1 I am an adult female and the chairperson at Mwatana for Human Rights ("**Mwatana**"), a non-governmental organisation based in Sana'a, Yemen.
- 2 I am deposing to this affidavit on behalf of Mwatana. I am authorised to depose to this affidavit and attach my work identification card.
- 3 The facts contained in this affidavit are to the best of my knowledge true. Unless otherwise stated or indicated by the context, these facts are within my personal knowledge. Where I make legal submissions, I do so on the advice of the applicants' legal representatives.
- 4 I depose to this affidavit in support of the application. In this affidavit I describe the war in Yemen from my perspective, both personally and as the chairperson at Mwatana. I do so to confirm that the conflict in Yemen is a crisis of staggering proportions. The supply of weapons to all parties to the conflict further fuels and exacerbates this crisis.

5 I have been advised that this affidavit must be commissioned in accordance with the South African Uniform Rules of Court. I am, however, unable to comply properly with these rules and I beg the Court's indulgence in this regard. As I attest in this affidavit, I live in Sana'a, Yemen, which is under the control of the Ansar Allah (Houthi) group. In normal circumstances, this sort of document would usually go through the authentication office in the Ministry of Foreign Affairs, but the internationally recognized government is currently based in Aden, Yemen, which is many hours away from Sana'a and across frontlines, and very hard to reach during these times. Generally, the circumstances in Yemen, including the ongoing conflict and proliferation of armed groups, are such that ordinary administrative and governmental agents do not operate optimally, or at all, in many parts of the country. Similarly, I am unable in the current circumstances to access South Africa's Honorary Consul in Yemen. Moreover, notarizing these kinds of documents in Sana'a could pose a security threat for Mwatana and for the local notary. As soon as it is safe to do so, I will take all necessary steps to ensure that this affidavit is commissioned, as far as possible, in accordance with the Uniform Rules of Court.

**About Mwatana:**

6 Mwatana is an independent Yemeni organisation dedicated to defending and protecting human rights by carrying out accurate and objective field investigations and research, providing legal support to victims, pursuing accountability and redress, conducting advocacy, raising awareness, and building capacity within and outside Yemen. Mwatana employs a significant number of women and men,

including field researchers and lawyers, across 21 out of 22 governorates in Yemen. Its staff conduct on-the-ground research and document and investigate alleged violations and abuses of international human rights law and international humanitarian law ("IHL") by all parties to the conflict.

7 Mwatana was established in 2007. Mwatana's work on the conflict in Yemen comprises of the following:

7.1 Investigating and documenting violations committed by all parties to the conflict, including those by the Yemeni authorities;

7.2 Providing legal support and advice to victims of detention related abuses.

7.3 Publishing regular English and Arabic reports, statements and documentary films;

7.4 Conducting advocacy on a range of human rights-related issues; and

7.5 Pursuing available international accountability avenues and searching for new accountability opportunities to achieve justice and redress for civilian victims of violations in Yemen.

8 Mwatana is committed to the highest standards of research and investigation in order to obtain accurate and objective information regarding human rights violations in Yemen, and to analysing that information in accordance with relevant international laws and standards. Mwatana is politically independent. The organization documents violations by all parties to the conflict, including by internationally

recognized Yemeni government forces, the Saudi/UAE-led coalition forces, and the Ansar Allah (Houthi) group, amongst others. Mwatana's reports have documented Saudi/UAE-led coalition airstrikes on civilian sites; the Ansar Allah (Houthi) group's use of landmines and indiscriminate shelling; and as well as indiscriminate shelling and other abuses by forces aligned with the internationally recognized Yemeni government. Mwatana has also researched and provided legal support in cases of arbitrary detention, enforced disappearance, and torture committed by all parties to the conflict. Members of Mwatana's staff including myself and Mwatana's Executive Director Abdulrasheed al Faqih have faced detention, attacks, harassment and slander campaigns by both the Ansar Allah (Houthi) group and forces loyal to the Saudi/UAE led Coalition in response to Mwatana's unvarnished reporting.

## **METHODOLOGY**

- 9 Mwatana has documented the civilian impact of the current conflict since it began in September 2014. Mwatana researchers use rigorous and peer-reviewed investigation methods to investigate alleged violations and abuses. Mwatana's research methodology, where circumstances permit, includes the following:
  - 9.1 Interviewing survivors, family members, and witnesses;
  - 9.2 Visiting attack sites;
  - 9.3 Taking photographs of incident sites, including, where present, weapons remnants;

- 9.4 Examining photographs, documents and videos that relate to witness accounts, including of attack sites, as well as of death certificates, birth certificates, medical reports, and other documents relating to victims and the extent of harm they faced in these incidents.

#### **RECOGNITION OF MWATANA**

- 10 Mwatana's work in fighting and advocating for human rights in Yemen has been recognised internationally.
- 11 In 2017, I, briefed the UN Security Council on the situation in Yemen. I was the first Yemeni civil society actor to speak before the body.
- 12 In 2018 Mwatana was awarded the Roger N. Baldwin Medal of Liberty by the US NGO, Human Rights First. The award was granted in recognition of Mwatana's work investigating, documenting and producing objective accounts of the multi-party conflict in Yemen. It was also recognised for its role in providing legal support to victims of the conflict.
- 13 In the same year, the tenth International Hrant Dink Award was granted to Mwatana for its courageous struggle against human rights violations in Yemen by conducting independent, impartial documentation of violations and preparing reports, in a time when cities in Yemen were being bombed and thousands of civilians losing their lives in the war.

- 14 In 2019, I was recognised by Time Magazine as one of the 100 most influential people in the world as a result of my leadership of Mwatana.
- 15 In 2021, Mwatana, along with the Campaign Against Arms Trade, was nominated for the Nobel Peace Prize.
- 16 In 2020 I received the Anna Politkovskaya Award based on Mwatana's in-depth uncovering, documenting and reporting on the human cost of a war.

#### **MWATANA'S WORK:**

- 17 Mwatana has published more than a dozen reports, issued dozens of statements, drafted letters and pursued legal action regarding the situation in Yemen.<sup>1</sup>
- 18 Mwatana's reports show the staggering devastation wrought to civilians by warring parties, including civilians who have been killed and maimed by Saudi/UAE-led Coalition airstrikes, including in airstrikes involving weapons exported to Saudi Arabia and the UAE by other countries.
- 19 In its 2019 annual report, Mwatana provided an extensive review of particular violations that occurred in Yemen by all parties to the conflict. Mwatana documented

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<sup>1</sup> <https://mwatana.org/en/category/reports-en/>  
<https://mwatana.org/en/category/messages-en/>

hundreds of incidents in 2019 alone that caused civilian harm, and appeared to violate international humanitarian law and international human rights law.<sup>2</sup>

20 I describe some of the findings by Mwatana confirming the applicants' contention that the parties to the conflict, including Saudi Arabia and the UAE, are committing violations of international humanitarian law and international human rights law. In some instances, these violations appear to amount to war crimes.

21 As part of its work to ensure accountability and redress for victims of human rights violations in Yemen, Mwatana has pursued international legal action and advocacy. As one example, in 2019, Mwatana along with its partners filed a communication with the International Criminal Court<sup>3</sup> calling on the Office of the Prosecutor to investigate the legal responsibility of corporate and political actors involved in the flow of weapons to members of the Saudi/UAE-led coalition. In 2018 Mwatana along with partners, filed a criminal complaint with the Italian Public Prosecutor's office<sup>4</sup> to investigate the possible criminal liability of: (i) UAMA, the body that authorizes Italian arm exports, and (ii) the executives of Italian arm manufacturer RWM Italia S.P.A, a subsidiary of the German company Rheinmetall AG - for exporting weapons to members of the Saudi/UAE led coalition during the conflict in Yemen.

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<sup>2</sup> <https://mwatana.org/en/without-accountability/>

<sup>3</sup> <https://mwatana.org/en/made-in-europe-bombed-in-yemen/>

<sup>4</sup> <https://mwatana.org/en/groundbreaking-decision/>



### Certain Patterns of Violations Documented by Mwatana in Yemen:

#### Impeding humanitarian aid

- 22 Mwatana's investigations confirm that the Saudi/UAE-led Coalition, as well as Coalition-affiliated forces, Coalition-backed armed groups and the Ansar Allah (Houthi) armed group, have blocked and impeded humanitarian aid access.<sup>5</sup>
- 23 Under international humanitarian law, parties to the conflict must facilitate the rapid passage of humanitarian aid for civilians in need and not arbitrarily interfere with it. However, between March 2015 and March 2021, Mwatana has repeatedly documented incidents of humanitarian obstruction by the Saudi/UAE-led Coalition and by Coalition-affiliated forces and Coalition-backed armed groups. Mwatana has also documented many dozens of cases of aid obstruction by the Ansar Allah (Houthi) armed group.
- 24 The Coalition's *de facto* blockade of air, land, and seaports has impeded the delivery of humanitarian aid and impacted the ability of Yemeni civilians to access food, medicine and fuel, which are essential for the survival of the civilian population. At various points throughout the conflict, the Coalition's closure of air and seaports has crippled the delivery of humanitarian aid and limited Yemeni civilians' access to food,

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<sup>5</sup> Mwatana, *Warring Parties Continue to Undermine Yemeni Lives*, 26 March, 2020, available at: <https://mwatana.org/en/warring-parties-continue-to-undermine-yemeni-lives/>.

medicine, and fuel.<sup>6</sup> In Yemen, imported goods are indispensable to the population's survival. Yemen relies heavily on imported goods and commodities. 90 percent of Yemen's food is imported. The severe restrictions by the Coalition have thus aggravated the risk of famine.

#### Airstrikes and ground attacks

25 Saudi/UAE-led coalition air strikes have caused heavy loss of life and damage to vital civilian infrastructure in the country.

25.1 Between March 2015 and the date of this statement, Mwatana has documented about 577 airstrikes by the Saudi/UAE-led coalition impacting civilians or civilian objects. These documented Saudi/UAE-led coalition airstrikes have killed and wounded thousands of civilians, including many hundreds of women and children.

25.2 The airstrikes have repeatedly hit residential neighbourhoods, civilian homes, markets, bridges, schools, health facilities, and service and commercial facilities.

Warring parties, including the Ansar Allah (Houthi) armed group), Coalition-backed ground forces, such as the UAE-backed Southern Transitional Council forces and UAE-backed Joint Forces on the Western Coast, as well as Saudi/UAE-led Coalition

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<sup>6</sup> Mwatana, *Submission to the United Nations Universal Periodic Review of Yemen*, p. 10, available at: <https://mwatana.org/en/submission-to-unceser/>

forces, have also carried out ground attacks that have killed and wounded civilians and damaged and destroyed civilian objects.

#### Detention Related violations

- 26 Mwatana has documented cases of torture and other forms of inhumane treatment by all parties to the conflict. Mwatana has documented many hundreds of cases of detention-related abuse, including arbitrary detentions and enforced disappearances. Unofficial detention sites and detention centres remain overcrowded, holding both civilian detainees and combatants.
- 27 The warring parties continue to commit human rights violations and abuses against journalists and media professionals. The parties have also restricted civilians' freedom of movement and have subjected civilians to additional arbitrary restrictions that have deepened their suffering.

#### Children

- 28 All parties to the conflict have been recruiting and using children during the conflict, including in combat, security and logistical operations. While the Ansar Allah (Houthi) group has been responsible for the vast majority of child recruitment cases documented by Mwatana, Mwatana has also documented child recruitment and use by the internationally recognized government of Yemen, as well as by pro-

government forces and by Coalition-backed armed groups. Over the years, there has been a significant increase in the rate of recruitment of girls.

#### Attacks on hospitals and schools

29 Mwatana's investigations reveal attacks on hospitals and medical staff.

29.1 Between March 2015 and March 2021, Mwatana documented repeated attacks impacting hospitals, health facilities, and medical staff.

29.2 As mentioned in its 2020 report with Physicians for Human Rights on attacks on health care in Yemen<sup>7</sup>, between 2015 and 2018, Mwatana documented 120 attacks on health facilities and medical personnel, including air strikes (35), ground attacks (46), occupation of medical facilities (10), assaults against medical personnel (24), and other violations affecting health care access (7). Saudi/UAE-led Coalition forces primarily destroyed and damaged hospitals, clinics, vaccination centres, and other medical points through aerial attacks. The Ansar Allah (Houthi) armed group, through its use of indirect fire weapons and occupation of health facilities, also participated in the destruction of health facilities. Other armed forces, including those supported by the Coalition, have commandeered and looted medical facilities and intimidated, and threatened health workers.

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<sup>7</sup> <https://mwatana.org/en/i-ripped-iv-out-of-my-arm/>

- 29.3 The warring parties bear responsibility for the incessant damage to the already dilapidated medical sector, particularly during a time of extremely dangerous humanitarian conditions due to the spread of the novel coronavirus (COVID-19).
- 30 Mwatana has documented attacks on schools and educational facilities. These attacks vary and include air and ground strikes and military occupation<sup>8</sup>.

### Water

- 31 Coalition strikes have damaged and destroyed water and sanitation facilities, causing water access to shrink and prices to rise.
- 32 Mwatana has documented repeated Coalition air strikes on water infrastructure.<sup>9</sup> Access to drinking water is limited throughout the country. These attacks, which have damaged and destroyed water infrastructure, and, in some cases, hit the same critical water infrastructure sites repeatedly, have decreased access to clean water and caused prices to rise.

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<sup>8</sup> <https://mwatana.org/en/undermining-future/>

<sup>9</sup> Mwatana, *Withering Life*, pp. 83–84, available at: <https://mwatana.org/wp-content/uploads/2019/07/Withering-Life-2.pdf>.

## CONCLUSION

- 33 As Mwatana's documentation and research illustrate, the supply of arms to Saudi Arabia and the UAE from third countries such as South Africa has a proximate and lethal impact on civilians in Yemen.
- 34 Since the conflict in Yemen began, some countries, including Germany and Italy, have suspended the export of arms to Saudi Arabia and other countries involved in the war in Yemen.
- 35 Despite this and the call by the UN Group of Eminent Experts to stop arms exports to Saudi Arabia and the UAE, a number of states, such as South Africa, have continued to provide weapons to these states. This has meant that, while certain companies are now based in countries that have imposed export bans, like German Rheinmetall (mentioned above), their subsidiaries continue to be able to export weapons, like Rheinmetall Denel Munition in South Africa.
- 36 Throughout the war, certain arms-supplying states have also impeded efforts aimed at ensuring international investigations and accountability efforts are sufficient to respond to the gravity, severity and volume of violations being committed in Yemen.
- 37 Mwatana showed through its 2019 report, Day of Judgment<sup>10</sup>: The role of the US and Europe in Civilians Death Destruction and Trauma in Yemen how every weapon

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<sup>10</sup> <https://mwatana.org/en/day-of-judgment/>

that finds its way to Yemen, has the potential, and is likely, to lead to civilian harm, be it the death or injury of civilians, the damage or destruction of civilian infrastructure, or contributing to the humanitarian crisis, which is leading to the starvation of children. While accountability and a political resolution is needed to end the conflict, Mwatana is firmly of the view that the cessation of the transfer of arms to the warring parties is an important step towards ending the death and destruction.

Radhya Almutawakel:

Date: June 3, 2021

Signature:  .....

Stamp: ...

