

Yemen, Obstructing Medical Care

1. Introduction

Case prepared by Ms. Danielle Breitenbücher, Master student at the Faculties of Law of the Universities of Geneva and Basel (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Gaetane Cornet, research assistant, at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Conflict in Yemen – Abyan's Darkest Hour

[Source: Amnesty International, Conflict in Yemen – Abyan's Darkest Hour, AI Index: MDE 31/010/2012, 4 December 2012; footnotes omitted; numbering of the paragraphs added by us; available on <http://www.amnesty.org>]

[...]

1. Ansar al-Shari'a (Partisans of al-Shari'a), an armed group affiliated with al-Qa'ida in the Arabian Peninsula (AQAP), rapidly established control of the small city of Ja'ar in the southern governorate of Abyan in early 2011. This was the period when the Yemeni authorities were brutally repressing large protests calling for President Ali Abdullah Saleh to step down. The armed group successfully attacked government forces and officials, and quickly gained considerable territory. By mid-2011, it controlled most towns and villages in Abyan, including the governorate's capital, Zinjibar, just 60km from the country's second largest city, Aden.

[...]

2. Background

THE 2011-12 CONFLICT IN ABYAN

[...]

1. Starting from mid-2011 and until early 2012, an estimated 200,000 people from the southern governorates, particularly Abyan, were displaced due to the fighting between the government forces and Ansar al-Shari'a and human rights abuses committed in the area. During this period, Yemeni forces were trying but failing to regain control of Zinjibar. In March 2012, the conflict between the government and Islamists intensified, particularly after Ansar al-Shari'a attacked an artillery military base in the town of Dufas, near Aden, reportedly killing scores of soldiers, capturing ammunition, and capturing dozens of soldiers. The fighting extended to Lawdar in the Abyan governorate and the Azzan area in the Shabwa governorate. Consequently, an additional 48,000 people were displaced.
2. Other key areas that fell under the control of Ansar al-Shari'a include Shuqra and al-Kawd in Abyan, and Azzan in Shabwa. In January 2012, the al-Bayda governorate city of Rada' fell to Ansar al-Shari'a for around two weeks before the group left it. Ansar al-Shari'a attempted to take control of other cities and towns by using suicide bombers and engaging in fierce fighting with government forces and pro-government tribal groups, but was driven away from these areas, such as in Lawdar in April 2012.
3. A proliferation of pro-government militias, the Popular Committees (*al-lejan al-sha'biya*), had emerged by April 2012 in several southern areas to help efforts to push back Ansar al-Shari'a. In early May 2012, Yemen's new President Abd Rabbu Mansour Hadi reportedly met Abyan tribal leaders to ask for the formation of more such committees.
4. On 12 May 2012, the Yemeni military launched a large offensive to recapture all areas in Abyan and Shabwa using the air force. The government succeeded in driving Ansar al-Shari'a out of Ja'ar and Zinjibar on 12 June, out of Shuqra on 15 June and finally out of Azzan on 23 June.

[...]

4. Violations by both sides during the conflict

[...]

EXPOSING CIVILIANS TO ATTACK

[...]

1. Residents of Ja'ar told Amnesty International that Ansar al-Shari'a effectively controlled the city's al-Razi Hospital, with armed fighters entering and leaving freely. While the emergency room continued to be used for medical procedures required by the city's residents, Ansar al-Shari'a occupied at least the second floor of the hospital and used the hospital's ambulance. This discouraged patients and the wounded from going to al-Razi Hospital as they felt Ansar al-Shari'a's presence there made it unsafe. On 5 September 2011, the hospital was hit by a government air strike (see below).
2. It remains unclear to Amnesty International if Ansar al-Shari'a were using the second floor only to treat their wounded men or if they were also engaged in activities that violated IHL.

[...]

OBSTRUCTING MEDICAL CARE

1. Serious injuries require prompt and adequate medical attention, and it is precisely at moments of greatest need, such as during the armed conflict in Abyan, that health care services in Yemen have become a casualty of the internal disturbances: vulnerable to attack, disruption and interference.
2. On 5 September 2011, the al-Razi Hospital was hit by a government air strike putting the lives of civilians, including wounded persons brought in from an earlier attack that day at the Great Mosque, at risk. While Ansar al-Shari'a was in control of the hospital's second floor and the hospital ambulance, the presence of its members would not make it a legitimate target for attack. It is unclear if the armed group was involved in unlawful activities at the hospital besides treating their wounded fighters. However, even if they were, the government forces should have used proportionality and refrained from targeting the hospital because hospitals are protected under IHL.
3. In addition to the absence of well equipped and available ambulances, the sick and wounded in Ja'ar who had to be transferred to hospitals in Aden faced another obstacle. The Yemeni authorities closed the main coastal road from al-Kawd, south of Ja'ar and Zinjibar, to Aden, a journey which normally takes 40 to 60 minutes by car. As a result, the residents of Ja'ar had to use much longer routes to Aden that take from three to five hours. It is unclear why the Yemeni authorities closed the short route and why it did not allow at least ambulances and civilians to use it for emergencies.
4. **Majed Ahmed Abdullah Awad** was injured by an air strike while standing with a crowd that had come to see **Nuweir al-Arshani's** destroyed home in Ja'ar (see above). He was badly burned and sustained shrapnel wounds. The MSF medical centre in Ja'ar had no capacity to treat his injuries, so his family decided to take him to Aden in a borrowed jeep, along with another man who was badly burned, **Assil Abd al-Hadi**.
5. That day, however, even the shortest of the longer routes to Aden was closed, so there was no option but a particularly long route. The absence of an ambulance and the longer journey exacerbated the suffering of Majed and Assil. [...]
6. Other people interviewed by Amnesty International also said that they had to use the longer routes to take wounded family members to hospital, such as the family of Ramzi al-Aqd [...] and Jaber Qassem Salem, who was injured in the Great Mosque attack [...] and died a week later.
7. It is unclear to Amnesty International if any of the three cases covered in this report could have survived if they had been able to access adequate medical care quicker.
8. Amnesty International also found that Yemeni authorities removed wounded people from ambulances and hospitals without complying with the customary medical referral procedures. They also delayed the right of wounded people to immediate access to hospitals by stopping civilian cars and ambulances transporting injured people while they checked if those in need of medical attention were suspected fighters. Yemeni security personnel entered hospital areas only authorized for medical staff, such as intensive care units, without consulting the health professionals in charge and without identifying themselves or presenting arrest warrants when they wanted to remove certain wounded persons.
9. In May or June 2012, during the Yemeni forces' military offensive in Abyan, an ambulance carrying a wounded man from Ja'ar was stopped at a military checkpoint in Lahj and the injured man, who has dark skin, was accused by the officers of being a Somali fighting with Ansar al-Shari'a. His brother, who was with him in the ambulance, told the officers that they were both from Ja'ar, but the military took the

ambulance to the Criminal Investigation Department in Lahj. The two men remained in the ambulance for at least one hour until the wounded man's other brother in Aden brought his identity card to prove he was a Yemeni national and they were let go.

10. Another wounded man, possibly a relative of alleged Ansar al-Shari'a commander Tareq al-Zahab, who was killed in February 2012 in Rada', was admitted to the intensive care unit in a hospital in Aden in a critical condition. He was unconscious and on a ventilator. Central Security forces entered the intensive care unit, which was authorized only for medical staff and one family member at specific times, without consulting the medical staff – apparently a common practice by security forces during the period of the conflict in Abyan – and declared their intention to take him away. The staff insisted that, if they removed his ventilator, he would die. The Central Security forces agreed not to take him away. Despite regaining consciousness and his condition stabilizing, the man died in early October 2011. Since security force members were free to access hospital wards without consulting the medical staff, Amnesty International is concerned that his medical treatment may have been impeded and in some way contributed to his death.
11. While Amnesty International recognizes that military and law enforcement personnel may need to arrest, guard or detain wounded patients on occasions, in all such cases the detaining authorities have an obligation to ensure that the arrest is legal and that medical treatment of injured people is not compromised. In the Abyan conflict, Amnesty International's investigations indicate that such standards have not been met, and that in some occasions, as documented here, the authorities have interfered in the treatment of wounded persons inside health facilities.
12. IHL requires all parties ensure that the wounded and sick receive, without discrimination, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. By arbitrarily impeding urgent medical treatment in the cases above, government forces violated this rule. Its actions also violated its obligations under international human rights law to respect the right to health.

5. Applicable international frameworks

[...]

IHL: PROTECTING INDIVIDUALS IN ARMED CONFLICT

1. By the middle of 2011 – and certainly by June of that year when Ansar al-Shari'a took control of Zinjibar – the fighting between government forces and Ansar al-Shari'a reached the minimum level of intensity and the parties to it had the level of organization required for the existence of an armed conflict of a non-international character. Therefore, for the period on which this report focuses, IHL applied alongside international human rights law to the conduct of government forces.

[...]

Discussion

I. Classification of the situation

1. (*Paras [1]- [5], [20]*) How does Amnesty International (A.I.) classify the situation in Yemen? Who are the parties to the conflict? Which criteria have to be fulfilled for a situation to be classified as a non-international armed conflict? Which set of rules applies in the present case? (GC I-IV, Art. 3; P II, Art. 1)

II. Protection of the wounded and sick

1. (*Para. [19]*)
 - a. What are the parties' obligations in relation to the treatment of wounded or sick people under the IHL of non-international armed conflicts? According to which criteria do they have to be treated? Who benefits from this treatment? Combatants wounded during hostilities? Wounded civilians? Only civilians who are in the hands of the enemy? Sick civilians? Pregnant women? (GC I-IV, Art. 3(2); P II, Art. 7; CIHL, Rule 110)
 - b. Do the same guarantees apply to the sick and wounded in international and non-international armed conflicts? (GC I-IV, common Art. 3(2); GC I, Art. 12; GC II, Art. 12; GC IV, Art. 16; P I, Arts 10 and 11)?
 - c. Is the human right to health applicable in the present context?
2.
 - a. Does the civilian hospital have an obligation to treat wounded fighters from Ansar al-Shari'a or does this obligation only apply to military medical units? To which patients should they give priority? (GC I-IV, Art. 3(2); P II, Art. 7; CIHL, Rule 110)
 - b. Does Ansar al-Shari'a have the right to treat its own wounded fighters but refuse to treat wounded civilians?

III. Ansar al-Shari'a's control over Ja'ar and the al-Razi Hospital

1. (*Paras [6]-[7] and [9]*)
 - a. Is Ansar al-Shari'a allowed under IHL of non-international armed conflicts to take control of the second floor of the al-Razi Hospital? To treat its wounded fighters? To use it for military purposes? Is Ansar al-Shari'a allowed to use the hospital's ambulance to transport its wounded soldiers? To transport its healthy soldiers? To transport ammunition?
 - b. What would the answer to (a) be in the case of an international armed conflict? Under which conditions may an occupying power requisition a hospital or its equipment, material and services? Under which circumstances would these conditions be met in the present case? (GC IV, Art. 57; P I, Art. 14; P II, Arts 7 and 11; CIHL, Rules 28, 29 and 110)
 - c. Is the law of occupation also applicable in non-international armed conflicts? To what extent does Ansar al-Shari'a play a role similar to that of an occupying power in Ja'ar and the other places in Yemen under its control? Could the discussed provisions therefore be applied by analogy? What is the opinion and practice of states and armed groups relating to this question?
 - d. Does the fact that Ansar al-Shari'a has effective control over the hospital's second floor and its ambulance as well as that its armed fighters are entering and leaving freely violate its obligation to care for the wounded and sick? (GC I-IV, Art. 3(2); P II, Arts 7; CIHL, Rule 110)

IV. Closing of the coastal road to Aden

1. (*Paras [10]-[14]*) Do the Yemeni authorities violate IHL by closing the main coastal road from al-Kawd to Aden? Are they allowed to close this road for military purposes? How could they nevertheless respect

their obligations under IHL? How do you interpret the phrase “to the fullest extent practicable and with the least possible delay” in Article 7 of Protocol II in the present case? Could there be situations when it would be lawful to close the road completely without violating IHL? (GC I-IV, Art. 3(2); P II, Art. 7; CIHL, Rule 110)

V. Controlling and removing wounded and sick persons

1.
 - a. (*Paras [15]-[18]*) Are the Yemeni authorities allowed to check the identity of the people in the ambulances and in the hospital, and arrest suspected fighters? What is the legal basis for this?
 - b. If the Yemeni authorities arrest wounded and sick suspects, do they have any obligation towards them afterwards? (P II, Art. 5(1)(a); CIHL, Rule 118)
 - c. Can the authorities remove wounded and sick persons from ambulances and hospitals without complying with the customary medical referral procedures or subject them to time-consuming inspections? Even when the wounded and sick are in need of urgent medical attention? Did the behaviour of the Yemeni authorities violate the rules of IHL applicable in non-international armed conflicts? If yes, how? (P II, Arts 7 and 11)

VI. Attack against a hospital

1.
 - a. (*Paras [6] and [9]*) Did the attack of the Yemeni government against the al-Razi Hospital in the present case violate IHL? Is a hospital a legitimate target under IHL? Does it become a legitimate target when an enemy armed group uses it to treat wounded fighters? When such a group uses the hospital for military purposes? Can the more detailed provisions of Protocol I be used to give precision to the provisions of Protocol II in a non-international armed conflict? (GC I, Arts 19-22; GC IV, Arts 18-19; P I, Arts 12-13 and 52; P II, Art. 11; CIHL, Rules 7-10 and 28)
 - b. Is it a war crime to attack a hospital during a non-international armed conflict? (CIHL, Rule 28 and 156; The International Criminal Court, Arts 8(2)(e)(ii) and (iv))
 - c. To what extent do the general principles of proportionality and precaution apply to the attack against the hospital in the event that its protection has ceased? Did the choice of an airstrike as method of attack respect these principles? (P I, Arts 51 and 57; CIHL, Rules 11-21)
2. By occupying parts of the hospital in Ja'ar, did Ansar al-Shari'a violate its obligations towards the civilian population under IHL? Does your answer change depending on the use Ansar al-Shari'a makes of the second floor of the hospital? (P I, Arts 12(4) and 58; CIHL, Rules 22-24)