

Mandates of the Special Rapporteur on the right to food; the Independent Expert on the promotion of a democratic and equitable international order; and the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

REFERENCE:
AL SAU 5/2017

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Independent Expert on the promotion of a democratic and equitable international order; Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolutions 22/9, 33/3 and 27/21.

In this connection, we would like to bring to the attention of your Excellency's Government, as the leading member of the Coalition Forces operating in Yemen, further information we have received concerning **the negative impact on the enjoyment of human rights of the people in Yemen due to the ongoing blockade of aircraft and vessels carrying essential goods to Yemeni ports, including basic food items, fuel and essential medicines.**

This issue has been the subject of a previous communication (SAU 6/2016) dated 17 November 2016 sent by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Special Rapporteur on the human rights to safe drinking water and sanitation. We thank your Excellency's Government for the replies received on 28 December 2016 and 9 January 2017.

According to the information received previously:

The Coalition Forces have imposed an aerial and naval blockade in Yemen since March 2015. The alleged purpose of this blockade is to implement United Nations Security Council resolution 2216. Nevertheless, this blockade appears to restrict and disrupt both the import and export of commercial goods (including food, medical and fuel supplies) and humanitarian aid, thereby encompassing in practice a unilateral coercive measure by the Coalition against Yemen.

Regarding the aerial and naval blockade, it is reported that humanitarian aid into Yemen is being hampered by a variety of regulatory, or in some cases even arbitrary, impediments from the Coalition. Consequently, there is an unreasonable delay and/or denial of entry to vessels into the ports.

Given the fact that Yemen is a net-food-importing state, this situation has led to a severe lack of basic goods and services. As of October 2016, the Humanitarian Country

Team estimates that 21.2 million people in Yemen (82 percent of the population) are in need of humanitarian assistance. Some 14.1 million are food insecure, including 7.6 million who are severely food insecure. Access of 14.1 million people to healthcare services is disrupted. Moreover, the lack of availability and inadequate quality of basic healthcare services (hospitals are increasingly unable to provide basic healthcare services due to the shortage of fuel), together with the severe shortages of essential medicines, especially vaccinations, are severely affecting the right to health of people in Yemen. It is also reported that two-thirds of Yemen's population do not have access to clean water supplies. The fuel shortage crisis creates logistical and transport restrictions, which further reduces access to food, water and medicine in some areas.

Furthermore, it has been reported that in addition to killing and injuring thousands of civilians, the airstrikes conducted by the Coalition Forces have also caused extensive damage to and/or complete destruction of healthcare structures, including facilities and healthcare personnel, as well as of other protected civilian objects.

According to the new information received:

(i) *Blockade and mismanagement at ports*

Delays in receiving clearances are due to restrictions imposed by the Saudi-led coalition, such as the hampering of vessels' access to Yemeni Red Sea ports and the absence of clear lists of prohibited items. It is reported that a vessel carrying four mobile cranes was recently ordered by Saudi authorities to leave Yemeni territorial waters and is now anchored 15 miles off Yemen's coast, waiting for the Coalition Forces' approval to berth at the port. These cranes would boost the port's capacity in handling humanitarian cargo. Two of them are to be used by the World Food Programme (WFP) to help expedite the timely delivery of vital humanitarian aid supplies.

Furthermore, offloading cargo can take up to 30 days due to inefficient port management, financial disputes among shippers and limited capacities, in particular at Al Hudaydah port, which was severely damaged by airstrikes in August 2015.

Consequently, merchants importing through Aden Port and transporting to northern governorates are facing higher transportation costs due to fuel prices that have risen sharply. Financial complications triggered by the ongoing armed conflict have also led trading partners to demand 100 percent cash collaterals for any trade transactions. There is concern among exporters that the delays due to Coalition inspections will cause their products to expire at ports, which makes them less keen on taking the risk of transportation.

(ii) *Airstrikes at ports*

Ports are under continuous threat of air strikes, notably Al Hudaydah Port. It is reported that on 24 January 2017, the Coalition threatened the Orix, a ship on its way to Saleef Port, stating that it must respond to the Coalition or else airstrikes would target the ship inside the Port. On 31 January 2017, the Coalition threatened all merchant ships and ports in Yemen with airstrikes. On 1 February 2017, the management of the Red Sea Port Corporation issued a statement condemning the threats of airstrikes on merchant ships and Yemen's ports. It claimed that the Coalition was using a narrative of military activity in the ports to justify its coercive actions and for labelling of Al Hudaydah Port as a military zone.

(iii) Impact of limitations of imports on the right to health

It has been reported that some members of the Coalition do not allow any medical supplies, including essential medicines, to be shipped from ports in their countries to Al Hudaydah Port. Moreover, the flight ban to and from Sana'a International Airport that has been in place for the past six months, restricts the ability to import medicine via commercial flights, which is often the only way to import medicines requiring refrigeration and timely transport. The situation is worrisome as, according to the Supreme Board for Drugs and Medical Appliances, 85 percent of the market for medicines is satisfied through importation by merchants. Additionally, the inability of manufacturers to import the necessary components for the manufacturing process such as raw materials and packaging materials hinders local production. The lack of access to medicines has led to an increase in health, including reported cases of transplanted kidney failure.

Due to lack of resources, lack of medical professionals and shortage of medicines, the World Health Organization (WHO) has found that approximately 3,500 healthcare facilities across Yemen are either closed or are only partially operational. The capacities of the remaining healthcare facilities are also seriously limited.

(iv) Impact of the limitations of imports on the right to food

The food security and nutrition situation in Yemen continues to deteriorate. According to Oxfam, in October 2016, the imported food covered only 40 percent of the demands. It is to be noted that Yemen imported 90 percent of its food requirement prior to the Saudi Coalition intervention in Yemen.

According to a joint assessment carried out by United Nations Food and Agricultural Organization (FAO), UNICEF and WFP in cooperation with authorities in Yemen, more than two-thirds of Yemen's population lack access to food and consume an inadequate diet. According to the joint assessment, 17.1 million people are food insecure, 7.3 million of whom are severely food insecure. The assessment has found that rates of acute malnutrition have passed the "critical" threshold in four governorates. In January 2017, the Famine Early

Warning Systems Network, a leading provider of early warning and analysis on acute food insecurity, reported that Yemen faces the largest food security emergency in the world, with 7 to 10 million people estimated to be in crisis or worse food insecurity (IPC phase 3). Of this total, at least 2 million people are in emergency and face an increased risk of mortality (IPC phase 4). Given this emergency, increased levels of humanitarian assistance are needed to save lives throughout the country.

The situation is especially grave for vulnerable groups, including 3.11 million internally displaced persons. 2.2 million children are acutely malnourished and almost half a million children are suffering from acute malnutrition. There has been a 63 percent increase of malnutrition in children since late 2015.

Furthermore, the agricultural sector continues to be heavily impacted by the conflict. FAO reports that there was a 30 percent reduction in agricultural output and a 70 percent decrease for fisheries.

(v) *Impact of the limited importations of fuel*

It has been reported that the import of fuel continues to be limited. Only 24 percent of required amounts of fuel have been permitted entry into the country, resulting in an increase in price by 400 percent in some areas. This has a high impact on the food, healthcare and sanitation sectors.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern over the further deterioration of human rights conditions in Yemen due to the comprehensive vessel and aerial blockade. The blockade, together with the alleged mismanagement of ports and delays in food importation, and the airstrikes have contributed to the obstruction of humanitarian assistance and aid.

Very serious concern is expressed at the impact that these measures, which could amount to unilateral coercive measures and which are difficult to reconcile with the implementation of the Security Council resolution 2216, have had on a number of fundamental human rights, including the enjoyment of the right to adequate food, health, and safe drinking water and sanitation of civilians. Very serious concern is thus expressed regarding the continuation of the situation which, despite assurances received, remains desperate and we call on the parties to the Coalition Forces to ensure unhindered access for all humanitarian supplies to restore the basic rights to food, health and safe drinking water and sanitation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the above-mentioned allegations.
2. Please provide information on any measures taken to ensure that humanitarian assistance, including basic healthcare goods and supplies, mainly essential medicines and vaccines, as well as food items, is delivered in a timely manner.
3. Please explain which measures are being taken to avoid any undue restriction on the importation of humanitarian goods.
4. Please indicate what kinds of measures are being taken to incorporate the international standards about facilitating the delivery of humanitarian assistance.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting public attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We kindly request your Excellency's Government to share a copy of this letter with the members of the Coalition. Please, also note that a copy of the present letter will be sent to the Government of Yemen for information.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Hilal Elver
Special Rapporteur on the right to food

Alfred De Zayas

Independent Expert on the promotion of a democratic and equitable international order

Idriss Jazairy

Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to remind your Excellency's Government of States' obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights, to which your Excellency's Government acceded on 9 February 1987. More specifically, article 11.1 recognizes the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions, and article 12 enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. These articles must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind.

We would also like to recall General Comment No. 8 of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights where the Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights, cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions. It has been observed that although this General Comment seems to apply to sanctions adopted by the Security Council, it may also apply to unilateral coercive measures (A/HRC/28/74, para. 15).

Furthermore, recalling its position stated in the aforementioned General Comment 8, the Committee in its General Comment No. 12 called on States to refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure. In addition, in its General Comment No. 14, the Committee called on States parties to refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment. Restrictions on such goods should never be used as an instrument of political and economic pressure.

In this regard, we would like to bring to your attention the Vienna Declaration and Programme of Action, which calls upon States to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for

their health and well-being, including food and medical care, housing and the necessary social services.

We would also like to remind your Excellency's Government of resolutions 27/21, 30/2 and 34/L.14 of the Human Rights Council, which inter alia, express grave concern on the negative impact of unilateral coercive measures on the right to life, the rights to health and medical care, the right to freedom from hunger and the right to an adequate standard of living, food, education, work and housing. The Council also expressed concern for the disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population, in particular women and children, of targeted States.

In addition, we wish to recall operative paragraph 1 of the aforementioned resolutions, in which the Council “[calls] upon all States to stop adopting, maintaining or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development.”

Furthermore, we recall the recognition of the human right to safe drinking water and sanitation by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 11 of the International Covenant on Economic, Social and Cultural Rights. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The human right to sanitation means that everyone, without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.