

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 32/8, 33/9 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **negative impact on living conditions of the population in the City of Derna including their access to safe drinking water, sanitation, food as well as medical services and supplies following the siege of the city since 2014.**

According to the information received:

The City of Derna has an estimated population of 80,000 and is located on the Mediterranean coast in northeastern Libya bordering the Mediterranean Sea on its northern side and the Green Mountains on its southern side and is divided into two parts by a valley called the Valley of Derna.

Since October 2014, the Libyan National Army has imposed a siege on the City of Derna blocking all roads into the city. Since May 2017, the siege has been intensified with the blockage of all entry points to the city, which does not allow entry and free movement of any vehicles. As a result, there is shortage of fuel and chemicals used for water treatment. Furthermore, it is alleged that the Libyan National Army has repeatedly refused entry to humanitarian relief trucks. On 5 November 2017, nine trucks full of relief supplies were turned back. On 7 November 2017, Derna Local Council sent a letter to the Chairman of the Presidential Council of the Government of National Accord, asking for assistance to provide protection to a ship in order to deliver medical, fuel and food supplies to the City of Derna. The Presidential Council has not yet responded to the request.

Situation on availability of drinking water

The City of Derna is facing severe water shortages. Water sources are managed by Derna Water and Sanitation Company (DWSC), which provides running water to each district once every four to eight days. It is reported that the district of Sahil

al-Sharqi is the most affected by water shortage. Allegedly, water supply is provided to the residents of Sahil al-Sharqi once every month and residents have to buy water from private companies, delivered in trucks.

The City of Derna relies on three main sources of drinking water. One source is the al-Fatayeh water station that collect spring water from Wadi (Valley) Derna. Water is pumped up to al-Fatayeh water station, and from there it runs to supply Sahil al-Sharqi district (Eastern Coast) of Derna. The water station is currently not operational with the water pump out of service.

The second source is the network of ground water wells, drawing ground water from depth of 150m. Out of 16 wells, only nine are operating – six wells in Shieha district and three in Bab Turbrug. Seven in the western side of the city (west of Khadija District) are not operating because of lack of pumps. The maximum production from each of the running nine wells is between 15 to 20 liters/second (1,200 to 1,700 m³/day).

The third source is the Derna Desalination Plant located in the City of Derna. The desalination plant produces 40,000 cubic meters of water per day when operating in full capacity and is the largest source of drinking water for the 80,000 inhabitants of the city. Allegedly, only one unit is operating at 50 per cent capacity and the plant is currently producing less than 25 per cent of its maximum production capacity due to lack of fuel oil.

Situation on sustainability of water services

In late September 2017, due to lack of supplies of fuel, spare parts and chemicals used for water treatment, the Derna Desalination Plant substantially reduced its production which led to a grave shortage of drinking water supply. Fuel and chemicals required for the operation of the Plant have been limited: the last heavy fuel oil shipment received by the Plant was in April 2017 for 32,000m³. The last shipment of diesel oil received by the Plant was in February 2016 for 630m³. It is alleged that currently the Plant barely has enough fuel oil to continue running at 25 per cent capacity for two to three weeks.

The Desalination Plant also suffers from severe shortage of spare parts. It is alleged that the operator uses parts that are obtained from the power station or recycled old spare parts. The lack of spare parts and maintenance works in the Derna Desalination Plant will lead to deterioration of the Plant and hence reducing its productive life and risk losing the plant all together.

It is alleged that the water crisis situation in the City of Derna will face an extreme deterioration if the desalination plant stops functioning. There is lack of diesel oil which is required for starting up the plant when it shuts down. Without the diesel oil, the plant is not able to re-start even when heavy fuel is available. Reportedly,

the last shipment of diesel received was over a year ago and that recent diesel shipment was barred from entry.

The water pipe network of the city is outdated and particularly in the center of the city (Shieha, Bab Tubruq and Eljebilah), the network has not been renovated since 1964. DWSC estimates that 40 to 50 per cent of water is lost through leakages in the network.

Situation on availability of sanitation services

The absence of sewage treatment plants presents a major sanitation issue in the City of Derna and also throughout Libya. There are few cities that have sewage treatment plants, and the existing sewage treatment plants suffer from lack of maintenance. The water intake for the desalination plant is at risk of contamination, being just about one kilometre from the shore. All sewage water in Libya flows into the sea from several points along the coast line of the city creating grave environmental damage and health risks for people who swim or fish in the area. The water intake for the desalination plant is also at risk of contamination.

Situation on access to food

Due to the siege and the restriction of access, no external goods or commercial trucks have been able to enter the city. Prices of food and groceries have increased substantially, with shortages of basic commodities such as bread, chicken meat, eggs and potatoes, and fresh vegetables except those locally produced. Alledgely, prices of basic food commodities such as sugar, flour, rice, pasta, couscous, tomato paste and chickpeas have risen 14 to 30 per cent between July and August 2017.

Most of the city's bakeries have stopped working due to a lack of flour stock. The only bread available in the city is homemade by individuals using firewood sold informally on the streets due to the absence of other types of fuel.

Situation on access to medical services and supplies

Since the siege, many foreign health workers who used to account for the majority of health staff have left the country and, therefore, the City of Derna suffers from shortage of qualified medical personnel. Alledgely, the situation has been aggravated by a chronic shortage of basic medicine and lifesaving medical supplies. Stocks of medicine are quickly depleting, in particular for chronic diseases (such as heart and kidney disease and diabetes); and there are shortages of medical supplies such as syringes for infant use.

Al-Wahda hospital is the only public hospital serving the City of Derna and the region, but it has no fuel and diesel for the hospital's emergency generators and

ambulances. As a result, health facilities cannot function at full capacity. There is a high prevalence of chronic diseases, as well as an increase in the predominance of mental health issues. In the City of Derna alone, it is reported that 2,000 individuals are suffering from psychiatric issues, 10 per cent of whom are children. These factors have a negative impact on people's health and well-being.

According to the information received, Brigadier General al-Jabali refused to allow the ambulances to leave the city to carry children in need of medical attention to Tobruk, which is located 150 km southeast of Derna. Those children were finally allowed to leave the city on 5 November 2017 where they were taken to Tripoli on a flight from Tobruk airport.

The stress on medicine availability was temporarily relieved by a delivery of anaesthesia, dressings, drugs, injection material, sterilization items, surgical materials and sutures by the International Committee of the Red Crescent on 10 August 2017, as well as deliveries from the World Health Organization of oxygen, medicine and medical supplies between 7 and 10 August 2017.

Grave concern is expressed regarding the negative impact on the living conditions of the population in the City of Derna. We express concern that as a direct cause of the siege imposed since 2014, the population in the City of Derna suffers from lack of access to safe drinking water and sanitation provisions, food as well as medical services and supplies.

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.

As 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 and any comment you may have on the above-mentioned allegations.
2. Please provide information on measures and steps taken to ensure that the population of the City of Derna has access to provision of safe drinking water and adequate sanitation and provision of sufficient health facilities, goods and services. Please include information on efforts to ensure the development, implementation, and monitoring of afore-mentioned provisions.
3. Please provide information on measures and steps taken in order to rehabilitate and recover the al-Fatayeh water station and the seven non-operational ground water wells in the Western side of the city (west of Khadija District).

4. Please provide information on measures and steps taken to ensure that fuel (both diesel oil and heavy fuel oil), chemicals, and spare parts for the Derna Desalination Plant are adequately supplied in order to ensure its operation.
5. Please provide information on other measures to provide drinking water to the population.
6. Please provide information on how the lack of reliance on water sources impact the access to sanitation facilities for the population in the City of Derna and what measures are being taken in order to address such situation.
7. Please provide information on measures taken to ensure the availability and accessibility of food for the population as a whole, given the increase in prices of basic food stuffs and the decrease in available goods for food consumption.
8. Please provide information on measures and steps taken to ensure that children and pregnant women have sufficient access to safe and nutritious food and indicate who is responsible for the monitoring of the nutritional status of children and pregnant women.
9. Please provide information on specific measures taken to ensure sustainability of the availability of adequate medical services and supplies following the temporal relief of supplies by the ICRC and the WHO in August 2017.
10. Please provide information on measures taken to ensure the transfer to appropriate healthcare facilities of the most urgent medical cases and the population in the most vulnerable situations, including injured children.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim 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 person(s) responsible for the alleged violations.

We may also 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 immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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

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Special Rapporteur on the right to food

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Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded by Libya on 15 May 1970; in particular article 25 of the UDHR, and articles 11 and 12 of the ICESCR, which provide that everyone has the right to an adequate standard of living and the right to to enjoy the highest attainable standard of physical and mental health, respectively.

The human rights to water and sanitation are essential human rights set forth in the ICESCR, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Article 11 of the ICESCR consecrates the right to an adequate standard of living and article 12 of the ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comments 14 and 15, establishes water as an underlying determinant of health and as a human right, derived from the right to an adequate standard of living.

Additionally, the United Nations General Assembly in its resolution 70/169 of 2015 recognized that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”, and that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.

Furthermore, CESCR noted that State parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water (General Comment no. 15, para. 32). Water should never be used as an instrument of political and economic pressure.

With regards to the right to health, Article 12 of the ICESCR establishes the right to the enjoyment of the highest attainable standard of physical and mental health, comprising the obligation on the State to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. (General Comment 14, paras. 33-34). States also have the obligation to respect the right to health by refraining from interfering directly or indirectly with its enjoyment and the obligation to protect by taking measures that prevent third parties from interfering with article 12 guarantees. Finally, violations of the right to health can occur through the omission or failure of States to take necessary measures arising from its legal obligations. (General Comment 14, paras. 33, 48 and 49).

We would like to highlight that the CESCR in its General Comment no 14 noted: “States parties should 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.” (para. 41).

Additionally, as highlighted by the former Special Rapporteur on the right to health (A/HRC/19/69), we would like to recall that, accessibility and acceptability of quality health facilities, goods and services are critical in times of conflict. A functioning health system, including health-care workers, is vital to the enjoyment of the right to health of people affected by and/or involved in conflict.

We would also like to underline the State’s obligation to utilize maximum available resources towards realization of economic social and cultural rights, including the right to health. An aspect of this obligation is that the right to health is progressively realizable. However, conflicts often reduce the availability of resources and even where resources are available, States may not be able to make use of them due to the insecurity and poor infrastructure in many conflict environments. Nonetheless, progressive realization is a specific and continuous State obligation. It does not dilute certain immediate obligations of States, including taking concrete steps towards the full realization of the right to health to all, without discrimination and regardless of the status of persons as combatants or civilians. Therefore, even if conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality health facilities, goods and services, especially to groups rendered vulnerable by conflict.

With regards to the right to food, Article 25 of the UDHR recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore, article 11.1 of the ICESCR stipulates that States “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and requires them to “take appropriate steps to ensure the realization of this right.”

According to the CESCR, the obligation to respect existing access to adequate food requires States parties to refrain from taking any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including their access to land in order to ensure their food security (CESCR General Comment No. 12, para. 15). Paragraph 54 of the General Comment No. 12 also emphasizes that ‘[t]he denial of access to food to particular individuals or groups [...], the prevention of access to humanitarian food aid in internal conflicts or other emergency situations’ constitute violations of the right to food. Article 54 of Protocol I

and Article 14 of Protocol II of the Geneva Conventions note that “to use starvation as a method of warfare would be to provoke it deliberately, causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies.”

Finally, we would like to stress that States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population. Moreover, given that some diseases are easily transmissible beyond the frontiers of a State, the international community has a collective responsibility to address this problem. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard (General Comment no. 14, para 40).