

Explosive Weapons and the Right to Health, Education and Adequate Housing

Extraterritorial Obligations of Sweden under CESCR

Shadow report to CESCR 58th session

Sweden



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EXPLOSIVE WEAPONS AND THE RIGHT TO HEALTH, EDUCATION AND ADEQUATE
HOUSING
EXTRATERRITORIAL OBLIGATIONS OF SWEDEN UNDER CESC
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I. Introduction

This report intends to make the case that international exports of arms and arms licences can give rise to an extraterritorial responsibility for human rights violations. If such violations could have been foreseen, the exporting state has an obligation to refuse the arms export or granting of an arms licence.

States must conduct thorough risk assessments prior to granting permits for arms exports, and to refuse arms exports when there is risk that they could be used to violate international human rights law, as has been recognized and mandated by the Arms Trade Treaty.

This report uses as a case study the arms sales to members of the coalition of the Saudi Arabian-led military intervention in Yemen. The coalition is using explosive weapons in populated areas, killing and injuring civilians and causing destruction to civilian infrastructure. Of particular relevance for this report, these strikes have had a direct impact on the rights to adequate housing, health, and education.

Extraterritorial responsibility

In this globalised world, human rights violations can occur across borders and cannot be successfully addressed if the legal response does not take into account this transnational character. For this reason, states' duty to protect human rights is not limited to their territory, but also to their actions that violate human rights extraterritorially as repeatedly affirmed by United Nations Treaty Bodies,¹ legal doctrine, and by the International Court of Justice itself.²

The Committee on Economic, Social and Cultural Rights (the Committee) has recognised in its General Comments 22 and 23 on the right to sexual and reproductive health and on the right to just and favourable conditions of work, that "States also have an extraterritorial obligation to ensure that the transnational corporations, such as pharmaceutical companies operating globally, do not violate the right to sexual and reproductive health of people in other countries, for example through non-consensual testing of contraceptives or medical experiments."

The extraterritorial due diligence obligation of states regarding the international arms trade has now wide recognition since the adoption of the Arms Trade Treaty (ATT) in 2013. This treaty currently has 130 signatories, and 81 states have already ratified or acceded to it.

Article 6 of ATT prohibits arms transfers if a state has knowledge at the time of authorization that the arms would be used "in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such." Further, article 7 obligates the exporting state to undertake an assessment prior to any arms export to establish the risk that the arms might be used to "commit or facilitate a serious violation of international human rights law;" in which case arms exports are not to be authorized.

¹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 (2000), para. 39; Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11 (26 November 2002), para. 31; Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, CERD/C/CAN/CO/18, para. 17; Concluding Observations: United States, CERD/C/USA/CO/6, para. 30

² Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, para. 109; Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v. Uganda) 19 Dec. 2005 paras. 178-180 and 216-217

The state under review is party to the ATT. However, its obligations to not export weapons when they are likely to be used to violate human rights to education, health, and adequate housing can already be found under its commitments within the ICESCR, in particular when it comes to the exports of explosives that are likely to be used in populated areas and by consequence impact the right to education, health and adequate housing.

United Nations Secretary General Ban Ki-moon has himself requested the United Kingdom to stop its arms exports to Saudi Arabia because of its role in the conflict in Yemen. This call could be transferred to all other countries exporting weapons to Saudi Arabia.

The use of explosive weapons in populated areas and international initiatives

Explosive weapons use blast and fragmentation to kill and injure people in the area where they detonate, as well as to damage objects, buildings, and infrastructure. When used in populated areas they tend to cause high levels of harm to individuals, communities, and infrastructure.

Destruction of infrastructure vital to the civilian population, including water and sanitation, housing, schools, and hospitals, will likely prevent enjoyment of right to health, education, and adequate housing.

Victims and survivors of explosive weapons can face long-term challenges of disability, psychological harm, and social and economic exclusion.

We are at a ground breaking moment in confronting this problem, as a group of governments, UN agencies, and civil society organisations affiliated with the International Network on Explosive Weapons (INEW) have indicated support for developing a political commitment on preventing harm from the use of explosive weapons in populated areas.³ This process extends from concern expressed by over 40 governments in UN Security Council debates on the protection of civilians in armed conflict and on children and armed conflict, at which the UN Secretary-General has also urged international action on this issue.⁴

This topic has also been taken on by the UN Secretary-General Ban Ki-moon and International Committee of the Red Cross (ICRC) President Peter in their six-point call including a demand for states to stop the use of “heavy explosive weapons in populated areas.”⁵ The World Humanitarian Summit has included as one of its Core Commitments the promotion and enhancement of “the protection of civilians and civilian objects, especially in the conduct of hostilities, for instance by working to prevent civilian harm resulting from the use of wide-area explosive weapons in populated areas, and by sparing civilian infrastructure from military use in the conduct of military operations.”⁶ The Human Rights Council Commission of Inquiry on Gaza also included analysis of the human rights violated by explosive weapon use in populated

³ “States move to stop bombing and bombardment in towns and cities,” 24 September 2015, Reaching Critical Will, <http://www.reachingcriticalwill.org/news/latest-news/10182-states-move-to-stop-bombing-and-bombardment-in-towns-and-cities>.

⁴ Ray Acheson, Political action to end the use of explosive weapons in populated areas,” Peace in Progress No. 26, February 2016, http://www.icip-perlapau.cat/numero26/articles_centrales/article_central_1/; also see references at <http://www.inew.org/acknowledgements>.

⁵ “Ban Ki-moon, ICRC call for curb on explosive weapons use, states move towards commitment,” 31 October 2015, <http://www.article36.org/explosive-weapons/1st-com-2015>.

⁶ “Uphold the Norms that Safeguard Humanity: Core Responsibility Two of the Agenda for Humanity,” World Humanitarian Summit, Istanbul, 23–24 May 2016.

areas.⁷ A number of UN agencies and INEW partner organisations have issued advocacy and policy briefs on this issue over the last several years and have reported on a variety of meetings.⁸

⁷ "Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1," Human Rights Council, A/HRC/29/CRP.4, 22 June 2015, http://www.inew.org/site/wp-content/uploads/2015/06/A_HRC_CRP_41.pdf.

⁸ Please see <http://www.inew.org/news>.

II. Human rights violations through use in Yemen of imported weapons from country under review

Saudi Arabia led a coalition intervention in Yemen starting in 2015, seeking to influence Yemen's civil war. Nine other states are involved in the intervention,⁹ which began carrying out airstrikes on 26 March 2015.

A United Nations panel investigating the Saudi-led bombing campaign in Yemen has uncovered "widespread and systematic" attacks on civilian targets in violation of international humanitarian law.¹⁰ When explosive weapons were used in populated areas in Yemen, civilians made up 95% of reported deaths and injuries.¹¹ In 2015, Action on Armed Violence (AOAV) recorded more civilian deaths and injuries reported from explosive weapons in Yemen than in any other country around the world.¹²

All parties to the conflict in Yemen have made widespread use of explosive weapons that have a wide area impact in populated areas, including aircraft bombs, rockets, and mortars, as well as improvised explosive devices (IEDs). A report produced by AOAV and the UN Office for the Coordination of Humanitarian Affairs analysing violence in Yemen between 1 January and 31 July 2015 showed that explosive weapons killed and injured 4,493 civilians in that period.¹³

More than half of all the reported Saudi-led coalition air strikes in Yemen were recorded in populated areas. The report documents a widespread pattern of strikes hitting civilian residential areas, schools, mosques and markets, including within the capital Sana'a. The large destructive radius of many aircraft bombs means that even if a military target was struck within a populated area, infrastructure such as health, and education facilities and houses were damaged or destroyed.¹⁴

As well as causing the deaths and injuries of civilians, the conflict in Yemen has exacerbated an already severe humanitarian crisis and 80% of the population is in urgent need of humanitarian assistance.¹⁵ In such a context, women and girls often disproportionately suffer notably due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and lack of access to victim and survivor assistance.¹⁶ UNHCR has expressed concern with

⁹ Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan, United Arab Emirates are involved in the bombings, while Somalia contributed airspace, territorial waters, and military bases. The United States has provided intelligence and logistical support and has deployed military personnel, along with the United Kingdom, in the command and control center responsible for the Saudi-led airstrikes.

¹⁰ Ewen MacAskill, "UN report into Saudi-led strikes in Yemen raises questions over UK role," The Guardian, 27 January 2016, <http://www.theguardian.com/world/2016/jan/27/un-report-into-saudi-led-strikes-in-yemen-raises-questions-over-uk-role>.

¹¹ Action on Armed Violence and the UN Office for the Coordination of Humanitarian Affairs, State of crisis: Explosive weapons in Yemen, August 2015, <http://www.inew.org/site/wp-content/uploads/2015/09/State-of-Crisis.pdf>

¹² Iain Overton, "At least 6,100 civilians reported harmed by explosive weapons in Yemen in 2015," Action on Armed Violence, 25 February 2016, <https://aoav.org.uk/2016/14618/>.

¹³ For more information see; "State of Crisis: Explosive Weapons in Yemen," Action on Armed Violence (AOAV) and UN OCHA, September 2015, <https://docs.unocha.org/sites/dms/Documents/Yemen%20EWIPA%20report.pdf>

¹⁴ Saudi-led coalition forces in Yemen are thought to be making extensive use of JDAM and Paveway guided aircraft bombs, which weigh between 500lbs and 2,000lbs. The largest of these bombs is believed to have a lethal radius of up to 360m, and can cause injury and damage as far as 800m from the point of detonation. See pp. 3-8, "Wide Area Impact," Action on Armed Violence (AOAV), March 2016, <https://aoav.org.uk/wp-content/uploads/2016/03/Wide-Area-Impact-explosive-weapons-in-populated-areas.pdf>.

¹⁵ Amnesty International: A spiralling conflict, <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/>

¹⁶ Committee on the Elimination of Discrimination against Women General Recommendation 30 on women in conflict prevention conflict and post conflict situations, paragraphs 34-81

sexual violence and abuse of refugee women fleeing to Europe from conflicts in the Middle East, including that in Yemen.¹⁷

In addition, prohibited weapons such as cluster munitions have been used by the Saudi Arabia-led coalition, killing and injuring civilians.¹⁸ The most recent such use was 15 March, when Saudi Arabia used US-supplied cluster munitions to attack a marketplace, resulting in the death of at least 97 civilians, including 25 children.¹⁹ Cluster munitions were banned in 2008 by a widely ratified treaty because it cannot comply with international humanitarian law principles and rules, in particular because their area of effect is very wide and they cannot distinguish their targets.

Right to Adequate Housing – Article 11

Residential buildings have been destroyed repeatedly during the bombardments by the Saudi Arabia-led coalition, as found in recent Human Rights Watch reports.²⁰

There are currently more than 2.5 million people displaced within Yemen from the bombed areas, This forced displacement constitutes in itself a violation of the right to adequate housing. As found by UNHCR, many of the internally displaced persons are living in precarious conditions in unfinished buildings, collective centres, and schools, or even make-shift shelters and tents.²¹

Displacement is affecting both the displaced peoples and the host populations with an over-crowding phenomenon.²²

Right to Health—Article 12

Bombing raids have shredded the country's healthcare system: 130 medical facilities have been targeted, including those run by Médecins Sans Frontières.²³ MSF has described the airstrikes as "a total disregard for the rules of war."²⁴

According to the Director-General of the World Health Organisation (WHO), Dr. Margaret Chan: "Hospitals around the country [Yemen] are closing down their emergency operations rooms and intensive care units due to shortages in staff and fuel for generators. Medicines for diabetes, hypertension and cancer are no longer available. The National Tuberculosis Programme has shut down in some areas, and

¹⁷ UNHRC concerned at reports of sexual violence against refugee women and children, 23 October 2015, <http://www.unhcr.org/562a3bb16.html>

¹⁸ "Yemen: Cluster Munition Rockets Kill, Injure Dozens," Human Rights Watch, 26 August 2015, <https://www.hrw.org/news/2015/08/26/yemen-cluster-munition-rockets-kill-injure-dozens>; "Saudi Coalition Is Dropping US-Supplied Cluster Bombs on Civilians in Yemen, Rights Group Says," Vice News, 14 February 2016, <https://news.vice.com/article/saudi-coalition-is-dropping-us-supplied-cluster-bombs-on-civilians-in-yemen-rights-group-says>.

¹⁹ "Yemen: US Bombs Used in Deadliest Market Strike," Human Rights Watch, 7 April 2016, <https://www.hrw.org/news/2016/04/07/yemen-us-bombs-used-deadliest-market-strike>.

²⁰ Human Rights Watch: Unlawful Coalition Airstrikes in Yemen NOVEMBER 2015 <https://www.hrw.org/report/2015/11/26/what-military-target-was-my-brothers-house/unlawful-coalition-airstrikes-yemen>

²¹ Protection Cluster Yemen: TASK FORCE ON POPULATION MOVEMENT 8th REPORT April 2016 https://www.humanitarianresponse.info/en/system/files/documents/files/task_force_on_population_movement_8th_report_-_apr_2016.pdf

²² *ibid*

²³ Medecin sans frontières: MSF-supported hospital bombed in Yemen: death toll rises to six, 10 January 2016 <http://www.msf.org/article/msf-supported-hospital-bombed-yemen-death-toll-rises-six>

²⁴ Owen Jones: Britain is at war with Yemen. So why does nobody know about it? 28th January 2016 <http://www.theguardian.com/commentisfree/2016/jan/28/britain-war-yemen-saudi-arabia-military-advisers>

infectious diseases such as malaria and dengue fever are spreading. Outbreaks of polio and measles are also serious risks.”²⁵

The right to the enjoyment of the highest attainable standard of physical and mental health is being violated by lack of medical attention and services as an effect of air strikes. According to WHO,²⁶ this is provoked by several factors:

- Increased pressure on the health facilities that are still functioning: the high amounts of wounded civilians are above the capacities of functioning facilities. For this reason hospitals have to focus on emergency health provision and health care is extremely difficult to access.
- Bomb strikes impact on health facilities: “Almost 23% of the health facilities in Yemen are no longer functional either because they were hit, they were already in poor condition or they happened to be close to military targets.”
- Impact of bombings on infrastructure also has an impact on health: “Recent outbreaks of malaria and dengue were unusually large, health officials say, because tap-water supplies have been disrupted and people are collecting water in containers, creating breeding grounds for mosquitoes.”
- Difficult access of population and health personnel to hospitals: According to WHO, many health workers and patients are too afraid to come to the health facilities. MSF employee also reported “We are getting shot at in our cars. I was almost killed by an airstrike,”.

Right to Education – Article 13

Hospitals, schools, and life-saving humanitarian assistance have been hindered, blocked, or closed down in Yemen. Huge swathes of the civilian population have been driven from their homes, fuelling a displacement crisis in which more than 2.5 million people are currently displaced within Yemen.²⁷

Displacement has an impact for children in two ways: displaced children face difficulties enrolling in new schools and fully re-engaging in education while they are displaced; and many schools are used as shelters for displaced persons thus impacting the availability of education facilities for the host communities.

Furthermore, schools were closed between March 2015 and November 2015 because of the insecurity caused by the conflict. According to UNICEF,²⁸ after the escalation of the conflict in March 2015, “over 1.8 million school-aged children were forced out of school due to the closure of 3,584 schools. In November 2015 schools reopened, but over 1,600 remain closed due to insecurity, damages and the use of schools as IDPs shelter, the closure of schools is now affecting about 387,000 children.”

²⁵ WHO Director-General, Dr Margaret Chan: Statement on the situation in Yemen, 27 May 2015
<http://www.who.int/mediacentre/news/statements/2015/yemen-situation/en/>

²⁶ WHO news: Health system in Yemen close to collapse, 2015 <http://www.who.int/bulletin/volumes/93/10/15-021015/en/>

²⁷ UNHCR Supplementary appeal 2016 <http://www.unhcr.org/56b0cd019.html>

²⁸ UNICEF YEMEN CRISIS SITUATION REPORT: 10 – 23 February 2016:
<http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Yemen%20Humanitarian%20Situation%20Report%202010%20-%202023%20Feb%202016.pdf>

III. Sweden's arms transfers to Saudi Arabia

In March 2015, Sweden announced that it would not be renewing its military cooperation agreement with Saudi Arabia. This decision came after Saudi Arabia blocked Swedish foreign minister Margot Wallström from speaking about human rights at a meeting of the Arab League.²⁹ The decision of the Swedish government in 2015 not to prolong the military cooperation agreement with Saudi Arabia was a very welcome step to respect and protect human rights. However, the decision does not imply an end to Swedish arms sales to Saudi Arabia. This would require a change in the national export control regulations.

It was announced in the autumn of 2015 that the Swedish arms company Saab signed a contract with the United Arab Emirates (UAE) to deliver a new airborne surveillance system with a new version of the Saab Erieye radar system. Erieye has also previously been exported to Saudi Arabia. While the Erieye system has not yet been transferred to the UAE, the signed deal indicates a strong expectation that the sale will go through.³⁰

At the time of the signature of the contract, the Saudi Arabia-led strikes had been widely known for over half a year but this export has not yet been banned.

Swedish human rights organisations and media have reported that Erieye may have been used in Saudi Arabia-led attacks in Yemen that, as shown above have targeted or affected civilians and civilian facilities such as humanitarian supplies. This could indeed be the case also with the newly acquired Erieye system.

²⁹ David Wearing, "Sweden's stopped selling arms to Saudi Arabia. Why can't the UK follow suit?" The Guardian, 12 March 2015, <http://www.theguardian.com/commentisfree/2015/mar/12/sweden-stopped-selling-arms-to-saudi-arabia>.

³⁰ Press release by Saab, November 2015: <http://saabgroup.com/sv/Media/news-press/news/2015-11/saab-receives-order-for-new-advanced-airborne-surveillance-systems-from-uae/>

IV. Recommendations

In light of above findings, WILPF considers that Sweden has violated the Covenant in its articles 11, 12 and 13 because of the impact that its arms exports has had on violations of the right to adequate housing, health and education of Yemenis.

The fact that arms exports have been used for these violations of human rights also shows flaws in the arms export control in general.

Thus, WILPF suggests the following recommendations for Sweden:

- To establish a mechanism for rigorous, transparent, and gendered risk assessments of international transfers of arm and export licences by adopting national legislation and policies to this effect, developed in full consultation with civil society organisations, in order to fully implement Sweden's obligations under ICESCR and the ATT
- To deny authorisation of any arms sales or transfers when there is a risk that they would be used to commit or facilitate human rights violations

The Women's International League for Peace and Freedom (WILPF) is an international non-governmental organisation (NGO) with National Sections covering every continent, an International Secretariat based in Geneva, and a New York office focused on the work of the United Nations (UN).

Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all.

Our approach is always non-violent, and we use existing international legal and political frameworks to achieve fundamental change in the way states conceptualise and address issues of gender, militarism, peace and security.

Our strength lies in our ability to link the international and local levels. We are very proud to be one of the first organisations to gain consultative status (category B) with the United Nations, and the only women's anti-war organisation so recognised.



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