

15 August 2018

Arabian Rights Watch Association Submission to the Committee on the Rights of the Child

on

Saudi Arabia's Compliance with the Optional Protocol on the Involvement of Children in Armed Conflict

Arabian Rights Watch Association (ARWA) expresses deep dismay about the ongoing systematic violations of child rights in Yemen, to which Saudi Arabia plays a large role in as the lead Coalition member conducting an unlawful war on the people of Yemen. We submit the following details to the Committee for its consideration when reviewing Saudi Arabia's compliance with the Optional Protocol on the Involvement of Children in Armed Conflict.

Background on the Status of Child Rights in Yemen

On 26 February 2014, the United Nations Security Council (UNSC) adopted Resolution 2140¹, which underlined the need for a peaceful political transition in Yemen and designated three individuals for sanctions due to their role in the conflict. On 14 April 2015, the UNSC adopted Resolution 2216², which sanctioned five individuals, subjecting them to an arms embargo, asset freeze, and travel ban. The latter resolution aimed to, among other objectives, assist the political transition in Yemen; express grave alarm at the significant and rapid deterioration of the humanitarian situation; and express grave concern at the threat to peace and security in Yemen and the region.

On 26 March 2015, before UNSC Resolution 2216 was adopted, the Saudi Arabia-led Coalition imposed an aerial and naval blockade on Yemen. The Coalition's unilateral action occurred without a UN mandate and preceded the adoption of Resolution 2216 by three weeks. Despite this, the Coalition cites the resolution as a retroactive justification for its unilateral military action, claiming that it is enforcing the arms embargo that the resolution mandates. Nevertheless, the intervention has been marked by indiscriminate violence and a lack of proper safeguards to protect against civilian casualties, resulting in severe human rights violations, particularly against those who are most vulnerable: the elderly, women and children. In practice, the Coalition airstrikes, coupled with the aerial and naval blockade, constitute "comprehensive" unilateral coercive measures that kill and maim civilians, destroy civilian infrastructure, and disrupt both the import and export of commercial goods (including food, medical supplies, and fuel) and humanitarian aid. Consequently, Yemen has become the site of the largest humanitarian crisis in the world and in the absence of appropriate measures taken by the international community, the dire situation will continue to deteriorate and the violations against civilians, children in particular, will continue with impunity.

Airstrikes on Children

According to the Legal Center for Rights and Development, in the first 1200 days of the war, a total of 14,718 civilians were killed by Coalition airstrikes. Of those civilian deaths, 2,185 were women, and 3,308 were children. Another 2,477 women and 3,222 children were maimed.³ Come another 30 days and these numbers rose to 3,359 child deaths and 3,310 injuries.⁴ Stated differently, about six children in Yemen are being killed or maimed per

day by airstrikes since the war began three and a half years ago on 26 March 2015. Given that over 30,000 adults have been killed or maimed by airstrikes as well, many surviving children are orphaned and traumatized by the ongoing violence. The total number of civilians wounded due to the indiscriminate airstrikes exceeds 40,000 according to the Undersecretary General for the Coordination of Humanitarian Affairs and Emergency Relief, Stephen Obrien which also adds tremendous burdens on the population of children.⁵ According to the 2018 Humanitarian Needs Overview the number of injured stood at 50,610 at the end of 2017. This excludes the first eight months of this year which witnessed a higher rate of targeting civilian vehicles resulting in an increase in civilian casualties as a consequence. In addition, 15 airports and 14 seaports were targeted with airstrikes, alongside 318 health facilities including 5 maternity centers, 882 schools (another 3750 were shut down compromising the right to education as 1.8 million children stopped attending),⁶ 727 water tanks and networks, 185 power stations (affecting refrigeration and water pumping facilities), 620 markets, 316 factories, 2963 agricultural fields, 295 poultry/livestock farms, 746 food warehouses, 608 food trucks, and 2512 roads and bridges, among other civilian objects.⁷

Compounding the indiscriminate use of conventional air power against civilian populations, the Coalition has also employed internationally banned cluster munitions in civilian areas on at least 60 occasions, particularly exacerbating the danger faced by children.⁸ According to the Legal Center for Rights and Development, 221 children casualties were documented to be due to cluster munitions.⁹ Despite the danger to children posed by these cluster munitions, the Coalition continues to use these internationally banned weapons on civilian areas with impunity.

As long as the international community supports mechanisms that, as in this case, allow the alleged criminals to investigate the crimes alleged to be committed by them, impunity will reign and with it the continued killing and maiming of children and the destruction of their homes and schools. Not only will these crimes against children continue, children themselves are and will continue to be deemed legitimate military targets by the Saudi-led Coalition. For example, on 9 August 2018, a Coalition airstrike targeted a school bus near a market in Dhahyan district of the Saada governorate killing 51 civilians, 40 of whom were children, and resulting in a further 79 injuries, 56 of whom were children as well. But according to the official Saudi-led Coalition spokesperson, Turki Almaliki, the airstrikes were on a legitimate military target in line with international humanitarian law, customs and norms and that all measures will continue to be taken by the Coalition to end child recruitment.¹⁰ This should come as no surprise given the biased performance plaguing the Joint Incidents Assessment Team (JIAT) that was set up by the Saudi-led Coalition to investigate alleged instances of civilian harm from the conduct of its military operations. The JIAT panel of investigators found in almost all 40 cases it investigated that the Coalition was pursuing a legitimate military target. This posture is also reflected in Saudi Arabia's response to the Committee on the Rights of the Child wherein it stated: "Saudi Arabia can confirm that the Coalition to Support Legitimacy in Yemen abides by international humanitarian law and international human rights law, and that its military operations are fully consistent therewith."

Targeting of spaces where children are most likely to be present, such as in the home or at school, have resulted in about 4.5 million children not attending school according to OCHA.¹¹ More than 1,690 schools are currently unfit for use due to conflict-related damage, hosting of IDPs or occupation by armed groups. About 2.3 million children need support to access education, including 1.1 million in areas that are acutely affected by conflict.

Blockade on Children

The blockade on food, medical, and fuel supplies – combined with airstrikes on health facilities, power plants, and water and food networks – has caused mass suffering among the civilian population, particularly the most vulnerable: the injured, children, and the elderly. According to Yemen’s Ministry of Public Health and Population, over 10,000 civilians died because they could not get medical treatment abroad due to the Coalition’s ban on flights to and from Sana’a International Airport.¹² The Department of Transportation and General Aviation Authority in Yemen, however, places the death toll from the travel ban at over 13,000 civilians.¹³

Moreover, cholera is now affecting an estimated one million people in Yemen, mainly children under the age of 15 who account for 41 percent of suspected cases and 25 percent of the deaths. Those aged over 60 represent 30 percent of fatalities.¹⁴ Children, pregnant women and people with chronic health conditions are at greater risk of death as they face the “triple threat” of conflict, famine and cholera. 18 million civilians face food insecurity. About 2.8 million require acute malnutrition treatment, including 1.8 million children and 1.1 million pregnant, lactating women.¹⁵ According to the Office of Coordination for Humanitarian Affairs (OCHA), “the blocking of essential medicine and vaccines and the lack of fuel arriving in Al Hudaydah port will impact millions of people that are already suffering from a lack of health services and multiple preventable diseases. All health facilities are reliant on fuel for delivering essential life-saving services and Diphtheria is spreading fast with 120 clinically diagnosed cases and 14 deaths in the last week. At least one million children are at risk of contracting the disease.”¹⁶ OCHA goes on to state in its report that “[t]he inability to re-supply life-saving maternal medicines and supplies will threaten the lives of 400,000 pregnant women and their newborns, including 53,000 pregnant women who are likely to develop complications during childbirth. A child is dying every ten minutes,¹⁷ amounting to over 63,000 children deaths in 2016 alone due to preventable causes according to UNICEF.¹⁸ According to Save the Children an estimated 50,000 children died due to preventable causes in 2017.¹⁹ The Ministry of Human Rights puts the number at 247,000 civilian deaths – mostly children – because of preventable causes related to malnutrition that remained untreated due to the Coalition’s blockade on food, medicines and fuel necessary to operate a facility that delivers healthcare services.

The U.N. Verification and Inspection Mechanism

The U.N. Verification and Inspection Mechanism (UNVIM) is designed to ensure that food and medicine is available for civilians, including life-saving supplies for children suffering malnourishment and disease. In May 2016, former Secretary General Ban Ki-moon announced the UNVIM, which is designed to facilitate the unimpeded flow of commercial goods and services to three Yemeni ports – Saleef, Mokha, and Hodeida, with associated oil terminals – while ensuring compliance with the arms embargo imposed by the UNSC. The UNVIM addresses the Coalition’s blockade by searching and inspecting incoming ships for weapons, with the aim of making the process more efficient and thereby helping to alleviate the mass suffering caused by the blockade.²⁰

Unfortunately, even with the UNVIM, the Coalition continues to have the final word on cargo ships attempting to enter Hodeida port, which is the lifeline of the population handling about 80 percent of imports into Yemen before the war began.²¹ Member States are not sufficiently defending or enforcing the mechanisms and mandates that they themselves have established. To address these problems, redlines should be defined whereby foods and

medicines cannot be withheld from a population and consequences should be enforced if those redlines are crossed.

Central Bank of Yemen and Withholding of Salaries

Compounding the dire human rights and humanitarian situation in Yemen is the decision to move the Central Bank of Yemen (CBY) to Aden under the control of the Saudi-led Coalition-backed Hadi government-in-exile, which resulted in the non-payment of monthly salaries to about 1.5 million public sector employees since September 2016. Despite the Hadi government-in-exile's assurances to the international community that it would undertake all obligations of the CBY, it has not done so for the past two years. Given that each public sector employee has an average of five dependents, the lack of payment of their monthly salaries for 24 months directly undermines the financial security of about 7.5 million people, most of whom are children. This also negatively impacts general economic activity, further impoverishing merchants, their employees, and families, including children.²² Months of unpaid salaries have also impoverished more than 166,000 teachers (about 73% of the total number of teachers in Yemen) and thereby negatively impacting Yemeni children's access to education.

Smart Coercive Measures versus Unlawful Comprehensive Coercive Measures

The Saudi-led Coalition's implementation of Resolutions 2140 and 2216 has played a major role in the deteriorating human rights and humanitarian situation in Yemen, particularly the rights of children who make up the largest segment of the population. While UNSC Resolutions 2140 and 2216 were intended as "smart" coercive measures designed to place an arms embargo, asset freeze and travel ban on specifically named individuals and entities connected to them, the Coalition implemented Resolution 2216 as a "comprehensive" coercive measure rising to the level of an unlawful collective reprisal. The misapplication of the resolution has violated the human rights of millions of Yemenis, particularly their rights to food, medicine, and to be free from poverty. These UNSC resolutions do not authorize war on Yemen, nor do they permit the imposition of a comprehensive land, air, and sea blockade that prevents regular trade, both import and export, in commercial goods, including food, medical, fuel supplies, and humanitarian aid. According to the Special Rapporteur on Unilateral Coercive Measures, Idriss Jazairy, "[t]he blockade involves a variety of regulatory, mostly arbitrary, restrictions enforced by the coalition forces – including an unreasonable delay and/or denial of entry to vessels in Yemeni ports. Mr. Jazairy says it amounts to an unlawful unilateral coercive measure (UCM) under international law." Mr. Jazairy goes on to state that "[t]he blockade involves grave breaches of the most basic norms of human rights law, as well as of the law of armed conflict, which cannot be left unanswered."²³

These unlawful measures have a multi-dimensional negative impact on child rights in Yemen, particularly their rights to life, right to education, and right to healthcare.

Listing and Delisting Mechanism for the Report on Children and Armed Conflict

There are some mechanisms that could be instrumental in protecting child rights in Yemen if key challenges to their success can be overcome. On 20 April 2016, the UN issued its report on Children and Armed Conflict which verified a six-fold increase in the number of children killed and maimed in the war on Yemen compared with 2014, totaling 1,953 child casualties (785 children killed and 1,168 injured). The report further found that 60% of child casualties were caused by airstrikes.²⁴ Former UN Secretary General Ban Ki Moon placed the Saudi

Coalition on the blacklist but shortly thereafter removed them due to what he termed was undue pressure on him in the form of a Saudi threat to defund UN programs. The UN Secretary General alluded to the lack of support from Member States and “underlined that when a UN report comes ‘under fire’ for raising difficult issues or documenting violations of law or human rights, Member States should defend the mechanisms and mandates that they themselves have established” to work constructively and maintain the cause of the organization.²⁵

The report describes horrors no child should have to face yet still these alarming violations against the rights of Yemeni children continued throughout 2016 and 2017. However, even if the Saudi-led Coalition remained on the “list of shame” its military intervention would continue to have negative impacts on the rights of children. Although “naming and shaming” plays a role in highlighting violations, it does not provide concrete consequences for perpetrators or compensation to their victims that would deter such action. Despite the fact that the new and current U.N. Secretary General, Antonio Guterres, placed the Saudi-led Coalition on the “list of shame” on 5 October 2017, the targeting, killing and maiming of children has not ceased. To the contrary, it has increased. Currently, the mechanism involves engaging in dialogue with governments and groups on the list to develop action plans that seek to halt and prevent violations against children. This has little practical effect in addressing families of children who have died or who must care for maimed children, orphans whose parents have been killed, or children who have suffered malnourishment or who have been prevented from attending school. It is imperative to establish a mechanism that holds perpetrators accountable for violations of children’s rights, makes available legal redress for victims of those violations, and has the power to enforce judgments of compensation through appropriate means. Unfortunately, this imperative has been arguably obstructed by a vote in the U.N. Human Rights Council in September 2015 that established a National Commission and by subsequent votes to extend its mandate despite its evident partiality and bias. Although the vote in September 2017 to establish a group of eminent experts to investigate rights violations in Yemen is a step in the right direction it falls short of the accountability standards that comes along with an international commission of inquiry.

Recommendations to Committee

To address the alarming status of child rights in Yemen, ARWA respectfully recommends that the Committee ask Saudi Arabia the following:

- What does Saudi Arabia seek to achieve by targeting homes, schools, school buses, markets, and other civilian areas where children are present killing and maiming them in the thousands? What does Saudi Arabia and its Coalition seek to achieve by being the proximate cause of malnutrition and disease among millions of Yemenis that has led to the death of about 247,000 civilians who were mostly children suffering preventable malnutrition related diseases?
- What concrete measures has Saudi Arabia taken to prevent the targeting, killing, maiming of children or causing them to suffer in any way whether by an airstrike or blockade imposed by its own forces or those states who are members of the Coalition it leads? What has been the effect of those measures to protect children in armed conflict from both a quantitative and qualitative standpoint?
- How many incidents of the numerous alleged violations against children in Yemen have been investigated by Saudi Arabia? How many of those investigations concluded that a violation by the Saudi-led Coalition occurred?

And how many of those cases where a determination was made that a violation occurred by the Saudi-led Coalition ended up with a penalty levied on the perpetrator and compensation given to the victims?

- Governmental and international and local nongovernmental organizations reported that anywhere between 113,000 and 247,000 civilians, mostly children, died due to preventable causes from malnutrition related diseases since the war began on 26 March 2015. How many incidents of alleged deaths and suffering due to the blockade have been investigated? What were the outcomes of those investigations? In enforcing the arms embargo as claimed, how many shipments were documented to have illegal weapons on board? What type of weapons were they and what was their origin? Do incidents of illegal weapons seizures provide you with a justification for the mass suffering and starvation of millions of civilians resulting from the blockade? Why are foods, medicines and lifesaving medical supplies being withheld or unduly delayed from entry into Yemen's ports if the purpose of the blockade is to merely enforce an arms embargo rather than using starvation as an instrument of war?
- Given that the numbers of children casualties continue to grow, along with the number of targeted homes, schools and markets, what positive effect have the measures in place to protect children achieved, if there are in fact measures in place to protect children in armed conflict?
- In an airstrike on a school bus near a market in Dhahyan on 9 August 2018, 96 casualties were documented to be children. The Saudi-led Coalition spokesperson claimed that the airstrike was on a legitimate military target. What legitimate military target was present that makes you believe that you can justify action that results in 96 children casualties? Identify the legal consultants and military personnel involved in the determination that the school bus was a legitimate target. What were the facts and circumstances that lead the decisionmakers to conclude that the school bus was a legitimate military target? Identify the legitimate military target by name and the conduct that Saudi Arabia claims excuses the targeting of a school bus near a market that lead to 96 children casualties.

ARWA recommends the Committee to call upon Saudi Arabia to:

- End the war it launched by bringing a complete end to the unlawful unilateral coercive measures imposed on the Yemeni people, including but not limited to, the airstrikes and blockade which have a disproportionate negative impact on the civilian population, particularly children.
- Investigate impartially all alleged violations against children with a view to punishing the perpetrator and compensating the victims.
- Allow the free flow of commercial imports and humanitarian aid involving food, medicine and fuel critical to stave off malnutrition and disease among vulnerable populations who are in large part children.
- Allow for an independent international commission of inquiry to carry out impartial investigations into all alleged violations by all parties to the conflict.

¹ Security Council 2140 Sanctions Committee Designates Three Individuals as Subject to Assets Freeze, Travel Ban, 7 November 2014, <http://www.un.org/press/en/2014/sc11636.doc.htm>

- ² Security Council Demands End to Yemen Violence, Adopting Resolution 2216 (2015), with Russian Federation Abstaining, 14 April 2015, <http://www.un.org/press/en/2015/sc11859.doc.htm>
- ³ <https://twitter.com/LCRDye/status/1016594876501282816>
- ⁴ <https://twitter.com/LCRDye/status/1027947044575567873>
- ⁵ Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O'Brien Statement to the Security Council on Yemen, New York, 16 February 2016 <http://reliefweb.int/report/yemen/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-stephen-4>
- ⁶ Complaint to the Special Rapporteur on the Rights to Education, Arabian Rights Watch Association, 19 February 2017, <http://arwarights.org/education-violations>
- ⁷ <https://twitter.com/LCRDye/status/1016594876501282816>
- ⁸ https://mobile.twitter.com/arwa_rights/status/828672534790955009
- ⁹ <https://twitter.com/LCRDye/status/1027947044575567873>
- ¹⁰ <https://www.spa.gov.sa/1796089>
- ¹¹ 2018 Humanitarian Needs Overview, <https://reliefweb.int/report/yemen/yemen-2018-humanitarian-needs-overview-enar>
- ¹² Yemen airport closure killed more people than airstrikes, Norwegian Refugee Council, 9 August 2017, <https://www.nrc.no/news/2017/august/yemen-airport-closure-killed-more-people-than-airstrikes/>
- ¹³ Department of Transportation: The death of over 13000 because of they could not travel abroad for medical treatment due to the aerial blockade, Department of Transportation, 9 August 2017, http://www.mot.gov.ye/view.php/?news_no=918
- ¹⁴ Key Messages on Cholera, United Nations, 23 July 2017 https://docs.unocha.org/sites/dms/Yemen/Yemen%20Key%20Messages%20on%20Cholera_23July2017.pdf
- ¹⁵ Ibid
- ¹⁶ Yemen: Impact of the closure of seaports and airports on the humanitarian situation - Situation Update 2, Office of Coordination of Humanitarian Affairs, 16 November 2017, <https://reliefweb.int/report/yemen/yemen-impact-closure-seaports-and-airports-humanitarian-situation-situation-update-2-16>
- ¹⁷ <https://twitter.com/OCHAYemen/status/810476064099233793?lang=en>
- ¹⁸ <https://twitter.com/UNICEFmedia/status/829676324889489409>
- ¹⁹ YEMEN: Hunger & disease could kill at least 50,000 children this year, more if the aid blockade continues, 15 November 2017, <https://www.savethechildren.org.uk/news/media-centre/press-releases/yemen--hunger---disease-could-kill-at-least-50-000-children-this>
- ²⁰ Ban welcomes launch of UN inspection to facilitate flow of commercial goods to Yemen, U.N. News Centre, 3 May 2016, <http://www.un.org/apps/news/story.asp?NewsID=53843#.WZayfTOGPIU>. For more information on UNVIM visit <https://www.vimye.org/about-unvim>
- ²¹ Saudi Coalition Blockade on Food, Medical and Fuel Supplies Entering Yemen, Arabian Rights Watch Association. 31 January 2017, <http://arwarights.org/blockade-on-healthcare-supplies>
- ²² The Saudi-led Coalition Airstrikes and Blockade on Yemen's Food Sector along with the Hadi Government-in-exile Decision to Withhold Public Sector Employee Salaries and Ensure the Central Bank of Yemen Refrains From Underwriting Transactions for Food Imports Has Impoverished Millions in Yemen Bringing an Entire Nation to the Brink of Famine, Arabian Rights Watch Association, 17 April 2017, <http://arwarights.org/right-to-food-violations>
- ²³ Lift blockade of Yemen to stop "catastrophe" of millions facing starvation, says UN expert, OHCHR, 12 April 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21496&LangID=E>
- ²⁴ Report of the U.N. Secretary General on Children and Armed Conflict, United Nations, 20 April 2016 http://www.un.org/ga/search/view_doc.asp?symbol=s/2016/360&referer=/english/&Lang=E
- ²⁵ Content of report on conflict-affected children 'will not change,' asserts Ban, UN News Centre, 9 June 2016, <http://www.un.org/apps/news/story.asp?NewsID=54185#.WZamojOGPIU>