

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



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EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS e.V.
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ZOSSENER STR. 55-58
AUFGANG D
10961 BERLIN, GERMANY
—

PHONE +49.(030).40 04 85 90
FAX +49.(030).40 04 85 92
MAIL INFO@ECCHR.EU
WEB WWW.ECCHR.EU

The Impact of Italy's Arms Transfers on Economic, Social and Cultural Rights

**Submission to the Committee on Economic, Social and Cultural Rights (CESCR) 66th
Pre-sessional Working Group (03 March 2020- 13 March 2020)
List of issues prior to reporting by Italy**

Berlin, March 2020

1. *The submitting organization*

The European Center for Constitutional and Human Rights (ECCHR) is an independent non-profit human rights organisation, registered in Berlin (Germany) since 2007. By engaging in strategic litigation, ECCHR uses legal means to protect groups and individuals against systematic human rights violations, and hold state and non-state actors accountable for these egregious acts.

2. *Arms Exports and their impact on economic, social and cultural rights*

The present submission seeks to complement information on serious concerns around Italy's arms exports provided in the joint submission by Fondazione Pangea onlus, Women's International League for Peace and Freedom (WILPF) and several other Italian organisations.

This submission sees to Italy's extraterritorial obligations under the International Covenant on Economic, Cultural and Social Rights, focusing on violations arising from Italian arms transfers to third countries, and pointing to Italy's obligation to protect under the Covenant, particularly in relation to Italian businesses operating in the arms industry. Arms transfers can have a profound impact on economic, social and cultural rights as they can lead among others to damage and destruction of civilian infrastructure, schools, hospitals, housing and water and sanitation infrastructure, directly impacting the population's enjoyment of their economic, social and cultural rights, such as the right to health, water, education, adequate food and adequate housing.¹

The impact of European/Italian produced and exported arms is most apparent in the ongoing war in Yemen. On 26 March 2015, a military coalition under the leadership of Saudi-Arabia and the United Arab Emirates (UAE) ("the Saudi/UAE-led coalition") intervened in the armed conflict in Yemen to restore exiled President Hadi to power. Since 2015 and until today, airstrikes and a *de facto* naval and aerial blockade, have had an unprecedented impact on civilians and much needed civilian infrastructure in Yemen. Already in September 2015 the United Nations High Commissioner for Human Rights reported that: "*at least 310 civilian infrastructures were partially or completely destroyed by coalition airstrikes and by ground fighters throughout the country, from 26 March to 30 June 2015. This figure includes 160 private homes and 150 civilian public infrastructures that were partially or completely destroyed by the armed conflict*".²

As reported by the 2016 UN Panel of Experts' report on Yemen, the incidents consist of attacks against schools, medical facilities, markets, as well as areas of particular cultural or religious importance and workplaces.³

Similar to the years 2015-2016, the violations of international humanitarian law in Yemen continue until today. On 26 January 2018, the UN Panel of Experts found that "*throughout 2017, there have been widespread violations of international humanitarian law and international human rights by all parties to the conflict*".⁴

Airstrikes by the Saudi/UAE-led coalition and Houthi explosive ordnance used throughout much of 2017 "*continued to affect civilians and the civilian infrastructure disproportionately*", and the Panel had seen no evidence "*to suggest that appropriate measures were taken by any side to mitigate the*

¹United Nations High Commissioner for Human Rights, Impact of arms transfers on the enjoyment of human rights, 3 May 2017, A/HRC/35/8, para 10, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/8

² Human Rights Council, Situation of human rights in Yemen, 7 September 2015, A/HRC/30/31, para 8, <https://www.securitycouncilreport.org/un-documents/document/ahrc3031.php>

³ UN Security Council of Experts on Yemen, Final report of the Panel Experts on Yemen pursuant Security Council Resolution 2140 (2016), UN DOC S/2016/73 at 35, 152-166.

⁴ Final Report of the Group of the UN Panel of Experts on Yemen, S/2018/594, at 3. All reports of the Panel of Experts on Yemen can be accessed here: <https://www.un.org/securitycouncil/sanctions/2140/panel-of-experts/work-and-mandate/reports>

devastating impact of these attacks on the civilian population".⁵ The Panel also noted that "*after 33 months of air strikes, the number of credible targets remaining is considered to be very low*".⁶

It is reported that as of June 2018, Saudi/UAE-led coalition airstrikes have been responsible for at least 4,300 deaths. On 12 June 2018, MSF reported that a Coalition airstrike hit an MSF cholera treatment centre the previous day, despite the fact that coordinates of the centre had been provided to the Saudi/UAE-led Coalition. MSF maintained "*that the bombing is an unacceptable attack on a medical facility*" and "*strongly condemn[ed] this attack, which is part of a worrying pattern of strikes on essential medical services that leave an already very fragile population with even less access to essential, lifesaving medical care and services.*"⁷

Particularly in relation to arms exports to members of the Saudi/UAE-led coalition the European Parliament found in several resolutions⁸ arms exports to Saudi/UAE-led coalition members to be in violation of the Common Position 2008/944/CFSP on arms export control, and consequently calling on then High Representative/Vice-President of the European Commission, Federica Mogherini, to launch an initiative to impose an arms embargo against Saudi Arabia given the serious allegations of breaches of international humanitarian law by Saudi Arabia in Yemen.

In addition, the Group of Eminent International and Regional Experts concluded in its 2019 report that individuals in the government of Yemen and the coalition, including Saudi Arabia and the UAE, may have committed acts that amount to war crimes, including "airstrikes in violation of the principles of distinction, proportionality and precaution, and may have used starvation as a method of warfare". The Group of Eminent International and Regional Experts, further recommended "*Considering the prevailing risk that arms provided to parties to the conflict in Yemen may be used to commit or facilitate serious violations of international humanitarian law and international human rights law*", that "*States should prohibit the authorization of transfers of, and refrain from providing, arms that could be used in the conflict to such parties*", also referring in paragraph 919 and footnote 1465 to the court proceedings among others in Italy.⁹

And, in June 2019, the Italian Parliament approved a motion¹⁰ that committed the government to adopt the necessary acts to 'suspend' the export of aircraft bombs, missiles and their components to Saudi Arabia and the UAE that may be used against civilians in Yemen. While the government publicly announced (and later confirmations came from the industry) that the suspension asked by the Parliament was put in place in July 2019 for a period of 18 months, it has not disclosed the practical and formal measures taken to implement the motion.

3. CESCR's past recommendations on arms exports

In 2018, in a joint submission with WILPF to the CESCR Committee for its review of Germany,¹¹ ECCHR highlighted the extraterritorial impacts of arms transfers to the Saudi/UAE-led coalition and

⁵ *Ibid*, at p. 3.

⁶ *Ibid*, at 10.

⁷ MSF, "Yemen: Airstrike hits MSF cholera treatment center in Abs", 12 June 2018, <https://www.doctorswithoutborders.org/what-we-do/news-stories/story/yemen-airstrike-hits-msf-cholera-treatment-center-abs>

⁸ European Parliament resolution of 25 February 2016 on the humanitarian situation in Yemen (2016/2515(RSP)), 25 February 2016, at <http://www.europarl.europa.eu/doceo/document/TA-8-2016-0066>, European Parliament resolution of 4 October 2018 on the situation in Yemen (2018/2853(RSP)) https://www.europarl.europa.eu/doceo/document/TA-8-2018-0383_EN.htmlhttp://www.europarl.europa.eu/doceo/document/TA-8-2018-0383_EN.html%20%20

⁹ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen 2019, A/HRC/42/CRP, <https://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx>, para 919 and 933.

¹⁰ Motion 1/00204, 24 June 2019, [20https://aic.camera.it/aic/](https://aic.camera.it/aic/)

¹¹ "The impact of Germany's arms transfers on economic, social and cultural rights Extraterritorial Obligations under the International Covenant on Economic, Social and Cultural Rights", Joint Submission WILPF and ECCHR to the 64th session of the Committee on Economic, Social and Cultural Rights (24 Sept - 12 Oct 2018)

the link with State Parties' obligations under the International Covenant on Economic, Cultural and Social Rights. The submission recalled that CESCR recommended to United Kingdom that "*it conduct thorough risk assessments prior to granting licenses for arms exports and refuse or suspend such licenses when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights*".¹² It is worth recalling that in 2017, the CEDAW Committee expressed concerns about Italy's arms exports, including to conflict zones, and the absence of a specific mechanism for gender-based violence risk assessments and made specific recommendations in this regard.¹³

According to CESCR's General comment 24 on States' obligations with regard to business activities, States also are required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory or jurisdiction".¹⁴

Finally, several UPR recommendations to Italy aim at ensuring Italy's arms transfers' respect of human rights.¹⁵

4. Italy's Arms Exports and their impact on economic, social and cultural rights in Yemen

Despite the continuous and documented violations of human rights and international humanitarian law by the Saudi/UAE-led coalition's airstrikes on civilians and civilian infrastructures in Yemen, the Saudi/UAE-led coalition members are among the top recipients of global arms exports.¹⁶

Over the course of the past five years, Italy, Germany, the UK, Spain and France were amongst the top five European states exporting these arms, as well enterprises such as RWM Italia S.p.A.

In addition to contributing to clear violations of international human rights law and international humanitarian law, these arms exports are contrary to the ATT, the EU Common Position and domestic laws - in the case of Italy - law 185/1990.

It is estimated that between 2015 and 2018, Italy's Authority for the Export of Armament (UAMA) has licensed for more than 700 million euros worth of arms exports to Saudi Arabia. Furthermore, Italian manufactured bombs have been exported to the UAE.¹⁷

A large part of the arms exports from Italy to Saudi Arabia are bombs manufactured by RWM Italia S.p.A., a subsidiary of the German Rheinmetall AG. RWM Italia S.p.A.'s production plant in Domusnovas/Sardegna, among others, produces bombs of the MK80 type-family, which are common

¹² Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 July 2016, E/C.12/GBR/CO/6, para. 12(c)

¹³ 25 "The Committee recommends that legislation regulating arms export control be harmonized with article 7 (4) of the Arms Trade Treaty and with Council Common Position 2008/944/CFSP of the Council of the European Union defining common rules governing control of exports of military technology and equipment. It also recommends that the State party integrate a gender dimension into its strategic dialogues with countries purchasing Italian arms and that, before export licences are granted, comprehensive and transparent assessments be conducted of the impact that the misuse of small arms and light weapons has on women, including those living in conflict zones". CEDAW/C/ITA/CO/7; see also: <https://wilpf.org/cedaw-committee-recommends-more-stringent-regulation-of-italys-arms-exports/>, and Joint submission for the UPR of Italy by WILPF *et al*, https://www.wilpf.org/wp-content/uploads/2019/10/UPR-of-Italy_Joint-submission_March-19df.pdf

¹⁴ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 26

¹⁵ Universal periodic review, Human Rights Council, A/HRC/43/4, Recommendation 148.15 Ensure that all arms transfers and exports comply with Italy's obligations under the Arms Trade Treaty (Iceland); 148.232 Take more measures to prevent arms transfers that may facilitate human rights violations, including gender-based violence, and that negatively impact women (Namibia); 148.7 Sign and ratify the Treaty on the Prohibition of Nuclear Weapons, and integrate a human rights impact assessment into its arms export control mechanisms (Ecuador);

¹⁶ As reported by SIPRI, Trends in international Arms Transfers, p.6: Saudi-Arabia is a lead recipient with a share of 12 per cent, Egypt with a share of 5,1 per cent, and the the United Arab Emirates (UAE) with a share of 3,7 per cent.

¹⁷ Figures based on the Italian government annual reports. For Reports from 2015 to 2017 see <https://www.sipri.org/databases/national-reports/Italy>. Report 2018, https://www.camera.it/leg18/494?idLegislatura=18&categoria=067&tipologiaDoc=elenco_categoria

bombs dropped by warplanes of Western origin.¹⁸ Warplanes of European and US origin comprise the Royal Saudi bomber fleet, as well as that of many other coalition air forces. Numerous loads of bombs, among others of the types MK82, MK83 and MK84, readymade or as parts for guided bombs, left Italy to Saudi Arabia since the outbreak of the conflict.¹⁹

As of May 2015, remnants of bombs made in Italy were found in the rubble left by coalition airstrikes on various occasions in Yemen.²⁰ Regardless of the evidence that Italian weapons are used for Saudi/UAE-led coalition airstrikes in Yemen – which have been documented to often violate international human rights law and international humanitarian law, Italy and RWM Italia S.p.A. continued to license and export to the Saudi/UAE-led coalition members.

5. Update 2019 – Italian arms exports and criminal proceedings

On 17 April 2018, ECCHR, Mwatana for Human Rights (Yemen based), and Rete Italiana per Il Disarmo (Italy based) in cooperation with Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa (O.P.A.L.), filed a criminal complaint against managers of RWM Italia S.p.A. and senior UAMA officials to the public prosecutor in Rome.

The criminal complaint focuses on several licensed arms exports as of March 2015 by UAMA and RWM Italia S.p.A. to Saudi Arabia and the UAE. The complaint further focuses on an airstrike on 8 October 2016 – alleged to have been carried out by the Saudi/UAE-led coalition – that struck a civilian home in the village of Deir Al-Hajari, in the Al Hudaydah governorate, in northwest Yemen. The air strike killed a family of six, including a pregnant mother and her four children. There is no indication that the civilians who were killed were ‘collateral damage,’ as a guided bomb was used and a military checkpoint that was, according to witnesses, more than 300 meters away was not targeted and has not been targeted ever since.

At the site of the airstrike, bomb remnants and a suspension lug were found by Mwatana for Human Rights' field researcher, which indicate that the type of bomb used was a guided bomb of the MK80-family. Its serial marks clearly indicate that it was manufactured by RWM Italia S.p.A.

After the criminal complaint was submitted, investigations were carried out. However, In October 2019 the Italian prosecutor in Rome requested a dismissal of the investigation. ECCHR, Mwatana for Human Rights and Rete Disarmo have objected and a court hearing is expected for the second half of 2020 in which the court will decide whether or not the prosecutor has to continue the investigations, should indict, or dismiss the investigation.

Against this background of ongoing European arms exports to members of the Saudi/UAE-led coalition, a coalition of several NGOs, among others Mwatana for Human Rights and ECCHR have submitted a communication to the Office of the Prosecutor of the International Criminal Court.²¹ The 350-page

¹⁸ International Institute for Strategic Studies (IISS), *The Military Balance 2019*, at 366 and 374, <https://www.iiss.org/publications/the-military-balance/the-military-balance-2019>

¹⁹ “*Who is arming the Yemen war? (And is anyone planning to stop?)*” 28 February 2018, <https://sites.tufts.edu/reinventingpeace/2018/> and a follow-up to this article by the same author on 19 March 2019, <https://sites.tufts.edu/reinventingpeace/2019/03/1/>, see also Giorgio Beretta, ‘Yemen e armi ai sauditi: coerenza nordica, ipocrisia italiana e i suoi giannizzeri’, *Unimondo.org*, 10 January 2018, <https://www.unimondo.org/Notizie/Yemen-e-armi-ai-sauditi-coerenza-nordica-ipocrisia-italica-e-i-suoi-giannizzeri-170922>

²⁰ Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen 2017, Report, S/2017/81, at 171, see also ECCHR’s case report « European Responsibility for War Crimes in Yemen – Complicity of

Italian Subsidiary of German Arms Manufacturer and of Italian Arms Export Authority », last updated April 2018, available at: <https://www.ecchr.eu/fileadmin/Fallbeschreibungen/>

²¹ Case Report by NGO coalition: “Made in Europe, bombed in Yemen: How the ICC could tackle the responsibility of arms exporters and government officials”,

communication provides details on 26 airstrikes conducted by the Saudi/UAE-led coalition which may amount to war crimes. The organizations called upon the ICC to investigate the legal responsibility of corporate and political actors from several European companies, including Italy.

6. Recommendations

ECCHR recommends that the CESCR Committee request Italy to provide information on:

- measures it has taken to harmonize its legislation regulating arms export control with article 7 (4) of the Arms Trade Treaty, the Council Common Position 2008/944/CFSP of the European Union and the CESCR to take account of the risk that the arms exported to third countries may be used to commit violations of economic, social and cultural rights and violations of international humanitarian law;
- measures it has taken to conduct adequate monitoring by public authorities, namely UAMA of the use of the exported arms in third countries and their potential use in human rights violations, particularly of rights under the Covenant; having particular consideration of article 1(6)(d) of Law 185/1990 in Italy²² and criterion 2(2)(b) of the EU Common Position on arms export.²³
- measures it has taken to ensure that arms-producing corporations assess risks and monitor the impacts of exported arms on human rights, particularly on social, economic and cultural rights of civilians in importing countries; in particular by integrating in Italy's arms export regulations and/or business and human rights relevant framework a mandatory human rights due diligence clause for the said corporations;
- measures it has taken to ensure that transparent and comprehensive information is available for the public and the Italian Parliament, on the content and end user of licenses granted by Italian Arms Export authorities, namely but not limited to, the UAMA;
- measures it has taken to ensure that effective judicial oversight can be applied, and in particular that comprehensive investigations are conducted in Italy on the criminal responsibility of Italian licensing authorities and of arms producing and exporting companies for the exports to Saudi/UAE-led coalition members fighting in Yemen, by ensuring access to all necessary information; in particular information on additional exports licenses issued by the UAMA to countries of the Saudi/UAE-led coalition;
- measures it has taken to implement the above mentioned June 2019 Italian Parliament motion that committed the government to adopt the necessary acts to suspend the export of aircraft bombs, missiles and their components to Saudi Arabia and the UAE that may be used against civilians in Yemen.

https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_ECCHR_Mwatana_Amnesty_CAAT_Delas_Repte.pdf

²² According to which « special caution and vigilance in issuing licenses, on a case-by-case basis and taking into account the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe”.

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