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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status*

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Children and Armed Conflict~ Violation of Rights to health of children in Iraq needs immediate international attention.

1. Introduction

Human Rights Now (HRN), a Tokyo based international human rights NGO, urges the governments of the US and UK to disclose all information regarding the types of weapons and hazardous materials used by military forces in Iraq following the 2003 invasion and during the later occupation. Following a fact finding mission on congenital birth defects in Fallujah, Iraq in 2013, HRN found a troubling rise in the number of birth defects in the country and believes that the rights to health and life of children has been seriously violated from environmental contamination resulting from the combat.

In light of the alarming increase in birth defects being reported, HRN urges the governments of the US and UK to investigate the sources and spread of these birth defects and adopt measures to address the harms imposed on Iraqi citizens as a result of the conflict.

Furthermore, HRN calls on the Iraqi government to establish an independent commission to investigate serious health problems reported after the war, and on the UN Human Rights Council to establish measures for the investigation of all human rights abuses committed during the war, including the use of inhumane and toxic weapons. HRN additionally urges the WHO to provide technical assistance and guidance in creating policies and measures to tackle the issue, as well as to consider conducting further investigations to try to better clarify the epidemiological nature of the phenomenon.

2. Background

In the US attacks on Fallujah in 2004, there were reports of direct attacks against civilians and the use of white phosphorous weapons and depleted uranium munitions in civilian areas without preventative measures. Depleted uranium ("DU") is a radiological heavy metal that was used extensively by US and UK forces during the 1991 Gulf War and 2003 Iraq war, dispersing an estimated total of at least 400,000 kg over the two years.

The radiation emitted by DU munitions has been shown to be significant: a DU tank shell emits 260 to 270 millirads of radiation an hour which is significantly over the established safety limit of 100 millirads per year.

Furthermore, an overview of scientific literature relating to the effects of uranium and heavy metals associated with munitions used in the 2003 Iraq War and occupation strongly suggests that environmental contamination resulting from combat is playing a significant role in the observed rate of birth defects in Iraq. Despite the gravity of the situation, there has not been a sufficient investigation of the health consequences associated with toxic munitions in Iraq by the US, UK or any independent international organization. A recent WTO investigation of post-war birth defects in Iraq has yet to be published, and it did not investigate causes or the possible role of toxic munitions. Furthermore, without sufficient disclosure of detailed information related to toxic weapons used during the conflict, the cause of problem cannot be identified.

In addition, the US administration has admitted it used white phosphorous, a weapon that has toxic chemical properties and may contribute to increases in lead and mercury contamination. The Iraqi government's Radiation Protection Center reported 300 to 365 contaminated sites as of 2006. Although the UK government has disclosed data about firing locations to UNEP, the US refuses to do so, obstructing clean-up efforts in Iraq. HRN believes that the US should disclose their data to UNEP to expedite the contamination clean-up process.

3. Increase in birth defects

The 2003 Iraq War led to a significant release of toxic materials into the environment that continues to put the life and health of children in particular at risk. In the years following the war, there was an epidemic

of congenital birth defects in Iraq cities. Iraqi physicians have expressed serious concern to the international community about the prevalence of birth defects through various media. In Fallujah, an area where white phosphorous weapons and DU munitions were allegedly used, the Fallujah General Hospital showed that 15% of infants since 2003 have had congenital birth defects.

From January 8 to February 6, 2013, HRN conducted an investigation in Fallujah and found an extraordinary situation of congenital birth defects in nature and quantity. HRN recorded a total of 24 births in the period with some kind of congenital anomaly immediately detectable at birth, as well as 13 stillbirths and 59 preterm deliveries, miscarriages, or abortions. When observing ultrasonography for seven women, three were found to have problems with the fetus. In cases such as anencephaly, where the likelihood of the child's survival is extremely low, the woman is administered an abortifacient agent to induce miscarriage. HRN found that the rights to health and life of children have been seriously violated in Fallujah, Iraq, and that the epidemic of congenital birth defects in Iraq needs immediate international attention.¹

Recent studies have also shown a noted increase in birth defects in Iraq following the 2003 invasion. A study by al-Sabbak² found that the prevalence of birth defects documented in a hospital in Al-Basrah increased 17-fold between 2003 and 2011, and certain defects, such as congenital hydrocephalus occurred at rates 3.5 times higher than world averages. A 2012 study found that the incidence of cancer in Fallujah has increased three-fold following the invasion, with a higher incidence than other nearby regions.

4. Potential link between increase birth defects and the use of munitions containing environmental contamination such as heavy metals and DU

Although the source of the increase in birth defects is unclear, depleted uranium is a known carcinogen, and it can cause birth defects. The mean levels of uranium found in Fallujah were 0.16 ppm, almost five standard deviations from the mean, and thus highly likely to be a primary cause or related to the cause of the increase in birth defects and cancer rates.

Other heavy metals associated with firing of munitions, such as lead and mercury, have an even stronger weight of evidence demonstrating their toxicity if taken up into organic matter. Both lead and mercury are designated by WHO as being in the top ten chemicals of major public health concern, and have well documented adverse effects particularly for fetuses and children. Uptake of lead into the body can lead to a range of negative effects, including neurological damage, kidney damage, miscarriage, premature birth, and death. Mercury is known to cause impairment of neurological development particularly in fetuses and infants, as well as toxic effects on the immune and digestive systems, and it is a possible human carcinogen.³

5. Legal responsibilities

The governments of the US and UK are bound by legal regimes to address the issue of toxic or otherwise harmful munitions and debris left following conflict, and their risk of ill effects on an occupied population. These include the Fourth Geneva Convention's Article 56 duty on occupying powers to provide for the public health in occupied territory; the duty of the UK under 1977 Additional Protocol I to ensure human rights guarantees to life and health in territory it occupies; and the ICESCR's Article 12 recognition of a right to health and duty on members to take steps to improve environmental hygiene, to which the UK is bound as a state member and the US is bound not to undermine as a signatory. Domestic federal and military

¹ "10 years after the Iraq war ~Innocent New Lives are Still Dying and Suffering ~Report of a Fact Finding Mission on congenital birth defects in Fallujah, Iraq in 2013"

Full Report is accessible at: <http://hrn.or.jp/eng/activity/HRNIraqReport2013.pdf>

Appendix is accessible at: <http://hrn.or.jp/eng/activity/area/iraq/press-release10-years-after-the-war-innocent-new-lives-are-still-dying-and-suffering-in-iraq-human-r/>

² Al-Sabbak et al. (2012) 'Metal Contamination and the Epidemic of Congenital Birth Defects in Iraqi Cities' *89Bull Environ Contam Toxicology* 937-944

³ "Health effects of mercury" US Environmental Protection Agency <http://www.epa.gov/hg/effects.htm>

rules in the US on “stability operations” and “environmental considerations” also impose obligations on US military operations of environmental clean-up and provisions for public health.⁴

Rights-based obligations towards environmental harms include both substantive obligations on states to avoid mortal risks within areas of their control and remove them when they are discovered (even if the state were not responsible for the risk) and procedural obligations when mortal risks are discovered, including conducting an investigation, disclosing information on the risks such as, in this context, information about related wartime activities, and providing affected persons effective remedies such as treatment and compensation. Unless proper investigations and clean-up activities are pursued, it will be impossible for affected peoples to achieve the full realization of the right to health as the environmental contamination will continue to cause disease.

6. Recommendations

HRN calls on the US and UK governments to disclose all information regarding the types of weapons used during the occupation, quantities fired, and exact firing points, and to take necessary measures to protect the right to health and life of the local people if a pollution problem is indicated.

Furthermore, HRN calls on the UN Human Rights Council to establish measures for the investigation of all human rights abuses committed during the war, including the use of inhumane and toxic weapons. The outcomes of the WHO investigation into the birth defect issue in Iraq have yet to be publically released. However, in the event of a public health issue being identified, HRN additionally urges the WHO to provide technical assistance and guidance in creating policies and measures to tackle the issue, as well as to consider conducting further investigations to try to better clarify the epidemiological nature of the phenomenon.

⁴ See, respectively, US Executive order EO 12114, “Environmental Effects Abroad of Major Federal Actions”; US Department of Defense directive DODD 3000.05 (2005); US field manual FM 3-100.4, *Environmental Considerations in Military Operations*.