

Mandate of the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights

#COVID-19 Human Rights Guidance Note

COVID-19 pandemic: humanitarian concerns and negative impact of unilateral sanctions and their exemptions

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The COVID-19 pandemic constitutes a global challenge to the world community and the whole system of individual and collective human rights, including the rights to life, to personal security, to be free from suffering and discrimination, to fair trial, to due process, freedoms of opinion, expression, assembly, association, and religion and belief, to property, to health, to food, to decent labour, to freedom from poverty, to access information, to education and to development. It also challenges the ability of states and international organizations to work together in the spirit of multilateralism, cooperation and solidarity.

The devastating effects of unilateral sanctions as well as the need for solidarity and full respect for all human rights in the course of the pandemic have been repeatedly proclaimed by the United Nations and other governmental and non-governmental organizations. As the UN High Commissioner for Human Rights noted, the pandemic “is challenging the whole system of human rights, including such fundamental human rights as the right to life”. In a UN policy brief, the Secretary General identified saving lives as the main UN priority in the time of COVID-19. Both of them, and I, have called for curtailing the use of sanctions that undermine the ability of targeted countries to fight the pandemic.

Unfortunately, the level of international solidarity and cooperation today is not sufficient as these calls did not have much result. A number of countries did not lift or minimise but rather expanded the application of unilateral sanctions using new forms, types, means and mechanisms, and affecting new types of targets.

The COVID-19 pandemic is affecting every person today. Unilateral sanctions, imposed against about 20 per cent of UN Member States, exacerbate the calamities it is causing and thus discriminate against populations in targeted countries, which appear to be more vulnerable than in other States. Unilateral sanctions negatively affect rights of all population groups in targeted states as well as third-state nationals. Due to the specifics of the COVID-19 emergency, children, women, medical personnel, refugees, migrants, internally displaced people, nationals abroad, the elderly and people suffering from chronic diseases appear to be the most at risk.

While welcoming every effort to provide humanitarian relief and deliver humanitarian aid, as well as documents aimed to make the procedures of delivering humanitarian aid more clear and transparent – in particular the Guidance Note issued by the EU on 16 November 2020 on the Provision of Humanitarian Aid to Fight the COVID-19 Pandemic in Certain Environments Subject to EU Restrictive Measures, which recognize that the economic sanctions may increase hardships of non-targeted civilian populations as well as the illegality of the extraterritorial application of targeted measures – I have to underscore that humanitarian exemptions remain ineffective, inefficient and inadequate.

On 21 - 22 October 2020, I organized an expert consultation on unilateral sanctions as the serious obstacle to delivery of humanitarian aid. The event took place in Palais des Nations, Geneva. The event brought together 24 world leading humanitarian organizations, including faith based organisations. They discussed humanitarian exemptions, which apparently continued to remain ineffective, inefficient and inadequate. Moreover, experts examined the multiple forms of humanitarian exemptions and practical impediments they create for delivery of aid to the most vulnerable people, including in the context of COVID-19.

Humanitarian organizations refer to unilateral sanctions as the main obstacle to the delivery of aid, including medicine, medical equipment, protective kits, food and other essential goods. Multi-layered, confusing, non-transparent and extensive systems of unilateral sanctions; the expansion of secondary sanctions; and lengthy, complicated and expensive mechanisms of getting licenses impede trade in medicine, medical equipment and relevant software, food and other essential goods; result in the growing over-compliance from the side of banks, donors and delivery companies; stimulate enormous rises in the costs and length of time needed for bank transfers; make delivery of humanitarian aid more complicated; put enormous burden and risks on humanitarian operators; and affect their beneficiaries in targeted and other countries.

In this context, as the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, I call on States, other influential actors and stake holders to act in a spirit of cooperation, solidarity, respect for the rule of law, humanitarian principles and human rights standards, and to consider urgent steps to be taken internationally to prioritize saving lives in the course of COVID-19 over political, economic and other interests.

1. The COVID-19 pandemic, as a common threat, can only be fought by joint efforts of all States and international organizations in a spirit of multilateralism, cooperation and solidarity. International cooperation at the bilateral and multilateral levels shall be based on the principles of the rule of law in full compliance with obligations arising from the UN Charter, international humanitarian and human rights law, and other international obligations, especially in the situation of the global challenge created by the pandemic.
2. While states bear the primary responsibility to guarantee the well-being of their people, the ability of targeted countries to do so is undermined by the application of unilateral sanctions, with an especially negative impact from economic, trade and sectoral ones. Therefore, the whole system of unilateral sanctions shall be reviewed in accordance with the rules of international law, including humanitarian, refugee and human rights law.
3. Sanctions regimes shall not be expanded; this will enable targeted states to respond to the humanitarian challenges of the COVID-19 pandemic and the growing economic crisis, to ensure the effective protection of their populations, to repair their economies and to guarantee the well-being of their people in the aftermath of the pandemic.
4. A preliminary humanitarian assessment analogous to those currently done in the environmental area shall always be made before any unilateral measures are taken. Saving lives shall be the priority of any unilateral activity in the course of the pandemic, as it is not possible to achieve any “common good” purposes, including the suppression of international terrorism and the protection of human rights, by violating the human rights of those whom unilateral sanctions seek to protect.
5. Under no circumstances should trade in essential humanitarian goods and commodities, such as medicine, antivirals, medical equipment, its component parts and relevant software, and food, be subject to any form of direct or indirect unilateral economic measure or sanction. Accordingly, any impediment to such trade – including trade barriers such as tariffs, quotas and other non-tariff measures; impediments to appropriate contracts, financial transactions, transfers of currency or credit documents and transportation that hamper the ability of states to effectively fight the COVID-19 pandemic and deprive them of vital medical care and access to clean water and food – should be lifted or at least suspended until the threat is eliminated.
6. Humanitarian aid – human resources, materials, equipment, cash and/or any other kind – to combat the pandemic shall not be subject to any direct or indirect restriction. The direction and delivery of

humanitarian aid aimed to combat the COVID-19 pandemic shall not be considered as an unfriendly or profit-oriented act;

7. States shall not take measures preventing other states from getting external aid of any character, including international loans to combat the pandemic both from other states and international organizations.
8. No unilateral sanctions shall be imposed against research institutions that might prevent them from developing COVID-19 vaccines or medication.
9. Requests to unfreeze state or privately owned assets for humanitarian purposes shall be considered in good faith in accordance with international law on behalf of humanity. In the case of any dispute, the UN organs and mechanisms shall be welcomed to exercise control over their use.
10. The right of public institutions and final consumers to have access to publicly offered paid or non-paid software or online services shall not be limited. Preventing access to medical technologies and software, and to professional, educational or public Internet resources, affects a broad scope of human rights: the right of access to information, the right of freedom of expression, the right to privacy, the right to education and the right to reputation, the right to decent work and other economic rights, as well as the right to development; and may result in the violation of the right to health and even the right to life in emergency situations
11. No national law or regulation of regional international organizations shall have extraterritorial application. Therefore, any sanctions, including administrative and criminal charges against individuals and companies involved in the delivery of medical goods and food to sanctioned states in accordance with international humanitarian and human rights norms, should be lifted or at least suspended to prevent fear and over-compliance from the side of states, banks, donors, humanitarian operators and other relevant actors.
12. Humanitarian exemption mechanisms shall be made clear, transparent and straightforward to allow for immediate or at least more rapid implementation during emergency situations, with a corresponding regime of more lenient enforcement to prevent over-compliance with sanctions.
13. Humanitarian exemption regimes shall not be limited to the medicine or medical equipment and software necessary to treat COVID-19 or for imminent life-saving activity only. They shall guarantee the availability of medicine and medical equipment necessary to treat other diseases, food and other essential goods, and shall include reconstruction projects to enable targeted states to repair national economies, to restore civilian healthcare and educational institutions and to guarantee the protection of the civilian population.
14. Essential goods necessary for people's survival and the treatment of diseases – like microscopes, other medical equipment, disinfectants, vaccines, chemicals, pain-relief medication, toothpaste, etc. – shall not be excluded from humanitarian exemption mechanisms because of their identification as dual use goods.
15. Humanitarian operators shall not bear the burden of proof that deliveries of essential goods will be for purely humanitarian use. Humanitarian exemptions should be forward-looking and anticipate broad categories of international emergencies such as pandemics, natural disasters, economic crises and others in order to require minimal adjustment to be effective. Any requests for licenses to purchase medical equipment, its component parts and software, medicine, food and other essential goods shall be considered without delay and granted upon request with a presumed humanitarian purpose for the sake of saving human lives.
16. Humanitarian operators, their members, employees and volunteers shall never be subjected to secondary sanctions including criminal prosecution, administrative or civil liability, or the blocking of bank accounts. Any criminal case shall only be started in the case of their direct intentional and conscious involvement in terrorism financing or money laundering based on the principles of the presumption of innocence, access to justice, fair trial and due process guarantees.