

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food; the Independent expert on the promotion of a democratic and equitable international order and the Independent Expert on human rights and international solidarity

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3 April 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Special Rapporteur on the right to development; Special Rapporteur on the right to food; Independent expert on the promotion of a democratic and equitable international order and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 49/6, 51/7, 49/13, 45/4 and 44/11.

In this connection, we would like to bring to the attention of your Excellency's Government the following comment on the text of the General Licence No. 23 (hereafter GL23), issued by the Office of Foreign Assets Control of the United States Department of the Treasury, and which aims at easing the Syrian Sanctions Regulations 31 CFR part 542 (SySR) for a period of 6 months for the purpose of facilitating the relief efforts following the catastrophic earthquakes of 6 February 2023.

While welcoming your Excellency's Government's quick reaction in response to this unprecedented natural disaster with its tremendous cost in human life and infrastructure, the express easing of transactions for earthquake relief purposes and the suspension of the secondary sanctions for such purposes imposed against non-US persons under the Caesar Syria Civilian Protection Act, we wish, however, to raise a number of points with regard to the text of the GL23 as well as of the Compliance Communiqué document issued on 21 February 2023, the latter of which aims at providing guidance in the interpretation and scope of the GL23.

At the outset, we wish to note that the text of the GL23 indicates that the 6-month suspension of the prohibitions under the Syrian Sanctions Regulations concerns only what is termed "earthquake relief efforts". The Compliance Communiqué of 21 February does not define this specific term, but it offers an indicative list of activities and interventions as examples that could fall under this category. Clarifications about emergency relief carve-outs, which are provided by way of non-exhaustive lists of examples, in the context of existing comprehensive sanctions regimes, may not suffice to dispel any sanctions-induced uncertainty among humanitarian actors, donors or financial institutions, who would wish to engage in the operation or financing of the emergency relief interventions. Fear of possible violations of the scope of the GL23 by engaging in activities which may be *ex post facto* considered as prohibited may result in excessive over-compliance and de-risking, with an ultimate consequence of complete disengagement of these actors.

At the same time, the non-exhaustive list of examples makes reference to a number of reconstruction interventions such as "stabilising damaged buildings", "stabilising or repairing roads and other critical infrastructure", or "repairing or

rebuilding of damaged hospitals and schools in earthquake-affected areas”. However, the Compliance Communiqué clearly stipulates that any long-term reconstruction effort is prohibited, as the timelines of such interventions should respect the specified period of 180 days of the GL23 validity, that means all reconstruction and rebuilding processes prohibited by sanctions regimes.

We are of the view that it would be inappropriate and morally questionable to assess the permissibility of critical and life-saving infrastructure reconstruction efforts following a natural disaster on the basis of the length of such efforts. In this regard, we wish also to underscore that in a worn-torn country, such as Syria, with 50 to 80 percent of its infrastructure destroyed (including water and electricity supply, health facilities, roads, schools, shelter, irrigation, diesel and gas), subjected to a comprehensive and long-standing system of economic sanctions and other restrictions, and with severe shortages in energy and fuel, even targeted reconstruction efforts may take significant amount of time, way beyond the 180-day period stipulated in the text of the General Licence.

Furthermore, GL23 appears to authorise transactions with the “Government of Syria”, as defined in the Syrian Sanctions Regulations 31 CFR § 542.305(a). This has been clarified by the Compliance Communiqué, because the relevant section of the GL23 itself is drafted in double negation, which adds to the confusion, namely “This general licence does not authorise any transactions involving any person who property and interests in property are blocked pursuant to SySR, other than persons who meet the definition of the term *Government of Syria* as defined in section 542.305(a) of the SySR”. However, the Communiqué reminds the reader that the GL23 does not authorise any transaction “involving any entities owned 50 percent or more by the Government of Syria (such as state-owned entities), or any entity controlled by the Government of Syria”, thus further complicating compliance and exacerbating the burden of humanitarian actors for due diligence and the navigation and understanding of complex legal statutes, maintaining again the sentiment of uncertainty for possible transgressions. Such prohibition may also hamper the exporting to Syria of heating fuels and diesel for an emergency relief effort. Although under GL23 such transactions with the Government of Syria are permitted, we are still reminded by the Compliance Communiqué that this permission refers to the term “Government of Syria” defined only by 542.305(a) of the SySR and not by the other subsections, thus not including in the said definition the entities owned or controlled by the Government of Syria, requesting *inter alia* a detailed legal analysis from the side of all actors involved including donors, humanitarian organizations and banks.

It is also concerning the fact that the export and re-export of food or medicine, goods that by their nature should be entirely exempted for humanitarian purposes, remains unclear and subject to case-by-case assessment by the US competent authorities. On this particular issue, the Communiqué indicates that not all, but “most of” food and medicine do not require an *ad hoc* licence for export to Syria, and refers any relevant actor engaged in earthquake relief efforts to seek further clarification before the Department of Commerce, Bureau of Industry and Security (BIS), thus further complicating the process of compliance assessment, with the involvement of another authority, which may result in delays in the delivery of the emergency relief assistance.

Although the GL23 appears to enable individuals or entities to transfer funds and remittances to persons and civil society organisations, including “through digital

payments, instant payments, or online platforms or services”, and allows US financial institutions and US registered money transmitters to process such transfer, it however adds an element of responsibility and burden of proof on these institutions with regards to the source, destination and actual use of these funds by clearly indicating that this authorisation is granted “provided that the financial institution does not know or have reason to know that the funds transfer is not in not compliance” with the operational scope of the GL23. Such wording may ultimately defeat the purpose of this licence, as financial institutions may be unwilling to assume any eventual risk, and thus prefer to over-comply and block or significantly delay such transfers out of fear of future repercussions. Our mandates have received information regarding such impediments in international funds transfers performed by humanitarian civil society actors, including international non-governmental organisations, something that testifies to the conduct of over-compliance and de-risking even in the context of emergency relief response.

Another element of concern relates to the territorial scope of the GL23, which is limited to the areas “affected by the earthquake” without providing concerned actors, and mainly “US persons engaging in humanitarian efforts”, with further clarity on whether their life-saving humanitarian actions performed outside such territories may be considered permissible and that they will not be liable for violating the provisions of this licence. The Communiqué’s response to this specific question is “It depends” and it refers the reader only to a short 2-page Guidance Note on 31 CFR 542.516, issued in 2014, and which refers to the possibility of non-governmental organisations to be sanction exempted for their humanitarian operations as long as they are not “dealing with persons blocked by sanctions, such as those listed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDNs)” or with “any entity owned 50% or more by blocked persons”. Firstly, it is not clear whether the Communiqué’s “it depends” response refers to the geographic scope of humanitarian interventions or to the above-mentioned conditions of engagement enunciated in the 2014 Guidance Note. And secondly, any references to specific geographic scope of emergency relief interventions not only overlooks the human dimension with internal displacement to safer areas, which outside the areas considered as “affected”, but also it is also fundamentally problematic functioning as a conditionality clause that undermines the fundamental principles. The specific issue of unilateral sanctions regimes and developed humanitarian carve-outs scheme as factors that challenge the principled humanitarian action of humanitarian operators has been addressed in a previous letter to your Excellency’s Government dated 26 October 2022 ([USA 21/2022](#)).

In this context and taking into consideration of the above-mentioned reflections, we are of the view that existing humanitarian carve-outs or other *ad hoc* temporary measures to ease unilateral sanctions regimes may be considered as positive steps, but due to their complexity and often unclear or limited scope, may not be the appropriate tools or sufficient in order to respond to humanitarian needs, and in this case urgent needs following natural disasters affecting hundreds of thousands of people. Catastrophic events such as the recent earthquakes affecting also Syria further exacerbate the already multifaceted and comprehensive adverse impact of long-lasting unilateral sanctions regimes on the lives and human rights of the Syrian people, and may demand for more comprehensive response, including the complete lifting of such regimes.

In this context, we recall the General Comment No. 8 by the UN Committee on Economic, Social and Cultural Rights (CESCR), which has underscored the findings of a number of UN and other studies, which have analysed the impact of sanctions on human rights and concluded that humanitarian exemptions do not have the expected positive effects, such as the unhindered flow of essential goods and services destined for humanitarian purposes (E/C.12/1997/8, paras 4 and 5).

We also recall the States' obligations in ensuring the respect, protection and fulfilment of all human rights and fundamental freedoms, in accordance with all relevant international and regional human rights instruments. With regard to businesses' and financial institutions' over-compliance and de-risking, we call on States to take all necessary steps to protect against human rights abuses by enterprises and institutions domiciled in, or owned and controlled by them; to provide effective guidance to them on how to respect human rights throughout their operations; and, to exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for such enterprises and institutions, in line with principles 2, 3, 4 and 5 of the UN Guiding Principles on Business and Human Rights.

The obligation to protect the right to life requires States to take special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, General Comment No. 36, para. 23). We note that the right to life is linked to the positive obligation to ensure access to the basic conditions necessary to sustain life (CCPR General Comment No. 6, para 5; CCPR General Comment No. 36, para 21). Measures, including the obstruction of humanitarian assistance, which restrict access to basic and life-saving goods and services such as food, health, electricity and safe water and sanitation run counter to the right to life (CCPR/C/ISR/CO/4, para. 12; A/73/314, para. 27). We recall that any deaths attributable to such measures amount to an arbitrary deprivation of life, which engages the responsibility of the State (A/73/314, para. 13).

We finally recall that the spirit of solidarity and international cooperation is enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which provides that States have a duty to cooperate in the various fields irrespective of differences in their political, economic and social systems. The Declaration stipulates that States are obliged to cooperate, inter alia, in the protection and promotion of human rights; in the economic, social and cultural fields.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned analysis.
2. Please describe the measures undertaken to provide further guidance and clarity on the application of the General Licence No. 23 to all relevant actors engaging in the post-earthquake emergency relief efforts in Syria.

3. Please provide information on the measures undertaken in order to address business and financial sector over-compliance with the current US sanctions regimes, despite the expansion of the authorised activities and transactions as provided by the General Licence No. 23.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of this letter has been shared with the Syrian Arab Republic, as the concerned State.

Please accept, Excellency, the assurances of our highest consideration.

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