

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 your Excellency's Government's General Licence: Humanitarian Activity INT/2023/2711256 issued on 15 February 2023 under Regulation 61 of The Syria (Sanctions) (EU Exit) Regulations 2019 ("The Syria Regulations") pertaining to the humanitarian activity in relation to the earthquake in Syria and Turkey. This General Licence aims at easing for a period of 6 months the sanctions regime against Syria for the purpose of facilitating the relief efforts following the catastrophic earthquakes of 6 February 2023.

At the outset, we wish to welcome your Excellency's Government's reaction in response to this unprecedented natural disaster with its tremendous cost in human life and infrastructure, the expressed easing of transactions for earthquake relief purposes, as well as the reported commitment to provide assistance, including financial support and delivery of the disaster relief goods.

In particular, with regards to the above-mentioned General Licence, we would like to highlight a number of elements and share few reflections around these elements for consideration.

The General Licence contains a detailed list of actors and operators who may be covered by this humanitarian exemption and who are involved in the delivery of emergency relief and humanitarian assistance, namely a) the United Nations, including its programmes, funds and other entities and bodies, and its specialised agencies and related organisations; b) humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations; c) NGOs participating in UN Humanitarian Response Plans, Refugee Response Plans, other UN appeals or humanitarian clusters coordinated by the UN Office for the Coordination of Humanitarian Affairs (OCHA); d) international organisations carrying out relief activities in Syria; e) any employee, grantee, subsidiary, or implementing partner of all the above, to the extent that they are acting in those capacities.

The approach adopted by determining with such precision the status and type of concerned parties is undoubtedly helpful in providing clarity among those parties

and dispel any uncertainties of these actors in the performance of their legitimate and life-saving interventions. In addition, such statutory clarity may also be important for any due diligence procedure and compliance review by banks and other financial service providers, who may enter into relationship with the above-mentioned actors, and who would be called upon to speedily process international payments and money transfers to the effectively respond to the emergency relief necessities. However, this list of concerned actors may not be completely inclusive, as it may not take into consideration actors with significant humanitarian work and presence in different parts of the country. By way of example we may refer to Churches and faith-based organisations, some of whom have presence in the country and may face serious challenges in the delivery of emergency relief humanitarian assistance or international transfers of funds.

With regard to the activities covered by this General Licence, reference is made to “Relevant Activities”, that is “activities necessary to facilitate humanitarian assistance in relation to earthquake relief efforts in Syria and Turkey”. We wish, however, to stress that the long-term effects of the earthquakes may require humanitarian interventions which may fall outside the 6-month time-bound scope of this licence, particular if taken into consideration that humanitarian aid in such circumstances may require reconstruction of critical infrastructure to effectively respond to basic human needs.

We are of the view that it would be inappropriate and morally questionable to assess the permissibility of critical and life-saving interventions 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 humanitarian interventions may not be sufficient to contribute to the much-needed recovery.

Furthermore, the General Licence allows for the performance of these “Relevant Activities” provided that the concerned actor “believes that carrying out the Relevant Activity is so necessary to ensure the timely delivery of earthquake relief efforts in Syria and Turkey and there is no reasonable cause for [this actor] to suspect otherwise”. Such wording may ultimately defeat the purpose of this licence and result in over-compliance and de-risking, discouraging engagement by any relevant actor. In other words, it includes an element of conditionality which appears to be determined by the capacity of any relevant actor to control the ultimate use of the delivered assistance, material or financial, by requiring this actor to prove that the assistance was not used for other purposes not covered by this licence, which are not clearly defined. Clarification needs also to be provided with regard to the competent authorities who will be called upon to assess the statements and beliefs of relevant actors that their activities are compatible with the permissions under this licence.

Another point of concern is the reference to “any Relevant Institution”, which may “carry out any activity necessary to affect the permissions”, with reference to a number of other specific laws, including the Financial Services and Markets Act of 2000, the Payment Services Regulations (SI 2017/752), the Electronic Money Regulations (SI 2011/99), the Banking Act of 2009. We note with concern the broad and unclear wording, which does not define the type of activity that such a “Relevant

Institution” could undertake to “affect the permissions”. Such activity may ultimately include a conduct that may be perceived as excessive de-risking with adverse effects on the delivery of the assistance. In addition, humanitarian operators with limited legal expertise and financial means may be discouraged by such provisions, and choose not to invest time and financial means to embark on the organisation and implementation of a humanitarian project out of fear that such an effort may be blocked by an “activity” performed by a “Relevant Institution”.

This uncertainty and potential de-risking approach, may also be exacerbated by another complex and unclear wording contained in this licence that “the permissions in this licence do not authorise any act which the person carrying out the act knows, or has reasonable grounds for suspecting, will result in a breach of the Syria Regulations save a permitted under a licence granted under the Syria Regulations”.

In addition, we are not aware of any detailed explanatory document that could guide the humanitarian operators following the adoption of this General Licence and which could offer specialised feedback with regard to the compliance of their activities with the scope of its permissions.

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.

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: Humanitarian Activity INT/2023/2711256 of 15 February 2023 to all relevant actors engaging in the post-earthquake emergency relief efforts in Syria.
3. Please provide information on the procedures for assessing the compatibility of humanitarian operators' ongoing or planned humanitarian activities with the scope of the above-mentioned General Licence.
4. Please provide information on the measures undertaken in order to address business and financial sector over-compliance with the current UK Syria Regulations, despite the expansion of the authorised activities and transactions as provided by the General Licence: Humanitarian Activity INT/2023/2711256 of 15 February 2023.

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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enjoyment of human rights

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