

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Special Rapporteur on the right to food

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(Please use this reference in your reply)

16 February 2024

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 and Special Rapporteur on the right to food, pursuant to Human Rights Council resolutions 52/13 and 49/13.

We would like to bring to the attention of your Excellency's Government the following comment on a bill of the United States' Congress introduced "[t]o prohibit any official action to recognize or normalize relations with any Government of Syria that is led by Bashar al-Assad", which, if accepted, would have a negative impact on the human rights of the Syrian population.

Unilateral sanctions have been imposed by your Excellency's Government against the Syrian Arab Republic since 1979 with the designation of Syria as a state sponsor of terrorism and being further expanded and intensified during the last decade. A broad range of unilateral sanctions was imposed in 2011, followed by the adoption of the Caesar Syria Civilian Protection Act in 2019, which was incorporated into the 2020 National Defense Authorization Act (NDAA, P.L. 116-92, Title LXXIV). These measures have formed a comprehensive framework of primary and secondary sanctions, covering goods, services, technology, information, though many items may be perceived as being vital for humanitarian purposes for the enjoyment of human rights, including water, sanitation, hygiene, health (WASH).

The comprehensiveness of existing unilateral sanctions regimes against the Syrian Arab Republic and the growing over-compliance, in particular following the imposition in 2019 of the Caesar Syria Civilian Protection Act, have placed the country in a straitjacket with serious adverse effects on a broad range of human rights. Some of the legal and humanitarian concerns with regards to the Caesar Act have been communicated to your Excellency's Government already in December 2020 through a detailed letter (AL USA 30/2020)¹, but regrettably, to date, after several years, there has been no response to that communication.

The current situation in the Syrian Arab Republic might be qualified as a fully-fledged economic, financial and trade blockade, with a multifaceted adverse impact on every sector of the economy and on the lives of Syrian people as reflected in a latest country visit report (A/HRC/54/23/Add.1)². Half of the country's 22.1 million population is internally or externally displaced³ and 15.3 million people – nearly 70% of Syrians – are in need of humanitarian assistance⁴, with ruined critical infrastructure

¹ AL USA 30/2020 of 21 December 2020 at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25785>

² The country visit report can be accessed at <https://undocs.org/A/HRC/54/23/Add.1>

³ Armed Conflict in Syria: Overview and U.S. Response, Updated 8 November 2022, at <https://sgp.fas.org/crs/mideast/RL33487.pdf>

⁴ Impact of sanctions on the humanitarian situation in Syria. Briefing. European Parliament, at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/749765/EPRS_BRI\(2023\)749765_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/749765/EPRS_BRI(2023)749765_EN.pdf)

including water supply, sanitation, heating, electricity, food, medicine, connectivity, among others, and impossibility to undertake any reconstruction and development projects to a large extent due to the impact of unilateral sanctions and over-compliance.

Furthermore, in the aftermath of the deadly earthquake of 6 February 2023, there have been numerous reports about the deteriorating humanitarian situation, calling for international community's prompt response, including through the expansion of the humanitarian programs⁵. On 10 February 2023, several UN experts called for the lifting of unilateral sanctions to ensure unhindered and prompt delivery of humanitarian assistance. In their words "[i]t is imperative for the international community and in particular sanctioning states to undertake prompt action by putting an end to unilateral sanctions against Syria, a country deprived of critical infrastructure and in dire need of recovery and reconstruction, following the decade-long war."⁶ At the same time humanitarian exemptions in unilateral sanctions regimes, both those which are integral part of the sanctions regulations as well as those adopted in response to specific circumstances, have proven ineffective and inefficient, as stated in multiple communications and reports⁷.

While welcoming your Excellency's Government's reaction to this natural disaster with its tremendous cost in human life and infrastructure through the reported easing of transactions for earthquake relief and the suspension of secondary sanctions for such purposes imposed against non-US persons under the Caesar Syria Civilian Protection Act, such decisions did not suffice to respond effectively to the increasing humanitarian needs of the Syria populations as highlighted in the communication of 3 April 2023 (OL USA 7/2023)⁸. It has been reported by multiple sources that the general situation with the delivery of humanitarian assistance has not changed significantly since then.

Notwithstanding this continuous regressive situation, a bill "[t]o prohibit any official action to recognize or normalize relations with any Government of Syria that is led by Bashar al-Assad" was first introduced to the U.S. House of Representatives in May 2023 and then to the Senate in September 2023. The bill appears to be driven by and to reinforce the current U.S. policy of international isolation of Syria. If passed, it is likely to further contribute to the existing general climate of uncertainty and fear already created by the system of comprehensive primary sanctions against Syria, as well as secondary sanctions, and undermine any positive initiatives in the country and the region, including in the diplomatic arena, as well as hinder any reconstruction and development efforts, and further exacerbate the already growing humanitarian crisis in the country.

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- ⁵ Media statement, "Flash Appeal: Syrian Arab Republic Earthquake" of 14 February 2023, at <https://reliefweb.int/report/syrian-arab-republic/flash-appeal-syrian-arab-republic-earthquake-february-may-2023-enar>
- ⁶ Media statement, "Genuine solidarity with earthquake survivors calls for lifting of sanction-induced restrictions: UN experts" of 10 February 2023, at <https://www.ohchr.org/en/statements/2023/02/genuine-solidarity-earthquake-survivors-calls-lifting-sanction-induced>
- ⁷ Media statement, "Humanitarian exemptions in unilateral sanctions regimes ineffective and inefficient", at <https://www.ohchr.org/en/node/104258>; see also communication on U.S. humanitarian carve-outs and their inefficacy at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27951>; in addition, General Comment No. 8 by the UN Committee on Economic, Social and Cultural Rights (CESCR), 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).
- ⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27951>

Section 3 provides for the main aim of the U.S. foreign policy which should be to “actively oppose recognition or normalization of relations by other governments with any Government of Syria that is led by Bashar al-Assad”. Such “active opposition” may take the form of concrete action under the Caesar Syria Civilian Protection Act of 2019, including the imposition of secondary sanctions. In particular, section 3(a)(3) invites the U.S. Government “to use the full range of authorities, including those provided under the Caesar Syria Civilian Protection Act of 2019 and Executive Order 13894, to deter reconstruction activities in areas under the control of Bashar al-Assad”, that in practice also prevents reconstruction of critical infrastructure.

Furthermore, section 4 lays down the different types of foreign governments’ actions vis-à-vis Syria that could be ultimately countered by the U.S. Government, namely “any actions taken or planned by foreign governments to normalize, engage with, or upgrade political, diplomatic, or economic ties”. It also requires the Secretary of State to submit annually and for a period of 5 years to “appropriate congressional committees” a report describing the specific actions undertaken by the U.S. Government.

In particular, section 4(a)(2) details the information to be included in the annual report and refers to diplomatic relations of the third states. The bill, via a directly prescribed pressure on neighboring countries and regional partners (Turkey, the United Arab Emirates, Egypt, Jordan, Iraq, Oman, Bahrain, Kuwait, the Kingdom of Saudi Arabia, Tunisia, Algeria, Morocco, Libya, or Lebanon⁹), undermines any regional effort to solve the Syrian crisis, which commenced in May 2023 within the League of Arab States, while the UN Charter supports and provides for such regional efforts.

In this regard, as the Special Rapporteurs with the UN mandate we remind your Excellency’s Government of the purposes and principles of the UN Charter enshrined in articles 1 and 2 and reiterated throughout the whole document. The United Nations prioritizes the development of friendly relations among nations on the basis of equality, achieving international cooperation in solving economic, social, cultural and humanitarian problems without any discrimination in full accordance with its founding treaty. The generally recognized principle of sovereign equality, non-intervention and cooperation are embedded, *inter alia*, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.¹⁰

We recall, accordingly, that all States enjoy sovereign equality and have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. They shall also respect the personality of other states and enjoy all rights inherent in the full sovereignty. Principle of sovereign equality prohibits, *inter alia*, any extension of jurisdiction of one state over another as a preemptory (*jus cogens*) norm (*par in parem non habet imperium*), no derogation from which is allowed under international law.

⁹ Bill H.R. 3202. The House of Representatives May 11, 2023 // <https://www.congress.gov/118/bills/hr3202/BILLS-118hr3202ih.pdf>

¹⁰ See UN General Assembly Resolution 2625 (XXV) of 24 October 1970, at https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf

Any threat of punishment of third states for cooperating with Syria, therefore, constitutes an attempt of subordination of both Syria and such third states in the exercise of their sovereign powers to the policy of your Excellency's Government *inter alia* by economic means that constitutes a breach of the principle of non-intervention into the domestic affairs of states. Similar argument and status apply to any threat of qualifying any activity of individuals or businesses which aim or might be used for reconstruction or rebuilding of Syria as a circumvention of U.S. primary sanctions.

Detailed analysis regarding the legal concerns around the enforcement of secondary sanctions and imposition of civil and criminal penalties on third-country nationals for alleged circumvention/ assistance in circumvention of primary sanctions as well as on their humanitarian and human rights impact is contained in thematic reports to the Human Rights Council¹¹ and the UN General Assembly¹² in 2022 and 2023 respectively.

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, and the welfare of nations. To this end States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention. The Declaration mentioned above stipulates that States are obliged to cooperate, *inter alia*, in the protection and promotion of human rights; in the economic, social and cultural fields.¹³

No reference to good objectives can justify any threats to state cooperation and equality of states in their choice of the modes of cooperation, as well as to actions of other stakeholders in implementing the values and principles of international law and the UN Charter.

The expanding scope of unilateral sanctions against the Syrian Arab Republic since 2011 and following the adoption of the Caesar Act in 2019, their broad interpretation, the designation of all Syrian banks mandated to facilitate and process international transactions, the imposition of secondary sanctions and the extension of civil and criminal jurisdiction to third-country individuals and entities have all resulted in over-compliance and de-risking or complete disengagement with any actors with ties to the Syrian Arab Republic.¹⁴

This pressure gives rise to over-compliance and fear to act in any capacity within the Syrian territory or towards the wellbeing of the Syrian population, preventing humanitarian deliveries, emergency assistance, food, water, medicines supply. The proposed Anti-Normalization Act intensifies sanctions on the entire Syrian population, that would create additional suffering for Syrian civilians, impact a critical infrastructure, affect the delivery of humanitarian assistance.

By cutting any interaction with Syria the proposed Anti-Normalization Act may further intensify the adverse effects of sanctions on the life and well-being of the

¹¹ A/HRC/51/33

¹² A/78/196

¹³ UN General Assembly Resolution 2625 (XXV) at https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf

¹⁴ A/HRC/54/23/Add.1

Syrian population, exacerbate the already intense and prolonged human suffering and continue to impede any development and reconstruction efforts particularly of critical infrastructure, as well as the delivery of humanitarian assistance in the immediate run. It may open the door for human rights violations extraterritorially, including the right to life, freedom from torture, the right to health, to an adequate standard of living, food, adequate housing, clean water and sanitation, favorable environment, as well as cultural rights including the right to access and benefit from technological progress, all of which have been already endangered tremendously¹⁵.

As it is our responsibility, under the mandate 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 information on the current state of consideration of the draft of Syria Anti-Normalization Act by your Excellency's Government.
2. Please, provide information how your Excellency's Government plans to ensure the conformity of Anti-Normalization Bill and its implications to peremptory norms public international law including the principle of sovereign equality of states; principle of non-intervention into domestic affairs of states; principle of promotion and protection of human rights in the face of the external effect; principle of peaceful settlement of international disputes, principle of cooperation.
3. Please, explain, what measures have been taken by your Excellency's Government to settle disputes between the United States and the Arab Republic of Syria peacefully in accordance with the Charter of the United Nations.
4. Please, provide information about the legal grounds of the planned interference into diplomatic relations of Syria with the third states in the proposed Anti-Normalization Act, including in relations within the League of Arab States.
5. Please, provide information, whether any type of humanitarian impact assessment of the Caesar Act has ever been made by Your Excellency's Government and whether the preliminary assessment of possible humanitarian impact of Anti-Normalization Bill took place. Please, provide the details.
6. As the critical infrastructure is vital to ensure fundamental human rights of the people of Syria, please, explain what measures are planned to be taken by your Excellency's Government to enable the reconstruction of the critical systems and services in the Arab republic of Syria: water, energy, electricity supply, transportation, agriculture, access to food and medicine etc.

¹⁵ A/HRC/54/23/Add.1

7. Please, specify what measures are taken/ will be taken by your Excellency's Government to ensure that the adoption of the act and relevant policy is not violating fundamental human rights of Syrian citizens and residents, including right to food, right to health, access to clean water and sanitation access to affordable energy and relevant Sustainable Development Goals.
8. In a view of the repeated appeals to your Excellency's Government as regards the impediments in delivery of humanitarian assistance in Syria, with heavy humanitarian consequences for those most in need, please explain what measures are planned to be taken to ensure that humanitarian assistance is delivered without any impediments to guarantee the basic needs of Syrian population.

While awaiting a reply, we urge your Excellency's Government to consider withdrawing the Assad Regime Anti-normalization Bill from the proceeding within the Congress of the United States, as contrary to the fundamental principles of international law including principle of non-intervention into domestic affairs of states, principle of sovereign equality of states, principle of cooperation with regards to the Syrian Arab Republic as well as to any third country intending to co-operate with Syria, and due to a high risk of its detrimental humanitarian impact in violation of the principle of the promotion and protection of human rights.

We also call on your Excellency's Government:

to implement recommendations formulated in the report on the country visit to Syria aimed at the promotion and protection of human rights of the entire population;

to ensure that humanitarian deliveries, as well as procurement and transactions to Syria for humanitarian purposes are not undermined or impeded, and that humanitarian actors are not subject to enhanced scrutiny, or criminal investigation, or any liability for undertaking humanitarian work and engaging with countries or territories under sanctions;

to guarantee that any efforts for reconstruction and rebuilding of critical infrastructure in Syria vital for the survival of the population and necessary for ensuring the exercise of its human rights, are not affected by any policy or determination of your Excellency's Government.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns about this issue in the future as it is a matter that should warrant careful attention. We also deem that the wider public should be informed about the human rights implications of these allegations. Any press release or public expression of concern on our part on this issue will indicate that we have been in contact with your Excellency's Government to bring it to your attention and seek clarification.

Please, be informed that 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.

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

Michael Fakhri
Special Rapporteur on the right to food

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to the relevant international norms and standards that are applicable to the issues brought forth by the application of the analyzed legislations.

Resolution 27/21 of the Human Rights Council and consequent resolutions expresses grave concern about the negative impact of unilateral coercive measures on the right to life, the rights to health and medical care, the right to freedom from hunger and the right to an adequate standard of living, food, education, work and housing. It also expresses concern for the disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population, in particular women and children.

We also refer to the fundamental principles of international law including principle of sovereign equality of states, principle of non-intervention into the domestic affairs of states, principle of peaceful settlement of international disputes, principle of promotion and protection of human rights as set forth in the Charter of the United Nations, Declaration on Principles of International law Concerning Friendly Relations between states of 1970, Helsinki final act of 1975.

We keep our attention to the accepted framework of human rights and unilateral coercive measures in the General Assembly resolution 51/103 which refers in the first paragraphs to the purposes and principles of the Charter of the United Nations, and reaffirms the pertinent principles and provisions contained in the Charter of Economic Rights and Duties of States proclaimed by the General Assembly by its resolution 3281 (XXIX) of 12 December 1974, in particular article 32 thereof, in which it is declared that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

As for the human rights law, we refer to the Bill of Rights and other treaty and customary norms of international human rights law. In particular, in respect to the right to life, article 6 of the International Covenant on Civil and Political Rights (ICCPR), provides for 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) and requires special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, general comment no. 36, para. 23). Measures, including the obstruction of humanitarian assistance, and of 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 wish to recall that any deaths attributable to such measures amount to an arbitrary deprivation of life (A/73/314, para. 13).

On another note, the International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (art. 12(1)). General comment no. 14 (2000) of the CESCR, which states that the agreed interpretation of the right to health includes, inter alia, the availability and the physical accessibility of goods

necessary to ensure this right (paras 12(a, b)), with these goods being “medically appropriate and of good quality” (para 12(d)). We also refer to paragraph 50 of the same general comment no. 14 which notes that violations of the right to health can include “the denial of access to health facilities, goods and services to particular individuals or groups”. Moreover, deterioration of one’s health condition as well as growing physical and psychological suffering due to the unavailability of adequate and appropriate medical treatment may have adverse effects on the enjoyment of other human rights including the right to education, the right to work, human dignity, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement (CESCR, general comment no. 14, E/C.12/2000/4, para. 3).

We remind and draw the attention of Your Excellency’s Government to the article 2.1 of the ICESCR which enshrines that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

We would also like to draw the attention of your Excellency’s Government to article 11(1) of the ICESCR which recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.” This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind.

With respect to the right to food, and to a decent standard of living in which food plays a vital role, we recall article 11 of ICESCR which recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food (...).” Additionally, regarding the right to enjoy one’s property, we refer to article 14 of the ICCPR for its pertinence to the blockage of property and related financial transactions, and to article 17(2) of the Universal Declaration of Human Rights, which states that “No one shall be arbitrarily deprived of his property.”

While acknowledging that your Excellency’s Government is not a party to the ICESCR, we note however, that provisions of this international treaty constitute part of international customary norms and thus are binding for all states.

UN Global Counter-terrorism strategy acknowledges that the “absence of public order, national [...] discrimination, political isolation, socio-economic marginalization” constitute conditions conducive to the expansion of terrorism (part. I). In the resolution 77/298 of 22.06.2023 on the Eighth review of the Global counter-terrorism strategy the General Assembly refers to the obligation of states “to eradicate poverty, to promote sustained economic growth, sustainable development, global prosperity, good governance, human rights and fundamental freedoms for all and the rule of law, [...] to increase understanding of human dignity”, involve youth in education, sport and development programs, to prevent their involvement into terrorism activity (preamble, para. 19). The General Assembly also requests all state to ensure that their counter-terrorism activity takes place in accordance with international law and human rights law and that “counter-terrorism legislation and

measures do not impede humanitarian and medical activities or engagement with all relevant actors” (para. 113).

In light of the above-mentioned impacts, we reiterate the international human rights standards that unilateral coercive measures shall not impact, as enshrined in all relevant international instruments.