

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the independence of judges and lawyers and the Independent expert on the promotion of a democratic and equitable international order

Ref.: AL USA 23/2025
(Please use this reference in your reply)

21 July 2025

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; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the independence of judges and lawyers and Independent expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 54/15, 52/17, 53/12 and 57/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the significant challenges faced by lawyers and other legal professionals in performing their duties on sanctions-related matters and while undertaking, representing and advising concerned individuals and entities on sanctions-related cases.**

A more comprehensive analysis on the issue of the impact of unilateral sanctions on access to justice and the right to effective remedies can be found in the 2024 thematic report to the 79th session of the General Assembly by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights ([A/79/183](#)). It was also addressed in detail at the International Conference on sanctions, business and human rights led by the same mandate, which took place in Geneva in November 2024.

According to the received information:

The complexity and proliferation of United States (U.S.) unilateral sanctions programs and regulations have made them challenging to navigate and understand, even among experienced professionals operating in such contexts, such as regulatory lawyers and legal professionals. This complexity, as well as the frequent changes in the scope and purpose of such unilateral measures heighten the risk of misinterpretation, with possible inadvertent omissions and imprecise legal advice which may result in possible violations of sanctions-related restrictions, with consequent implications for both the lawyer and the client.

The U.S. Government implements a host of sanctions programmes, including comprehensive, sectoral and targeted sanctions, with numerous sanctions and export control lists containing tens of thousands of individuals, as well as

governmental and non-governmental entities and businesses. These programmes are based on a panoply of cross-referenced federal laws, regulations, and executive orders, which are updated and amended on a regular basis due to the dynamic character of the U.S. foreign policy and national security priorities and goals. Furthermore, the reported vagueness of some of the sanctions-related provisions as well as the technical difficulty to navigate the interconnectedness of all these legal and administrative sources have led to the issuance by the various U.S. competent authorities of numerous interpretative and guidance documents, which although aimed at providing clarity, nevertheless have exacerbated the technical complexity and heightened the risk of misinterpretation.

Most of the U.S. unilateral sanctions programmes impose penalties for alleged violations of prohibited transactions between a “U.S. nexus” and a sanctioned person. “U.S. nexus” may refer to a U.S. person, a U.S. origin product or technology, or simply an activity taking place in the U.S. territory. The complexity in the interpretation of the “U.S. nexus” constitutes a serious challenge for legal professionals and may expose them to liability under the U.S. sanctions programmes.

In particular, the term “U.S. person” appears to have different meanings and scope among the different U.S. sanctions programmes. Most of U.S. sanctions programmes define “United States or U.S. person” as U.S. citizen, permanent resident alien, entity organised under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.¹ However, for Cuba and Iran, sanctions restrictions also apply to any non-U.S. entity which is owned or controlled by a U.S. person.² Such differences in scope may not only compound the complexity in sanctions-related litigation but it may also constitute a significant disincentive for U.S. branches of (or of U.S. lawyers and other legal professionals employed by) international law firms, or for foreign branches of U.S. law firms, which may hesitate to undertake U.S. sanctions-related cases and to engage in legal representation or in the provision of advisory services, for fear of possible violations of sanctions regulations.

Similarly, the U.S. nexus with regards to the “U.S. origin product or technology” in sanctions and export control cases is governed by the U.S. Bureau of Industry and Security’s *de minimis rule*, which provides for prohibition of exportation or re-exportation by both U.S. and non-U.S. persons of any good, item, software or technology that contains a certain percentage of U.S. content or technology.³ Such criteria not only complicates the work and operations of concerned individuals, entities and businesses, but also renders their legal defence and representation in sanctions-related procedures as well as judicial litigation more complex and challenging, while at the same time heightening the risk of error by legal professionals handling and representing such cases.

¹ See for example 31 CFR 560.314; 31 CFR 591.312; 31 CFR 548.323

² See for example 31 CFR 515.329; 31 CFR 560.215

³ See *de minimis* rule in 15 CFR 734.4

In addition to the above, legal professionals representing designated persons may be found liable for violating U.S. sanctions regimes for the use of the U.S. financial system, including under the International Emergency Economic Powers Act (IEEPA). This may be triggered by the payment of legal fees in U.S. dollars or by the clearance of such payments through U.S. correspondent banks.

Furthermore, although the provision of legal advice is in general authorised through the general licences of the U.S. Code of Federal Regulations, the payment for such services may involve further restrictions with regards to the source of the funds. It may also require specific licences⁴ and thorough review of the Office of Foreign Assets Control's (OFAC) interpretative guidance and other documentation, which may significantly raise the legal costs and incur further delays in the review of sanctions-related cases. Such circumstances and restrictions may further undermine the provision of legal services and the performance of legal professionals' duties.

Another significant factor that heightens the risks for lawyers and other legal professionals handling U.S. sanctions-related cases and hinders the performance of their functions is the implementation and enforcement by the U.S. authorities of secondary sanctions, namely penalties and other restrictions imposed on non-U.S. individuals and entities who transact and establish relations with a sanctioned individuals or entities, even in the complete absence of a U.S. nexus. Even with a very disciplined and thorough risk assessment programmes, legal professionals and law firms may be exposed to U.S. secondary sanctions, if their services are perceived not only as violations of the specific prohibitions but also as a threat to the purpose and the policy objectives of the specific sanctions programme under which the client (individual or entity) is designated. Uncertainty and fear among legal professionals about enforcement of secondary sanctions has been further exacerbated by cases of designations of non-U.S. lawyers for alleged assistance to sanctions circumvention, and by eventual civil or criminal penalties under the U.S. federal laws, including the International Emergency Economic Powers Act (IEEPA) and the Countering America's Adversaries Through Sanctions Act (CAATSA). All the above impedes access to legal protection for people affected by unilateral sanctions, means of their enforcement and over-compliance.

Procedurally as well, legal professionals face serious challenges in performing their duties in sanctions-related cases, due to inter alia delays by competent U.S. authorities in the review of delisting requests; absence of response in certain cases; non-disclosure of evidence or facts motivating the sanctions designations; as well as the use of rebuttable presumption of wrongdoing, which reverses the burden of proof and obliges the defendant, through her legal representatives, to submit evidence refuting the alleged wrongdoing, which will be deemed sufficient and satisfactory by the competent U.S. authority mandated to review the case. They are also affected by instances of over-compliance by banks, businesses and other entities who may refuse to process payments and provide other services critical for the performance of legal functions.

⁴ See for example 31 CFR 583.507

Most of the U.S. sanctions programmes contain sections authorising the provision of certain legal services to or on behalf of sanctioned persons, as well as payments for the provision of such services from funds located outside the U.S. Authorised legal services include legal advice and counselling on the requirements of and compliance with U.S. laws; legal representation in legal, arbitration, and or administrative proceedings before any U.S. Federal, State, or local court or agency; initiation and conduct of legal, arbitration, or administrative proceedings before U.S. Federal, State, or local court or agency; and, legal services in other contexts “in which prevailing U.S. law requires access to legal counsel at public expense”.⁵ All other services require the issuance of specific licence, without which legal professionals and law firms may be found liable for violating the U.S. sanctions regulations. Notwithstanding the relative comprehensive scope of the authorisations on the provision of legal services, they may not fully address the other main regulatory and operational challenges faced by legal professionals, described above.

While we do not wish to prejudge the accuracy of the received information, we wish to reiterate our concerns about the adverse impact that the U.S. unilateral sanctions regimes may have on the work of legal professionals, access to justice, due process and fairness in administrative and judicial proceedings, as well as on the enjoyment of the right to an effective remedy, protected and guaranteed by relevant international instruments and standards, including article 14 of the International Covenant on Civil and Political Rights (ICCPR).

We particularly note with concern the reported multifaceted challenges faced by legal professionals to navigate the complex and ever-expanding sanctions programmes and to perform their duties, notwithstanding the existence in U.S. sanctions programmes of general licenses explicitly authorizing the provision of certain legal services. Furthermore, we wish to recall that the adverse effects of unilateral sanctions on access to justice and the work of legal professionals may not only emanate from the prescribed prohibitions in the sanctions-related U.S. federal laws and the sanctions regulations, but also from the constant and further exacerbated fear and uncertainty within the legal profession due to the complexity of sanctions regulations, the various interpretations of their scope, the enforcement of secondary sanctions, the serious repercussions, including civil and criminal penalties for alleged violations, as well as the possible reputational damage for representing and advising sanctioned individuals or entities.

We wish to recall the 2013 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and in particular principle 12 on “Independence and protection of legal aid providers”, which clarifies that States should ensure that legal aid providers are able to carry out their work effectively, freely and independently and that they are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or

⁵ See for example Ukraine/Russia-Related Sanctions Regulations, 31 CFR 589.506; Syrian Sanctions Regulations, 31 CFR 542.507; Iranian Transactions and Sanctions Regulations, 31 CFR 560.525; Cuban Assets Control Regulations, 31 CFR 515.512.

other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We refer to the 2023 report by the Special Rapporteur on unilateral coercive measures on “Access to justice in the face of unilateral sanctions and overcompliance” ([A/79/183](#)) and in particular to the observation that access to justice should be understood and interpreted broadly to include *inter alia* equal protection of the law without any discrimination; presumption of innocence and due process; access to affordable legal assistance; access to documentation and evidence; legal certainty; right to appeal; access to effective remedy and redress. The same report calls against the criminalisation of the legal profession in sanctions-related matters and its protection against intimidation and reputational damage.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the current sanctions regulatory frameworks enable the unhindered provision of legal services and the unrestrained performance of lawyers’ and other legal professional’s duties in sanctions-related matters.
3. Please indicate the measures undertaken by your Excellency’s Government to address the procedural challenges described in this letter and to ensure consistency of the legal services’ authorisations among all U.S. unilateral sanctions programmes.
4. Please provide information about cases of civil and criminal prosecution of lawyers and other legal professionals involved in sanctions-related cases, and the factual and legal grounds for such actions.
5. Please provide information on the measures undertaken to effectively address sanctions’ overcompliance by banks and other entities, whose conduct may adversely affect the performance of lawyers and other legal professionals’ duties in sanctions-related matters.
6. Please provide information on any measures undertaken by your Excellency’s Government to protect U.S. lawyers’ professional integrity and to fence them against any improper restrictions, infringements and interference, including those who undertake sanctions-related cases.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Attiya Waris

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

George Katrougalos

Independent expert on the promotion of a democratic and equitable international order

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described. We reiterate our observation that sanctions-related procedures and decisions are of an executive and administrative nature. They, however, impose penalties and restrictions which are commensurable to criminal or civil penalties which are enforced following formal conviction through judicial proceedings. In this context, we wish to highlight specifically the international standards on due process and fair trial guarantees enshrined in the international human rights instruments, in particular the International Covenant on Civil and Political Rights (ICCPR).

Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including presumption of innocence; the right to be promptly and in detail informed about the nature and cause of the charge; to have adequate facilities for the preparation of the defence; to communicate with counsel of his own choosing; to be tried without undue delay; and the right of appeal. These guarantees must be respected by State parties, regardless of their legal traditions and their domestic law.

In its general comment No. 32 (2007), the Human Rights Committee states that deviating from the fundamental principles of fair trial, including presumption of innocence, is prohibited at all times, including in circumstances of emergency. Furthermore, it states that access to administration of justice must be effectively guaranteed to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status.

Similarly, the right to equality before courts and tribunals also ensure equality of arms, which ensures that each party is given equal opportunity to contest all the arguments and evidence adduced by the other party (para. 13).

General comment No. 32 refers also to the notion of fair trial which includes the guarantee of fairness of proceedings, which entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and whatever motive (para. 25), as well as the avoidance of undue delays (para. 27).

Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt,

and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused (para. 30).

The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such (para. 31).

Article 14 3(b) of ICCPR provides that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. According to Human Rights Committee, “adequate facilities” must include access to documents and other evidence. This access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. (para. 32).

We wish to recall the UN Basic Principles on the Role of Lawyers of 7 September 1990, and particularly those presented under “Guarantees for the functioning of lawyers”. Specific reference is made here to the responsibility of Governments to ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Finally, we refer to the Guiding Principles on Sanctions, Business and Human Rights developed by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, and in particular section 28 on “Legal services” referring to the protection of the provision of legal services in sanctions-related proceedings as precondition for the protection of the right to an effective remedy; and, the protection of legal professionals in the course of their performance of their legal duties in sanctions-related cases.