

**Unilateral Coercive Measures (UCM)s
and
the UN Guiding Principles on Business
and Human Rights (UNGPs)**

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BUSINESS & HUMAN RIGHTS



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Report No. 11

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UCMs and UNGPs

As part of our ongoing efforts to shed light on and challenge the systematic human rights violations of the most vulnerable people in Iran, due to comprehensive unilateral/multilateral coercive measures, Organization for Defending Victims of Violence (ODVV) has published a series of reports on the ways in which economic sanctions negatively impact the daily life of the civilian citizens in Iran and targeted countries. The first volume in the series addressed the detrimental consequences of the imposed economic sanctions on “patients and the process of the production and distribution of medicines in Iran”; the second volume discussed “corruption and money-laundering” as a result of sanctions; the third volume centered on the economic sanctions forced upon Iran and its people, particularly by “banks and other financial institutions;” the fourth volume focused on “the humanitarian consequences of sanctions;” the fifth volume explored “the impact of sanctions on refugees and migrants in Iran”, the sixth volume reflected on “Sanctions and Medicines”, the seventh volume discussed “Sanctions and the people with Disabilities”, the eighth Volume drew the reader’s attention to “Mal-effects of UCMs on Human Rights under Covid-19”; the ninth Volume recorded the ODVV’s exclusive interview with Prof. Alena Douhan, the UN Special Rapporteur on the negative impact of the unilateral coercive Measures on the Enjoyment of Human Rights, the tenth issue assessed the impact of the United States Unilateral Sanctions on various sections of societies in Cuba, Iran and Venezuela and the current issue highlights the challenges that UCMs pose to the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs).

Introduction

This report highlights the effect of imposition of unilateral coercive measures (UCMs) on implementation of UN Guiding Principles on Business and Human Rights (UNGPs). To this end, the report discusses the effect of economic sanctions on A) “The State Duty to Protect Human Rights”; B) The corporate responsibility to respect Human rights and the C) Access to Remedy.

Under title A, written comment analyses the effect of sanction imposition on the States’ capacity to protect human rights in their own territory and abroad. Under title B, there is a discussion of the over-compliance of banks and businesses and with coercive and oppressive economic sanctions and its effect on their commitments under the UNGPs and finally with regards to remedy and under title C, the necessity of access to adequate and sufficient remedy and redress for the victims of economic sanctions is explored.

The present report also reveals some of the devastating social, political, and economic consequences of unilateral sanctions on the most marginalized and disenfranchised groups in sanctioned countries.

A) Economic Sanctions and “The State Duty to Protect Human Rights”

With regards to the State Duty to Protect Human Rights, attention should be paid to the point, that All UN member States bear a duty to protect human rights both within and beyond their territories. That is, in addition to the obligation to make efforts to promote enjoyment of human rights domestically, under the international law, they are also committed to prevent violation of human rights beyond their borders. However, under economic sanctions, banks and businesses are threatened—by both State and non-state actors—against getting involved with any sort of business with sanctioned countries to a point that even delivery of humanitarian items and humanitarian funds are in many cases blocked by unilateral sanctions.

Consequently, on 28 June 2022, the UN expert on unilateral coercive measures called on governments to monitor how financial sector over-compliance with sanctions affects critical human rights infrastructure abroad. In an statement, she recalled States’ obligations under the UN Guiding principles on Business and Human Rights to ensure that the

activity of all entities under their jurisdiction and control, including banks and financial entities do not violate human rights.

Ms. Douhan declared that this issue could not be settled by domestic efforts only. Guiding principles needed to be drafted on secondary sanctions, over-compliance and human rights to establish rules to avoid over-compliance and to protect the rights and lives of people.

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However, in Iran, over-compliances of pharmaceutical companies – including the Swiss company Novartis and the Swedish company Mölnlycke - with United States sanctions, instead of their compliance with the UN Guiding Principles on Business and Human Rights, led to violation of the right to life and the right to health and loss of life for many patients including the people suffering from thalassemia (as explained in textbox 1) and the children suffering from butterfly disease or EB (epidermolysis bullosa) – a disease which causes extremely painful wounds. In addition, in Iran, the banning of the majority of Iranian public and private banks from the international banking system, has made them incapable of purchasing the required currency (dollars and euros) for their international trade transactions.

The Swiss Novartis and Iranian Thalassemia People

On May 5, 2018, the Unilateral withdrawal of the United States from the Joint Comprehensive Plan of Action, opened a black chapter in the lives of Iranian children and adolescents suffering from thalassemia who were hoping of a better tomorrow. Sanctions against Iran were imposed under false pretexts and contrary to the Security Council Resolution 2231 and the ruling of International Court of Justice (ICJ).

Consequently, the sanctions indiscriminately, limited access to medicine and medical care for 23,000 thalassemia patients in living Iran, which caused the death of more than 170 thalassemia patients in the two following years, in addition to causing severe and irreparable damages to 7,000 of those patients, and, leaving 23,000 patients at risk of death as of 2022. The Iranian Thalassemia Association declared a state of emergency regarding the violation of the right to life of patients in need of lifelong treatment under sanctions and in statements to the Human Rights Council

called on all UN member States to continue recommending the United States to lift all unilateral sanctions. The UN Special Rapporteur on unilateral coercive measures, has received testimonies of acute shortages ... for life-saving ... medicines, as well as accounts of rationing of medical doses ... Since November 2018, the price of healthcare rose 67%. In addition, in 2021, Iran was able to import 1.5 million injection doses for thalassemia patients, out of the 10 million needed... Such shortages have led to a quadrupling of mortality rates among thalassemia patients. (A/HRC/51/33/Add.1) pp.30



Sweden Mölnlycke and the Iranian Butterfly Kids

- In March 2019, a Swedish dressing Company, Mölnlycke, in a letter to (epidermolysis bullosa) EB Home in Iran, said that because of US sanctions it “decided not to conduct any business with relation to Iran for the time being.” Later Iran’s EB Home filed complaint against Sweden’s Mölnlycke, however, some children suffering from the painful illness lost their lives due to lack of access to the dressing and treatment produced by the Swedish company.
- On October 2021, six UN Experts¹, including the UN Special Rapporteur on Unilateral Coercive Measures, wrote a letter to the permanent mission of Sweden and asked the government for explanation and clarifications in this regard.
- In Dec 2021, the Sweden government replied to the UN Experts’ letter affirming the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) by the country, emphasizing that Sweden has been the sixth country in the world to adopt UNGPs. It is regrettable however, that the Sweden government utterly denied any responsibility for the human rights consequences of the decisions adopted by Mölnlycke.
- Despite the objections expressed by UN Experts, Sweden failed to stay committed to the human rights obligations under the UN Guiding Principles on Business and Human Rights which was adopted by the country to make sure that the companies working under its territory implement their international obligations.

1. The experts: Ms. Alena Douhan, UN Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights; Mr. Morris Tidball-Binz Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Mr. Obiora Okafor; Independent Expert on human rights and international solidarity; Mr. Livingstone Sewanyana; Independent Expert on the promotion of a democratic and equitable international order; Ms. Tlaleng Mofokeng Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.



To summarize, although the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), has been a step forward in the pathway of protecting human rights in the realm of business activities, on the ground, there are cases of governments failing to stay committed to their obligations under the adopted UNGPs. This is while, in line with the word and the spirit of the UNGPs, the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, has called on governments to fulfil their obligation to uphold human rights, by requiring banks to carry out the due diligence necessary to prevent such harm¹.

1. <https://www.ohchr.org/en/press-releases/2022/06/financial-sector-overcompliance-unilateral-sanctions-harmful-human-rights-un>

B) Economic Sanctions and "the Corporate Responsibility to Respect Human Rights"

The UNGPs are designed to encourage businesses including banks and other financial institutions around the world to conform to the UN Guiding Principles and to stop over-complying with sanctions regimes imposed by various countries, beyond the authority of the United Nations and the international law, while the practice of unilateral sanctions inadvertently leads to human rights violations.

The responsibility to respect human rights is an international standard which is expected to be followed by all business round the world. The international standard that protect human rights exist above compliance with national laws. Other commitments or activities of businesses to promote human rights, does not offset a failure to respect human rights in their operations.

Banks and financial institutions are among important businesses and a key component of almost every country's international trade, particularly when conducting financial exchanges for import of food and medicine as vital items. With respect to the worldwide hesitation of international banks (following the United States unilateral

withdrawal from Joint Comprehensive Plan of Action in 2018 to date) from conducting business with Iran (Iranian entities, governmental and non-governmental bodies), Iran has been forced to turn to small and private banks in order to be able to do international business and to import the required food stuff and medicine. Iran has been forced to take high risk transactions in trusting small banks who had less credit in total than the money deposited by Iran in order to import humanitarian items into the country. The high risk transactions with financial institutions that lack the capacity to handle the business, severely damages the economy of Iran by providing room for corruption, through unofficial deals, transactions and exchanges.

There have been a number of qualitative and quantitative studies and reports conducted on the harms and sufferings on public health sector in Iran, due to over compliance of banks and pharmaceutical companies with the economic sanctions experienced by the country.

In order to examine the specific impacts of over-compliance of banks and businesses with economic sanctions on the access of patients to medical treatments we refer to some studies conducted in Iran, as well as some comments offered by health sector experts who believe that political gains of imposed economic sanctions result in pain and suffering for the civilian population in Iran.

UNICEF echoes these concerns by stating that “...the heaviest consequences [of economic sanctions] often fall on those who are

least culpable and most vulnerable”¹. The Guardian published an article on the effects of international sanctions on Iran that stated that the refusal of international companies to sell medicines to Iran due to difficulties in receiving payments caused by the economic embargo has had devastating consequences for many folks with chronic or long-term illnesses.

Dehghani, the author of this article, reports: “an estimated 23,000 Iranians with HIV/Aids have had their access to the drugs they need to keep them alive severely restricted”.² Furthermore, in an interview with Dr. Naghdi, head of the supplier company of about a third of Iran’s pharmaceutical needs, he accused the West to be lying when it claimed it hasn’t imposed sanctions on the medical sector of Iran. According to Dr. Naghdi, many medical firms have sanctioned Iranian entities³.

The challenge imposed by the over-compliance of banks and pharmaceuticals companies on access to food and medicine is also expressed in the statements released by the UN Special Rapporteur on unilateral coercive measures, Prof, Alena Douhan. For example, in a statement published on 28, June 2022, the Special Rapporteur has declared that “Cases show that over-compliance prevents, delays or makes more costly the purchase and shipment of humanitarian goods and services including food, medicine, medical equipment and goods for maintenance of critical infrastructure to sanctioned countries, even when the need is urgent.” “Over-

compliance also prevents international organizations and humanitarian actors from transferring funds to pay their workers in sanctioned countries, and blocks people in targeted societies from accessing their property, meeting their financial obligations, engaging in business activities, participating in international cooperation and day-to-day interactions.”⁴

In addition to the statements released by the Special Rapture, Prof. Douhan has also published a “Guidance Note on Over-compliance with Unilateral Sanctions and its Harmful Effects on

Human Rights”, in which she further explains the effect of over-compliance of banks with unilateral sanctions and its negative effects on sanctioned populations:



1. Garfield, Richard, Julia Devin, and Joy Fausey. “The health impact of economic sanctions.” *Bulletin of the New York academy of medicine* 72.2 (1995): 454.

2. Dehghan, Saeed. “Iran unable to get life-saving drugs due to international sanction”. *The Guardian*. January 2013. Retrieved at: <http://www.theguardian.com/world/2013/jan/13/iran-lifesaving-drugs-international-sanctions>
ibid

3. <https://www.ohchr.org/en/press-releases/2022/06/financial-sector-overcompliance-unilateral-sanctions-harmful-human-rights-un>

4. The letter is available in the UN communications database: Communication from Special Procedures, Reference: AL SWE 3/202

What can be concluded is that unilateral sanctions which are imposed on countries beyond the authority of the United Nations discourage banks and businesses from implementation of UN Guiding Principles on Business and Human Rights (UNGPs), causing widespread human rights violations in sanctioned countries.



“Over-compliance also occurs when banks decide to freeze assets that are not targeted by sanctions, or deny individuals the possibility to open or maintain bank accounts or to engage in transactions simply because they are nationals of a sanctioned country, even when the individuals are refugees from that country”...”Some over-compliance policies of banks do prevent states, international organizations, diplomats and individuals in targeted countries from participation in international cooperation. They do also often result in the cancellation or suspension of membership or voting rights in international organizations”...”De-risking (avoiding risk) and over-compliance with the requirement of unilateral sanctions by banks force companies and individuals to look for alternative ways to transfer money, making the mechanisms of financial transactions opaque, increasing costs and time for transferring money and goods, creating a flourishing underground economy, giving rise to smuggling, fostering corruption and criminal activities, within the borders of targeted countries but also often outside them in neighboring countries”.

C) Economic Sanctions and “Access to Remedy”

A ccording to the Guiding Principles, under international law, States have the duty to protect people against human rights abuses by businesses. That is States bear the responsibility to prevent, investigate, punish and redress human rights abuses that take place domestically. However, we argue that the States have the responsibility to protect people against human rights abuses caused by the businesses operating in their territory even when the human rights of people living in other countries is violated as a result of such operations. We echo that the Guiding Principles “recommend that States set clear expectations that companies domiciled in their territory/jurisdiction respect human rights in every country and context in which they operate”. That is, States are responsible for the human rights violations committed by banks and pharmaceuticals

companies operating within their territory even when the rights of people beyond their territory is breached.

In 2008, the United Nations endorsed the 'Protect, Respect, and Remedy Framework' for business and human rights. The UN Framework recognizes the right to access effective remedy for individuals and communities whose rights have been violated by businesses. Affected people should access

remedy and redress through the court system or other legitimate processes. Companies, are also expected to establish effective remedy mechanisms for those adversely impacted by their business activities.

The UN Framework also addresses the human rights responsibilities of businesses. The Framework obliges businesses to respect human rights wherever they operate and whatever the size of their company is. That is companies bear the responsibility to gather information on the actual or potential impacts of their activities on people and prevent and mitigate abuses, and address adverse impacts on people.



the UN Working Group on Business and Human Rights is seriously expected to raise concerns over the non - implementation of the UN Guiding Principles by States parties leading to violation of the right to life and the right to health for affected populations.

The UN Framework clarifies that the corporate responsibility to respect human rights exists independently of States' willingness to fulfil their duty to protect human rights. That is, businesses are required to prevent, mitigate and, remedy human rights violations that they cause or contribute to. The Guiding Principles require businesses to prevent or mitigate any negative impacts on human rights as a result of their business activities, products or services, even the impacts by suppliers or their business partners.



The UN Working Group on Business and Human Rights is expected to speak out on the necessity of establishment of effective and easily accessible mechanism of remedy and redress for the victims whose right to life and right to health is violated by non-implementation of UNGPs.

Recommendation

Now that in some cases, neither the States nor the business enterprises accept their responsibility of human rights abuses resulted by the over-compliances of banks and businesses with economic sanctions, and try to shift the responsibility on others – for example in the case of the Swedish company, the government of Sweden, in response to UN Experts, denied any responsibility related to the death of Butterfly Kids in Iran(1) resulted by the over-compliance of the

Swedish company with unilateral sanctions of the United States. Therefore, the UN Working Group on Business and Human Rights is seriously expected to raise concerns over the non - implementation of the UN Guiding Principles by States parties leading to violation of the right to life and the right to health for affected populations. In addition, the UN Working Group on Business and Human Rights is expected to speak out on the necessity of establishment of effective and easily accessible mechanism of remedy and redress for the victims whose right to life and right to health is violated by non-implementation of UNGPs.



Organization for Defending Victims of Violence
(ODVV)