

## Monitoring and assessment of the impact of unilateral sanctions and over-compliance on human rights

### Introduction and purpose

In recent years, the UN Human Rights Council and General Assembly have passed numerous resolutions expressing alarm about the adverse effects of unilateral coercive measures on human rights, notably unilateral sanctions, and affirming these measures as contrary to international law.<sup>1</sup> Nonetheless, their use has grown enormously, to become a routine element of many countries' foreign policy. The grounds and rationale for the use of such measures, their types and scope, and their methods of enforcement have evolved rapidly, while the growing application of secondary sanctions, civil and criminal penalties against presumed violators have exacerbated fear, uncertainty, resulting in over-compliance and excessive de-risking. Moreover, unilateral sanctions are often imposed simultaneously by more than one country, with cumulative effects and wider implications for the targeted countries and their nationals. Efforts to stop the harm to human rights through exemptions for humanitarian purposes have been largely proven insufficient and inefficient in front of the complexity of sanctions regimes, the growing over-compliance and de-risking, and the significant and multifaceted economic and other disruptions they cause.

In her thematic work, in accordance with the scope of her mandate, the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights has repeatedly highlighted the importance of a systematic monitoring and assessment of the human rights impact of unilateral sanctions and the clear identification of the targets of such measures. She also highlighted the absence of such a mechanism of assessment despite the important steps taken in early 2000s within the UN system. The Special Rapporteur is of the view that any informed discussion around unilateral sanctions should be the result of a clear understanding of the adverse effects through collection, analysis and reporting by all relevant actors of specific information, which will be based on specific criteria and indicators. In this context, since early 2022, she has launched a process of expert consultations towards the elaboration of a simplified and unified methodology for impact monitoring and assessment, with categories of indicators that will be brought to stakeholders' attention for further reflection.

Under Human Rights Council resolutions 27/21 and 45/5 and General Assembly resolution 74/154, the UN Special Rapporteur is tasked with gathering all relevant information relating to the negative impact of unilateral coercive measures on the enjoyment of human rights; studying relevant trends, developments, and challenges; and making guidelines and recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights

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<sup>1</sup> The most recent Human Rights Council resolution was adopted on 3 April 2023 (<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2FL18&Language=E&DeviceType=Desktop&LangRequested=False>). The most recent General Assembly resolution, 77/214, was adopted on 15 December 2022 (<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F77%2F214&Language=E&DeviceType=Desktop&LangRequested=False>).

Toward that end, the Special Rapporteur builds on past work by the UN Inter-Agency Standing Committee (IASC) and the Office for the Coordination of Humanitarian Affairs (OCHA) and introduces here a methodology to better identify the effects that unilateral sanctions have on human rights. It consists of a non-exhaustive set of indicators that can be readily compiled, and readily used, by governments, NGOs and others who observe or have information about situations in which sanctions are harming human rights. The objective of the data is to establish more clearly the links between specific unilateral sanctions and sanctions induced over-compliance and the various human rights that are impacted.

## Glossary

**Unilateral coercive measures** – any type of measures or activity applied by States, groups of States or regional organizations without or beyond authorization of the UN Security Council, not in conformity with international obligations of the sanctioning actor or the illegality of which is not excluded on grounds of the law of international responsibility, regardless of the announced purpose or objective. Such measures or activities include but are not limited to economic, financial, political or any other sort of State-oriented or targeted measures applied to another State or an individual, company or other non-governmental entity, in order to induce a change in policy or behavior, to obtain from a State the subordination of the exercise of its sovereign rights, to secure advantages of any kind, or to signal, coerce or punish. Examples include trade sanctions in the form of embargoes and the interruption of financial and investment flows between sender and target countries, and targeted sanctions such as asset freezes and travel bans against individuals or companies.

**Unilateral sanctions** – measures taken by a state, group of states, regional organization unilaterally without authorization of the UN Security Council without prejudice to their legality or illegality. Unilateral sanctions may comply with international law if they are implemented as retortions responding to unfriendly acts but not violating international obligations or as counter-measures against a State responsible for an internationally wrongful act in full conformity of the law of international responsibility. Vast majority of unilateral sanctions does not comply with criteria of retortions and countermeasures and therefore qualify as unilateral coercive measures. Therefore, all Unilateral Coercive Measures are Unilateral Sanctions, but not all Unilateral Sanctions are Unilateral Coercive Measures.

**Secondary sanctions:** Unilateral sanctions imposed against individuals or entities who allegedly violate or circumvent sanctions regimes. Particular reference is made to secondary sanctions imposed against third-country individuals or entities, who may engage in what is perceived to be an unauthorized activity involving the targeted by sanctions country and its entities.

**Over-compliance:** Going beyond compliance with sanctions, often to minimize the risk of penalties for inadvertent violations, to avoid reputational risks that can arise from dealing with a sanctioned country or because the complexity of some sanctions makes precise compliance too costly. An example is a company that halts all business with a sanctioned country, including humanitarian business that is allowed through exemptions; or banks decide to block transactions with a country under unilateral sanctions, its nationals and companies.

**Zero-risk policy:** A policy of complete disengagement and interruption of any activity with a sanctioned country or entity which is adopted by a company or other entity out of fear of

possible negative repercussions. A conduct which often bypasses more thorough and often costly due diligence procedures.

**Humanitarian carve-outs:** Exceptions, exemptions and derogations that are specified in unilateral sanctions programs in order to facilitate the continued flow of goods and services of a humanitarian nature. They are often characterized by complex and vague wordings, as well as costly or lengthy approval procedures that deter their use, while at the same time may exacerbate over-compliance and de-risking.

## Principles

**Inclusion:** Determining the specific impact of unilateral sanctions on human rights requires input from a variety of stakeholders whose circumstances allow them to observe or have access to relevant information, whether descriptive or quantitative. The proposed monitoring and reporting platform is open to all relevant actors and entities, governmental and non-governmental, engaging in any discipline, or research and policy area.

**Comprehensiveness:** Considering that sanctions can affect multiple human rights at once, and their impact can differ in nature and magnitude according to the right, the objective is to collect sufficient data from various sources and stakeholders, public or private. The tool is proposed as an open platform to all disciplines approaching the issue of sanctions from different perspectives and with different findings and outputs.

**Evidence-based:** The provided information can be an empirical snapshot of the sanctions-induced restrictions, which may contain both quantitative and qualitative information/data, as well as concise factual narratives explaining correlation or causality. Anecdotal observations and evidence, and even partial observations may be considered valuable to shed light on mechanisms and phenomena triggered by the imposition of sanctions-induced restrictions.

**Confidentiality:** The ultimate purpose of the tool is to offer the opportunity to any actor and stakeholders to freely engage in the work of monitoring of and reporting on the observed adverse effects of unilateral coercive measures and to share specific input, either once or on regular basis, with the mandate of the Special Rapporteur. For this reason, the Special Rapporteur takes very seriously issues pertaining to the privacy of the submitters. Therefore, their identity is to remain confidential.

**Principled:** The proposed tool should not be seen as an acceptance/acquiescence of the imposition of unilateral coercive measures, or as a method to map the impact for the purpose of developing and putting forward mitigating solutions. It's instead tool to encourage the impact assessment work of all relevant actors and the regular reporting, and a means to reflect on the specific areas of impact.

**Transparency:** The results of the monitoring and assessments of adverse effects of unilateral coercive measures are accessible and open to all interested stakeholders. The collection, analysis and reporting of specific information concerning adverse effects of unilateral coercive measures is held in accordance with the principles of the Special Procedures of the Human Rights Council, including comprehensiveness, independence, verification, impartiality, objectivity, non-selectivity.

## Structure

The tool proposes several areas/blocks, particularly those that have been explored by the Special Rapporteur in the implementation of the activities of her mandate, such as the thematic reports, communications on specific cases, and observations/findings following her official visits to affected by sanctions countries.

Each block contains a non-exhaustive list of questions and indicators meant to capture information in as much detail as possible. If a block doesn't contain certain indicators or doesn't cover certain aspects or challenges to the enjoyment of the right concerned, this data could be provided in the section "**Additional criteria/indicators**". It is not expected that a single user/stakeholder will be able to provide information on all the areas covered by these blocs and indicators.

The tool is available to any user/stakeholder who wishes to submit relevant information. Users/stakeholders may focus only on those areas and blocks for which they can provide information. They are not required to fill all the fields.

The questionnaire is confidential. Data concerning identity or the details of stakeholders in not disclosed.

### Source of information

**Individual**

**Government**

**NGO**

**Academic/Research Institution**

### Geographic Scope

**Country**

**Region**

## Right to health (physical & mental)

### 1. Impact on availability of medicines

**YES NO**

If yes, please indicate

- a) the items concerned

- b) the specific obstacles in the procurement

### 2. Impact on availability of medical equipment

**YES NO**

If yes, please indicate

- a) the items concerned (incl. any relevant statistical information)

- b) the specific obstacles in the procurement

### 3. Impact on availability of raw material for domestic production

**YES NO**

If yes, please indicate

- a) the items concerned (incl. any relevant statistical information)

- b) the specific obstacles in the procurement

### 4. Impact on availability of spare parts/software/high-tech/consumables for medical equipment or treatment

**YES NO**

If yes, please indicate

- a) the items concerned (incl. any relevant statistical information)

- b) the specific obstacles in the procurement

**5. Impact on availability of medical services**

**YES NO**

If yes, please indicate

- a) the type of service concerned (incl. any relevant statistical information)

- b) the specific obstacles in providing medical service

**6. Population groups most affected** (provide examples of the impact)

**7. The nature of the affected health condition (mental health, reproductive health etc.)**

**8. Additional criteria/indicators**

**Right to Food**

**1. Impact on access to food**

**YES NO**

If yes, please indicate

- a) the foodstuffs concerned

- b) import volumes of basic food basket products (compared to total annual consumption)

- c) production volumes of basic food basket products (compared to total annual consumption)

- d) the specific obstacles in the production or procurement

## 2. Impact on availability of agricultural input

**YES NO**

If yes, please indicate

- a) the items concerned (ex. seeds, feedstuff, fertilizers, other)

- b) the specific obstacles in the production or procurement of these items

## 3. Impact on availability of agricultural equipment

**YES NO**

If yes, please indicate

- a) the equipment concerned

- b) the specific obstacles in the production, procurement, or maintenance of this equipment

## 4. Impact on availability of spare parts and infrastructure materials

**YES NO**

If yes, please indicate

- a) the spare parts and infrastructure material concerned

- b) the specific obstacles in the production and procurement of this material

**5. Impact on food prices****YES NO**

If yes, please indicate

- a) the price of basic food basket compared to average monthly salary

- b) any dietary changes due to the increase in food prices

- c) percentage of population being food insecure

- d) percentage of population benefiting from Government food support programs

- e) other relevant statistical data (please specify)

**6. Please indicate the populations most affected****7. Additional criteria/indicators****Water & Sanitation****1. Impact on access to safe drinking water****YES NO**

If yes, please indicate

- a) the main reasons, access to water situation



- b) the specific obstacles in the development and maintenance of drinking water supply systems (please indicate specific material, spare parts, filters, reagents, etc.)

**2. Impact on availability of water for irrigation purposes**

**YES NO**

If yes, please indicate

- a) the main reasons, availability situation

- b) the specific obstacles in the development and maintenance of irrigation water supply systems (please indicate specific material and spare parts)

**3. Impact on adequate sewage disposal**

**YES NO**

If yes, please indicate

- a) the main reasons

- b) the specific obstacles in the development and maintenance of sewage systems (please indicate specific material and spare parts)

**4. Impact on availability of sanitary products**

**YES NO**

If yes, please indicate

- a) the items concerned (incl. any relevant statistical information)

- b) the specific obstacles in the procurement

**5. Health-related adverse effects on the population**

**YES NO**

If yes, please indicate

- a) prevalence of water-borne diseases (include statistical data, if available)

- b) prevalence of other preventable health risks (include statistical data, if available)

**6. Please indicate the populations most affected**

**7. Additional criteria/indicators**

**Access to justice**

**1. Impact on access to justice**

**YES NO**

If yes, please indicate

- a) the actors concerned (private individuals, legal entities etc.)

- b) types of courts (international courts, commercial arbitration, Human Rights bodies, national courts in sanctioning countries, national courts in countries under sanctions etc.)

- c) the specific obstacles in the access to justice

**2. Additional criteria/indicators**

**Education**

**1. Impact on access to education material and equipment**

**YES NO**

If yes, please indicate

d) the material/equipment which is unavailable or in shortage

e) the specific obstacles in the procurement or production of such material/equipment

**2. Impact on access to online education, material and training**

**YES NO**

If yes, please indicate

a) the specific online tools, material, programmes, web pages which are unavailable/inaccessible

b) the specific obstacles in procuring/accessing such online tools and material

**3. Impact on access to funding opportunities in foreign institutions**

**YES NO**

If yes, please indicate

a) the funding programs

b) the specific obstacles in accessing them

c) other difficulties in financing studies abroad

**4. Impact on access to study opportunities abroad**

**YES NO**

If yes, please indicate

a) exchange programs

b) specific obstacles for physical participation

### 5. Additional criteria/indicators

## Cultural Rights

### 1. Impact on cultural heritage projects

YES NO

If yes, please indicate

- a) the specific projects concerned (e.g. cultural sites, physical artefacts, intangible heritage)

- b) the specific challenges & restrictions

### 2. Impact on arts and international cooperation in this area

YES NO

If yes, please indicate

- a) the specific projects concerned, consequences

- b) the specific challenges & restrictions

### 3. Impact on sports and international cooperation in this area

YES NO

If yes, please indicate

- a) the specific projects concerned

- b) the specific challenges & restrictions

**4. Impact on international academic/scientific cooperation** **YES NO**

If yes, please indicate

- a) the specific programs concerned

- b) the specific challenges

**5. Additional criteria/indicators**

**Employment and Social Protection**

**1. Impact on foreign investments** **YES NO**

If yes, please indicate

- a) the specific programs which have been discontinued or delayed

- b) the specific challenges & restrictions

**2. Impact on specific businesses/entities** **YES NO**

If yes, please indicate

- a) the type, size and number of businesses/entities affected

- b) the specific impact (e.g. closures, cutbacks) (with statistics, if available)

**3. Impact on social protection programmes** **YES NO**

If yes, please indicate

- a) the specific programs concerned (e.g. maternity benefit, child protection, unemployment protection, disability protection, medical coverage, pension schemes, old-age protection, other)

- b) the affected populations (with statistics, if available)

#### 4. Unemployment rates (disaggregated by gender, age, disability, and other)

#### 5. Statistical information on the social protection programmes coverage

#### 6. Poverty rates & other relevant data

#### 7. Additional criteria/indicators

### Services and Infrastructure

#### 1. Impact on the energy sector

YES NO

If yes, please indicate

- a) the specific sectors and number of sites/projects affected

- b) the specific challenges encountered

#### 2. Impact on transportation & related infrastructure

YES NO

If yes, please indicate

- a) the specific sectors affected (e.g. air, sea, road transportation, or other)

b) the specific challenges encountered

### 3. Impact on telecommunications & Internet

**YES NO**

If yes, please indicate

a) telecommunications and internet coverage

b) availability of telecommunication material

c) the specific challenges encountered in procurement or production of such material

### 4. Additional criteria/indicators

## Humanitarian Assistance

### 1. Impact on the delivery of humanitarian assistance

**YES NO**

If yes, please indicate

a) the affected goods

b) the affected services

c) the specific challenges and restrictions

- d) the total number of filed applications for humanitarian licenses / number of successful applications

## 2. Additional criteria/indicators

## Special Focus

### 1. Impact on children and youth

**YES NO**

If yes, please indicate

- a) the affected rights

- b) the specific challenges and restrictions

### 2. Impact on women

**YES NO**

If yes, please indicate

- a) the affected rights

- b) the specific challenges and restrictions

### 3. Impact on migrants, refugees, asylum-seekers, internally displaced people **YES NO**

If yes, please indicate

- a) the affected rights

- b) the specific challenges and restrictions



**4. Impact on persons with disabilities and their well-being****YES NO**

If yes, please indicate

- a) the affected rights

- b) the specific challenges and restrictions

**5. Impact on persons living with HIV, tuberculosis, and those living with rare diseases**

If yes, please indicate

- a) the affected rights

- b) the specific challenges and restrictions

**6. Impact on people living in poverty and extreme poverty****YES NO**

If yes, please describe

- a) the observed impact on national programmes and policies to provide for the needs of these people

- b) other specific challenges and restrictions

**7. Additional criteria/indicators/groups****Sustainable development goals****1 Impact on Sustainable Development Goals****YES NO**

If yes, please indicate

a) the affected SDGs

b) the impact on specific SDGs and SGD targets

c) the specific challenges and restrictions

## 2. Additional information

### Other general areas of impact (blocks)

Please list them here