

Recommendations about the Draft UN Guiding Principles on Sanctions, Compliance, and Human Rights:

An Input to the United Nations Special Rapporteur on unilateral coercive measures

Type of Stakeholder: Academic institution.

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Can we attribute responses to this questionnaire publicly? Yes.

Introduction

The *United Nations Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights* has consistently emphasized the significance of a comprehensive understanding of the human rights implications stemming from unilateral sanctions¹.

Concerned with the phenomenon of sanctions overcompliance and their impact on the human rights and humanitarian action, the Special Rapporteur has conducted many efforts including the drafting of the UN Guiding Principles on Sanctions, Compliance and Human Rights. [Facts and Norms Institute](#) has been collaborating with the mandate since 2023, with 3 submissions including the participation in an expert consultation meeting held on 7 November 2023, in hybrid format. In preparation for that, the Institute had access to the confidential draft version of the draft document. The main considerations and suggestions were presented by Leonel Lisboa in the mentioned meeting via online participation. During the discussions, contributions were also made impromptu.

At the end of the meeting, the Special Rapporteur invited the participants to submit their contributions also in written form. In response to this invitation, an input was crafted by the [Facts and Norms Institute](#). Building upon that analysis and other research work conducted, the Institute presents a new revision of the draft document with contributions aiming to help in the development of a strong and useful set of guidelines able to protect and support human rights and humanitarian action.

The Institute's work

The [Facts and Norms Institute](#) is an independent academic institution based in the Global South, with members present in all continents. The Institute's mission is straightforward: to promote a rational, human rights-based approach to social issues. Since its establishment, the Institute promoted educational activities ranging from the online training of researchers in human rights-based methods and techniques to onsite courses and events, such as the *Advanced Course on International Law and Human*

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‡ Disclaimer: author's views are exclusively on behalf of [Facts and Norms Institute](#).

¹ The term "sanctions" refers to any unilateral or multilateral or collective measures of coercive nature or effect imposed by a State, group of States or International Organization.

Rights (in partnership with the Ius Gentium Conimbrigae – Human Rights Centre of the University of Coimbra, Portugal).

The Institute also conducted social and legal research in collaboration with the Inter-American Court of Human Rights in the form of written Amici Curiae Memorials. The Institute's record includes, *v.g.*, i) an Amicus Curiae Memorial in the proceedings of the case *Leite de Souza and Others vs. Brazil*, also known as the Massacre of Acari case, a comprehensive argument regarding the systemic violence perpetrated by state agents in Brazil, particularly focusing on police violence, the limits of transitional justice, and the dehumanization of poor and Afro-descendant populations; ii) and an Amicus Curiae Memorial in the proceedings of the Advisory Jurisdiction of the Court regarding Human Rights and the Climate Emergency.

Moreover, the Institute conducted research about varied human rights topics in collaboration with the United Nations, including human rights and infectious diseases; torture and torture prevention; the notion of short-term enforced disappearances; religious intolerance, violence, and racism; social participation; transitional justice and sustainable development; poverty, post-growth and SDGs; sustainable development and the human rights of persons with albinism; the role of non-state actors (particularly businesses) in transitional justice; memorialization and the Roma; the protection of lawyers; the human rights of indigenous and rural communities to water and sanitation; militarization of indigenous and quilombola land; human rights and internet shutdowns; mercury, artisanal and small-scale gold-mining and human rights; contemporary forms of slavery and the informal economy; technology and contemporary forms of slavery; human rights and voluntourism; digital education and online protection of young people; adequate housing and climate change; the extractive sector, just transition, and human rights; various aspects concerning the interplay between sanctions and human rights; and the present submission concerning the Draft UN Guiding Principles on Sanctions, Compliance and Human Rights.

Procedural note

In order to facilitate the use of this document, specific suggestions of text alteration will be color coded as red. In addition to color coding, inclusion will be signaled with brackets and exclusions with strikethrough. Therefore, suggestions of inclusion will appear **[like this]** while suggestions of exclusion will appear ~~like this~~. Contributions are organized either by section of the document under analysis or by theme.

1. The Input's Questionnaire

This submission will answer selected questions among the ones proposed in the text of the [Call for Inputs](#).

<p>1. What shall be the title of the document in a view of the main idea would be to crystalize the rules of behavior of States, businesses, and other actors to minimize the humanitarian and human rights impact of sanctions of the UN Security Council, and to avoid negative humanitarian impact of all forms of unilateral sanctions, of measures aimed to enforce compliance with unilateral sanctions, as well as of over-compliance?</p>

As pointed out by the Special Rapporteur the final document needs a clear and meaningful title that can be easily referenced to in the future. The main objective of the document is to provide States, International Organizations, and private entities with

guiding principles in order to reduce the impact of sanctions on human rights and humanitarian action, especially when those public and private entities are calibrating the level of coerciveness of sanctions. It aims to lighten the effects of overcompliance or avoid it all together. **The current title of the document is adequate.** However, to provide more options, the following are tentative titles that seek both to capture the main elements and to be concise.

- United Nations Guiding Principles on Responsible Sanction Application in Respect for Human Rights and Humanitarian Action
- United Nations Guiding Principles on Responsible Compliance with Sanction Regimes: Protecting Human Rights and Humanitarian Action
- United Nations Guiding Principles on Human Rights Responsible Sanction Compliance
- United Nations Guiding Principles on Sanctions Compliance and Human Rights

On the use of the short form “Guiding Principles” for this document: The UN adopted numerous *Guiding Principles* on other subjects, including the widely known *UN Guiding Principles on Business and Human Rights*. Given that the short form “Guiding Principles” is often used to refer to the latter, it may be prudent to adopt a distinct nomenclature for the sanctions-related principles. Possible alternatives include 'Sanctions Guiding Principles', 'Guiding Principles on Sanctions', or 'Responsible Sanctions Guiding Principles'. These designations provide clear differentiation, thereby preserving the unique identity and purpose of each document.

2. What shall be the status of the Guiding Principles?

The UN Guiding Principles on Sanctions, Compliance, and Human Rights should be crafted to ensure they hold both moral and practical authority, thereby guiding member states and relevant stakeholders effectively. The possibility of submitting these Guiding Principles to the UN Human Rights Council to be adopted or endorsed via resolution does not exclude the potential normative character of the principles as reflecting customary law and as a rational instrument of implementing human rights of a binding custom and treaty character.

3. In a view of the vague, complicated, and confusing terminology of sanctions/ unilateral coercive measures, is the glossary provided in the draft comprehensive and clear enough? What other notions and definitions may be added and which from those already included in the document could/should be amended?

Please find below some amendment suggestions for the glossary section:

Due diligence – principle of international law, providing for the obligations of States **and Businesses** to take all measures necessary to ensure that their activity as well as activity under their jurisdiction and control does not violate international obligations ~~and, including fundamental~~ those of human rights **law and humanitarian law basis.**

By writing this way the definition of Due Diligence the protection of human rights does not feel as added at the end. Removing the “fundamental” qualifier of “human rights” also expands the scope of the obligation owed by States and Businesses. The express addition of “humanitarian law” also helps by incorporating into Due Diligence elements referenced throughout the document.

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, undermine their effectiveness, while at the same time may exacerbate over-compliance and de-risking.~~

The part indicated for removal is an additional commentary on the practical issues related to humanitarian carve-outs, not a definition.

4. The draft Guiding Principles seek to crystalize general, foundational, and operational principles of behavior of states, international organizations, businesses and other actors in the face of the expanding use of sanctions, unilateral coercive measures, development of sanctions-enforcement strategies and over-compliance. What other principles should be added to the draft to ensure solidarity and human rights-based approach?

Among the business principles there is Due Diligence, as item 27 of the draft document. Considering the already mentioned characteristic of this document of mirroring the UN Guiding Principles on Business and Human Rights, it is useful to also adopt the terminology of Human Rights Impact Assessment (HRIA) in the document. The HRIA is a well established set of methodologies for assessing both risks and impacts of businesses on human rights. This methodology can easily – and should already – be used to identify, measure, and provide remedy for negative impacts of compliance and overcompliance with sanctions by businesses.

27 [Human Rights Impact Assessment and] Due diligence

27.1 ~~Companies and other b[B]usinesses shall undertake [carry human rights] due diligence[. This process should include assessing the adverse impact on human rights, integrating and acting upon such findings, tracking response and communicating how impacts were addressed. This process shall cover adverse human rights impacts that the business may cause, contribute to or may be directly linked to its operations, activities, products, services, and relationships]. exemptions procedures and methods in interpreting and implementing all requirements, exemptions, exclusions and derogations.~~ [Businesses shall include the considerations regarding respect for human rights in sanctions settings, humanitarian action and avoidance of sanctions overcompliance in the methodology for human rights impact assessments.]

27.2 [Businesses are expected to incorporate heightened due diligence in evaluating humanitarian and human rights risks prior to t]The termination of existing contracts, the refusal of deliveries and the inclusion of sanctions clauses [in contract relations] regarding the supply of humanitarian goods and goods necessary for the functioning of critical infrastructure ~~are unacceptable, especially in the cases when the business is a monopolist producer of the critical / life-saving goods and/or equipment.~~ [Businesses should consider their heightened responsibility for the negative impacts of such actions especially when they hold a de-facto – even if transitory – monopolist position as the producer, supplier, repairer, etc, of critical and life-saving equipment, consumer goods or services.]

Another useful principle to be included would be on transparency and signaling to the market section. Humanitarian organizations face tremendous barriers to their action in territories affected by sanctions or when dealing with needs for dual-use goods essential to protection of human life and dignity. In order promote the effectiveness of humanitarian exemptions in sanction regimes, sanctioning entities, and businesses might adopt public lists of cleared products, suppliers, and humanitarian recipients. This will contribute to the real-life micro decision-making by businesses due to market

signaling. Thus, the proposition of such cleared lists might figure in the section dedicated to transparency as follows:

[29.3 Either individually or as territorial or sector entities, businesses should transparently signal to the market when clearing a specific good, service, supplier or humanitarian recipient in the application of humanitarian carve-outs.]

Replicating the same logic with respect to sanctioning entities will also be quite useful. This can figure in the section dedicated to humanitarian licensing, as follows:

[23.3 States and regional organizations should make public when clearing a specific good, service, supplier, or humanitarian recipient in the application of humanitarian carve-outs.]

Businesses – especially large-scale, public owned and publicly traded companies – are required or expected to have public policies on diverse matters such as financial reporting, human resources, environment/climate change/sustainability and on human rights. The specific topic of human rights might be dealt with either on standalone documents or as part of another corporate policy.

This guidance document has mentioned “compliance policy” on several occasions without properly defining it as a specific corporate document, leaving it ambiguous as also referencing the “policy” in the sense of course or principle of action. It should be clearly stated that this guidance document asks for the establishment of transparent, clear, and formal corporate normative documents regarding sanctions and human rights. This guidance document may also suggest that the sanctions normative dispositions be integrated with the human rights ones. This might appear in the section “Transparency” or elsewhere in this guidance document. Either way, all mentions of “policy” and “compliance policy” in this guidance document should be revisited in light of such adjustments.

29 [Corporate Policy and] Transparency

29.1 [Businesses shall adopt specific corporate policies on compliance with sanction regimes. Such policies shall reference commitment of the business to the protection of human rights and humanitarian action.] The policy commitments should be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties.

29.2 Businesses shall [implement sanctions in a transparent manner and] take all [reasonable] measures to provide transparency of the ~~companies~~ relevant rules and procedures while implementing sanctions.

5. What format of discussion of the draft and commentary is preferable: diplomatic conference, academic conference, consultations with banks and businesses, and/or any other option?

We recommend the adoption of various formats of discussion, such as a diplomatic conference, an academic conference, consultations with businesses, multistakeholder workshops, public comment periods, and online forums and consultations.

A diplomatic conference is particularly suitable if the goal is to gather official government positions and negotiate consensus among member states. This setting is formal and involves representatives from various countries, making it ideal for addressing international agreements and ensuring broad governmental support.

An academic conference can be beneficial for incorporating scholarly research and expert opinions into the document. Academics and experts provide in-depth analysis and critique, which can enhance the document's rigor and applicability. This format is good for exploring theoretical underpinnings and innovative perspectives.

Since the guiding principles deal with sanctions and compliance, consultations with banks and businesses are crucial. Involving the private sector, especially entities that are directly affected by such regulations, provides practical insights into the feasibility and impact of the principles, ensuring that the document reflects practical compliance challenges and solutions.

Multistakeholder workshops that combine elements from the above methods can be effective too. These workshops could include diplomats, academics, business leaders, and representatives from non-governmental organizations, allowing for a broad spectrum of views and practical insights. This enhances the document's comprehensiveness and acceptance.

Additionally, allowing for a public comment period can enable a wider range of stakeholders, including civil society and the general public, to submit their comments and suggestions. This increases transparency and public trust in the final document. Online forums and consultations can also be utilized, especially given the global scope of the UN. These platforms enable discussions and feedback from a diverse set of stakeholders across different geographic regions without the constraints of physical meetings.

9. To what extent shall the Guiding Principles address the issue of accountability, remedies, responsibility, and redress? What methodology for identifying and assessing damage may be used in order to provide remediation in cases of sanctions-related impact?

The Draft UN Guiding Principles on Sanctions, Compliance, and Human Rights should address the issues of accountability, remedies, responsibility, and redress comprehensively, ensuring that entities imposing sanctions can be held accountable for human rights impacts. These principles should clearly define mechanisms for affected individuals and entities to seek and receive remedies. The establishment of clear responsibilities and methods for redress is critical to uphold the principles of justice and fairness in the application of sanctions.

For identifying and assessing damage to provide remediation in cases of sanctions-related impact, the methodology should align closely with established practices in related areas. Specifically, the methodology adopted by the business community under the UN Guiding Principles on Business and Human Rights provides a robust framework. This approach includes impact assessments that consider both direct and indirect consequences of business operations, which can be analogous to the impacts of sanctions. By using this established methodology, the principles can ensure consistency with globally recognized human rights standards and facilitate the integration of sanctions compliance into existing corporate responsibility frameworks. Incorporating these methodologies involves several steps, such as detailed impact assessments, stakeholder consultations, and monitoring of outcomes. This approach not only aids in accurately determining the extent of harm caused by sanctions but also ensures that the measures for redress are appropriate and effective.

2. Typos

Additionally, there are small typos that have been identified and signaled hereafter.

In paragraph 6 of the **I. Preface** there is a small typo.

Para 6. (...) These Guiding Principles shall not in any way be interpreted or read as a direct or implicit recognition of legality ~~of~~ or legitimacy of any form of unilateral coercive measures, compliance or over-compliance with such measures.

In paragraph 14 of the **V. Principles** there is another small typo.

14.2 The UN Security Council resolutions, including those relevant to humanitarian action, shall be implemented bona fide, with due respect to the Charter of the United ~~National~~ Nations,

3. Final Words

The Facts and Norms Institute is deeply grateful for the opportunity to continue contributing in this round of written inputs. The interactions of the Institute and the Mandate have been of great value. We look forward to further collaborations with the United Nations to ensure that the *Guiding Principles on Sanctions, Compliance, and Human Rights* effectively uphold and protect human rights and humanitarian actions across the globe.