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GUIDING PRINCIPLES
ON SANCTIONS, BUSINESS AND
HUMAN RIGHTS
(DRAFT)

**GUIDING PRINCIPLES
ON SANCTIONS, BUSINESS AND HUMAN RIGHTS
(DRAFT)**

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

2024

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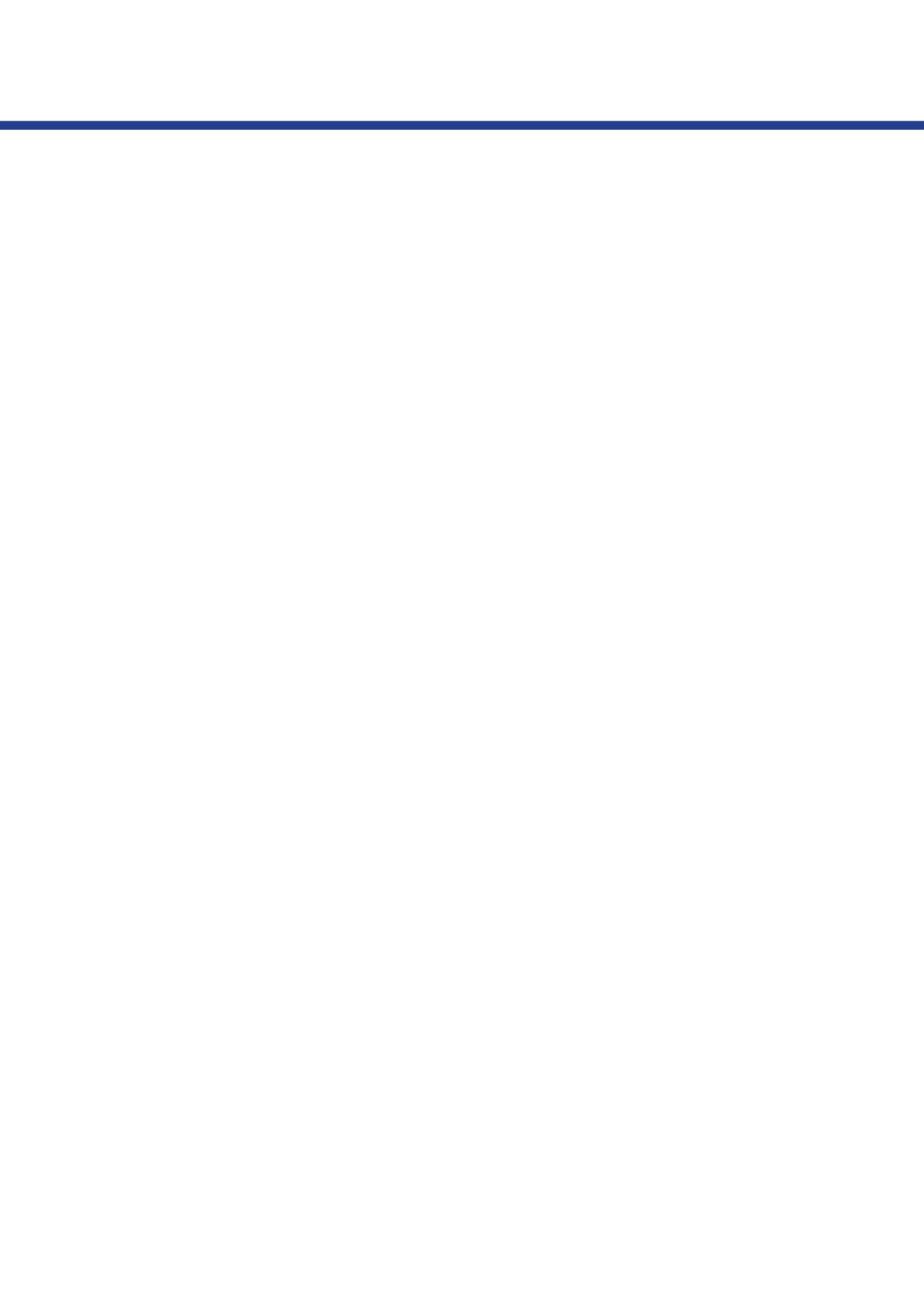
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I. FRAMEWORK

1. Objective

- 1.1 The Guiding Principles on sanctions, business and human rights (hereinafter the Guiding Principles) are developed to establish guidelines and benchmarks for States, international, universal, and regional organizations and businesses to ensure the promotion, protection and respect for human rights and to fulfill obligations under international law in the sanctions' environment, to eliminate and/or minimize over-compliance with unilateral sanctions in accordance with para. 27 of the Human Rights Council resolution 55/7. The Guiding Principles also apply to businesses where businesses are practically compelled to comply with unilateral coercive measures by States or regional organizations. The Guiding Principles are accompanied with the Commentary that aims to provide a factual and legal framework for every provision of the principles.
- 1.2 The Guiding Principles also set forth the minimum standards of human rights precaution and protection in the course of the implementation and enforcement of UN Security Council sanctions.
- 1.3 The Guiding Principles set out principles and rules that businesses must adopt in their compliance policy, which shall not violate internationally recognized human rights and shall in no way interfere in the delivery of essential goods, including medicines and food, as well as on critical infrastructure, the environment, and on other related services.

2. Sanctions environment and enforcement

The world faces an enormous expansion in the use of unilateral sanctions applied by individual states or regional organizations against states, economic sectors, companies or individuals, with-

out or beyond authorization of the UN Security Council (primary sanctions). Another tendency reflects an active use of different means of unilateral sanctions enforcement via secondary sanctions, civil and criminal penalties applied to entities and individuals allegedly circumventing, or assisting in the circumvention of, primary sanctions regimes, resulting in de-risking and over-compliance.

Unilateral sanctions affect the human rights of directly designated individuals, employees and partners of designated companies, family members of affected individuals, people involved in the sectors of the economy under sanctions, and the population of the countries under sanctions in general. Secondary sanctions, civil and criminal penalties for the circumvention of sanctions' regimes force States, businesses, humanitarian organizations and individuals to look for alternative ways to procure necessary goods and services, resulting in rising costs, delays in delivery, growing risks of corruption and other types of transboundary crimes, and endangering the status of humanitarian organizations and humanitarian deliveries even when it involves the implementation of UN Security Council humanitarian carve-outs.

Over-compliance exacerbates this harm, while extraterritorial enforcement expands the geographic scope, and consequently the number of individuals whose rights are affected around the world. People in vulnerable situations, including women, children, persons with disabilities, the poorest, migrants and the elderly, among others, are affected the most.

3. Tendencies and challenges of sanctions regulations

Legal uncertainty around the scope and legal status of the sanctions regulations, which are often based on “clarifications” , Q&As and other recommendatory instruments, framing incompatible conduct with vague wording like “red flags” , “expecta-

tions” and other restrictive terms, as well as the seriousness of the liability imposed, “frozen” accounts, civil and criminal penalties and reputational costs, create a feeling of fear and result in “zero risk” or de-risking policies, encouraging businesses to break contracts in violation of their terms, and leaving markets and regions without any assessment of their humanitarian and human rights impact.

4. Actors

The Guiding Principles apply to:

- States, groups of States and international organizations, also when acting to implement sanctions of the UN Security Council,
- All business enterprises and transnational corporations, regardless of their scale, economic sector, place of operation, place of incorporation and headquarters, corporate structure, and applicable jurisdiction,
- The United Nations and its organs and agencies, other international intergovernmental organizations and non-governmental organizations, donors, humanitarian organizations and missions, in order to avoid the adoption or enforcement of unilateral coercive measures, over-compliance, and to mitigate negative effects of sanctions and similar restrictive measures –both those already imposed as well as those planned to be imposed– on the human rights of individuals and peoples.

5. Legal framework

The Guiding Principles are based on the Charter of the United Nations, the International Bill of Human Rights, fundamental principles and other peremptory norms of international law, international treaties and customary rules of international law, and general principles of law recognized by all nations, and seek

to draw from and expand on the Guiding Principles on Business and Human Rights (2011)¹, the Articles on Responsibility of States for Internationally Wrongful Acts (2001)², the Draft Articles on Responsibility of International Organizations (2011)³, implementing the United Nations “Protect, Respect and Remedy” Framework for business and human rights, the calls for cooperation, humanity, solidarity and inclusion of the “Our Common Agenda” report of the UN Secretary General (2021)⁴, the principles of humanitarian work set forth in UN General Assembly Resolution 46/182 (1991)⁵, as well as, but not limited to, General Assembly Resolutions 2131 (1965), 2625 (1970), 3281 (1974), 38/197 (1983), 69/180 (2014), 70/1 (Agenda for Sustainable Development, 2015), UN Security Council Resolution 2664 (2022), and other relevant documents.

6. Disclaimer

Nothing in the Guiding Principles shall in any way be taken or interpreted as a direct or implicit recognition of the legality or legitimacy of any form of unilateral coercive measures, compliance or over-compliance with such measures.

7. Coherence

These Guiding Principles constitute a coherent document and shall be read, individually or in aggregate, in terms of their objectives, enhancing standards and practices with regards to business

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- 1 https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
 - 2 https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf
 - 3 https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf
 - 4 Our Common Agenda. Report of the Secretary-General 2021, https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf
 - 5 Strengthening of the coordination of humanitarian emergency assistance of the United Nations, Resolution 46/182 of 19.12.1991 <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/582/70/IMG/NR058270.pdf?OpenElement>

and human rights so as to achieve tangible results for affected individuals and communities, and thereby to also contribute to international and national efforts towards sustainable development, protecting human dignity and safeguarding humanity, and the strengthening of international solidarity and cooperation.

II. USE OF TERMS

8. Use of terms

For the purposes of these Guiding Principles terms shall be understood as follows:

Businesses – any entity undertaking the role of banks and other financial institutions, local, national and transnational corporations, state owned or privately held, regardless of the state of incorporation or the applicable local law designation

Compliance – the scope of steps taken by States, regional organizations, banks, businesses and other institutions and individuals to implement sanctions.

Due diligence (States) – an obligation of conduct under international law to take all measures necessary to ensure that any activity under their jurisdiction and control does not violate international obligations and fundamental human rights.

Due diligence (businesses) – an obligation of businesses to take all measures necessary to ensure that their activity and business policies do not violate human rights.

Essential goods and services – food, seeds, medicine, medical equipment, services, equipment, spare parts, reagents, supple-

ments and soft-ware, and other types of goods, necessary for the maintenance of critical infrastructure and critical services relevant to healthcare, nutrition, agriculture, electricity, water supply, irrigation, sanitation, transportation, and other spheres necessary for the survival and well-being of populations.

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.

Over-compliance – going beyond compliance with sanctions, often to minimize the risk of penalties for inadvertent violations, and/or to avoid reputational risks that can arise from dealing, or having any other nexus, with a State, entity or individual under sanctions, or because the complexity and uncertainty of sanctions, and/or high penalties as a form of sanctions enforcement, make effective compliance too costly or risky.

Sanctions of the UN Security Council – enforcement measures adopted upon decision by the UN Security Council acting under Chapter VII of the UN Charter.

Secondary sanctions – unilateral sanctions imposed against States, individuals or entities who allegedly violate, circumvent,

or assist in circumvention, of primary sanctions regimes as a means of enforcement of primary sanctions against primary targets.

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.

Unilateral sanctions – measures taken by a State, group of States or a regional organization without or beyond authorization of the UN Security Council, without prejudice to their legality or illegality.

Zero-risk policy (de-risking) – a policy of the complete or partial disengagement and interruption of any activity with a State, entity or individual under sanctions or under the risk of sanctions, which is adopted by a company or other entity out of fear of possible negative repercussions leading to over-compliance.

9. Principles

The following Principles, combined in three groups, are recommended for adoption by States, businesses and stakeholders, to eliminate and minimize the impact of sanctions, sanctions enforcement and over-compliance on human rights:

General principles:

- 1) The principle of humanity
- 2) Accessibility of humanitarian assistance
- 3) Equality of all human rights
- 4) Precautionary principle
- 5) The principle of non-discrimination
- 6) The principle of proportionality
- 7) Accessibility of information

Principles for States

- 8) The principle of respect for the rule of law
- 9) The principle of legal certainty
- 10) The principle of respect for internationally recognized jurisdiction
- 11) The principle of respect for fair trial and due-process standards

- 12) Humanitarian carve-outs clarity
- 13) Licensing minimization and simplification

Principles for businesses

- 14) Human rights based approach in business activity
- 15) The principle of due diligence
- 16) Minimization of humanitarian impact in compliance policies
- 17) The principle of transparency

III. GENERAL PRINCIPLES

10. The principle of humanity

- 10.1 States and regional organizations shall ensure that any businesses and other entities under their jurisdiction or control act with due regard to human rights and humanity concerns.
- 10.2 The principle of humanity shall prevail over any consideration of internal or foreign policy of States and international organizations and business policies of private actors.
- 10.3 All actors shall respect and treat all persons, individually and in community with others, with due respect to their fundamental human rights and dignity, without discrimination or distinction of any kind.
- 10.4 No “good intentions” , “high goals” or “common goods policy” can justify violation of human rights and of the principle of humanity.
- 10.5 Businesses must ensure the incorporation and implementation of the principles of humanity and non-discrimination in their internal and external documents and policies, with specific reference to humanitarian exemptions/carve-outs and the requirement of a human rights impact assessment, to avoid overcompliance and negative impacts on human rights.
- 10.6 Failure to respect and observe the principle of humanity may constitute involvement in breaches of public international law (including, without limitation, international criminal law, international human rights law and international humanitarian law), with all criminal and civil consequences that may follow.

11. Accessibility of humanitarian assistance

- 11.1 Access to humanitarian assistance and humanitarian relief shall be granted in any and all circumstances to all persons in need, without any discrimination or distinction, in accordance with the principles of humanitarian assistance: humanity, neutrality, impartiality, and independence.
- 11.2 Obstruction of humanitarian relief is prohibited. No unilateral sanctions shall be formulated or implemented that obstruct humanitarian relief or the supply of essential goods or services.
- 11.3 Any reprisals or other penalties for humanitarian work and/or assistance in the delivery of humanitarian goods in a sanctions environment are prohibited. Delivery of humanitarian assistance shall not in any way be interpreted as circumvention of sanctions regimes.
- 11.4 UN Security Council resolutions, including those relevant to humanitarian action, shall be implemented in good faith, with due respect for the Charter of the United Nations, in particular its article 25, and for the competence and authority of the UN Security Council. All stakeholders are under an obligation to implement fully all existing or future humanitarian resolutions and provisions of resolutions of the UN Security Council, including resolution 2664 (2022).
- 11.5 People in States affected by unilateral sanctions, and in the absence of sanctions of the UN Security Council, shall enjoy humanitarian assistance regimes not less favorable than those proposed for countries under sanctions of the UN Security Council. They shall fully benefit from the principle of humanity and access to humanitarian aid and assistance.

12. Equality of all human rights

- 12.1 All human rights, freedoms, and dignity enshrined in the International Bill of Rights (the *acquis* of the international community)

shall be fully respected and protected while implementing UN Security Council enforcement measures under Chapter VII of the UN Charter, or in the course of any unilateral activity.

- 12.2 All persons shall enjoy all human rights enshrined in the International Bill of Rights, independently of the aims of any sanctions policy, or implementation and enforcement of relevant sanctions, or over-compliance with the latter.
- 12.3 All public and private actors shall respect and prioritize all human rights without discrimination when formulating and implementing sanctions and/or compliance policies.

13. Precautionary principle

- 13.1 All stakeholders shall take all necessary precautionary measures, and perform ongoing humanitarian impact assessments, when formulating and implementing any measures and actions within the UN Security Council's sanctions frameworks or when acting unilaterally, and shall reformulate them or adjust their enforcement as appropriate to avoid negative impact on human rights.
- 13.2 Lack of full scientific certainty about specific negative humanitarian impact shall not be used as a reason/ground for ignoring humanitarian concerns and not taking all measures necessary to avoid or minimize over-compliance and possible consequential negative humanitarian impact.
- 13.3 No reference to an "unintended" character of humanitarian impact shall be invoked to legalize, legitimize or justify adoption of unilateral coercive measures, enforcement or implementation of the above measures, or failure to take all measures necessary to avoid or minimize over-compliance with such measures.
- 13.4 Sanctions` policies and their implementation shall not affect delivery of essential goods as being contrary to the humanity and

precautionary approach per se.

14. The principle of non-discrimination

- 14.1 States shall not purport to derogate from their human rights obligations, including their obligation not to discriminate against any person on the basis of race, nationality, gender, political opinion or any other recognized ground, and shall ensure that businesses and other entities under their jurisdiction or control do not formulate or implement discriminatory policies.
- 14.2 Businesses shall take all appropriate measures to elaborate, monitor and implement the compliance policy aligned to a human rights-based approach on a non-discriminatory basis, also extraterritorially. This approach shall apply to all operational processes, all levels of decision-making, all products and services.
- 14.3 No collective punishment is allowed. Nationals or residents of countries under sanctions, relatives or friends of designated individuals shall not be subjected to any limitation or face negative consequences due to their place of birth, nationality, residence, IP address, personal ties or any other nexus with designated states, entities, individuals.

15. The principle of proportionality

- 15.1 All measures undertaken by any actor to implement UN Security Council sanctions must be proportionately interpreted in a strict sense, i.e. such measures must be necessary and suitable to achieve the desired purpose, and must not impose a burden on an individual or a community that is excessive in relation to the sought objective.
- 15.2 States shall not purport to confer immunity on any person or entity in respect of their over-compliance with measures imposed by the Security Council under Chapter VII of the U.N. Charter or

their purported compliance with unilateral coercive measures.

- 15.3 Any means of pressure taken by States or international organizations in the course of counter-measures against other subjects of international law shall be performed in full compliance with the standards of the law of international responsibility, and must be proportionate to the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question, being limited to non-performance for the time being of international obligations with no effect to the obligations for the protection of human rights.

16. Accessibility of information

- 16.1 Access to information through all types of communication services is an indispensable element and a mediator of the complex of human rights. No sanctions shall interfere with the right to information through all media and all means of communication, as it is set forth in art. 19–20 of the ICPPR.
- 16.2 States, international and regional organizations shall provide transparency, timeliness and adequacy of all information on matters related to sanctions, including reporting on humanitarian impacts, and the free and non-discriminatory character of access thereto. Access to IT-platforms shall be guaranteed by the operators.
- 16.3 All sanctioning actors shall create enabling environments and maintain open channels for communication on human rights and humanitarian aspects relevant to sanctions and their implementation, including as a primary obligation, but not limited to, the establishment of focal points with adequate financial and human resources.
- 16.4 Focal points shall provide detailed information, clarification and advisory services, free of charge and in a timely manner, regard-

ing licensing, the scope of humanitarian carve-outs and relevant procedural matters, including administrative and legal procedures for de-listing of designated individuals and entities, and arrangements to secure access to justice.

IV . STATE ORIENTED PRINCIPLES

A. FUNDAMENTAL PRINCIPLES FOR STATES AND REGIONAL ORGANIZATIONS

17. The principle of respect for the rule of law

- 17.1 The UN Security Council shall formulate sanctions resolutions in clear, non-ambiguous terms to facilitate the understanding of their ambit and application, outlining the measures to be taken by States for their enforcement and implementation, as well as provisions on humanitarian exemptions.
- 17.2 States and regional organizations shall not adopt or implement any means of pressure that are incompatible with their obligations under international law, in relation to substantive content, exercise of jurisdiction and access to remedies. Coercive measures can only be taken by States and international organizations in the course of the implementation of resolutions of the UN Security Council adopted under Chapter VII of the UN Charter, or when such measures do not violate their international obligations (retorsions), or their wrongfulness is precluded under international law when the measures constitute counter-measures in full conformity with the rules of the law of international responsibility. All other unilateral means of pressure constitute unilateral coercive measures and are illegal under international law. States and regional organizations shall not exercise their jurisdiction extraterritorially, contrary to the principles of sovereign equality and of non-intervention into the domestic affairs of states.
- 17.3 Secondary sanctions, civil and criminal penalties for the circumvention of primary unilateral sanctions regimes, as well as any other mechanism for their implementation, do not form any legal basis to circumvent peremptory norms of public international law as well as other customary law or treaty obligations.

- 17.4 States are under the obligation to refrain from implementing unilateral sanctions imposed by other States and/or regional organizations and are obliged to ensure that businesses under their jurisdiction and/or control do not comply and/or over-comply with such unilateral sanctions.
- 17.5 States shall take all necessary legislative and administrative measures to avoid over-compliance with sanctions.
- 17.6 States shall provide for accountability- and redress-mechanisms for violations of human rights perpetrated in the context, or as a result of, sanctions` policies.
- 17.7 Sanctions, secondary sanctions and over-compliance shall not obstruct access to justice, the administration of justice, respect for judicial procedures, and access to effective remedies.

18. The principle of legal certainty

- 18.1 If states adopt any means of pressure, including for the implementation of sanctions of the UN Security Council, they shall do so by means of formal legislation in clear language and in the narrowest possible way to ensure that such measures are readily understood by all affected, and are precise in their application to avoid over-compliance, and with due respect to their obligations to respect and protect human rights and human dignity.
- 18.2 Measures imposed by the Security Council of the United Nations under Chapter VII of the UN Charter shall be interpreted and implemented by States and regional organizations in good faith and consistent with their human rights obligations.
- 18.3 States and relevant regional organizations shall provide for legal certainty in the scope and methods for compliance policies of companies within their jurisdiction or control. Requirements for compliance policies of companies must be clear, certain and

foreseeable, accessible, and adopted in the form of the legally binding document.

- 18.4 Banks shall draft their compliance policies consistent with humanitarian and human rights concerns.

19. The principle of respect for internationally recognized jurisdiction

- 19.1 States shall protect against human rights abuses within their territory or jurisdiction by third parties, including businesses, when adopting and implementing sanctions. This includes the obligation of States to take all appropriate action to prevent, investigate, punish and redress such violations through effective policies, legislation, regulations and adjudication.

- 19.2 States shall implement a due diligence approach to ensure that businesses acting under their jurisdiction or control do not over-comply and do not violate human rights, including extraterritorially.

- 19.3 States are obliged to take all measures necessary to protect businesses under their jurisdictions or control from any means of enforcement on the part of sanctioning States including through diplomatic protection and international adjudication, to prevent or minimize over-compliance.

- 19.4 Extraterritorial application of unilateral coercive measures is illegal under international law, being a violation of fundamental principles of international law. Secondary sanctions, civil and criminal penalties, can not be used as grounds for the extension of the jurisdiction of sanctioning States over third States, their nationals and companies, as well as their own companies and nationals.

B. OPERATIONAL PRINCIPLES FOR STATES AND INTERNATIONAL ORGANIZATIONS

20. The principle of respect for fair trial and due process standards

20.1 Without any prejudice to the legality of unilateral measures taken, any means of pressure implemented in the national criminal, administrative, customs, civil and other areas of law shall be formulated in an open and transparent manner. States shall ensure that public and transparent reasons and evidence are provided as a ground for any measure taken unilaterally, regardless of the mechanism used, and provide the opportunity to bring a case and successfully contest it in court under the standard of the due process.

20.2 States and regional organizations shall bear the burden of proof in sanctions adoption and sanctions' compliance procedures. States or regional organizations must not transfer the burden of proof to any other actor, including targeted states, third states, entities or individuals regardless nationality, registration or residence, their counter-partners or any other subjects.

20.3 Introduction, implementation and enforcement of a rebuttable presumption of the wrongdoing of any actor within sanctions' policy constitutes a further violation of international law.

21. Humanitarian carve-outs clarity

21.1 Humanitarian exemptions shall be formulated in a clear, transparent and precise manner and be interpreted in the broadest possible manner, with due account of the principle of humanity.

21.2 States and regional organizations shall establish focal points on humanitarian exemptions and endow them with legal authority and material resources to provide prompt, comprehensive and

no-cost consultation on mechanisms and procedures.

- 21.3 Humanitarian actors shall not bear the burden of proof of the pure humanitarian character of their work, and shall not be held responsible for any alleged non-compliance or circumvention of unilateral sanctions regimes on account of performing their humanitarian work.
- 21.4 Humanitarian resolutions/provisions of resolutions of the UN Security Council, as well as exemptions granted by the UN Security Council subsidiary bodies, shall be fully implemented by the Member States of the United Nations. Sanctioning actors shall ensure that no unilateral measures applied by them prevent the full implementation of humanitarian deliveries under the UN Security Council resolutions.
- 21.5 Member States of the United Nations also bear responsibility for the full implementation of these measures by private actors under their jurisdiction or control.

22. Licensing minimization and simplification

- 22.1 Delivery of essential goods, equipment and spare parts, including food, medicine, medical and adaptive equipment, seeds, fertilizers, as well as machinery and equipment necessary for the maintenance of critical infrastructure and services, shall not be subjected to, or made conditional upon any requirement, restriction or licensing.
- 22.2 When necessary a single license shall be issued without delays and at a nominal cost. Humanitarian organizations shall not be requested to obtain multiple licenses within one or multiple jurisdiction(s) for a single delivery.
- 22.3 States and international organizations shall ensure that deliveries of essential goods are not prevented by sanctions or other regu-

latory restrictions, including, but not limited to, the prohibition of financial transactions, carriage or insurance, prohibitions to receive payments from countries under sanctions, or sanctions on transport insurance.

V. PRINCIPLES FOR BUSINESSES

A. FUNDAMENTAL PRINCIPLES FOR BUSINESSES

23. Human rights based approach in business activity

23.1 Business enterprises shall refrain from any act or omission resulting in violation of human rights, including extraterritorially, and shall take all necessary measures to eliminate or mitigate any adverse human rights impact that results from their implementation of sanctions measures, including extraterritorially.

23.2 Businesses shall embed responsible anti-over-compliance business conduct in accordance with the OECD Due Diligence Guidance for Responsible Business Conduct (2018) into their policies and management systems in all sectors of economy.

23.3 Banks and businesses shall not invoke the content or effects of any unilateral coercive measure as discharging them from any legal obligation under the pretext of, on the basis of frustration or force majeure or any related legal doctrine.

23.4 Banks and businesses shall not purport to conclude contractual terms which require observance of a unilateral coercive measure, or which purports to release them from any legal obligation on account of such a measure, and/or encourage over-compliance. Given the illegality of unilateral coercive measures such terms shall be null and void.

24. The principle of due diligence

24.1 Businesses shall undertake due diligence procedures and methods in interpreting and implementing all requirements, exemptions, exceptions and derogations. As unilateral coercive measures are illegal under international law, businesses shall challenge their implementation and enforcement by all available

legal means.

- 24.2 In relation to the supply of essential goods and services, the termination of existing contracts, the refusal to continue supplies, and the inclusion of sanctions clauses, are unacceptable in accordance with the prohibition of discrimination and the duty of care, especially in the cases when the business is a monopolist supplier of life-saving and/or essential goods and/or equipment.

B. OPERATIONAL PRINCIPLES FOR BUSINESSES

25. Minimization of humanitarian impact in compliance policies

- 25.1 Compliance policies of businesses should be based on the requirements prescribed by law only.
- 25.2 Businesses should have policies and processes in place in order to avoid any adverse human rights effects resulting from the implementation of sanctions. Businesses shall formulate and include sanctions impact assessment criteria as part of their human rights assessment policies.
- 25.3 Businesses should avoid general (non-individual) measures, discriminatory and/or non-transparent practices.

26. The principle of transparency

- 26.1 Business policies should be publicly available and communicated internally and externally to all personnel, business partners, and other relevant parties.
- 26.2 Businesses shall implement sanctions in a clear, transparent and accessible manner and take all reasonable measures to provide transparency of the relevant rules and procedures while implementing/complying with sanctions.

- 26.3 Businesses shall take measures to monitor their compliance policies and strategies for abiding with human rights and to adjust them as soon as a negative humanitarian impact is identified.
- 26.4 For this purpose businesses shall assess the consequences of the measures adopted. Assessments should be based on appropriate qualitative and quantitative indicators, conducted on a systematic basis.

VI. ACCESS TO JUSTICE

27. **Effective access to justice**

- 27.1 Access to justice, including access to all types of legal services, with regard to violations of human rights by unilateral sanctions, sanctions' enforcement, or over-compliance with sanctions of the UN Security Council and unilateral coercive measures, shall be granted without constraints and in a timely manner to all persons, natural and legal, in full conformity with the presumption of innocence, with respect for due process and with fair trial guarantees, in line with international law.
- 27.2 Any person shall have real and effective access to any national or international mechanism for the protection of rights against the implementation of sanctions, secondary sanctions, other means of sanctions enforcement and over-compliance.
- 27.3 Access to justice shall not be impeded by any legislative, administrative or operational measure, including impediments to transfer or unfreeze funds to cover legal fees and expenses, including legal advice and representation.

28. **Legal services**

- 28.1 Sanctions policy shall never affect the provision of legal or other services that are commissioned in good faith for the purposes of challenging sanctions, defending any proceedings brought under them, and protecting the right to effective legal remedy.
- 28.2 Legal and other (notaries, customs officers etc.) professionals shall enjoy all traditional immunities and guarantees in the course of the exercise of their legal services in cases of sanctions, sanctions circumvention or over-compliance. Legal advice and representation shall not be treated as breach or circumvention of sanctions' regimes, and shall not request additional licensing.

VII. RESPONSIBILITY

29. Inevitability of responsibility

- 29.1 All actors shall be held responsible for violations of international law and human rights that may result from the adoption, enforcement of or compliance with unilateral coercive measures, and from over-compliance with any form of sanctions. Nothing in these Guiding Principles should be read as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regards to human rights, WTO law, international trade law and other areas of international law.
- 29.2 Shifting responsibility between international organizations, States and businesses does not provide any ground for excluding such responsibility or liability under international public law, international private law or national law (civil or criminal).
- 29.3 Provisions of national law of sanctioning States cannot be invoked to avoid responsibility under international law and/or liability for damages thereof.
- 29.4 The obligation of due diligence is the obligation of action. Therefore, States are obliged under international law to take all necessary legislative, organizational or operational measures to ensure that activity of businesses under their jurisdiction or control does not violate human rights, including extraterritorially. Regional organizations shall bear the obligation insofar as it falls within their functional competence.

30. Indivisibility of responsibility

- 30.1 The existence of sanctions decisions by international organizations other than UN Security Council does not exclude the responsibility of States for complying with or enforcing them in

accordance with the law of international responsibility.

- 30.2 A State's failure to act to ensure that businesses under its jurisdiction or control abide by international human rights law and avoid implementation/ compliance with unilateral coercive measures, or exercise over-compliance, which impact human rights negatively, constitutes a violation of its obligation to promote and protect relevant human rights.

VIII. REMEDY

31. Remediation

- 31.1 Businesses shall develop and make available complaint mechanisms to enable people negatively affected by compliance with sanctions to challenge the conduct of the business and seek compensation. This is without prejudice to the right of people affected to access to justice.
- 31.2 Adverse impact on human rights and humanitarian action shall be addressed by the businesses in a measure compatible with the degree of involvement. Businesses are responsible for putting in place processes to enable the remediation of the adverse impact they cause, to which they contribute, or that is directly linked due to their business relationships.

32. Adequacy and efficacy

- 32.1 States must ensure, through judicial, administrative, legislative or other appropriate means, that when violations of human rights due to unilateral coercive measures, means of their enforcement and over-compliance occur within their territory or jurisdiction, those affected have access to justice and effective remedy.
- 32.2 States shall not purport to provide any form of immunity to businesses for complying or purporting to comply with unilateral coercive measures including unilateral sanctions.
- 32.3 Where human rights are contravened by unilateral coercive measures and/or over-compliance, States imposing or enforcing them shall ensure that those affected have access to justice and effective remedies within their respective jurisdictions, without prejudice to any other remedies that they may have elsewhere.

33. States and businesses cooperation

- 33.1 States, international organizations, non-governmental organizations and businesses must use their best endeavors to cooperate in good faith in order to integrate a human rights-based approach to avoid any sanctions-induced humanitarian impact and to implement efficient judicial/administrative remedies.
- 33.2 All actors shall cooperate in order to eliminate or minimize over-compliance and redress any adverse human rights effects caused by such conduct, as well as to implement efficient judicial/administrative remedies.
- 33.3 Banks and businesses shall cooperate with States in relation to the principles set forth by the Guiding Principles.