

---

**Advance Unedited Version**Distr.: General  
11 September 2018

Original: English

---

**Human Rights Council****Thirty-sixth session**

10–28 September 2018

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on the negative impact  
of unilateral coercive measures on the enjoyment of  
human rights on his mission to the Syrian Arab Republic\*****Note by the Secretary-General**

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, submitted in accordance with Human Rights Council resolutions 27/21 and 36/10.

During his visit to the Syrian Arab Republic the Special Rapporteur met with a wide range of government officials, permanent representatives, business associations, representatives of United Nations agencies and civil society.

The focus of his visit was to examine the impact of unilateral coercive measures. In the report, the Special Rapporteur reviews the impact of these measures on the enjoyment of human rights of Syrians, and identifies the impediments identified by Syrian-based civil society and humanitarian actors operating in Syria. It concludes with recommendations on measures for making the existing humanitarian exceptions available under unilateral coercive measures more workable.

---

\* The present report was submitted after the deadline in order to reflect the most recent developments.

## **Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the Syrian Arab Republic\*\***

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Overview of humanitarian and human rights situation regarding sanctions.....	3
III. Overview of the unilateral coercive measures on Syria .....	5
A. Human rights obligations of sanctioning countries.....	6
B. Humanitarian exemptions .....	6
IV. Unintended negative consequences of sanctions.....	7
A. Reported difficulties in making use of humanitarian exemptions.....	7
V. Proposals .....	11
VI. Conclusions and recommendations .....	13

---

\*\* Circulated in the language of submission and in Arabic only.

## I. Introduction

1. The Special Rapporteur conducted an official visit to the Syrian Arab Republic (Syria) in Damascus from 13 to 17 May 2018. He held meetings with Ministers, Deputy Ministers and senior officials of the ministries of Foreign Affairs and Expatriates, Economy and Foreign Trade, Local Administration and Environment, Social Affairs and Labour, Transport, Agriculture and Agrarian Reform, Electricity and Health. He also met with the leadership of the Planning and International Cooperation Commission, the Central Bureau of Statistics, the Chamber of Commerce, and with the Governor of the Central Bank. He also engaged with civil society, humanitarian organizations and by independent experts. Finally, the Special Rapporteur met with diplomatic missions in Damascus and Beirut. He is also grateful to the briefings provided by the United Nations Economic and Social Commission for Western Asia in Beirut prior to his visit.

2. The Special Rapporteur expresses his gratitude to the Syrian Government for the invitation to visit the country and for the openness and readiness with which it facilitated the meetings for his mission. He also thanks the office of the Resident Coordinator, the members of the UN country team and the Office of the High Commissioner for Human Rights for their invaluable support.

3. The present report discusses the impact of unilateral coercive measures on the enjoyment of human rights in Syria, and considers the difficulties in making use of humanitarian exemptions under these measures. The report concludes with recommendations on how to minimize the impact of unilateral coercive measures on Syrians, and how existing exemptions could be better implemented.

4. The Special Rapporteur would like to clarify at the outset that, while his mandate refers to “unilateral coercive measures”, understood as transnational, non-forcible coercive measures, and sanctions normally refers to those enacted by the Security Council acting under Chapter VII of the Charter of the United Nations, he uses loosely and interchangeably the expressions “unilateral coercive measures”, “unilateral sanctions” and simply “sanctions” in the present report.

## II. Overview of humanitarian and human rights situation regarding sanctions

5. The humanitarian needs of the people of Syria continue to be immense. The Office for the Coordination of Humanitarian Affairs has estimated that 6.1 million children and young adults require educational support, including 1.75 million children out of school, and that one third of all schools in Syria have been destroyed or damaged, with many more being used as temporary shelters.<sup>1</sup> 4.2 million require adequate shelter, with an estimated one third of all housing having been destroyed. Some 14.6 million people lack access to clean drinking water, including 7.6 million in acute need.

### Medical conditions

6. The World Health Organization reported that approximately 11.3 million Syrians lack access to adequate health care, and one in three children is missing out on life-saving vaccines, declining from 95% in 2006 to only 60% in 2016.<sup>2</sup> The decline in vaccination rates in Syria have led to the reappearance of previously eradicated diseases, including poliomyelitis, typhoid, measles, and rubella.<sup>3</sup> As vaccines require a cold-supply train, and due to a shortage of refrigerators, or power for refrigeration, insufficient vaccines are

<sup>1</sup> OCHA 2018 Syrian Humanitarian Needs Overview, <https://hno-syria.org/#sector-needs>.

<sup>2</sup> WHO (World Health Organization) (2016). Syrian Arab Republic Annual Report 2016. Geneva: World Health Organization. Available at: [http://www.who.int/hac/crises/syr/sitreps/syria\\_annual-report-2016.pdf](http://www.who.int/hac/crises/syr/sitreps/syria_annual-report-2016.pdf).

<sup>3</sup> Van Berlaer, G., Elsafti, A. M., Al Safadi, M., Souhil Saeed, S., Buyl, R., Debacker, M. and Hubloue, I. (2017). Diagnoses, infections and injuries in Northern Syrian children during the civil war: A cross-sectional study. PLoS ONE, 12 (9), e0182770.

available. Unsanitary conditions and limited access to clear water and functional sewage systems contribute to the rise of disease.

### **Food insecurity**

7. An estimated 6.5 million Syrians are food insecure, with an additional 4 million at risk of becoming so, representing nearly half the population. 4.3 million women and children are estimated to require nutritional support. Local food production from 2006 to 2011 was relatively stable, and Syria was the only country in the Middle East region to be self-sufficient in food production. From 2006 to 2011, Syria had a thriving agricultural sector that contributed about 21% to the GDP, and employed 17% of the labour force.<sup>4</sup> The food production market was controlled by the Syrian government, the prices of food were affordable, and the daily caloric intake was on par with many Western countries.<sup>5</sup> Food production declined since 2011, and today Syria relies on food imports. Additionally, oil and economic embargoes impair the ability of Syria to purchase food internationally and the financial embargo prevent the country from paying for whatever it can afford to import. Furthermore, the declining economy makes it more difficult to subsidize food.

### **Economic situation**

8. Prior to 2011, the Syrian economy was one of the best performing in the region, with a growth rate averaging 4.6% per annum from 2008 to 2010.<sup>6</sup> Yet from 2011 to 2016, the rate became negative, falling by an average of 10.8% annually, with falls of over 22% in 2012 and 2013.<sup>7</sup> The total GDP of Syria has reportedly fallen by between one half and two thirds since 2011. Foreign currency reserves have been depleted, and international financial and other assets remain frozen. In 2010, 45 Syrian Liras were exchanged for one dollar; by 2017 the rate fell to 515 liras per dollar.<sup>8</sup>

9. Economic deterioration has severely harmed employment numbers. The working age population has also decreased by 2 percent annually, corresponding to an estimated decrease of 264,000 individuals net per year in that period. Overall, the unemployment rate increased from 8.6 percent in 2010 to a disastrous 52.9 percent in 2015, a 44.3 percentage point change.<sup>9</sup>

### **Inflation**

10. This is compounded by the declining purchasing power of Syrians, which has reduced access to food and other needed goods.<sup>10</sup> Inflation in Syria from 2000 to 2009 was low and averaged 4.4%, but rose rapidly after 2011, with the consumer price index (CPI) increasing by approximately 291% between 2011 and 2018.<sup>11</sup> Between 2008 and 2011, the food annual inflation rate in Syria averaged 12%, but beginning in 2012 it increased dramatically, reaching an all-time high of 121% in 2013, and dropping to about 30% in 2018.<sup>12</sup> Some food items increased eight-fold in price during that period. This rapid rise in costs is particularly hard on Syrians living on fixed incomes who are by far the most important segment of the income earning population.

<sup>4</sup> FAO (Food and Agriculture Organization) and WFP (World Food Programme) (2016). Crop and Food Security Assessment Mission to the Syrian Arab Republic. Rome: FAO and WFP. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/a-i6445e.pdf>.

<sup>5</sup> UNOCHA, 2016

<sup>6</sup> Trading Economics. Syria GDP Annual Growth Rate, 2008-2017.

<https://tradingeconomics.com/syria/food-inflation>

<sup>7</sup> Ibid.

<sup>8</sup> <https://www.xe.com/currencycharts/?from=USD&to=SYP&view=10Y>

<sup>9</sup> World Bank (2017). The Toll of War: The Economic and Social Consequences of the Conflict in Syria, p. 68. Available at: <https://openknowledge.worldbank.org/handle/10986/27541>.

<sup>10</sup> Friberg Lyme, 2012

<sup>11</sup> Trading Economics. Syria CPI, 2008-2017. <https://tradingeconomics.com/syria/consumer-price-index-cpi>

<sup>12</sup> Trading Economics. Syria Food Inflation, 2008-2017. <https://tradingeconomics.com/syria/gdp-growth-annual>

### Agricultural production

11. International sanctions have led to a marked reduction in the availability of crop protection chemicals, fertilizers, seeds and other agricultural inputs. This together with sanctions on the energy and water sectors have contributed to reduced production of food and fodder.

## III. Overview of the unilateral coercive measures on Syria

12. The EU and US sanctions on Syria have been described as some of the “most complicated and far reaching sanction regimes ever imposed.”<sup>13</sup> They are more severe than those previously applied to the Sudan.<sup>14</sup> American sanctions, first applied in December 1979,<sup>15</sup> amended with comprehensive measures in May 2004,<sup>16</sup> and strengthened again in 2011,<sup>17</sup> are all-encompassing and include trade restrictions, financial sanctions, an arms embargo, as well as travel restrictions and asset freezes on individuals in Syria.

13. US measures have been applied by at least five different government authorities, including the Treasury Department’s Office of Foreign Assets Control, The Department of Commerce’s Export Administration Regulations, the Department of State’s International Traffic in Arms Regulations, as well as the Financial Action Task Force (dealing with money laundering), and the Financial Crimes Enforcement Network, among others. US sanctions prohibit investment in Syria, direct and indirect exports (including re-exportation), sales to the US, trade in petroleum products, the use of the US dollar or any financial transaction connected to the US, and others.<sup>18</sup>

14. American sanctions have an extraterritorial effect. Unlike EU sanctions which are limited in scope, US sanctions apply to any transaction which involves a US connection (for example, non-Americans transacting in goods with more than 10% US content, or use of US dollars as the transaction currency).

15. EU measures include an asset freeze and travel ban on 259 people and 67 entities, as well as an oil embargo, restrictions on certain investments, a freeze of the assets of the Syrian central bank held in the EU, export restrictions on equipment and technology that might be used for internal repression as well as on equipment and technology for the monitoring or interception of internet or telephone communications.<sup>19</sup>

16. In addition, Australia, Canada, Japan, Norway, Switzerland, Turkey, the United Kingdom and the Arab League have applied, inter alia, financial sanctions, as well as asset freezes, travel restrictions and arms embargoes on Syria.

17. As a result, anyone seeking to conduct international business with Syria must comply with a global network of regulators in multiple different jurisdictions. For example, compliance with EU sanctions for a UK company requires compliance with both the EU and the UK regimes, as well as US sanctions with extra-territorial effect. While the EU provides broad restrictions, along with humanitarian exemptions, in the UK such exemptions are limited to organizations receiving funding from the UK, the EU or from other EU states –

<sup>13</sup> Walker, J. (2016). Study on Humanitarian Impact of Syria-Related Unilateral Restrictive Measures. A study prepared for the United Nations Economic & Social Commission for Western Asia (ESCWA), p.6.

<sup>14</sup> Ibid., p. 25.

<sup>15</sup> US State Department, <https://www.state.gov/j/ct/list/c14151.htm>

<sup>16</sup> Syria Accountability and Lebanese Sovereignty Restoration Act, available: <https://www.congress.gov/bill/108th-congress/house-bill/1828>

<sup>17</sup> US Treasury Office of Foreign Asset Control, <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria.pdf>. See also US State Department, <https://www.state.gov/e/eb/tfs/spi/syria/>

<sup>18</sup> US Treasury Office of Foreign Asset Control, <https://www.treasury.gov/resource-center/sanctions/Programs/pages/syria.aspx>

<sup>19</sup> <http://www.consilium.europa.eu/en/press/press-releases/2018/05/28/syria-eu-extends-sanctions-against-the-regime-by-one-year>

others will need to obtain a licence from both the Export Control Organization as well as the Office of Financial Sanctions Implementation. Further, inadvertent violations of any provision of counter-terrorism sanction regimes are strictly prohibited and prosecuted as intention is not required to find a violation.<sup>20</sup>

## **A. Human rights obligations of sanctioning countries**

18. The United Nations Charter specifically authorizes the United Nations Security Council to apply sanctions in order to maintain or restore international peace and security under Chapter VII. There have been repeated calls for States to avoid applying sanctions unilaterally, including through resolution 39/210 of UN General Assembly, which states that developed countries should refrain from threatening or applying trade and financial restrictions, blockades, embargoes, and other economic sanctions, incompatible with the provisions of the Charter of the UN and in violation of undertakings contracted, multilaterally and bilaterally, against developing countries as a form of political and economic coercion that affects their political, economic, and social development.<sup>21</sup> The Vienna Declaration and Program of Action 1993 was more specific, calling for States to “refrain from any unilateral measure not in accordance with international law and the Charter of the UN that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services.”<sup>22</sup>

19. In a report to the Human Rights Council, the High Commissioner for Human Rights identified a number of limitations on the application of sanctions. The report calls for States to ensure that any sanctions must be “imposed no longer than necessary, be proportional and be subject to appropriate human rights safeguards, including human rights impact assessments and monitoring conducted by independent experts.”<sup>23</sup> The report further calls for a balancing between the positive impact of sanctions intended to protect human rights can be reasonably expected to have against their negative impact, “taking into account the views of the population suffering under the human rights violations that gave rise to the sanctions and the impact on the most vulnerable parts of society. In this context, it has to be borne in mind that targeted sanctions aimed at applying pressure on specific decision-makers bearing responsibility for the human rights situation typically have a less harmful impact on the population as a whole than measures targeting the economy as a whole.”<sup>24</sup>

## **B. Humanitarian exemptions**

20. The High Commissioner’s report called on States to “adopt measures ensuring that essential supplies, such as medicines and food, are not used as tools for political pressure, and that under no circumstances should people be deprived of their basic means of survival. These considerations should also apply in the case of an armed conflict, in accordance with international humanitarian law.”<sup>25</sup>

21. In furtherance of their obligations to protect the human rights of Syrians under sanction, American and European sanction regimes include provisions that allow for the import of either categories of humanitarian goods, or a licensing system for goods or services intended for humanitarian purposes. Under the US regime, exemptions from US treasury sanctions and export regulations can be obtained through general or specific licenses, and

---

<sup>20</sup> Government of the United Kingdom. Guidance: Financial sanctions, Syria.

Available:<https://www.gov.uk/government/publications/financial-sanctions-syria>

<sup>21</sup> UN General Assembly. Meeting report no 104, Economic measures as a means of political and economic coercion against developing countries (A/RES/39/210). UN; 1984.

<sup>22</sup> UN General Assembly. Vienna Declaration and Programme of Action, A/CONF.157/23. 1993.

<sup>23</sup> A/HRC/19/33, p. 11.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

from general exemptions which exempt a category of items from the sanctions. General licenses provide broad waivers to existing sanctions, while specific ones are limited to particular situations. However, such exemptions do not apply to sanctions arising from the US designating Syria a state sponsor of terrorism, which prohibits transactions with listed persons or entities. As a result, a transaction with a company which has a shareholder deemed to be connected to the government could result in prosecution. Yet one consequence of the years of sanctions is that most, if not all, major companies which remain have ties of some sort with government officials.

22. The US regime includes a general licence for the official business of the United Nations,<sup>26</sup> provided that agreements with contractors or grantees are first cleared by the US, noting that transactions with designated Syrians are prohibited. General licences have also been given for the work of humanitarian NGOs, for food and medicine, but specific limitations apply, including the prohibition to violate any other US sanction. Specific licences are favourably considered for certain medicines, medical devices, telecommunication-related items and goods related to civil aviation safety.

23. Despite the availability of licences, to date none have been provided to the Syrian government. At a minimum, both the US and the EU would have to agree to provide this licence. There is a paradox with source countries suggesting that they could provide licences to the Syrian government for such goods, if only such a request was made, ignoring the fact that humanitarian exceptions could have been made more broadly available in regulations without a licence request and with an unblocking of corresponding financial transfers. The establishment of humanitarian licences, together with related transfer authorizations for Syrian government agencies operating in humanitarian sectors, could be a confidence-building measure that would demonstrate to all parties that the welfare of the Syrian people is being addressed.

#### **IV. Unintended negative consequences of sanctions**

24. Despite the efforts to implement “smart” sanctions with humanitarian exemptions, the application of current sanction regimes have contributed to the suffering of the Syrian people. This report does not claim that the sanctions have caused the current humanitarian crisis, as it cannot be disentangled from the violence that has taken place in Syria since 2011. What is undisputed however is that they do contribute to a worsening of the humanitarian situation, contrary to their stated intentions.

##### **A. Reported difficulties in making use of humanitarian exemptions**

25. Despite these provision of humanitarian exemptions, they have proven extremely difficult for humanitarian actors to use, and nearly impossible for those without an international presence. During his interaction with civil society and humanitarian actors, a number of difficulties were reported to the Mandate holder. It is worth noting that many of the challenges reported echo those addressed in greater detail in the 2016<sup>27</sup> and 2017<sup>28</sup> unpublished studies prepared for the United Nations Economic & Social Commission for Western Asia.

##### **Confusion navigating sanction regimes**

26. In the years since 2011, only UN agencies, and the largest international humanitarian actors have been able to establish functional banking relationships, and the necessary

<sup>26</sup> 31 CFR 542.513(a)

<sup>27</sup> Walker, J. (2016). Humanitarian Impact of Syria-Related Unilateral Restrictive Measures. A study prepared for the United Nations Economic & Social Commission for Western Asia (ESCWA), National Agenda for the Future of Syria Programme (NAFS).

<sup>28</sup> Walker, J. (2017). Examining Viable Banking and Payment Options for the Movement of International Humanitarian Funds into Syria. A study prepared for the United Nations Economic & Social Commission for Western Asia (ESCWA), National Agenda for the Future of Syria Programme (NAFS).

exceptions and licences to conduct their operations in Syria. A very large Syrian-based humanitarian organization continues to have difficulties importing medicines and medical devices, as well as receiving donations from international sources. Numerous small and medium-sized humanitarian organizations and civil society actors felt overwhelmed by the hurdles to be overcome to receive humanitarian supplies, and did not know where to begin in some cases. The high cost of legal fees to seek licences in Brussels and Washington were raised. The inability to make use of donor funds for Syrian operations was also reported, which was due in part to an inability to import the money into Syria as known mechanisms were not publicised or easily discoverable.

#### **Difficulties obtaining exemption licences**

27. Extensive confusion was reported around the process for obtaining exemption licences. While UN actors and the largest INGOs have been able to meet their needs, other actors described being confused or overwhelmed by the process. EU licences, the need to engage with national authorities as well as the EU (with its office located in Beirut) was seen as excessive, as was the need to ensure compliance with at least four national regulatory agencies for US licences.

28. The high cost of legal and other professional services in connection with obtaining licenses was raised by smaller actors, who noted that such costs were not provided for in their projects, and that they were often out of proportion with the value of the goods being sought.

29. The very broad definition of dual use goods was also criticized, as they would include pipes, water pumps, and many kinds of essential construction equipment. There appeared to be no mechanism by which humanitarian actors could seek to have input into the list, requiring each NGO to seek their own license. A proposal was made for the creation of a public “whitelist” of approved items to avoid the need for duplicate licenses.

#### **Financial restrictions**

30. Financial sanctions on Syria are comprehensive. There are sanctions on all State-owned banks as well as the central bank, on the use of US dollars, on EU credit facilities, and on developing new partnerships (correspondent banking relationships) between EU banks and Syrian financial institutions. All financial transactions involving the United States, including credit card transactions, are prohibited. Financial restrictions can appear in anti-money laundering and counter-terrorist financing laws, anti-corruption regulations, and may be triggered by transactions with counterparties who appear on anti-terror sanction lists. Even private Syrian banks not directly under sanction may have investors who are listed entities on anti-terror sanction lists, which may not be easily discovered.

31. There is no clarity as to what level of due diligence is expected of exporters or financial intermediaries. As sanctions are applied according to the legal principle of “strict liability,” it is not a defence to say there was no intent or knowledge of any violation – if one is found all connected actors can be punished.

32. With the government of Syria listed as a state-supporter of terrorism, and numerous government officials and related business persons listed, there is significant risk that a transaction may inadvertently be connected to a “listed person.”

33. The strict nature of U.S. sanctions contributes to the “chilling effect.” U.S. penalties of up to \$250,000 per civil violation, and \$1 million per criminal violation, with the possibility of jail time is particularly threatening as violating sanctions are assessed according to “strict liability,” meaning that unintentional violations are just as liable. Hence, the argument that goods were intended for humanitarian purposes would not be an excuse if a technical violation was found. Non-US banks have paid billions in sanctions-related penalties, mostly to US regulators.<sup>29</sup>

34. Numerous aid groups reported that the inability to transfer money into Syria has prevented them from being able to pay for local staff salaries, severely limiting their ability to operate within Syria. Work arounds involved sending money to a neighbouring country, and then bringing cash across the border in vehicles, or making use of informal money traders. In another case, an NGO reported their longstanding European bank required

<sup>29</sup> Walker 2016, p. 16.



extensive documentation that funds would not be used in Syria. It was suggested that as a result, some civil society actors would be forced to mislead financial institutions in order to operate, despite the apparent “humanitarian exceptions.”

35. The licencing system was reported by one NGO to be so strict they were forced to obtain a licence for each project they were engaged in, and donors were trying to limit exposure by funding only small projects, rather than multi-year plans. This dramatically limited the ability of the NGO to plan its operations, and reduced its effectiveness. The ambiguity has even affected United Nations staff, who reported being refused bank accounts or mortgages from European banks when the word “Syria” appeared in their job title.

#### **Hawala as an alternative**

36. In the absence of functioning banking alternatives, informal money traders, known as the “hawala” system, have been used by humanitarian actors to move cash across borders and throughout Syria. This system, however, raises serious concerns. Hawala transfers are also used by smugglers, money launderers, and potentially criminal and terrorist financing channels.<sup>30</sup> Civil society actors reported difficulties auditing financial transactions which have been made through the hawala system, creating concerns with donors and limiting their ability to raise funding.

#### **The “chilling effect”**

37. The most serious challenge facing humanitarian actors in Syria is that the complexity of the overlapping sanction regimes have created so much doubt and uncertainty on how to comply with all possible measures that banks, exporters, transportation companies and insurance companies have voluntarily refused to conduct business in Syria. While the current sanction regimes contain theoretically useable exception mechanisms, the fact that only the very largest international organizations are able to make use of them after seven years is a testament to the need to reform the system. This problem is particularly acute for banks, which rely on their industry reputation and trust with clients to operate. An inadvertent violation, leading to a public investigation, can be devastating, even if the bank is eventually found to be innocent.

38. Similarly, international exporters have avoided entering into new contracts in Syria, observing their inability to find shipping options, banking possibilities, and a general fear of receiving payments from Syria.<sup>31</sup>

#### **Medical care and supplies**

39. Syria practices universal, free health care for all its citizens. Prior to the current crisis, Syria enjoyed some of the highest levels of care in the region. The demands created by the crisis have overwhelmed the system, and created extraordinarily high levels of need. Despite this, restrictive measures, particularly those related to the banking system, have harmed the ability of Syria to purchase and pay for medicines, equipment, spare parts and software. Despite the humanitarian exemptions, in practice international private companies are unwilling to jump the hurdles necessary to ensure they can transact with Syria without being accused of inadvertently violating the restrictive measures.

40. According to information received, prior to 2011 more than 90% of medicines used in Syria were locally produced. Since then, economic sanctions, currency fluctuations, difficulty in the availability of hard currency and an increase in operational costs have negatively affected the production of medicines and pharmaceutical products and made it difficult for the country to import medicines not locally produced such as anti-cancer medicines, factor VIII, hormones, specific antibiotics, and other specific medicines. Medicines which are patented in the US or Europe cannot be substituted for from other markets. As a result, available quantities of medicines are currently limited, and they often do not cover the health needs for the population.

<sup>30</sup> Beechwood International, Humanitarian use of *Hawala* in Syria, p. 8, available: <http://www.cashlearning.org/downloads/beechnwood-technical-assessment-syria-31-july-15.pdf>

<sup>31</sup> Reuters. Long reach of U.S. sanctions hits Syria reconstruction. Available: <https://www.reuters.com/article/us-mideast-crisis-syria-sanctions/long-reach-of-u-s-sanctions-hits-syria-reconstruction-idUSKCN1LI06Z>

41. Efforts to rebuild the pharmaceutical sector are also being harmed by sanctions. The Ministry of Health noted that it is unable to obtain reference pharmaceutical standards for American and European pharmaceuticals, which prevent it from evaluating the strength and quality of locally produced products. As a result, substandard medicines are being produced.

42. The most critical concerns related to interrupted maintenance services and the lack of spare parts which were affecting the functionality of medical equipment. The WHO has undertaken several site visits to operating hospitals in Syria, where it found that medical equipment were often not functioning, either because they were missing critical spare parts, or due to technical errors that can be only resolved by authorized agents, many of whom had left the country.

43. The WHO Syria reported importing recently CT scanning machines manufactured by Toshiba, a Japanese company, which had components of American origin. As a result, a specific licence was needed, which reportedly requires up to six months to obtain. In many cases, the software in medical devices includes US content, preventing them from being updated or repaired in the case of error by international technicians.

44. As a result of the comprehensive sanctions against the Syrian government, the ministries of health and higher education are unable to directly purchase medicines from EU or US suppliers. During his visit to the WHO and the Damascus Children's Hospital, numerous concerns were raised. Some medicines prohibited by sanctions have proven impossible to substitute from other sources, such as India or China. Radioactive isotopes for cancer treatment, rotavirus vaccines, and specialized medicines for kidney transplants have been impossible to source. Some laboratory testing machines, including flow cyclometers, and software updates and spare parts for existing Western equipment is similarly unavailable. Numerous medicines were identified by the WHO as unavailable on the local market, including anti-epileptic medicine and some anti-cancer medicines, as well as all US-branded products. While such purchases could be made possible, each would require one or more licences from multiple jurisdictions. Without more proactive cooperation such complications have effectively resulted in a lack of available medicines. When the added complications related to the financial embargoes on the Government of Syria no mechanism or process has been established to date to allow for the cost-effective importation of medicines to the government ministries. As a result, the WHO has become the largest provider of primary health care in many parts of Syria.

#### **Transportation issues**

45. Even when medicines or other goods can be legally acquired, transporting them into Syria is difficult. Most international shipping companies avoid travel to Syria, requiring multiple shipments first to neighbouring countries. Insurance providers predominantly refuse to insure shipments. In one case, a shipping company demanded that an INGO fully indemnify them for any costs which might arise in connection with the shipment; this indemnity was ultimately limited to \$1 million, which was still prohibitively expensive. Closure of Syrian airports to commercial activities prevents the importation of medicine, which is particularly challenging for some vaccines and other time and temperature-sensitive medicines.

#### **Dual use goods**

46. Many goods are deemed to be "dual use," which means they could be used for peaceful as well as for military purposes. Examples include chlorine gas, used for purifying water, and can include water pipes and spare parts for electrical generators or industrial machinery. Construction equipment, and many kinds of rescue equipment are also captured. Specific licences are needed for every transaction involving such goods, resulting in added costs, financing difficulties, and long processing delays. It was suggested that providing a general licence for named non-governmental organizations could be an interim solution.

#### **Electronics**

47. US sanctions prohibiting the export to Syria of anything with 10% or more of American content meant that almost all electronic goods, including computers and mobile smartphones with American processors or software, are prohibited. The dominance of Windows on personal computers and Apple and Android on mobile phones meant that all

sectors of the economy were equally harmed. Humanitarian actors reported alarm that US-sourced radio telecommunications equipment, which has been standardized across many UN actors, was being affected by sanctions. It was reported that the time-sensitive nature of their work was severely affected by delays in obtaining licences.

48. Government offices were observed operating with antiquated computers, which reduced operational effectiveness. This was particularly acute for the ministries of higher education and health, which had greater technological needs.

#### **Heating oil supplies**

49. The embargo on oil trading not only affected Syria's ability to export oil, it also dramatically raised the cost of fuel oil for heating, cooking and lighting. As government energy subsidies were gradually reduced, and poverty levels have increased, this situation has worsened dramatically, leaving many households unable to afford heating.

#### **The politicization of aid delivery**

50. The inability of ordinary Syrians to avail themselves of humanitarian exemptions leaves them vulnerable to receiving aid from humanitarian organizations. The international community has contributed hundreds of millions of dollars in humanitarian aid to Syria annually since 2011.<sup>32</sup> Despite this, sanction regimes have all but ensured that such aid can only be delivered through the UN or the largest international actors, unnecessarily excluding many humanitarian NGOs, including almost all Syrian-based actors. It cannot be justified that basic humanitarian needs are denied to the State, only for some to be resupplied through humanitarian aid, according to the priorities of donors and aid agencies.

51. The State must respect its obligations to all Syrians, and ensure that the human rights of all Syrians are being met, to the best of its ability. Prompt, non-discriminatory delivery of aid, and equal treatment of the humanitarian needs of all Syrians is an obligation under international law.

52. The Special Rapporteur calls on all parties to find solutions to ensure that aid is provided to all civilians, as required under international humanitarian law and international human rights law. Last mile delivery could be provided by actors trusted by all sides, such as the Syrian Arab Red Cross and Red Crescent, and where possible through the Syrian government, which is ultimately responsible for ensuring the human rights of all Syrians are being met.

## **V. Proposals**

53. The Special Rapporteur calls upon all interested Member States to engage with him in finding technical solutions which can reduce the human rights impact of existing unilateral measures.

54. The most serious issue with the multiplicity of international sanction regimes is that they have effectively created a comprehensive sanction system, despite the apparent availability of humanitarian exemptions. The complexity and uncertainty in the current system has effectively created a voluntary boycott by exporters, and financial, insurance and transportation institutions and companies. Any solution must create sufficient certainty to allow these actors to operate in Syria.

55. To address these concerns, the Special Rapporteur proposes the establishment of a procurement office, operated by the United Nations in Damascus, which would be able to facilitate all humanitarian transactions authorized under all sanction regimes. This proposal would shift the burden of ensuring sanction regime compliance, including taking reasonable efforts to avoid diversions, thereby giving comfort to banks and exporters that the transaction in question would be considered safe by all countries with sanctions in place.

56. The procurement office would be assisted by experts from source countries, establishing a single point of reference for all actors, and would be responsible for ensuring

<sup>32</sup> Funding by year can be identified through the OCHA Financial Tracking Service: <https://fts.unocha.org/global-funding/overview/2018>

coordinated compliance for financial transactions, as well as imports of goods and services to meet humanitarian needs.

57. This office could obtain approval for a new banking channel for large scale transfers of funds. It could be used by humanitarian actors, and eventually for resilience and stabilization activities, as well as future restoration of vital infrastructure. A further possibility would be to allow private Syrian banks to establish correspondent banking relationships with international banks through the procurement office, which could be responsible for conducting with due diligence operations with the banks and related transactions.

58. A similar idea was implemented in the Sudan at the suggestion of this Mandate. The United Nations-run procurement office for medicines that was thus created with the approval of the source country of sanctions and of the target country is an appropriate template. Though American sanctions permitted the import of medicines, financial impediments, including the blocking of the SWIFT system for international financial transactions, effectively prevented the Sudan from paying for purchases. Through this office, exporters as well as financial intermediaries had certainty that the humanitarian transactions in question were not violating any unilateral coercive measures.

#### **Confidence-building measures**

59. During his visit the Special Rapporteur was repeatedly informed of the lack of confidence among all parties in Syria, including international organizations, civil society, state actors and foreign states. This lack of trust has contributed the lack of dialogue among the actors. Proposals to make the humanitarian exemption operational have been discussed since the imposition of sanctions, and concrete solutions have been identified in many studies. Yet despite this, a first step has not been taken.

60. The Rapporteur suggests that small, simple steps could act as confidence-building measures, establishing confidence on all sides that there is now a genuine will to work towards addressing the survival needs of the Syrian population. One proposal would be for Syria's internationally frozen assets to be released for the use of importing agricultural goods, including wheat and animal fodder. Though this might amount to only some US \$600,000 in assets, it could act as an important first step in re-establishing good will between the Syrian Government and the international community, which has been deeply undermined over the past seven years.

61. The Special Rapporteur would like to emphasize that other measures could be proposed and considered, and places his good offices at the disposal of all to begin such discussions.

#### **Future considerations**

62. Under the Covenant of Economic, Social and Cultural Rights Syrians have, among others, rights to food, adequate housing, safe water and sanitation, education and healthcare. The progressive realization of these rights will require the rebuilding of schools, medical facilities, water and electrical systems, and residential homes. Though much of this will not be possible without international support, the maintenance of water and power stations often require imported spare parts and international technical expertise.

63. While coordinated legal and regulatory reforms are desirable, the differing political inclinations in each State make this an unlikely scenario. The Special Rapporteur believes the only workable solution is to create a United Nations procurement mechanism to consolidate all compliance risks into a single office.

64. This office would, in coordination with the Syrian government, the United Nations and sanctioning States, determine which goods and services could be imported, and all transactions by exporters, financial intermediaries and contractors would be deemed to be in compliance with all sanction regimes. Specialists in the office would be responsible for ensuring such compliance, and would negotiate with respective authorities to address concerns, such as diversion risks. While such an office would initially be limited to responding to requests from national and international non-governmental organizations, the office should eventually be empowered to address requests relating to humanitarian import needs of Government agencies.

65. As identified in the beginning of this report, the humanitarian needs are immense. Without a single authority to “whitelist” transactions there is no possibility of scaling up humanitarian work in any meaningful way beyond the emergency relief that is being provided by United Nations organizations. Syrians continue to have a right to schools, medical facilities, clean water, shelter and meaningful employment and if they are denied these rights, they have told the Mandate that they will join the flow of migrants to Europe even if peace is fully restored. There is therefore an urgent need to identify priorities to ensure that all of Syria is able to provide for the basics of life. Without such conditions, people will continue to emigrate, and those wishing to return will be unable to rebuild their lives.

66. The need for a United Nations-based solution is even more apparent when one considers that the lifting of all sanctions regimes simultaneously is difficult to achieve owing to the multitude of States and regulatory authorities involved. Further, the secondary sanctions applied by the U.S. require that this regime be lifted before the “chilling effect” can be addressed. It is therefore preferable to seek to make use of the existing United Nations-related exemptions under the US sanctions, if possible.

67. The United Nations Office for the Coordination of Humanitarian Affairs, in collaboration with the Syrian Government, produces regular humanitarian needs updates. These updates should ensure they address the full range of economic, social and cultural rights of all Syrians, and could form the basis of a broader needs assessment that could be used by the proposed procurement office to obtain the goods and services needed by the Syrian people.

## VI. Conclusions and recommendations

68. **The ability of Syrians to enjoy their basic human rights, and to receive humanitarian aid, is being made unnecessarily difficult to achieve through the application of an accumulation of diverse and intertwined unilateral coercive measure regimes. The multiplicity of regimes and regulatory actors has increased costs and complexity of compliance beyond the ability of all but the largest humanitarian actors. Scarce resources that should be targeted towards the Syrian people have instead been spent finding exemptions to sanctions, resulting in increased costs and delays.**

69. **The time has come to reconsider whether the current balance of allowing for the provision of the basic human rights of the Syrian people is adequately being considered in the application of unilateral coercive measures. While legal mechanisms for the delivery of humanitarian aid exist, in practice they are overly limited, slow and difficult to apply for all but the largest actors. These restrictions are especially pernicious in that they cause incremental suffering which increases over time, but often escapes notice in the international media.**

70. **There is a pressing need to lift all sanctions which have a negative impact on the enjoyment of human rights of Syrians. Unilateral coercive measures on agricultural inputs and products, medicines, on many dual use items related to water and sanitation, public electricity and transportation, and eventually on rebuilding schools, hospitals and other public buildings and services, are increasingly difficult to justify, if they ever were justifiable.**

71. **While much has been done to provide guidance and clarity on how to navigate Syrian sanctions through information published on government websites, it remains that U.S. sanctions are applied by a number of different authorities, and EU sanctions require negotiations in Brussels as well as with EU States represented in Beirut. Despite improved guidance, the guidance is not legally binding, while any violation, inadvertent or otherwise, is strictly punished by US authorities. These risks are compounded by uncertainty on how to also comply with sanction regimes of six additional countries, the Arab League, and the regulatory agency of applicable EU member states. This degree of complexity is unreasonable to manage for all but the largest of organizations, exporters and financial companies. Further, any organization which is able to obtain a licence to import goods will be able to charge far higher prices due to the lack of any alternative supplier.**

72. The Special Rapporteur is concerned that ongoing discussions related to the return of refugees and migrants to Syria is not also addressing the needs to ensure the conditions exist for their basic human rights to be met. This includes the availability of adequate shelter, food, water and sanitation, employment, medical care and education, among other rights. To the extent that the availability of such rights is being impaired, directly or indirectly, by sanctions, they must be addressed.

#### Universality of human rights

73. The Special Rapporteur reasserts that human rights are universal and interdependent. The right to food, health, education, water and sanitation, and to adequate housing must be provided to all without discrimination, as called for in the International Covenant of Economic, Social and Cultural Rights.

74. The Special Rapporteur calls upon the Government of Syria to meet to the best of its ability under the circumstances, the human rights of all Syrians without discrimination, as called for under the Covenant of Economic, Social and Cultural Rights. Syrians have, among others, the right to food, adequate housing, safe water and sanitation, education and healthcare. The progressive realization of these rights will require the rebuilding of schools, medical facilities, water and electrical systems, and homes.

75. Similarly, sanction regimes must not impede the delivery of goods or services provided for the realization of the human rights of Syrians, and should be provided to all Syrians, without discrimination.

In the light of the above, the Special Rapporteur would like to offer the following recommendations:

76. The Special Rapporteur recommends the creation of a specialized United Nations procurement office with full authority to obtain humanitarian goods and services in compliance with all unilateral coercive measures and to ensure financial transfer of payment therefore as well as to address the “chilling effect” which has made the financing, transport and insurance of permitted humanitarian goods and services unavailable in Syria. In collaboration with all parties concerned this office should be used to provide for the human rights needs of all Syrians.

77. The Special Rapporteur recommends that until such a procurement mechanism is established, that source countries immediately implement the recommendations of two studies prepared for the United Nations Economic and Social Commission for Western Asia in 2016 and 2017, which provide workable, concrete suggestions on how to make existing humanitarian exemptions under unilateral coercive measure regimes more effective.

78. The Special Rapporteur recommends that all parties find confidence-building measures which can work to re-establish trust. One example could be the release of frozen Syrian State assets for the purchase of agricultural products, including wheat and animal fodder to address urgent survival needs of the population.

79. Finally, the Special Rapporteur recommends that all concerned Member States, in collaboration with the United Nations, begin to identify the priority humanitarian and human rights needs of the Syrian people, with a view to progressively including related goods and services in the measures which the proposed procurement channel, or any other potential solution, can import into Syria. As a priority, goods and services related to the provision of shelter, water and sanitation, education, health and electricity should be identified.

