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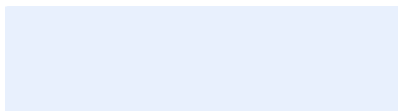
DATE: 5 June 2023

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REF: OL OTH 64/2023 (PLEASE USE THIS REFERENCE IN YOUR REPLY)

PAGES: 5 (INCLUDING THIS PAGE)

OBJET/SUBJECT: **COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a communication sent by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights.

I would be grateful if this letter could be transmitted at your earliest convenience to
International Labour Organization - ILO.

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

Ref.: OL OTH 64/2023
(Please use this reference in your reply)

5 June 2023

Director-General of the ILO, Mr. Gilbert F. Hounbo,

I wish to thank you for your response of 9 May 2023, as well as for the clarifications of the position of the International Labour Organization provided therein, which are published at the [webpage](#) of the Special Procedures communications database and public reports together with my initial communication of 25 April 2023 ([OTH 29/2023](#)), in accordance with the Manual of Operations of the Special Procedures of the Human Rights Council.

I would like to use this opportunity to address you a follow-up communication in accordance with the established procedures.

Since its establishment in 1919, the ILO has played a vital role in the development and consolidation of the system of international treaties and recommendations to protect vulnerable groups, to ensure that human rights standards in the economic, labour and social areas are duly observed and to monitor measures adopted by States to implement them as well as other ILO standards. The purpose of my initial communication of 25 April 2023 as the Special Rapporteur was not to intervene specifically on the issues pertaining to the relations between the ILO bodies and its Member States.

Instead, the main focus was on the types of measures that the Governing Body recommended to the General Conference of the ILO, as well as on the text of the draft resolution of the ILO General Conference¹ as regards to measures to be applied under art. 33 of the ILO Constitution.

¹ Governing Body, “Option for measures under article 33 of the ILO Constitution, as well as other measures, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in respect of Conventions Nos 87 and 98”, 347th Session, Geneva, 13-23 March 2023, GB.347/INS/14(Rev.1), at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_867799.pdf

Mr. Gilbert F. Hounbo
Director-General
International Labour Organization

In your response you have correctly pointed out that in my thematic work and reports I have repeatedly acknowledged the possibility of international organizations to impose sanctions on their Member States, as noted in the commentary to article 22 of the Draft articles on responsibility of states for international wrongful acts. Under international law, however, international organizations can only decide on sanctions explicitly provided for in their constituent documents with due respect to provisions of the Charter of the United Nations Organizations, purposes and principles of the United Nations and other peremptory norms of international law, including the obligation to promote and protect human rights.

Chapter VII of the UN Charter endows the UN Security Council with the unique possibility to apply both military and non-military measures under international law, while Chapter XVI and particularly its article 103 effectively limits the competence of other actors, including international organizations, in the area of sanctions against Member States. Therefore, I strongly believe that the compliance with the obligations under the UN Charter was the main reason for the removal of any reference to economic sanctions from the Constitution of the ILO in 1946. The same understanding also comes from the long-standing practice of the ILO of not adopting any recommendations to impose economic or other types of sanctions, as well as the repeated statements on the adherence to the non-sanctions policy by the previous ILO Directors General.

These statements, the removal of the reference to the economic sanctions in 1946, as well as the non-use of art. 33 mechanisms even before 1946 support the non-sanctions approach of interpretation of the ILO Constitution in accordance with customary international law provisions on the role of subsequent practice and agreements in interpretation of international treaties, were later formulated in the Draft conclusions of the International Law Commission on the Subsequent agreements and subsequent practice in relation to interpretation of treaties (2018).

I wish to highlight the possible negative consequences of the means taken by the ILO constituents to implement the General Conference recommendation under art. 33, if it is ultimately adopted, namely to impose unilateral sanctions against a Member State of the ILO. Taking into account that the ILO Constitution provides the General Conference with the authority to make recommendations only, measures taken by States on the ground of such recommendations won't constitute sanctions of an international organization but rather unilateral sanctions of the ILO Member States.

My work as the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights reflects the expanding practice of States to impose unilateral sanctions against other States, sectors of economies, businesses and individuals.² My country visit reports³ clearly demonstrate that the use of economic and financial sanctions, as well as breach of relations in academic, sport and cultural spheres have detrimental effects on human rights of people in the targeted societies, undermine development, raise unemployment and poverty rates, deteriorate labour conditions, severely restrict access to basic goods, including food and medicines, disrupt the

² Targets of unilateral coercive measures: notion, categories and vulnerable groups: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 13 September 2021, A/76/174/Rev., at <https://undocs.org/A/76/174/REV.1>

³ See mandate's country visits webpage: <https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/country-visits>

economic activity allowing for the flourishing of gray economies or criminal activities with disproportionate impact on the most vulnerable – often marginalized groups, exacerbate economic inequalities and disrupt State social programmes to those most in need, including women and children, persons with disabilities and the elderly, among others, due to the insufficiency of State revenues.⁴ In particular, the received information has demonstrated serious economic disruptions leading to the plummeting of per capita income, with public sector jobs being unappealing (with high vacancy rates) due to extremely low salaries, which in some of the targeted by sanctions countries are not sufficient to cover even the monthly average cost of food baskets.

Scholars, scientists, athletes, artists and persons employed in small businesses and the crafts industry in all countries under unilateral sanctions are often excluded from international cooperation initiatives, participation in international projects, competitions, conferences and programmes, thus deprived of opportunities for further development and additional financial resources.

Country visits to several countries under unilateral sanctions as well as information received from various stakeholders, including from civil society actors, have clearly demonstrated that references to human rights standards and international human rights law are often neglected by States in both UN and unilateral sanctions regimes. Human rights concerns are even raised with regards to the implementation of UN resolutions, including those seeking to ensure the unhindered delivery of humanitarian assistance to the populations of targeted by sanctions countries (e.g. resolution 2664(2022)). Unilateral measures and sanctions are often defended and justified by reference to good intentions and pursued “high values”, as well as to their presumed “targeted” nature, or framed as a means to respond to observed or assumed mismanagement in the countries targeted by such measures. Any reference to their negative humanitarian impact is often dismissed by arguments about their “unintended” nature or the reported safeguards provided by existing systems of humanitarian exemptions.

Unfortunately, in practice humanitarian exemptions appear to be ineffective and insufficient. The adverse effects of targeted sanctions compounded by over-compliance and excessive de-risking, unclear and vague terminology, criminal and civil penalties for circumvention of sanctions regimes de facto render them comprehensive and affect the targeted country’s population as a whole.

There is a number of other issues on the impact of unilateral sanctions and over-compliance with such sanctions on economic, labour and social rights. Given ILO’s important mission and history in the promotion and protection of these categories of rights, I urge the Organization to consider establishing processes to regularly monitor the negative humanitarian impact of unilateral coercive measures on economic, social and cultural rights. I would like to reiterate my mandate’s openness for dialogue and constructive engagement, as well as readiness to provide you and the ILO with additional information about the mandate, as well as the thematic and empirical work.

⁴ Visit to Zimbabwe: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, 12 August 2022, A/HRC/51/33/Add.2, paras 20-21, 45, 76, at <https://undocs.org/A/HRC/51/33/Add.2>; Preliminary findings of the visit to the Syrian Arab Republic by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, at <https://www.ohchr.org/sites/default/files/documents/issues/ucm/statements/2022-11-09/20221110-eom-syria-sr-ucm-en.docx>

I would also call the General Conference of the ILO to avoid any steps which could be interpreted as encouraging or authorizing the ILO Member States to take measures not in accordance with the UN Charter, to amend the ILO Guide for Constituents to avoid the misleading broad interpretation not in accordance with the UN Charter to ensure that they are acting in accordance with the ILO purposes, principles, with due account of the worker's rights and social protection objectives of the recent ILO declarations and plans.

This follow-up communication, as a comment on pending or discussed resolutions, regulations or policies, and any response received will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. We I stay open for any further interaction.

Please accept, Mr. Gilbert F. Hounbo, the assurances of our highest consideration.



Alena Douhan

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