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**OIC INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION
(IPHRC)**

REPORT ON:

**THE NEGATIVE IMPACTS OF ECONOMIC AND FINANCIAL SANCTIONS ON
THE FULL ENJOYMENT OF HUMAN RIGHTS OF PEOPLE OF THE OIC
TARGETED COUNTRIES**

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IPHRC Report

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Countries*

APRIL, 2014

A - Introduction

In pursuance of the CFM resolution No. 21/40-POL calling the Independent Permanent Human Rights Commission (IPHRC) "to undertake a comprehensive study on negative impacts and consequences of economic and financial sanctions on enjoyment of human rights by people of the OIC targeted Member States" and to present accordingly an in-depth report to the Council of Foreign Ministries at its Forty-first Session; the IPHRC prepared the present report on the issue and transmitted to the meeting of CFM held in Jeddah, on 18 – 19 June 2014.

A note Verbal was sent to all Member States requesting them to provide their views on the negative impact of the economic and financial sanctions enabling the IPHRC to present a comprehensive report that is based on all round views. Pending the receipt of the views of the Member States regarding the impact of sanctions on the enjoyment of human rights and their experiences, the IPHRC embarked on preparing this report addressing, in brief, different dimensions involved the issue of sanctions, based largely on international law particularly Human Rights Law in order to help contributing to the corresponding international environment in which the deep concerns of the OIC Member States regarding the impact of sanctions on the enjoyment of human rights are fully and effectively addressed.

The IPHRC will provide follow-up reports on the subject in due course, reflecting further the views and experiences of the Member States on the issue.

B - General observation

The Human Rights system is an indivisible whole. It is insoluble construct and interdependent in nature. The concept of indivisibility not specifically meant for diverse range of human rights from political and civil, to economic, social and cultural, the notion of shared responsibility and mutual accountability will also be an indispensable component of the implementation of human rights for all worldwide.

The international community is currently working to shape and develop the framework of the post -2015 Development Agenda. Several factors and parameters are being discussed at length in an effort to design a successor framework in which practical goals are outlined and lines of shared responsibility and mutual accountability are clearly drawn. Forums across regions and at the international level are carefully considering the multidimensional agenda for development beyond 2015. To summarize them, they identified the notion of indivisibility within the new geometry of power and relationship and recognized the fact that in the process of globalization, the capacities and power of states for realizing the goals of sustainable development are limited and they are no longer the only actor in this domain. The experts emphasize that although the primary responsibility for devising and implementing development policies and making use of "maximum available resources" rest with the states, the decisions and policies beyond borders will also affect heavily on the capacity of and power of states in this domain.

The proliferation of actors at the international level playing crucial role in development policies and decision- making processes brings new dimensions to development agenda and associated accountability system at the international level. In the current era of accelerated globalization, these actors include national and local governments and other state institutions, business

enterprises, third countries, intergovernmental institutions and multilateral development agencies and financial institutions¹. Policies designed and implemented by these actors including on imposing sanctions affect in many ways the pace of progress in development of individual member states, within the web of global social and economic institutions, which in turn will have their impact on the enjoyment of human rights including the right to development. The domestic policies, laws and decisions made within a specific country or the measures taken by an international body in the form of sanctions may infringe upon the ability of other countries to mobilize resources for the realization of the human right to development.

Thus, the international community including regional organizations must consider the right to development and the development processes at the national and international level as well as the obstacles lying ahead such as sanctions within a multidimensional agenda. In this context, the concept of “shared responsibility” and its indivisible component i.e. mutual and multidimensional accountability are central to every global development framework at any stage. Various international forums including the Summit on the Millennium Development Goals asserted this essential component of global development agenda. In the Millennium Declaration, the General assembly stipulates the following:

“Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.”

The Declaration further reiterates the following:

“...We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.”

A key implication to recognizing the “shared responsibility” and “commitment to make the right to development a reality for everyone” is the obligation by all states, international institutions and private corporations to refrain from implementing bilateral or multilateral policies and measures which will create conditions that may restrict the ability of other states to make use of “maximum available resources” in the benefit of the realization of development goals and the enjoyment of human rights by all peoples. Placing this obligation within the human rights context, requires the international community including global and regional governance institutions to expand the current spectrum of human rights accountability system to ensure the violation of human rights including the right to development by the states beyond their borders or by international and private sectors are dealt with on the basis of human rights norms and standards.

In view of the above, sanctions and unilateral coercive measures put in place by some states against other states or by a multilateral body such as the relevant organs of the UN that have the effect of impairing or nullifying the enjoyment of human rights of individuals and peoples must be viewed as violation of human rights and treated accordingly.

The Vienna Declaration and Program of Action in its Para 31 declare the following:

¹ -Who will be accountable, published by OHCHR, Geneva, 2013, P.18

“31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations 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. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.”

The Foreign Ministers of the Organization of Islamic Cooperation during the Thirty-ninth Session of the CFM and through the Resolution No.22/39-POL expressed that they are:

“Gravely concerned over the application of economic and financial sanctions against some OIC members, with all their negative implications for the socio-economic activities and economic and social development of those states, thereby creating additional obstacles to the full enjoyment of all human rights by peoples and individuals under their jurisdiction;”

The Foreign Ministers further:

“Condemn the continued imposition of economic sanctions by certain powers as tools of political or economic pressure against some Islamic countries, with a view to preventing these countries from exercising their right to decide of their own free will, their own political, economic and social systems.”

Owing to their coercive nature, the economic and financial sanctions not in accordance with International law and Human Rights Law, will effectively hinder the targeted states from disposing of their national resources and consequently cause the failure to design and implement development policies. This situation will inevitably lead to the infringement of human rights of the peoples and individuals in the targeted states.

The Human Rights Council of the General Assembly of the United Nations in its resolution A/HRC/RES/24/14 dated 8 October 2013 declares the following:

“Reaffirming that unilateral coercive measures are a major obstacle to the implementation of the Declaration on the Right to Development,”

Due to the deep negative impact of the sanctions on the enjoyment of human rights and humanitarian situations, the Resolution went on to express that the Human Rights Council:

“ 3. Condemns the continued unilateral application and enforcement by certain powers of such measures as tools of political or economic pressure against any country, particularly against developing countries, with a view to preventing these countries from exercising their right to decide, of their own free will, their own political, economic and social systems;”

C - Legal aspects

This study seeks to review, in the first place, briefly, the legal status of enforcing sanctions within the United Nations system. It further explores the situations in which these sanctions become illegitimate and counterproductive, given the parameters set forth by the Charter of the United Nations and other sources of international law. The manifestation of various aspects of violation of Human Rights taking place as a result of illegitimate sanctions is also the focus of this study which will be followed by a number of proposals to be considered by the IPHRC for sharing them, through the CFM, with the relevant bodies of the international community.

A wide range of legal documents and multilateral declarations within the United Nations and other organizations address the question of sanctions in different ways. Many of them particularly within the South organizations consider, in one way or another and with different strengths, in a positive or negative form, measures including economic and financial sanctions which have the effect of infringement on or nullifying the enjoyment of human rights by peoples and individuals, as unlawful and illegal. These measures have been rejected and at times, as shown above, condemned in different tones.

These documents include the Charter of the United Nations, Bill of Rights, core international Human Rights instruments, General Comments of Treaty Bodies, UN Declarations, multilateral Declarations and the outcome of the UN World Conferences, Decisions of the ICJ and other international tribunals (in the form of rejecting the violation of “peremptory norms” or “erga omnes obligations” or “jus cogens” and the soft laws including resolutions in the UN system and other organizations.

The content of the documents mentioned above may apply on both the sanctions imposed by the Security Council or the Unilateral Coercive Measures.

For the purpose of this report and to observe briefness, the focus of the study will be on just one reference under each document. Other references could be tackled within the Comprehensive Report.

1- Sanctions under the Charter of the United Nations

There is no reference to “sanction” in the Charter in this domain. The term adopted by the Charter in Article 41 is “MEASURES”. This Article is as follows:

“Article 41: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”

What matters most in this context is that this Article is about the legal action of the United Nations, within the parameters expounded in the following Articles in the Charter and with the purpose of combating forces actually threatening the international peace and security. Clearly, it does not apply to the “measures” violating the content of the Article 1(3) declaring the respect

and promotion of Human Rights as Purposes of the United Nations. Under the Law of Treaties, no decision by an organ of the United Nations can nullify the purposes enshrined in a treaty such as Charter.

Furthermore, any economic, financial and commercial measure or sanction which contravenes the obligations committed by the member states in the Article 55 and 56 of the charter referring to the observation of Human Rights which have the effect of the violation of “*erga omnes obligations*” and “*peremptory norms*” are considered unlawful and must be rejected.

The pledges committed by the member states in Article 56 to uphold Human Rights are in the following form:

‘All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.’

And the purposes outlined in Article 55 read as follows:

“Article 55: With a view to the creation of conditions of stability and well-being which are necessary for Peaceful and friendly relations among nations based on respect for the principle of equal rights and Self-determination of peoples, the United Nations shall promote:

- a) Higher standards of living, full employment, and conditions of economic and social progress and development;*
- b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and*
- c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”*

There are other references in the Charter that imply the illegality of “measures” or sanctions with the negative impacts on the enjoyment of Human Rights by peoples and the individuals. These could be dealt with in the Comprehensive Report on the issue at hand.

Besides, According to the Article 24(2) of the Charter, all decisions of the Security Council (and that of the member states) should not be against the Purposes and Principles of the Charter of the United Nations.

Article 24 reads as follows:

“2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII”.

In a nutshell, although the sanctions imposed by the Security Council are legitimate based on the content of the Article 41 of the Charter as one of the basic sources of International Law, but it will not remain so if within a protracted period of time lead to the infringement of human rights and fundamental freedoms in the targeted states. The issue of legitimacy of sanctions imposed by the Security Council will be tackled under the CESCR’s General Comments No.8

2. Unilateral Coercive Measures

The concept of “unilateral Coercive Measures” usually refers to economic measures taken by one state to compel another state to effect changes in its policies, without the clear and explicit backing of the international community, often represented by the United Nations.² Such Measures, legislative, or otherwise include economic, trade, financial, travel sanctions and asset freezes in relation to certain targeted individuals, companies and institutions of a state.

Some consider the Unilateral Coercive Measures as illegitimate, *per se*, mainly because they are imposed out of the United Nations system which is the broadest international organization with the duty of maintaining international peace and security. Yet there exist almost consensus among the members of international community that these measures are flagrant violation of Human Rights owing to its wide impact on living standards of vast populations and infringement of their fundamental human right. The relevant resolution of the General Assembly of the United Nations on the issue of US embargo on Cuba is but one example. These measures are also condemned by the GA resolutions, generally, which have been referred to earlier in this study.

3. Bill of Rights

International Human Rights law considers states and national governments as having primary responsibility for fulfilling their commitments under the relevant international instruments. They have an obligation, for example, under the International Covenant on Economic, social and cultural “*to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*”

Fulfillment of this obligation requires the member states to exercise freely their right to self-determination and the right to dispose of all their natural wealth for the benefit of the realization of the right to the development.

Article 1(2) of both Covenants within the UN Bill of Rights accentuates these rights in the following terms:

“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. **In no case may a people be deprived of its own means of subsistence.**”*

² -Ariranga G. Pillay, Chairperson of the UN Committee on Economic, Social and Cultural Rights, Speech in the HRC Seminar on the Unilateral Coercive Measures held in Geneva on April 5, 2013

The last phraseology in Article 1(2) is of critical importance in rejecting measures under all circumstances, unilateral or multilateral, with the effect of restricting the member state's ability to mobilize natural wealth and national resources as means of fulfillment of its obligations to realize Human Rights specially the right to development. It implies, in categorical terms, that sanctions are illegal in case their practical results cause deprivation of the targeted people from exploiting their resources for the objectives of development.

Although the core premise in this question is the illegality of sanctions incompatible with the human rights norms and standards, yet shifting the focus from the content of sub para (2) to the very significant determinant of "international cooperation and assistance" which is the subject of the General Comment of the CESCR, will turn the negative obligation into positive one. It implies that it is a legal obligation for the wealthier states to take steps, through international cooperation and assistance, to assist the developing countries to reach their development goals.

4. Treaty Bodies General Comments

The CESCR in its General Comment no.3 on the nature of the states obligations under the International Covenant on Economic, Social and Cultural Rights stipulates that:

*"14. The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of International law, and with the provisions of the Covenant itself, **international Cooperation for development and thus for the realization of economic, social and Cultural rights are an obligation of all States.** It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in Particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognized therein. It emphasizes that, in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries. In this respect, the Committee also recalls the terms of its general comment No. 2 (1990)."*

The logical corollary of this interpretation is that, not only the wealthier states have the negative obligation of refraining from any coercive measure with the negative impact on the enjoyment of Economic and Social rights, but also they are under legal commitment to assist the developing countries, through international cooperation and assistance, in different forms and contexts, in realizing their development goals.

The CESCR in its General Comment No.8 addresses the question without differentiating and distinguishing between the imposition, maintenance or implementation of sanctions by the Security Council, regional organizations or states. The main focus of this Comment is on the need to strict observation of and respect to human rights. This is referred to as an obligation on the part of all actors involved.

The General Comment No.8 on “*the relationship between economic sanctions and Economic, Social and Cultural Rights*” provides that:

1. Economic sanctions are being imposed with increasing frequency, internationally, regionally and unilaterally. The purpose of this general comment is to emphasize that, whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights. The Committee does not in any way call into question the necessity for the imposition of sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law. But those provisions of the Charter that relate to human rights (Articles 1, 55 and 56) must still be considered to be fully applicable in such cases.

11. The second set of obligations relates to the party or parties responsible for the imposition, maintenance or implementation of the sanctions, whether it is the international community, an international or regional organization, or a State or group of States. In this respect, the Committee considers that there are three conclusions which follow logically from the recognition of economic, social and cultural human rights.

14. Third, the external entity has an obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.

The very crucial element which is cross-cutting almost in all paragraphs of this General Comment is that all subjects of international law, from states to international organizations particularly the Security Council are legally under an obligation to respect and protect human rights, though it accepts that the sanctions in all cases and circumstances hampered the enjoyment of human rights and fundamental freedoms of many peoples.

5. United Nations Declarations

The landmark Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (General Assembly resolution 2625 of 1970) is one of the most important UN documents which refer also to the question of economic sanctions within the requirements of international law.

It articulates the following:

“No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.”

“Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.”

6. Resolutions (soft law)

Ample resolutions were adopted within the United Nations, Non-Aligned Movement, Organization of Islamic Cooperation and others addressing the question of sanctions from different perspectives. While some rejecting the “Unilateral Coercive Measures” *per se*, as apolitical attempt to influence the policies of the targeted states or even change a specific regime, others condemn sanctions that have the effect of impairing or violating fundamental human rights within vast populations in various countries. Although Resolution A/HRC/RES/24/14 has already been the focus of this debate, it is being discussed again for other dimensions which are of critical importance to the question of sanctions. The HRC Resolution in the preamble part stresses the Following:

“Deeply concerned that, despite the resolutions adopted on this issue by the General Assembly, the Human Rights Council, the Commission on Human Rights and at United Nations conferences held in the 1990s and at their five-year reviews, and contrary to norms of international law and the Charter, unilateral coercive measures continue to be promulgated, implemented and enforced by, inter alia, resorting to war and militarism, with all their negative implications for the social-humanitarian activities and economic and social development of developing countries, including their extraterritorial effects, thereby creating additional obstacles to the full enjoyment of all human rights by peoples and individuals under the jurisdiction of other States,”

In the first Operative part, the Resolution again stresses that:

“Calls upon all States to stop adopting, maintaining or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development;”

Two points are crucial which bring new dimensions to the question at hand.

First is the relationship between sanctions on one hand and international peace and security on the other. The HRC Resolution puts the issue of unilateral coercive measures in the context of **war and militarism**. In the view of the Human Rights Council, promulgating, implementing and enforcing unilateral coercive measures is a tool for waging war and militarism against targeted peoples which have the effect of negative implications for the social-humanitarian activities and economic and social development of developing countries. It is also believed by some civil society organizations that comprehensive sanctions against the whole population for a protracted period of time such as the situation in Iraq in 1990’s constitute crime against humanity. In their views sanctions of this kind, because of their aggressive nature also constitute a serious threat to international peace and security.

Second, the Resolution highlighted also the extraterritorial effects of the sanctions particularly for the third countries. It is particularly important because extraterritorial

application of domestic laws will affect negatively the sovereignty, the right of free trade, right to self-determination and equality among nations. It could bring a rupture in the whole international economic, financial and trade system and creates negative impacts for the development of the developing countries in general and infringe upon, indiscriminately, the human rights of a vast population of a given country.

7. International Jurisprudence and decisions of International Tribunals

A wide range international legal institutions and courts referred to the principles of international law in the process of investigations and while making judgments on the cases referred to them. What could be inferred as a common denominator in all applicable cases is their emphasis on the obligation of all states and other subjects of international law to observe “human rights”, “erga omnes obligations”, “peremptory norms”, “jus cogens” or “general principles of humanity”. This obligation is applicable in all circumstances, whether for example; the sanctions are imposed by a particular state or states or an international or regional organization, or whether a particular state or states are the party to a particular Human Rights international instrument.

The case in point could be the ICJ decision on “Barcelona Traction” in which the Court emphasized on the observation of “erga omnes obligations” in all circumstances by all nations.³

A number of cases have been investigated by the international or even regional tribunals by virtue of which the concerned parties are ordered to observe human rights and fundamental freedoms beyond their borders. The ICJ decision on the question of “Partition Wall” is one of them. In this context, through the General Comment No.31 on the nature of the obligation of Member States under Article1(2) of the International Covenant on the Civil and Political Rights, the Human Rights Committee reiterates the urgency of the respect to Human Rights and fundamental freedoms by states beyond their borders. This legal Comment could be applied to different situations in which human rights of a particular people or individuals are violated by virtue of extraterritorial measures, economic sanctions or otherwise.

Furthermore, legally speaking, the implementation of coercive measures with aggressive nature in the form of comprehensive sanctions against the whole population and individuals, in an indiscriminate manner, is an act of collective punishment. This is in total contradiction with the general principles of law, and the principles of humanity, justice and fundamental human rights such as the right to life and the right to food and health. These rights form part of “*peremptory norms*” and “*jus cogens*” whose violation constitute the “*State Responsibility*”

“Draft Articles on Responsibility of States for Internationally Wrongful Acts” which has been adopted by the International Law Commission clearly stipulate the notion of State

³ -Barcelona Traction, Light and Power Company, Ltd., I.C.J Reports 1970 (The Hague: I.C.J., 1970), P. 32

Responsibility in its Articles 26, 40 and 50. In these Articles, the “DARS” holds those states accountable that violate “peremptory norms of general international law” and “Human Rights” in the form of Countermeasures or otherwise.

Those Articles are as follows:

Article 26 - Compliance with peremptory norms:

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 40 - Application of this chapter:

- 1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.*
- 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfill the obligation.*

Article 50 - Obligations not affected by countermeasures:

1. Countermeasures shall not affect:

- (a) the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;*
- (b) obligations for the protection of fundamental human rights;*
- (c) obligations of a humanitarian character prohibiting reprisals;*
- (d) other obligations under peremptory norms of general international law.*

D - The negative impact of sanctions on the enjoyment of human rights

For the purpose of the Comprehensive Report we need to receive the views and experiences of the member states of the OIC in this domain. Those views and experiences are crucial in identifying the patterns of enforcing sanctions by the sender state or states in the unilateral or multilateral form as well as the areas of impact on the enjoyment of human rights. Before that and pending the receipt of those from the Member States, the primary deliberation on the general patterns of the impact of sanctions on human rights might help clarifying the various dimensions of it.

Comprehensive sanctions and interruption of economic, trade, financial and international relations for a protracted period of time, particularly when not assessed and monitored, will cause shrinking national income which, in turn, leads to the violation of human rights of peoples and individuals in the following grounds:

- i. Considerable decline in the family income and individuals propelling them into poverty. And this is violation of the right to decent life.
- ii. Reduction in the job opportunities as a result of liquidation and bankruptcy of the factories and the production units owing to the interruption of international financial, trade and economic relations with the targeted state or states. Also the oppressive deprivation of the peoples concerned from the disposition of their means of subsistence has a crucial role in this regard.

- iii. Cumulative pressure on the vulnerable groups such as women, children, elderly, etc. and violation of their rights.
- iv. Increasing poverty arising from the intersection discrimination which will lead to the growing inequalities between men and women and other vulnerable groups.
- v. General decline in the living standards and social security particularly in the areas of right to life, health and education. One of the most important impacts of sanctions in this domain is the imposition of limitations on the government's ability to provide sufficient food and drugs especially for children. Malnutrition and scarcity in basic drugs needed to maintain the minimum requirements of a human life for the peoples and individuals in the time of sanctions, will lead to the death of children and elderly.
- vi. Brain migration and its detrimental consequences for the universities and scientific institutions and corresponding decline of knowledge among the students are among the worst impacts of sanctions which have long negative effects on the whole life of the general population of the targeted countries.
- vii. Violation of political and civil rights particularly during Smart Sanctions is also one of the possible consequences of this kind of measures. In these circumstances, normally, the political and civil rights of some individuals such as the right to movement and right to property are violated. The main cause for violation is the lack of fair trial and impartial investigation by a competent court which is the only legal basis for giving a lawful judgment to condemn the individuals and groups. Normally in the sanctions regimes, the human rights standards enshrined in the Universal Declaration of Human Rights and other applicable international instruments do not count.

E - Assessment and evaluation of sanctions

Placing the sanctions in Human Rights context, one can find that there is no system of assessment and evaluation of their impacts on the life of the targeted people. This will lead to an unhindered application and imposition of sanctions by the sender state on the targeted states. The international community should embark on developing such system, if the international human rights standards were to be applied equally and without discrimination for all peoples and individuals across the globe.

Prof. Dr. Marc BOSSUYT, the member of the former UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the current President of the Constitutional Court of Belgium, explained, during the HRC Panel on the adverse consequences of economic sanctions on the enjoyment of Human Rights which was held in Geneva in 5 April, 2013, the terms of the system of proposed assessment. This system is in fact considered as the standard to verify the legitimacy of the imposition of sanctions, unilateral or by the Security Council. The following are the terms of the proposed standard:

“(i) Are the sanctions imposed for valid reasons?”

Sanctions under the United Nations system must be imposed only when there is a threat of or actual breach of international peace and security. Sanctions should not be imposed for invalid political reasons and should not arise from or produce an economic benefit for one State or group of States at the expense of the sanctioned State or other States.

(ii) Do the sanctions target the relevant parties?

Sanctions should not target civilians who are not involved with the threat to peace or international security, nor should they target, or result in collateral damage to "third party" States or peoples.

(iii) Do the sanctions target the relevant goods or objects?

Sanctions should not interfere with the free flow of humanitarian goods and they should not target goods required to ensure the basic subsistence of the civilian population, nor essential medical provisions or educational materials of any kind. The target must have a reasonable relationship to the threat of or actual breach of peace and international security.

(iv) Are the sanctions reasonably time-limited?

Legal sanctions may become illegal when they have been applied for too long without meaningful results. Sanctions that continue for too long can have a negative effect long after the wrongdoing ceases."

Mr. Bossuyt in the same Panel termed the whole theory behind economic sanctions as "fallacious".

F – Challenges and recommendations

The international community is facing the dilemma of sanctions in that the methods, patterns of implementation and the consequences, being contrary to the purposes and principles of the United Nations and principles of international law in many cases, pose serious challenges and Threats to the human Rights standards and their enjoyment by the peoples and individuals in targeted countries and beyond. Unless these challenges are deliberated in an impartial manner and the current asymmetrical political structures are adjusted, the negative impacts arising from sanctions on the enjoyment of human rights continue unabated and the sender or sender states continue their policy of pressure on developing countries in the name of the shared values. For the purpose of this report, the challenges the international community is facing concerning illegal sanctions could be summarized briefly around the following factors;

1. The nature of international relations

The purpose of unilateral coercive measures and some kind of other sanctions is to compel targeted states to change their policies in order to serve the interests of sender state or states as mentioned by the Chairperson of the CESCR. In other instances, the purpose of

those imposing sanctions on targeted states might pursue the regime change or otherwise by pressurizing the general population.⁴ And this is politicization of international law including Human Rights law and pursuance of “Real Politik” at the cost of shared global values and principles. In fact, politicization of international law runs against the letter and spirit of the Article 28 of the Universal Declaration of Human Rights. The content of this Article implies the need to bring about harmony and synergy among the various components of the UN system in their actions on peace and security, Human Rights and development within a global order in order to serve the aspirations of the human kind. In contrast, politicization tends to misplace some selected provisions of the Charter and operationalize them against others.

2. Lack of structural system for assessment and evaluation of sanctions

Sanction Regimes, unilateral or otherwise, lacks structural system of assessment, evaluation and monitoring in the context of human rights. Sanctions, if imposed legitimately, needs indicators and objective criteria to determine, in the first place, its legitimacy particularly as regards the basis of “measures” under Article 41 of the Charter. Further, the criteria should ascertain whether the implementation processes and consequences are in full compliance with the purposes and principles of the Charter of the United Nations including human rights standards enshrined in Article 1(3), 55 and 56. General Comment No. 38 of the CESCR has also made a particular emphasis on this challenge. This study **recommends** that the Advisory Committee of the Human Rights Council, pursuant to the HRC Resolution 24/14, and the panel discussion held in 5 April 2013, embarks on identifying the elements needed to develop a structural system for assessment and evaluating the processes and consequences of sanctions. **The IPHRC Working Group on the Right to Development** may also be tasked with the deliberation on this issue and report the result of the proceedings to the IPHRC plenary in order to facilitate this recommendation.

3. Lack of accountability system for violation of human rights beyond borders through extraterritorial sanctions.

As emphasized earlier in this study, there occurred global transformative changes in international relations particularly in the sphere of economic development. States are no longer the sole influential actor in shaping the development framework and the ensuing realization of economic and social rights within an accelerated globalization. The proliferation of actors at the international level playing crucial role in development policies and decision- making processes brings new dimensions to development agenda and associated accountability system at the international level. In the current era of accelerated globalization, these actors include national and local governments and other state institutions, business enterprises including TNC’s, third countries, intergovernmental institutions and multilateral development agencies and financial institutions.

⁴ -Statement of Prof. Dr. Marc Bossuyt in the panel discussion on the Adverse Consequences of Economic sanctions on the Enjoyment of Human Rights, Para. 4, Geneva, April, 2013

The international Community, therefore, should give deeper meaning to the transnational dimensions of accountability and hold those responsible for violation of human rights beyond their borders through imposing comprehensive economic and financial sanctions against economic foundations of the targeted states. States must bear responsibility for the human rights impacts their domestic decisions, policies and legislations may have beyond their borders. By the same token, the international organizations including financial and economic institutions also must accept responsibility for their performance causing violation of human rights in the targeted states. To concretize commitments and accountability system, the international experts suggest 3 constituent pillars namely: responsibility, answerability and enforceability.⁵ These elements would help developing structural accountability system for holding those imposing illegitimate sanctions accountable. The first and foremost criteria for legitimacy are the full compliance with human rights standards.

This study also **recommends** that an accountability system is defined based on the Human Rights criteria in the sphere of sanctions. One specific recommendation in this context is that the performance of states, unilaterally and multilaterally, in the area of sanctions be scrutinized and monitored within the HRC mechanism of Universal Periodic Review (UPR) and the issue of evaluation and monitoring sanctions be part of the Agenda of relevant UN bodies within the Human Rights Context.

The whole purpose of these recommendations is to match the international cooperation enshrined in the OIC documents and Article 13, 55 and 56 of the Charter of the UN as well as the General Comment No.2 of the CESCR with the share sense of responsibility in the sanction regimes.

Finally, the IPHRC **recommends** that a representative or representatives of the Commission participate in the deliberations of the HRC Advisory Committee when the latter takes up consideration of the issue of sanctions entrusted by the HRC by virtue of the Resolution 24/14, with the view to propose its recommendations to the Committee on the issue at hand. The HRC resolution also requested the OHCHR to organize a workshop on the impact of the application of unilateral coercive measures on the enjoyment of Human Rights and present the report thereon to the 27th session of the HRC (September 2014). **It is highly recommended** also to participate in that event.

⁵ -Who will be accountable? Human Rights and the Post-2015 Development Agenda, Office of the High Commissioner for Human Rights, Geneva, P.10