



مرکز حقوق کیفری بین المللی ایران
Iranian Center for
International Criminal Law

Iranian Center for International
Criminal Law's Input

Mohammad H. Zakerhossein, the Director
Iranian Center for International Criminal law
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Dr. Alena Douhan,
Special Rapporteur on the negative impact of the UCMS

Dear Dr Douhan,

In response to your call for input to the UCM thematic reports 2022, I am writing to you on behalf of Iranian Center for International Criminal Law (ICICL), a non-governmental organization established under Dutch law with the UN Consultative Status, whose aim is to promote accountability for the serious violations of human rights and international criminal justice.

In this submission, I wish to address one of the thematic studies undertaken by you, namely “Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes, and overcompliance with sanctions”. The present input, which is based on ICICL’s experience in giving voice to voiceless victims of the

unilateral sanctions with the extraterritorial effects, shall be considered as a response to questions 2, 3, 4 and 6 posed by your call for input.

Following withdrawal from the Joint Comprehensive Plan of Action (JCPOA), the US re-imposed stringent and comprehensive sanctions against Iran. Sanctions have been designed to put Iran under a “maximum pressure campaign”, “placing unprecedented stress on Iran’s economy, [and] forcing Tehran to make increasingly difficult choices”. Despite US government claims that it has kept a ‘humanitarian window’ open in its sanction’s regime, according to Human Rights Watch, “the consequences of US sanctions have posed a serious threat to Iranian’s right to health and access to essential medicines”.

After the reimposition of the US unilateral sanctions, Molnlycke stopped selling to Iran the Meplix product. In March 2019, the company wrote to the director of EB Home, an Iranian NGO supporting EB patients, that due to the US economic sanctions, it had “decided not to conduct any business with relation to Iran for the time being. This also applies to business conducted under any form of exceptions to the US economic sanctions”.

Molnlycke produces a product that is called Mepilex absorbent foam dressing that is trusted around the world to treat a wide range of chronic and acute wounds. The product is easily conformable and highly absorbent, to effectively manage wound exudate. Every Mepilex wound dressing includes Safetac – the original less-pain contact layer with silicone adhesion. Dressings with Safetac are clinically demonstrated to minimize damage to the wound and skin at removal.



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Iranian EBs used to be treated by Mepilex purchased from Mölnlycke for years, which was so effective in harm and suffering reduction. Nonetheless, the new wave of the US sanctions in 2018 stopped the supply of Meplix by the company. Lack of access to Meplix, that is a product without an effective alternative, has caused great suffering and serious injury and pain for the EB children in Iran. Non-existence of this necessary solution results in the wound extension and infection.

So far, nearly 30 Iranian EB patients, mostly children, have lost their lives, including Mesana Mouradi (2018-2019); Massoumeh InanlouDoghouz (2009-2018); Sina GhareGhanloue (2015-2018); Zeinab Adboulmaleki (1989-2018); Khadijeh Rahmani (1988-2019); Armin Allahyari (2008-2019); Ava Ariyafar (2017-2019); Mehdi HassanPour (1990-2019); Sahar Shamsi (2008-2019).

On 14 May 2021, ICICL, as the representative of a number of EB patients, filed a complaint against Mölnlycke Health Care at the Swedish National Contact Point (NCP). The complaint concerns the human rights adverse impacts of the decision of Mölnlycke Health Care to stop selling its medical products in Iran due to the US unilateral economic sanctions against Iran, which was re-imposed in 2018. In the complaint, ICICL argued that Mölnlycke breached its due diligence and human rights obligations under the Organization for Economic Cooperation and Developments (OECD) Guidelines when it chose to discontinue sale of an

essential health care product, namely the wound dressing Mepilex, without attempting to prevent or mitigate foreseeable impacts to patients relying on Mölnlycke as the sole provider of the product in Iran. As a result, children suffering from epidermolysis bullosa (EB), a disease which is characterized by extremely fragile skin and recurrent blister formation sores and wounds to the skin, have experienced serious injury and even death. By this initiative, ICICL sought mediation from the NCP to address the irresponsible disengagement of Mölnlycke and ensure the company both assures the provision of this essential health product in Iran and provides the victims with prompt reparation.

In response to the complaint, the concerned Company deliberately insisted that its board of directors, appointed by the owner of the company, has decided not to conduct any business, directly or indirectly, in relation to Iran as long as the US sanctions are in force. Having knowledge of the humanitarian exceptions to sanctions, the company explicitly admitted that its decision applies also to business conducted under any form of exception to the sanctions. According to the company, the latter part is due to the fact that there are secondary sanctions which de facto makes it impossible to find a bank or financial institution that is willing to support in monetary transaction involving sales of any kind to Iran. This admission proves that companies do not over-comply with the US sanctions, but they exactly follow the way that has been designed by the US. Indeed, what the Swedish company did is not over-compliance with the US sanctions, but it is a direct and intended effect



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of the sanctions. This admission proves that even the exemption and exception regime is not functional and effective in practice, because of the impossibility of financial transactions. In a nutshell, as a result of the US comprehensive unilateral sanctions regime with the extraterritorial effects, the fundamental human rights to life, health, and access to medicine have been fragrantly endangered and resulted in the death of the children and the sick.

In addition, the company claimed that it has acted in a responsible way when deciding not to conduct business with Iran and has taken appropriate actions when the possibility to collaborate with UNICEF occurred. This claim is however substantiated and unfounded. The UNICEF's involvement was not an initiative taken by the Company itself. UNICEF was approached by Iranian authorities, and the Company's role was entirely passive in this regard. UNICEF simply purchased a considerable amount of the dressing made by Molnlycke. In addition, the initiative resulted in a shipment to Iran in 2020; almost two years after the Company's disengagement with Iran, that is to say it was not effective in mitigating or preventing severe damages that had already occurred. Third, the claim of the Company poses the questions why it had not contacted UNICEF earlier. The UNICEF's engagement per se challenges all defense of the Company. If UNICEF was regarded as a solution in 2020, it should have used earlier and prior to the inhumane adverse impacts on Iranian patients. The

Company claims that it did not decide to use the exemption and exceptions mechanism provided in the US regime, because of the secondary sanctions. Nonetheless, the UNICEF successful involvement shows that this excuse is not accepted. As firmly argued in our complaint, the Company failed to observe its due-diligence by, *inter alia*, failure to find a solution to mitigate the adverse impacts such as the involvement of UNICEF. If the Company was in consultation and negotiation with the Iranian stakeholders, they would be able to find a solution. The sticking point is that the Company did not intend to take a mitigating action, contrary to their claims.

In December 2021, the Swedish NCP finally made and published its initial assessment on ICICL's complaint. The decision was, however, frustrating, because the NCP decided not to go further with the complaint. ICICL had argued that, *inter alia*, according to the plain text of the OECD Guidelines, the due diligence obligations include the issue of reparation too. However, the NCP simply denied its jurisdiction to deal with this aspect in favor of the company.

Based on experience of the EB's case, ICICL would like to suggest you, as the Special Rapporteur on the negative impact of the UCMS on the enjoyment of human rights, to introduce the due diligence as one of the considerations that should be taken into account in implementing economic sanctions. Failure in observing this obligation may amount to violation of human rights. In this regard, the OECD Guidelines are of great assistance.



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According to the General Policies section of the OECD Guidelines, enterprises including Molnlycke have two obligations, namely to “avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur” (paragraph 11). Adverse impacts are “either caused or contributed to by the enterprise or are directly linked to their operations” (paragraph 14). In this regard, an enterprise shall “carry out risk-based due diligence, for example, by incorporating it into their enterprise risk management systems to identify, prevent and mitigate actual and potential adverse impacts” (paragraph 10). The Guidelines explicitly stipulate that potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation” (paragraph 14). In particular, enterprises shall “carry out human rights due diligence as appropriate to their size, the nature and context of operations the severity of the risks of adverse human rights impacts” (paragraph 5, Human Rights section).

The Guidelines require multinational companies to conduct due diligence for all their actions, including disengagement for any reason. On the subject of disengagement specifically, the OECD Guidelines, General Policies, Paragraph 22 sets out that “[t]he enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage”. This is further

clarified by the language in the OECD Due Diligence Guidance for Responsible Business Conduct: "A decision to disengage should take into account potential social and economic adverse impacts. These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers, buyers and other business relationships". Moreover, Paragraph 23 of the OECD Guidelines, General Policies stipulates that companies may engage with suppliers and other entities in the supply chain to improve their performance. Supply chain implies "business relationships" generally too. The gist of Paragraph 23 is that a company can and should engage with business partners, including governments, to encourage them to take part in addressing risk management. Although these paragraphs follow discussion of disengagement resulting from irresponsible actions of a partner, the main purpose of these provisions is to ensure and promote the broader principle of responsible disengagement. All disengagement decisions, like all business decisions, are subject to the OECD Guidelines' general due diligence requirement to follow all the relevant steps of the due diligence process, including to prevent and avoid impacts wherever possible and mitigate, including through leverage, any impacts that are not fully avoidable. In the situation of Iranian EB patients, Molnlycke has evidently failed to observe due diligence as required by the Guidelines. Molnlycke decided to stop its relationship with Iran without taking into account the risk of its decision and without offering an effective alternative to prevent adverse impacts on the human rights of the EB patients. The company concerned has been aware that in the



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ordinary course of events stopping selling its products to Iran will cause or at least contribute to the adverse impacts on the human rights of those child patients who used to benefit from its products. The adverse impacts on the EB children were widely publicized.

In light of the above, and with due regard that the necessary urgent vital needs of the EB patients shall not be jeopardized by political or economic incentives of the governments or private entities or be affected by secondary sanctions, ICICL invites the Special Rapporteur to

- i) be in contact with the OECD asking the organization to instruct all multinational companies to take into account their due diligence in their decisions and actions that are affected by unilateral sanctions.
- ii) Promote accountability for human rights violations associated with unilateral economic sanctions.


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