

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

REFERENCE:
AL USA 13/2019

2 May 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolution 36/10.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the 17 April 2019 decision of the US Department of the Treasury's Office of Foreign Assets Control (OFAC) to designate the Central Bank of the Bolivarian Republic of Venezuela (hereafter "Venezuela") under Executive Order 13850, "Blocking Property of Additional Persons Contributing to the Situation in Venezuela," as amended, thereby preventing any State or person from engaging in dollar-based transactions with it, and to limit remittances and credit card transactions by March 2020.

I would like to bring to the attention of your Excellency's Government information I have received concerning the refusal of your Government to reissue the Significant Reduction Exceptions, targeting the Islamic Republic of Iran (hereinafter "Iran"), thereby prohibiting almost all trade between Iran with all countries in the world.

I would also like to bring to the attention of your Government information I have received concerning the 17 April 2019 announcement of your Excellency's Government to permit legal action against third country companies operating in the Republic of Cuba (hereinafter "Cuba"), to restrict visas to Cuban nationals and third country nationals visiting the US, and to limit remittances to Cuba.

According to the information received:

On 17 April 2019 the OFAC extended the sanctions set out in Executive Order (E.O.) 13850, as amended, to the Banco Central de Venezuela, or the Central Bank of Venezuela, as well as to any person or entity conducting US dollar-based transactions with the bank.

On 17 April 2019, the White House announced that it will impose additional measures against Cuba, including the lifting of the waiver related to Title III of the Helms Burton Act of 1996, allowing Americans to pursue claims against third party companies and nationals for engaging in business with Cuba; the restriction of visas for persons who have trafficked in property confiscated by Cuba from an American person or entity; and the extra-territorial restriction on remittances by anyone using US dollars to Cuba.

On 22 April 2019, the White House issued a statement indicating it will not reissue the Significant Reduction Exceptions under the measures applied through E.O. 13846 “Re-imposing Certain Sanctions With Respect to Iran,” thereby applying the threat of sanctions against any country continuing to purchase, among other things, oil from Iran.

While I do not wish to prejudge the accuracy of these allegations, the serious allegations of the application of extra-territorial measures against the Central Bank of Venezuela, and against Cuba and Iran, cause serious concern regarding the legality of the measures being taken, and the impact of such measures on the human rights of the people of these States.

The extraterritorial reach of these secondary sanctions targeting non-US persons and businesses raises serious issues regarding their legality, since it is widely considered that extraterritorial application of sanctions violates international law. I would like to call your Government’s attention to the fact that unilateral measures should not be extended without a reasonable and sufficiently justified basis, as well as without an evaluation of their efficacy and impact. By seeking to prevent any person or company in the world from transacting with the Venezuelan Central Bank, Cuba or Iran, in the above-mentioned sectors, the United States appears to cause material harm to the economies, and by extension the human rights of the people of Venezuela, Cuba and Iran, without legitimate cause or justification.

In connection to the above alleged facts and concerns, the measures applied on Iran may be considered as conflicting with the principles recognized in the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken by your Excellency’s Government to ensure that the unilateral coercive measures are, in each case, compliant with the obligations of the United States under its

international legal obligations, including the extra-territorial application of such measures as specifically protested by the European Union, Canada, and others.

3. Please indicate what measures your Excellency's Government has taken to ensure that the unilateral sanctions, in each case, are reasonable, necessary and proportionate, and in accordance with national and international human rights law and standards, and in particular, what measures are being taken to safeguard the right to food, housing, and healthcare of the people of Cuba, Iran and Venezuela.
4. Noting the obligations which arise from the 3 October 2018 Order of the International Court of Justice on the "Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights," and noting the concerns raised by Member States regarding the sufficiency of existing published guidance which aims to provide assurance that the sale of agricultural commodities, food, medicine, or medical devices to Iran are not sanctionable (unless involving sanctioned Iranian individuals, organizations or financial institutions), please indicate what measures are being taken by your Excellency's Government to address these concerns, including those regarding the "chilling effect" which continues to cause over-compliance by the international financial sector, and by multinational medical vendors in particular, to address the demonstrated unavailability of certain medicines, or the prohibitive rise in their costs which is leading to the violations of the right to health.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your Government's attention to the following human rights standards:

I would like to refer your Government to articles 2 (3) and 14 International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America the 8 June 1992, which state that everyone has the right to an effective remedy, the right to be presumed innocent and the right to a due process.

Furthermore, I wish to point to article 25 (1) of the Universal Declaration of Human Rights which provide for an adequate standard of living.

I would like to remind of article 1 of the Declaration on the Right to Development adopted by the United Nations General Assembly by Resolution 41/128 on 4 December 1986, by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.

I would like to recall common article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights, which states that all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development by virtue of the right to self-determination.

I would also like to recall General Comment No. 8 of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights where the Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights (UDHR), cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions. It has been observed that although this General Comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures (A/HRC/28/74, para. 15).

Furthermore, recalling its position stated in the aforementioned General Comment 8, in its General Comment No. 12, the Committee on Economic, Social and Cultural Rights calls on States to refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries.

I would like to bring to your Government's attention the Vienna Declaration and Programme of Action which calls upon States to refrain from any unilateral measures 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 UDHR and other 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.

I would also like to remind your Government of resolution 27/21 of the Human Rights Council, which inter alia, expresses grave concern by the negative impact of unilateral coercive measures on the right to life, the rights to health and medical care, the right to freedom from hunger and the right to an adequate standard of living, food, education, work and housing. It also expresses concern for the disproportionate and indiscriminate human costs of unilateral sanctions and their negative effects on the civilian population, in particular women and children, of targeted States.

In addition, I wish to recall operative paragraph 1 of the same resolution which “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.”