

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA USA 8/2020

21 April 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Special Rapporteur on the right to development; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the promotion of a democratic and equitable international order; Independent Expert on human rights and international solidarity; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/10, 42/23, 35/6, 35/15, 36/4, 35/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged ongoing severe impact of the unilateral economic coercive measures that your Government has imposed on Cuba and on the citizens of Cuba in the context of the unprecedented global health crisis caused by the Covid-19 pandemic.

According to the information received:

As of 17 April 2020, more than 145,000 deaths worldwide have been attributed to COVID-19 and more than 2.1 million people have been confirmed to be infected by the virus. The pandemic has proved to affect all countries and peoples of the world and challenge the whole system of human rights, including fundamental rights as the right to life, the right to health, the right to personal security, and right to food. While governments are obliged to protect their population from this invisible enemy and to leave no one behind, the Government of Cuba has been effectively prevented from doing so due to the US economic, commercial and financial blockade.

Despite the restoration of diplomatic relations between the United States of America and Cuba in 2015, later policy change on 17 April 2017, in particular, the adoption of the National Security Presidential Memorandum "Strengthening

the policy of the United States toward Cuba” and further changes in its implementation, have increased the level of pressure on Cuba and its population. The United States lifted 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; and the extra-territorial restriction on remittances by anyone sending US dollars to Cuba. In practice, US companies are not allowed to sell equipment, technology or products, among others, to Cuban companies, and Cuba is forced to buy them in other markets.

Further regulatory actions were taken on 5 June and 9 September 2019 to implement the President’s foreign policy toward Cuba by two U.S. Government agencies, the Department of Commerce’s Bureau of Industry and Security (BIS) and the Department of the Treasury’s Office of Foreign Assets Control (OFAC), which mainly affect any export or re-export transactions and administer Cuba-related sanctions.

The United States maintains a comprehensive embargo on trade with Cuba despite the current COVID-19 crisis, and most transactions between the United States, or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited. The export and re-export to Cuba of items subject to the Export Administration Regulations (EAR) require a BIS license unless authorized by a license exception specified in section 746.2(a)(1) of the EAR or exempted from license requirements in section 746.2(a)(2), which undermines the efficiency of purchasing medicine, medical equipment and technology given that the issuance of these licences can take several months.

Since the outbreak of the COVID-19 pandemic, the impact of the comprehensive embargo has imposed additional financial burden, increased cargo travel time due to an inability to procure supplies, reagents, medical equipment and medicines necessary for the diagnosis and treatment of COVID-19 directly from the United States and therefore constrains the effectiveness of the response. Additionally, it delays the development of e-health and telemedicine due to difficulties in accessing affordable technology.

The embargo causes an inability to access developmental loans from the World Bank and the Inter-American Development Bank, and limits access to humanitarian aid from civil society in the United States and other countries. On March 24, Jack Ma, founder of Alibaba, the Chinese online e-commerce platform, and the Jack Ma Foundation, announced a donation of 100,000 masks and 10,000 COVID-19 rapid detection kits to Cuba. On 30 March, additional shipments of equipment such as ventilators, gloves and medical protective suits as a part of Alibaba’s worldwide donation, were announced. The US-based carrier hired to complete the shipment declined the Alibaba order at the last minute, on grounds

that the regulations related to the economic, commercial and financial blockade imposed against the destination country, prevented it from fulfilling the contract.

In this context, we would like to remind your Government of resolution 40/3 of the Human Rights Council, which outlined the negative impact of unilateral coercive measures on the right to life, right to personal security, 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. This resolution echoed the repeated concern expressed by the UN General Assembly about the continued promulgation and application by the US Government of laws and regulations, such as the Helms-Burton Act, the extraterritorial effects of which affect the sovereignty of other States, and its request “to repeal or invalidate them as soon as possible” in the 28 resolutions which persistently deplore the blockade against Cuba (see the most recent resolution 74/7 of 7 November 2019).

It is our assessment that the defeat of COVID-19 pandemic can only be achieved through joint efforts of all States and international organisations in a spirit of multilateralism, cooperation and solidarity. No one shall be left behind and denied vital medical care. We are particularly concerned about the negative impact that the embargo will have on the rights of the most vulnerable sections of the Cuban population, including persons with disabilities and older persons, who are at much higher risk of/when contracting the virus.

In her report, “Saving Lives is not a Crime,” the Special Rapporteur on Summary, Extrajudicial or Arbitrary executions points out that with regard to humanitarian services, “a State has two set of obligations: a positive obligation to agree to, and facilitate, such services and a negative obligation not to impede the offer and provision of humanitarian services to individuals and populations in need.” In addition, authorities concerned have a duty to grant and facilitate the free passage of humanitarian intervention particularly when authorities concerned are “unable or unwilling to provide the required humanitarian assistance.” In addition, Acts prohibiting or otherwise impeding humanitarian services violate State’s obligation to respect the right to life. Any death that may be linked to such prohibition would constitute an arbitrary deprivation of life.”

In the face of this global challenge, we urge your Excellency’s Government to lift sanctions, or at least suspend application of the Helms-Burton Act of 1996 until the common threat is eliminated, so as to withdraw financial and other barriers preventing Cuba from purchasing equipment, medicines, protective, antiviral and food from global markets, and getting humanitarian aid to enable its health care system to fight the COVID-19 pandemic and save lives.

In view of the urgency of the situation, we believe that this matter warrants serious attention at the highest level and would appreciate a prompt response to this letter.

For the same reason, we may consider reserve the right to publicly express our concerns in this regard, as we believe that this is a matter of public interest, and that the wider public should be informed about the implications on the rights to life and health of the continued imposition of these sanctions. Any public expression of concern on our part indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

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

Saad Alfarargi
Special Rapporteur on the right to development

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment