

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 food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Independent Expert on human rights and international solidarity

REFERENCE:
AL USA 30/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 45/5, 32/8, 42/16 and 44/11.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **negative impact on human rights of sanctions authorized by the Caesar Syria Civilian Protection Act of 2019 ("Caesar Act" – Public Law 116-92, Title LXXIV), signed into law on 20 December 2019, and Executive Order 13894, under which the first sanctions were imposed on 17 June 2020**, as these raise grave rule of law and human rights concerns.

The Caesar Act provides highly discretionary powers to the President of the United States, outside of judicial oversight, to impose sanctions blocking US property and transactions in such property as well as the inadmissibility into the United States of any foreign person that knowingly provides significant support or engages in a significant transaction with the Government of Syria or with a foreign person acting in a military capacity in Syria on behalf of the Governments of Syria, the Russian Federation or Iran; provides goods, services, technology, information or other support to facilitate the Government of Syria's domestic production of petroleum and natural gas; provides aircraft or parts used for military purposes in Syria; provides goods or services associated with operating aircraft for military purposes in Syria; or provides significant construction or engineering services to the Government of Syria.

The Caesar Act authorizes also the imposition of one or more of the special measures described in section 5318A(b) of Title 31, United States Code, with respect to the Central Bank of Syria. In particular, the Caesar Act provides highly discretionary powers to the Secretary of the Treasury, free from judicial oversight, to determine that reasonable grounds exist for concluding that the Central Bank of Syria is a financial institution of primary money laundering concern.

Our concerns are prompted firstly by the sanctions' impact on the enjoyment of human rights by Syrian and non-Syrian foreign individuals whom your Excellency's Government deems to be involved in, or supporting, activities covered by the sanctions.

Although the entities and individuals sanctioned on 17 June and 29 July 2020 are Syrian, it has come to our attention that certain activities for which they were

sanctioned receive funding from persons in China, Russia and Lebanon,¹ exposing individuals in these countries to secondary sanctions. Indeed, the Caesar Act authorizes the US President to determine that any non-US person anywhere in the world is engaging in an activity covered by the Act and to impose secondary sanctions against that person without a legal judgment in any jurisdiction that the person is guilty of a criminal act.

The extraterritorial character of the Caesar Act's sanctions raises serious concerns of legality under international law. Despite the universally recognized customary principle of universal jurisdiction, codified in multiple treaties to which the United States is party, no treaty expands such jurisdiction to the activities covered by the Caesar Act.

E.O. 13894 refers to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, which authorize the President of the United States to declare a national emergency with respect to virtually any perceived or real threat in order to exercise the power to restrict fundamental rights and freedoms, which normally can be restricted only by a court order.

The sanctions authorized by the Caesar Act and E.O. 13894 prolong and expand an uninterrupted series of sanctions imposed by your Excellency's Government since 11 May 2004, when E.O. 13338 was signed by President George W. Bush, against persons determined to engage in activities on behalf of the Government of Syria or that benefit said Government. While all of the Executive Orders authorizing such sanctions refer to the NEA and the IEEPA as legal foundations for their existence, the NEA "was intended to end perpetual states of emergency"² by requiring the automatic termination of declared emergencies after one year. Although the NEA authorized the U.S. President to prevent emergencies from automatically terminating by declaring their continuation, this does not constitute a license to subvert the NEA's intent through an indefinite string of continuations. Additionally, the President's authority to impose sanctions under the IEEPA "may only be exercised to deal with any unusual and extraordinary threat" that justifies the declaration of an emergency. Although the threat in question here may have undergone some evolution over 16 years, its longevity has transformed it into a usual and ordinary threat for the United States, making the validity of the emergency status highly dubious.

We are gravely concerned that the NEA and IEEPA have been used as an unlimited grant of authority for the President of the United States to exercise, at his discretion, broad emergency powers in both the domestic and international economic arena, without judicial review or oversight, so long as the declaration of national emergency is extended annually in contravention with article 4 of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified on 8 June 1992.

¹ "Syria Sanctions: a deeper look at the Caesar Act designations," Syria Justice and Accountability Centre, 10 September 2020, <https://syriaaccountability.org/updates/2020/09/10/syria-sanctions-a-deeper-look-at-the-caesar-act-designations/>.

² Congressional Research Service, "Emergency Authorities under the National Emergencies Act, Stafford Act and Public Health Service Act," 14 July 2020, <https://crsreports.congress.gov/product/pdf/R/R46379>.

In particular, in E.O. 13894, the President declared a national emergency on the basis of his own determination that the situation in and in relation to Syria, and in particular the recent military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria (ISIS), endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

While the Caesar Act and E.O. 13894 are designed to provide the President of the United States with emergency powers to restrict the right to property without judicial oversight, it is highly likely that the same emergency powers can be used to unduly restrict a large array of other fundamental rights and freedoms of sanctioned individuals, including the rights to freedom of movement, liberty and security, life, privacy and family life, freedom of expression, fair trial and due process, presumption of innocence, to be informed promptly about the nature and cause of the accusation, the right to defend oneself, the right to effective remedy, the right to protection by law and the right to defend one's reputation. All of these are enshrined in the ICCPR. We are deeply concerned that the Caesar Act and E.O. 13894 deny sanctioned individuals these rights.

The potential for erroneous or abusive determinations by the US President in the absence of any judicial review of evidence, and in the absence of a mechanism to prevent abuse, are problematic for the protection of human rights generally.

Another major concern is the impact of Caesar Act sanctions on the Syrian population's human rights through what appears to be illegal and disproportionate ban on any reconstruction efforts by the Government of Syria or by those, who are contracted by or affiliated with it. While we appreciate the intent of your Excellency's Government to not harm the Syrian people while pursuing accountability for the violence and destruction in the country,³ its economy has been devastated by the conflict⁴ and domestic actors independent of the Government of Syria cannot engage in reconstruction on a major scale. Such reconstruction is essential for the enjoyment of economic and social rights, including the right to development through access to basic resources, education, health services, food, housing and employment.

For reconstruction to occur in the present situation, the Government of Syria is to ensure domestic coordination of such an effort, and it has a legal obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure the right to a standard of living adequate for health and well-being, including housing and social services, and also continuous improvement of living conditions for all within its territory, independently of their sex, nationality, ethnicity, religion, social or other origin. The ICESCR is binding on Syria, which acceded to it on 21 April 1969; while the United States has not ratified it since signing it on 5 October 1977, your Excellency's Government has a legal obligation to ensure that Syria can adhere fully to the ICESCR and that measures taken by the United States do not result in Syria violating economic, social and cultural rights in its efforts related to humanitarian response and reconstruction.

³ U.S. Department of State, "Caesar Syria Civilian Protection Act," fact sheet, 17 June 2020, <https://www.state.gov/caesar-syria-civilian-protection-act/>.

⁴ See, e.g., Raja Abdulrahim and Nazih Osseiran, "Reviving Syria's Economy Is an Uphill Battle for Assad After Years of War," *Wall Street Journal*, 31 January 2020.

The Government of Syria's obligation to ensure an adequate standard of living for its people. Syria's economic situation obliges its Government to rely on non-Syrian persons for the reconstruction needed to achieve this, and it is reported to have sought out such actors.⁵ Some States note that "if an affected State cannot discharge its obligation to provide timely relief to its people in distress it must have an obligation to seek outside assistance."⁶

Of more fundamental concern is the negative impact of the Caesar Act's sanctions on the Syrian people's enjoyment of the right to life, enshrined in the ICCPR and other international human rights instruments. As your Excellency's Government has noted, the devastation of Syria's civilian infrastructure includes hospitals that protect this right. In the course of the pandemic, we are very much concerned that humanitarian NGOs involved in delivery of humanitarian aid and humanitarian projects, including reconstruction projects, in Syria may also be affected by the application of Caesar Act and corresponding E.O.s. It has been reported in particular that any licenses can only be received for life-saving activity rather than reconstruction of society projects, and that the process of using humanitarian exemptions is complicated, lengthy and expensive.

We further wish to bring to your Excellency's attention the rights of foreign persons involved in Syria's reconstruction and in restoring its oil and gas production, as the Caesar Act can subject them to sanctions that infringe on their rights to work and to freedom of movement. The right to work and to free choice of employment are guaranteed by the ICESCR and the Universal Declaration of Human Rights (UDHR). While neither is binding on the United States and the US Supreme Court has judged that the UDHR does not "of its own force" create international legal obligations for it,⁷ We wish to recall that your Excellency's Government is obliged to ensure these rights on broader grounds, as they may be deemed to constitute customary international law, and as US membership in the United Nations entails the obligation its Charter to promote universal respect for and observance of human rights for all.⁸ As for the right to freedom of movement, it is guaranteed by the ICCPR and the UDHR.

Moreover, inhibiting domestic oil and gas output prolongs fuel shortages⁹ that harm Syria's ability to ensure economic and social rights that are key to all other human rights.

Deliberately impeding Syria's reconstruction preserves the trauma of the conflict by keeping portions of the population displaced and thus denying them the possibility to return and resettle, a situation that may amount to psychological torture and other ill-treatment which can result in mental illness and foster dependence and "learned helplessness" and undermine the enjoyment of the right to the highest

⁵ Syria Justice and Accountability Centre, 'The Caesar Act: Impacts and Implementation,' 20 February 2020, <https://syriaaccountability.org/updates/2020/02/20/the-caesar-act-impacts-and-implementation/>.

⁶ UN General Assembly document A/63/10, "Report of the International Law Commission, Sixtieth session, 5 May-6 June and 7 July-8 August 2008," p. 321.

⁷ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004).

⁸ See Gillian MacNaughton and Mariah McGill, "Economic and Social Rights in the United States: Implementation Without Ratification," *Northeastern University Law Journal* 4 (2), 2012, pp. 367-69, notably citing Ian Brownlie and Guy Goodwin-Gill, *Basic Documents on Human Rights*, 5th ed. (2006), in which it is stated that the UDHR, while not a legally binding instrument, is an authoritative guide to the interpretation of the human rights to which the UN Charter commits all of its members.

⁹ Raja Abdulrahim, "Syrian Fuel Shortage Squeezes Assad's Loyalists," *Wall Street Journal*, 23 April 2019.

attainable standard of health. If such displacement results in degrading and inhumane living circumstances due to deliberate prevention of reconstruction, such State conduct may in certain circumstances amount to torture and inhumane and degrading treatment, prohibited by article 7 of the ICCPR. It may also run counter to the obligations of your Excellency's Government arising from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified on 21 October 1994.

We additionally point out that your Excellency's Government recognizes the importance of post-conflict reconstruction in the prevention of terrorism.¹⁰ Denying human rights by obstructing reconstruction fosters an environment that can be conducive to terrorism, spawn terrorists and favor their recruitment. It is to be recalled that UN Security Council resolutions have addressed grave concerns by the US Government and others about the presence of terrorists in Syria (Resolution 2170, 15 August 2014; Resolution 2258, 22 December 2015).

We would like to call to the attention of your Excellency's Government that unilateral measures should not be extended without a reasonable and sufficiently justified basis, as well as an evaluation of their efficacy and impact. In this context, we would like to remind your Excellency's Government that the legality, legitimacy, necessity and proportionality of unilateral sanctions taken without or beyond authorization of the UN Security Council, as well as without appropriate precautionary measures not to upset the fundamental human rights and freedoms, is also rather dubious from the perspective of international law and rule of law.

With respect to any current or future determination that the Central Bank of Syria is a financial institution of primary money laundering concern, we wish to point out that the consequences can be disruptive to its ability to regulate the process and actors involved in transfers of foreign funds to humanitarian actors within Syria, thereby impeding these actors in supplying food and medical assistance to alleviate human suffering. Although the Caesar Act calls on the US President to have a strategy "to help facilitate the ability of humanitarian organizations to access financial services to help facilitate the safe and timely delivery of assistance to communities in need in Syria" (sec. 7426(a)), it does not require the implementation of such a strategy or give any time frame for doing so. Moreover, any replacement for an existing and habitually used process for financial transfers would likely be less efficient during an initial period as all parties become accustomed to it, which can delay urgent humanitarian assistance; and it could encourage greater use of unauthorized channels at a time when the Central Bank is trying to curtail such activity through the Anti-Money Laundering and Terrorism Financing Authority.¹¹

In connection with the rights that give rise to our concerns about the Caesar Act sanctions, 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 our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be

¹⁰ US Department of State, Country Reports on Terrorism 2019, <https://www.state.gov/reports/country-reports-on-terrorism-2019/>.

¹¹ "Syrian Central Bank Closes Transfer Offices," *Syrian Observer*, 24 December 2019; "The Syrian 'Central' is fighting 'informal' financial transfers from abroad," *Saudi24 News*, 2 June 2020.

grateful for your observations on the following matters:

1. Please explain, from the perspective of international law, the legal grounds for introducing secondary sanctions contained in the Caesar Act. Please also explain the legal basis for the extraterritorial application of US jurisdiction with respect to these sanctions. What norms of international law provide for the legal basis for the extending the jurisdiction of the United States to the activities covered by Caesar Act?
2. We would be very grateful if you could provide a detailed answer on whether your Excellency's Government has already taken steps to eliminate or minimize the negative impact of Caesar Act sanctions on the enjoyment of human rights by individuals who become subject to them, or whether you intend to do so in the future and in which form. Also, what precautionary measures were undertaken by your Excellency's Government to preclude any adverse impact on the enjoyment of human rights and fundamental freedoms by innocent people living in Syria?
3. How will your Excellency's Government monitor the use of the Caesar Act in accordance with its intent to not harm persons living in the territory of Syria? How will it ensure that the population's human rights are not violated? If your Excellency's Government becomes aware of violations, what corrective actions does it intend to take ? Please explain.
4. Please explain in details what measures have been taken by your Excellency's Government to ensure that the sanctions are, in each case, compliant with with rule of law principles of legality, legitimacy, necessity and proportionality, as well as with its obligations under the UN Charter, international human rights law and other international obligations to guarantee that the rule of law is observed.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any negative impact on the human rights of persons subject to the sanctions authorized under the Caesar Act. In view of the concerns we have expressed in the present communication, we urge your Excellency's Government to repel the Caesar Act and lift sanctions in order to save lives and well-being of innocent people living in Syria or at least to reconsider the sanctions contained in it with a view toward full compliance with rule of law principles of legality, legitimacy, necessity and proportionality, as well as with the United States' obligations arising from the UN Charter, international human rights law and other international obligations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The

press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

Annex

Reference to international human rights law

In connection with the above concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

We refer to article 14 of the International Covenant on Civil and Political Rights (ICCPR) with respect to the due process standards. Article 14(2) of the ICCPR establishes that all persons charged with crimes are to be presumed innocent until their guilt is established through legal procedures. As a criminal charge can be essential for establishing one's innocence as well as guilt, the presumption of innocence can only be strengthened if no criminal charges are levied. As for determining whether a crime has been committed, article 14(1) of the ICCPR holds that everyone charged with a crime "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law," during which the accused person has the right to defend himself (article 14(3)(d) of the ICCPR). This allows the presumption that if no charge is brought, the act in question does not rise to the level of a crime for which a fair hearing shall be held.

The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights (HRC General Comment No. 32, para. 6). The Human Rights Committee finds no justification for derogation from these guarantees during emergency situations as well as in the time of war (HRC General Comment No. 29, para. 16). In the same way, the prohibition to hold anyone "guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed" (article 15 of the ICCPR) cannot be derogated from even in a time of emergency (article 4 of the ICCPR). As for the national emergency declared in E.O., 12957, it is highly questionable whether it meets the standard required to form a basis for derogations under that article (HRC General Comment No. 29).

We wish to recall that the due process procedure also is addressed by article 9(2) of ICCPR, which requires that an accused person be promptly informed of the charges against him, and by article 2 of the ICCPR, which states that "any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" (article 2(3)(a)) of the ICCPR, and that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy" (article 2(3)(b) of the ICCPR). Furthermore, article 15(1) of the ICCPR states that "[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

We additionally refer also to article 17 of the ICCPR, which is relevant insofar as it prohibits "arbitrary or unlawful interference with [a person's] privacy, family, home or correspondence" as well as "unlawful attacks on his honour and reputation."

The extraterritorial character of Caesar Act's sanctions raise serious concerns of legality under international law. Despite the universally recognized customary principle of universal jurisdiction, codified in multiple treaties to which the United

States is party, no treaty expands such jurisdiction to corruption or single human rights violations or crimes including starting an illegal logging network, money laundering, bribery, and arms deals with designated entities; and even being a family member of someone else cannot be qualified as an international crime.

Any measures taken in response to the violation of collective *erga omnes* obligations – serious breaches of obligations under peremptory norms of general international law (article 48(b) of the Draft articles on Responsibility of States for Internationally Wrongful Acts ((DARS) - A/56/10) shall be in conformity with international law and shall not violate fundamental human rights (article 50(1b) of the DARS). In a case when the alleged activity provides a solid ground for the exercise of universal jurisdiction, customary international law prescribes the obligation of adjudication with full observance of fair trial standards.

Regarding the obligation to maintain a favourable climate for the enjoyment of human rights by not acting in ways that can cause relations between States to deteriorate, we refer to the Manila Declaration on the Peaceful Settlement of International Disputes (UN General Assembly Resolution 37/10, 15 November 1982 (A/37/590)), which sets forth the following obligation in part I(1) of the Annex: “All States shall act in good faith and in conformity with the purposes and principles enshrined in the Charter of the United Nations with a view to avoiding disputes among themselves likely to affect friendly relations among States, thus contributing to the maintenance of international peace and security.”

We also bring to the attention of your Excellency’s Government article 25 of the Universal Declaration of Human Rights (UDHR), which makes clear that an adequate standard of living includes “medical care and necessary social services” for which a civilian infrastructure is required. We would like to further refer to the International Covenant on Economic, Social and Cultural Rights (ICESCR) with respect to the right to an adequate standard of living. While the United States of America has not ratified the ICESCR, your Excellency’s Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification. This includes the obligation on the part of all State parties to protect “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions (article 11(1) of the ICESCR). States are also obliged to “take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

The Committee on Economic, Social and Cultural Rights, in General Comment No. 4 on the right to adequate housing (1991) elaborates on the concept of “adequacy” and identifies aspects of the right “that must be taken into account for this purpose in any particular context.” These include: “Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”

Furthermore, article 12 of the ICESCR protects the right to health including an obligation on the part of States to ensure that health facilities, goods and services are

accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination (General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, para 12). States should also refrain from limiting access to health services as a punitive measure during armed conflicts in violation of international humanitarian law (Ibid, para 34).

In regard to acts that prevent another State from fulfilling its international legal obligation under to ensure an adequate standard of living, we bring to the attention of your Excellency's Government article 16 of the Articles on State Responsibility for Internationally Wrongful Acts: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State." This must be considered in the context of the International Court of Justice's advisory opinion in *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase*, which applies to Syria's obligations under the ICESCR in noting that "refusal to fulfil a treaty obligation involves international responsibility,"¹² as noted in the International Law Commission's Commentary to art. 1.¹³

We refer additionally to article 8(1) of the Declaration on the Right to Development (UN General Assembly Resolution 41/128, 4 December 1986): "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income." While Resolution 41/128 is not legally binding in itself, its content is largely founded in the right of a population to a enjoy a situation of well-being, which States are obliged to respect under numerous human rights instruments including the UN Charter, the ICESCR, the UDHR and others.

With respect to the right to life enunciated in article 6 of the ICCPR, it is a non-derogable right. We call your attention to the UN Human Rights Committee's General Comment No. 36 (2018), in which it states that this right "should not be interpreted narrowly" and that it pertains to medical infrastructure such as hospitals insofar as the right "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death."

With respect to the right to work and the right to freely choose one's employment, we refer to article 23 of the UDHR, and to article 6 of the ICESCR.

Regarding the inadmissibility of sanctioned foreign persons to a country, We refer to article 12 of the ICCPR on freedom of movement, which states that "No one shall be arbitrarily deprived of the right to enter his own country." The UN Human Rights Committee, in General Comment No. 27 (1999), specified that "(t)he scope of 'his own country' is broader than the concept 'country of his nationality.' It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien." Restrictions on freedom of movement are also subject to the due process rights elaborated in article 14 of the ICCPR. Additionally, freedom of movement is

¹² ICJ Reports 1950, p. 228.

¹³ https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

ensured under article 13 of the UDHR.

We further wish to bring to the attention of your Excellency's Government the relevance of freedom of movement to the right to life. It is routine for nationals of a country to travel abroad to seek vital medical treatment that may be more readily available, or only available, in another country. The right to travel abroad for the purpose of ensuring the right to life operates as a corollary to the right to leave one's country.

Furthermore, we refer to the duties of the United States as a member of the United Nations. The UN Charter, in its articles 55 and 56, creates the obligation to promote universal respect for and observance of human rights for all.

Lastly, we wish to recall that as a party to the ICCPR, the United States is authorized under article 4 to derogate from the obligations it imposes on States Parties "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed." The ICCPR allows derogations from its obligations only "to the extent strictly required by the exigencies of the situation." Thus, a derogation may only occur in the case of a threat to "the life of the nation," which the UN Human Rights Committee, in General Comment No. 29 (2001), deems to be an actual and direct existential threat to the State rather than a threat of disruption to daily life within the State; and it must be limited only to those obligations in the ICCPR that are absolutely necessary for addressing such a threat.

We refer also to the Human Rights Committee's General Comment No. 5 (1981), in which it states that derogations under article 4 of the ICCPR are to be considered exceptional and temporary, and must "only last as long as the life of the nation concerned is threatened."

Article 4 of the ICCPR also requires a State Party derogating from its provisions as the result of a public emergency to "immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated." General Comment No. 29 notes that such notification is essential for allowing the Human Rights Committee to assess whether derogations are justified by the circumstances for which an emergency is declared.