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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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: AL USA 23/2021

12 July 2021

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 development; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 45/5, 42/23, 42/16, 36/4, 44/11 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the effect of sanctions on the access to adequate healthcare and treatment by Venezuelan nationals suffering from oncological deceases. More specifically, the situation regarding former recipients of the beneficiary programmes of the Simon Bolivar fund, previously carried out jointly with the government of Venezuela, who have been disregarded and left to perish due to a calculated transfer of ownership and economic control of Citgo Petroleum Corp. (Citgo) on the basis of private and international interest.

According to the information received:

Several dozen persons, both inside and outside of Venezuela, have been arbitrarily removed from a life-saving programme due to a series of executive orders by way of sanctions. Additionally, former beneficiaries are no longer able to receive medical assistance, according to previously signed agreements guaranteeing access, funding and care for transplants and treatment.

A health programme financed by Petróleos de Venezuela S.A. (PDVSA) and its subsidiary Citgo, through their private foundation (Fundación Simon Bolivar)¹, previously affiliated with the government of Venezuela, used to provide medical assistance to persons in precarious economic conditions since 2009.

¹ The Simon Bolivar Foundation is a private non-profit organization that is the charitable wing of CITGO. It was established in 2006 the patients in accordance with the agreements to guarantee the transplants, treatment to offer medical assistance to patients with complex diseases.

Candidates to the medical assistance programme were evaluated by the Foundation for Organ, Tissue and Cellular Donations and Transplants (Fundavene), an agency of Venezuela's Health Ministry, and then referred for incorporation into the health programme financed by Fundación Simon Bolivar / PDVSA-CITGO.

Patients were later referred to various clinical centres outside of the country to receive specialized treatments unavailable in Venezuela. The continuation of the programme abroad was administered through non-profit organizations like the Foundation for Bone Marrow Transplants (ATMO²), with the continuous sponsorship of the Fundación Simon Bolivar. The programme provided beneficiaries with all or a large portion of the costs of treatment and the travel of the patient in company of at least one family member. In addition, Fundación Simon Bolivar also had agreements with hospital centres outside of the country, through which it was committed to paying off debts arising from care and specialized examinations of the beneficiary patients, the majority of whom were children and adolescents.

PDVSA-CITGO (Fundación Simon Bolivar) had routinely assumed the costs patients and their accompanying family members incurred relating to their round-trip airfare, medical check-ups, payment of transplants, treatments and specialized examinations, housing, food, transportation, cell phones and internet, medications, ambulance services and emergencies.

Since 2015, through Executive Order (E.O.) the government of the United States of America has imposed targeted sanctions against Venezuelan individuals and entities alleging their involvement in drug trafficking. In 2006, an arms embargo was imposed on the grounds of insufficient cooperation in countering terrorism. In 2014 and 2015, more targeted sanctions were enforced against Venezuela citing alleged suppression of protesters, and other human rights violations and criminal activity. These sanctions included assets freeze, and bans on transaction and travel. On 27 August 2017, sanctions (E.O. 13808) were imposed against the State-owned company, Petróleos de Venezuela, S.A. (PDVSA) Venezuela's main source of foreign revenue, blocking all transactions and U.S. financial market. access to the On 1 November 2018, additional sanctions were placed on other mining, food, and banking and financial services through EO 13850.

In 2019, with the recognition of Juan Guaidó as the winner of the presidential elections by the United States, further sanctions³ were imposed on PDVSA, the

² La Associazione per il Trapianto di Midollo Osseo (ATMO, by its Italian initials) was constituted on November 15, 2006, according to the laws of the Republic of Italy, and was identified as the operating branch in the country of the Foundation for Bone Marrow Transplants (FTMO). FTMO was created in Venezuela in 1999 and is headquartered in the city of Maracaibo. Both entities were constituted to facilitate medical care for Venezuelan patients with cancer, liver disease or requiring bone marrow transplants.

³ Action Intensifies Pressure on Maduro and Regime Insiders, Demonstrates U.S. Commitment to Leverage Economic Pressure [...] holding accountable those responsible for Venezuela's tragic decline, and will continue to use the full suite of its diplomatic and economic tools to support Interim President Juan Guaidó" <u>Treasury Sanctions Venezuela's State-Owned Oil Company Petroleos de</u> Venezuela, S.A. | U.S. Department of the Treasury

Venezuelan Central Bank, and key government officials. These sanctions were mainly put in place to pressure Nicolas Maduro to renounce his victory, and hand over the control of the presidency to the leader recognized by the United States. In addition, EO 12857 of 25 January 2019, and EO 13884 of 5 August 2019, made it difficult for PDVSA to find vessels to ship crude oil to non-USA markets, and interrupted purchases from established clients, due to overcompliance practices and fears of reprisals from the USA.

These executive orders establish a set of prohibitions on legal persons and entities that prevent them from carrying out commercial and financial transactions with State owned agencies and/or companies in Venezuela, particularly major companies such as Petróleos de Venezuela S.A., representing the main source of national income.

On 21 November 2018, in an attempt to continue with the medical assistance programme, despite the imposition of sanctions, CITGO issued a payment for one million, six hundred seven thousand, eight hundred seventy-one euros and fifteen cents, \notin 1,607,871.15 (the total debt accrued to that date) at the request of PDVSA, in order to pay medical providers. The payment was not processed by Banks because it corresponded to expenses related to PDVSA.

On 11 February 2019, there was an attempt from the financial entity Bank of Economic and Social Development of Venezuela (BANDES) to carry out a payment of the total debt to date of four million, eight hundred fifty-one thousand, two hundred fifty-two euros with seventy-nine cents, \notin 4,851,252.79. This could not be processed due to the refusal of intermediary banks in carrying out operations coming from Venezuela.

On 20 February 2019, PDVSA requested a payment through the financial entity "Novo Banco" of Portugal for the amount of the total debt, which was rejected. The next day, on 21 February 2019, there was another attempt for a payment order from Novo Banco, which was also rejected. PDVSA introduced a protective order in Portuguese courts due to the refusal by Novo Banco to process the payments to care for patients with chronic diseases.

Due to the nature of the sanctions set against the Government of Venezuela, the health and economic sectors of the country have been undermined, causing impairment to millions of citizens. The implementation of the US Department of the Treasury's Office of Foreign Assets Control (OFAC) of Executive Orders No. 13808⁴, 13850⁵, 13884⁶ and 13857⁷, blocking Petróleos de Venezuela, S.A., the Venezuelan state-owned oil and natural gas company (PDVSA), from accessing the financial system as well as CITGO petrol assets, has only intensified these disastrous effect.

⁴ <u>13808.pdf (treasury.gov)</u>

⁵ Federal Register :: Blocking Property of Additional Persons Contributing to the Situation in Venezuela

⁶ <u>13884</u> 0.pdf (treasury.gov)

⁷ <u>13857.pdf (treasury.gov)</u>

On 24 October 2019, the United States Government modified a current sanction previously imposed on PDVSA to benefit CITGO creditors, paying a debt of US \$913 million in the form of bonds. In doing so, it transferred control of the CITGO board of trustees, to opposition leader Juan Guaidó, who proclaimed himself as the legitimate president of Venezuela, following the 2018 elections. Default of said loans would have caused the auctioning of CITGO stocks and loss of CITGO control by Venezuela. This includes one refinery, oil ducts, and a chain of gasoline stations valued at more than \$10.000 million dollars. This decision was taken less than three days following the renewal of several oil companies, permitted to work in Venezuela. Until these changes, CITGO had been constrained to purchase oil from other countries in Latin America and Africa.

As a result of application of the mentioned U.S. national legislation as well as zero-risk policy taken by banks, Venezuela nationals, which used to benefit from the medical assistance programmes in transplantation cases abroad, lost access to this life-saving medical treatment. This, in the context of a sanction regime that has led to the deepest recession in modern history, shrinking the economy of Venezuela by 80%, with an inflation rate of about 2.300% per year.

Cases Abroad (See annex II)

During February 2019, following the shift of CITGO capital control as a result of sanctions on the Government of Venezuela and PDVSA, several former beneficiaries of financial aid received a letter from the Simon Bolivar Foundation, notifying them of an abrupt termination of treatment. More than 12 adult patients as well as 8 children at the time of selection, had been undergoing treatment in Italy, and 5 other children in Argentina at the time the programme was cut. Patients are unable to pay for the cost of medicine, medical tests, examinations, trips to the hospital or emergency ambulance services. Unable to pay their treatment, many were forced to return to Venezuela, but some of the patients are still residing abroad under precarious conditions. Many of these patients need clinical monitoring and specialized treatment.

Evictions and cancelled treatments due to lack of payment, inability to pay mobile or internet services in order to be contacted by the hospitals, hygiene products, medicines, or food, have afflicted the lives of these former programme beneficiaries. Several of them and their relatives were forced to request housing at shelters where they must share spaces with other people, even under the consideration of immunodeficiency problems and critical health conditions of their family members, and some have found themselves in situations of homelessness.

National Cases (see Annex II)

The Government of Venezuela, which used to cover medical expenses for medical examination, treatment, travel and housing expenses for patients and their family members in transplantation cases abroad – primarily in Italy and Argentina, due the unavailability of such treatments in the country - stopped

financing due to its inability to access funds, including its own funds, and carry out bank transfers as of the moment sanctions were been imposed.

Most patients in need of funding and currently undergoing treatment requiring bone marrow and kidney transplants are concentrated in three hospitals: José Manuel de los Ríos Children's Hospital, located in the city of Caracas, Padre Machado Oncological Hospital, located in the Capital District of Caracas, and the Dr. Alfredo Van Grieken University Hospital, located in the city of Coro in Falcón State.

More than 14 children, including 3 children ages 1-3, have died in 2017 - 2020 awaiting acceptance into the programme, for urgent liver, kidney or bone marrow transplants. In addition, due to the current situation of global pandemic, all persons in similar medical conditions are facing hazardous situations with moral and physical suffering.

Amongst the patients affected, Isabella Lisandri Guevara Albornoz, at the time three months old, underwent a Kasai procedure and received a hepatic transplant from her mother on 26 November 2018. In a post-surgery complication, her surgical wound became infected and she presented with an intra-abdominal abscess, severe stenosis of the hepatic artery with a spleen clot and enterocutaneous fistulas, for which she was unable to eat for 20 days, spent one month in intensive care, and remains in post-transplant risk. She has yet to be discharged and needs to remain under specialized medical care. She has a history of atresia in her bile ducts and intestinal malrotation.

One patient, Diego Jesús Arvelo Marrufo born on 21 February 2020 was diagnosed with Biliary Artesia. He has died aged 1, while awaiting treatment under the programme, due to lack of adequate medical care.

While we do not wish to prejudge the accuracy of these allegations, the serious consequences of the application of primary and secondary extra-territorial measures against the Government of Venezuela and companies related to it, the zero-risk policy of banks and other state and private institutions, is a matter of serious concern to the mandates, especially regarding the legality of the measures taken, and their impact on the human rights of the people of Venezuela and other affected people, especially as regards access to healthcare, the right to life and to physical and psychological integrity.

It is our understanding that any measures taken by states without or beyond authorization of the UN Security Council can only be taken as retaliation or countermeasures in full compliance with the law of international responsibility. In accordance with art. 50 of the Draft Articles on Responsibility of States for international wrongful acts, obligations of humanitarian character as well as fundamental human rights shall never be affected, even when seeking to implement international responsibility of states. Humanitarian concerns should thus always be taken into account.

The extraterritorial reach of secondary sanctions targeting non-US persons and businesses raises serious issues regarding their legality, and results in growing overcompliance, selection of zero-risk policies by banks and other third state governmental and private companies, and has as a result a devastating effect over fundamental human rights including the right to health, freedom from inhumane treatment and right to life. We would also like to remind that the right to live and adequate standard of health and living constitute an integral part of the right to development.

Seeking to prevent the government of Venezuela getting access to funds and possibility to get revenues from the oil sector by your Excellency's government, impedes the possibility of Venezuela to guarantee basic economic and social rights of its people including in the sphere of the healthcare, especially severe affecting those suffering from serious diseases and therefore endangering their lives.

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 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 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 your Excellency's Government has taken to ensure that the unilateral sanctions implemented on Venezuela are reasonable, necessary, proportionate, and in accordance with international law, especially international human rights law and humanitarian standards, and effectively guarantee the safety and access to adequate healthcare of the entire population, more specifically, vis-àvis the extraordinary need for medical equipment, medicines, international funding, and similar considerations of all states during this global pandemic, and ensured.
- 3. Please indicate what measures have been taken, or are envisaged, by your Excellency's Government to ensure that the unilateral coercive measures imposed on Venezuela are, in each case, compliant with the obligations of the United States under its international legal obligations, including under the right to health.
- 4. Please indicate what measures have been taken by your Excellency's government to establish that the sanctions implemented guarantee the basic rights of Venezuelan citizens who may not be privileged to programmes under the control of the opposition government.
- 5. Please clarify why the previous beneficiaries of the programme were arbitrarily omitted, causing extreme hardship to the victims and their families, and in some cases, even death.
- 6. How does the newly issued General License No. 39 facilitate / is predicted to facilitate the health-related transactions as tied to COVID-19, including transactions involving banks, and how this may be used, if

at all, to alleviate the secondary sanctions placed on the health system of Venezuela.

- 7. Please provide more information on the control and/or justification that has to be provided by organizations, private or public, that wish to engage in business, as permitted by General License No. 39, with the Government of Venezuela or other private entities.
- 8. Please provide information about the steps taken by Your Excellency's Government to assess that the current imposition of the sanctions against Venezuela is aligned with the obligation to ensure the protection of humanitarian and fundamental human rights as per the Draft law on the international responsibility of starts.

This communication and any response received from your Excellency's Government will be made public via the communications reporting <u>website</u> 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 halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We are drawing Your Excellency's Government's attention to the possibility that we may publicly express our concerns in this case, given its urgency, that in our view warrants prompt attention. Every day that passes, puts indeed the very life of these patient at further risk of death. While the information in our possession, based on firsthand accounts appears to be reliable, we would be grateful for your view and comments, and especially the measures that are being taken, to save the life of these adult and children patients. Any public comment on our side will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question and to seek its views.

A copy of this communication is being sent to the Bolivarian Republic of Venezuela, a similar letter is being drafted to Banco Novo of Portugal, and a copy of that communication will be sent to Portugal.

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

Tlaleng Mofokeng

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

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

Annex I

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. Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights guarantee the right of every individual to life and security and not to be arbitrarily deprived of life. States parties therefore have the duty to respect and ensure the right to life extends to all threats that can result in loss of life. States parties may be in violation of article 6 even if such threats have not actually resulted in loss of life."

In addition, 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.

We would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by the United States on 5 October 1977. While the United States is yet to ratify the ICESCR, as a signatory, it has an obligation to refrain from any acts which would defeat the object and purpose of the Covenant prior to its entry into force. Article 25 (1) of the Universal Declaration of Human Rights states that everyone has the right to a standard of living adequate for the health and well-being. The content of this right is delineated in CESCR General Comment No. 14, which states that Health is a fundamental human right, indispensable for the exercise of other human rights, and conduction of a life in dignity and contains freedoms and entitlements

We 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. We also wish to recall Article 6, which raises the need for co-operation by states with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms, which are interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights. The Declaration further calls on States to take all necessary measures for the realization of the right to development and to ensure equality of opportunity for all in their access to basic resources, education, health, food, housing and employment (art. 8). In addition, at the international level, the Declaration places a duty on States to cooperate with each other, both to promote more rapid development of developing countries and to remove obstacles to comprehensive development (arts. 3 (3) and 4 (2)). We refer to the Guidelines and recommendations on the practical implementation of the right to development, which recommend that Governments funding development programmemes should not impose conditionalities on beneficiary Governments since doing so could have adverse unintended effects on the population. (A/HRC/42/38, para 127).

We 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.

We 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).

We would like to bring to your Government's attention the Vienna Declaration and Programmeme 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.

In this context, we would also like to draw the attention of your Excellency's Government to paragraph 1 of General Assembly Resolution 68/156, which "[c]ondemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment".

We 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.

In addition, we 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."

In addition, Article 2 (7) of the charter, constitutes the explicit call for respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes. In addition, the General Assembly, at its fifty-sixth and fifty-eighth sessions, adopted two resolutions entitled "Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes". Resolution 56/154 affirmed "that the principles enshrined in Article 2 of the Charter of the United Nations, in particular respect for national sovereignty and non-interference in the internal affairs of any State, should be respected in the holding of elections". Resolution 58/189

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States ratified on 1994. This includes an obligation on the part of all State Parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. According to Article 12, States have an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services

As a final point, I would like to draw your attention to Chapter II, article 49 on Countermeasures of the Responsibility of States for Internationally Wrongful Acts, Object and limits of countermeasures, which states that an injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations, nevertheless, countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question. In addition, Article 50 highlights that countermeasures shall not affect the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations; the obligations to comply with protection of fundamental human rights; the obligations of a humanitarian character prohibiting reprisals; nor other obligations under peremptory norms of general international law.

Annex II

List of victims, children. Awaiting transplant under the Simon Bolivar Foundation Programme

First / Family Name	Sex	Date of birth	Age	Illness	Location
-					

First / Family Name	Sex	Date of birth	Age	Illness	Location