

Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Independent Expert on human rights and international solidarity

Ref.: AL OTH 259/2021
(Please use this reference in your reply)

16 December 2021

Dear Sir,

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 and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 45/5 and 44/11.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has (44) thematic and (13) country mandates on a broad range of human rights issues.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received.

Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including private entities or companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications.

The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning **the freezing of gold assets of the Central Bank of Venezuela (CBV) by the Bank of England¹ (BOE)**, which has been holding the gold on behalf of the CBV. The freeze has occurred in the context of a dispute about the legitimate holder of governing authority in Venezuela after elections in 2018. It may constitute a violation of international obligations towards a state and raises grave human rights concerns.

According to the information received:

¹ Formally, the Governor and Company of the Bank of England.

The Central Bank of Venezuela is an entity with its own legal personality that is part of the state's governing structure. In performing its functions, it is not subject to directives from the Venezuelan Government.²

The Bank of England is a chartered corporation that was nationalized in 1946. Its capital is wholly owned by the Government of the United Kingdom.³

The European Union imposed unilateral sanctions against Venezuela on 13 November 2017, citing concerns about democracy, the rule of law and human rights.⁴ The United Kingdom, after implementing Brexit, continued the sanctions under its own domestic authority as of 31 December 2020.⁵

In 2018, as separate sanctions imposed by the United States blocked Venezuela from conducting trade through commercial banks, the Central Bank of Venezuela began bartering some of its gold for food from Turkey to supply the Government's "CLAP" program, which fights food insecurity and malnutrition by providing food boxes to needy Venezuelans.⁶

The Bank of England has stored some of the Central Bank of Venezuela's gold. The CBV sought in 2018 to reclaim this gold, around 14 tonnes, but the BOE refused to release it amid a dispute referring to the unclear authority for asset control.⁷ Maduro and Guaidó had appointed rival boards of directors for the CBV, and each had claimed authority over the gold.⁸

By early 2019, the amount of the CBV's gold held by the BOE had risen to around 31 tonnes after the CBV closed out a gold swap arrangement with Deutsche Bank in which the gold served as collateral. This brought the value of the gold sought by the CBV from the BOE to more than \$1 billion.⁹

As the Central Bank of Venezuela continued to try to recover all of its gold held by the Bank of England, the BOE continued to refuse to release it.¹⁰

In a recent case heard by the Supreme Court of the United Kingdom involving the "Guaidó board" and the "Maduro board" of the Central Bank of Venezuela, as well as the UK Secretary of State for Foreign, Commonwealth

² Constitución de la República Bolivariana de Venezuela, 1999, arts. 318 and 320, <http://www.minci.gob.ve/wp-content/uploads/2011/04/CONSTITUCION.pdf>

³ Bank of England, "The Bank of England Act 1998, the Charters of the Bank and related documents," pp. 3-4, <https://www.bankofengland.co.uk/-/media/boe/files/about/legislation/1998-act.pdf>

⁴ Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017D2074&from=FR#d1e142-60-1>

⁵ Venezuela (Sanctions) (EU Exit) Regulations 2019, <https://www.legislation.gov.uk/ukxi/2019/135/made>

⁶ Imdat Oner, "Venezuela, Turkey using gold to evade U.S. sanctions," *Miami Herald*, 15 January 2019, <https://www.miamiherald.com/opinion/op-ed/article224594180.html>; Mayela Armas and Corina Pons, "Venezuela gold holdings in Bank of England soar on Deutsche deal: sources," Reuters, 21 January 2019, <https://www.reuters.com/article/us-venezuela-gold-idUKKCN1PF1Z8>

⁷ Mayela Armas, Exclusive: Venezuela seeks to repatriate \$550 million of gold from Britain – sources," Reuters, 5 November 2018, <https://www.reuters.com/article/us-venezuela-gold-exclusive-idUSKCN1NA1Q7>; Stephen Gibbs, Maduro scrambles to bring Venezuela's gold back from the UK," *The Times*, 7 November 2018.

⁸ Russell Hope, "Venezuela goes to court over £800m of gold held by Bank of England," Sky News, 22 September 2020, <https://news.sky.com/story/venezuela-goes-to-court-over-800m-of-gold-held-by-bank-of-england-12078461>

⁹ Mayela Armas and Corina Pons, "Venezuela gold holdings in Bank of England soar on Deutsche deal: sources," Reuters, 21 January 2019, <https://www.reuters.com/article/us-venezuela-gold-idUKKCN1PF1Z8>

¹⁰ Russell Hope, "Venezuela goes to court over £800m of gold held by Bank of England," Sky News, 22 September 2020, <https://news.sky.com/story/venezuela-goes-to-court-over-800m-of-gold-held-by-bank-of-england-12078461>

and Development Affairs as Cross-Appellant, the latter formally expressed the absolute recognition by the UK Government of Guaidó as Venezuela's head of state and argued that under the United Kingdom's "one voice policy," the Court, and by implication the Bank of England, are constrained to act accordingly.¹¹

The Bank of England asserts that it carries out its responsibilities independently from the UK Government despite the latter's ownership, and states that it acts "free from day-to-day political influence."¹² Although the UK Government has the power to issue directions to the BOE, "(t)o date, the Government's power to issue directions has not been used."¹³

The UK Government has affirmed that the decision to not release the Central Bank of Venezuela's gold was made by the Bank of England and not the Government, noting that "the Bank is responsible for dealing with requests from its customers should they wish to repatriate their gold. (The Government) only has direct control over the UK Government's own holdings of gold within its official reserves, which are held by the Bank of England."¹⁴

The Government of Venezuela has stated that the gold, once reclaimed, would be used for acquiring "supplies, raw materials, food (and) medicines."¹⁵ The Venezuelan Government has concluded an agreement with the United Nations Development Programme (UNDP) in which part of the Central Bank of Venezuela's gold held by the Bank of England, once released, will be used for obtaining food and medicine.¹⁶

Without prejudging the accuracy of the aforementioned information, it is essential to remind the Bank of England that it is neither its prerogative as a financial institution, nor its responsibility to manage, diverge, expropriate, withhold or otherwise control the funds or assets of central banks of foreign governments in order to comply with a national political agenda, and that these over-compliance initiatives are contrary to international law.

It is also important to remind the BOE that non-recognition of a government or results of elections does not eliminate the personality of a state. The possibility of the effective government, which controls the territory of a state, to represent a state, is traditionally not disputed under international law.¹⁷ Moreover, in accordance with customary norms on the immunity of state property, assets of central banks and property used for public functions belong to the relevant states rather than to their governments or any individual and are immune from any civil action under

¹¹ UKSC 2020/0195, Case on behalf of the Foreign Secretary, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003665/20210818_Foreign_Secretary_s_Case_18_June_2021.pdf

¹² Bank of England, "Who owns the Bank of England?" (video), transcript, <https://www.bankofengland.co.uk/knowledgebank/who-owns-the-bank-of-england>

¹³ Bank of England, "Our History," updated 22 January 2021, <https://www.bankofengland.co.uk/about/history>

¹⁴ Response by Her Majesty's Treasury to a question in the UK Parliament, 15 March 2019, "Freezing of assets: Venezuela – Question for Treasury," <https://questions-statements.parliament.uk/written-questions/detail/2019-03-12/231403>

¹⁵ James Booth, "Venezuela's Nicolás Maduro calls for gold held in Bank of England to be returned," *City AM*, 12 February 2019, <https://www.cityam.com/venezuelas-nicolas-maduro-calls-gold-held-bank-england/>

¹⁶ Deisy Buitrago, "Exclusive: Venezuela reaches deal with U.N. to buy food, medicine with gold – central bank," Reuters, 27 May 2020, <https://www.reuters.com/article/us-venezuela-politics-centralbank-exclus-idUSKBN23333N>

¹⁷ James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press, 2012), p. 151; C. Warbrick, "States and Recognition in International Law," in M.D. Evans, ed., *International Law*, 2nd ed. (Oxford: Oxford University Press, 2006), p. 253-256.

international law.¹⁸

It is further noted that despite the numerous requests to release the gold in question within the context of a dire global pandemic, to be managed jointly with the UNDP, the Bank of England's freeze has contributed to shortages of food, medicine, medical equipment and spare parts in Venezuela. These have negatively impacted COVID-19 responses, exacerbated the country's economic crisis and contributed to poverty.

In her preliminary findings, following her visit to Venezuela in February 2021, the special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights expressed concerns that, regardless of the pending judgment in the case heard by the UK Supreme Court, and regardless of any political or other acts and decisions of the UK Government, the decision by the Bank of England to not release the CBV's gold has damaged, and continues to damage, the human rights of millions of individuals in Venezuela whose access to food, medicine and other goods and services has been severely curtailed by unilateral sanctions and over-compliance with those sanctions by international banks and others.¹⁹

We note that the alleged facts cause serious concern regarding the legality of the measures being taken, and the impact of such measures on the human rights of the people in Venezuela. Among specific rights negatively impacted may be the rights to food and to health, and by extension the rights to life and to freedom from inhuman treatment. These rights are recognized in the Universal Declaration of Human Rights and constitute an integral part of the right to development. Furthermore, the rights to food, to health and to development are enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the rights to life, to development and to freedom from inhuman treatment are enshrined in the International Covenant on Civil and Political Rights (ICCPR). The right to freedom from inhuman treatment is further enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It must be stressed that impact of the Bank of England's refusal to release the CBV's gold on human rights in Venezuela is substantial, as this gold accounts for around 25% of Venezuela's gold reserves and 15% of its total foreign exchange reserves.²⁰

While the UK Government may assert that its "one voice policy" obliges entities it owns or controls to align their decisions with its foreign policy positions, the Bank of England, in the absence of a legal obligation to comply with the policy, in fact has a duty to *not* comply when doing so violates the human rights that the UK Government is obliged by international law to respect and protect. The further duty of company directors to act in the best interests of shareholders,²¹ as well as the Bank of England's code of conduct²² indicate that neither the BOE nor its directors should

¹⁸ United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004, Art. 21(1c); https://treaties.un.org/doc/source/recenttexts/english_3_13.pdf

¹⁹ OHCHR, Preliminary findings of the visit to the Bolivarian Republic of Venezuela by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 12 February 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26747>

²⁰ Marc Jones, "In battle over \$1 bln in gold, UK backs Guaido as Venezuela president," 19 July 2021, Reuters, <https://www.reuters.com/world/americas/battle-over-1-bln-gold-uk-backs-guaido-venezuela-president-2021-07-19/>

²¹ This applies to companies in general; it is codified in the UK Companies Act 2006, section 172.

²² Bank of England, "Our Code," 2020, <https://www.bankofengland.co.uk/-/media/boe/files/about/human-resources/ourcode.pdf>

expose the UK Government to being associated with violations of international law through the inadequate exercise of human rights due diligence.

It is further noted that the Bank of England informs its employees that they are expected to act in accordance with the Human Rights Act 1998,²³ which makes it illegal to violate rights covered in the European Convention on Human Rights, including the right to life and others that are equally contained in the ICESCR and ICCPR. The Act states clearly that “It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”²⁴

It should be mentioned that the responsibility to promote and protect human rights lies not only with states and international organizations, but also on banks and business institutions regardless of their size, type and structure under supervision and control of states in accordance with the UN Guiding Principles on Business and Human Rights²⁵ (Guiding Principles). This duty extends throughout their operations abroad and applies to countries where their activities affect human rights.

Under the Guiding Principles, companies must avoid infringing on the human rights of others and to address adverse human rights impacts in which they are involved (Guiding Principle 11). In connection with this, companies should have in place “policies and processes appropriate to their size and circumstances,” including a “human rights due diligence policy to identify, prevent, mitigate and account for how they address their impacts on human rights” (Guiding Principle 15). Companies also have the responsibility to “(a)void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” (Guiding Principle 13a).

Among the responsibilities of states under the Guiding Principles is the duty to require companies to respect human rights (Guiding Principle 2). Additionally, “(w)here a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations (Commentary to Guiding Principle 4).

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 United Nations Human Rights Council, to seek to clarify all cases brought to our attention, and in accordance with the UN Guiding Principles on Business and Human Rights on private entities to refrain from activity which results in violation of human rights, we strongly recommend to the Bank of England to unfreeze assets rightfully belonging to other state authorities.

We would be grateful for your observations on the following matters:

²³ Bank of England, “Staff Handbook,” 2020, p. 35, <https://www.bankofengland.co.uk/-/media/boe/files/about/human-resources/staff-handbook.pdf>

²⁴ Human Rights Act 1998, Section 6(1).

²⁵ https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf

1. Please provide any additional information and/or comment(s) you may have on the allegations contained in this letter.
2. Please clarify on what grounds and legal rationale has the Bank of England decided to freeze unilaterally the gold assets of the Venezuelan state.
3. Please explain the nature, extent and form of assessment of humanitarian impact that the Bank of England conducted prior to its decision to not release the Central Bank of Venezuela's gold, and since the decision was implemented, to guarantee that human rights are not negatively affected.
4. What factors contributed to the decision to not release the Central Bank of Venezuela's gold? Please identify whether this included the UK Government's "one voice policy," or any form of influence or pressure from the UK Government or its officials.
4. We would be grateful to know if the Bank of England has reviewed its decision to not release the Central Bank of Venezuela's gold. If so, how often has this been done, what have been the outcomes, and how are they justified?

As per the standard practice of our institution, this communication and any response received from the Bank of England will be made public via the office of the United Nations High Commissioner for Human Rights' communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual public report to be presented to the Human Rights Council.

While awaiting a prompt response, we recommend that the Bank of England's Court of Directors launch an enquiry into the effects of the decision to not release the Central Bank of Venezuela's gold on the life of citizens in Venezuela. We would also be grateful if your institution brings these concerns, as well as their human consequences, up for discussion with the UK Treasury as the holder of the BOE's capital.

We reserve the right to publicly express our concern about this case, which in our view warrants undivided attention. Any public comment on our side will indicate that we have been in contact with the Bank of England to clarify the issues in question and to seek its views.

Please note that a similar letter is being sent to the Government of the United Kingdom, with a copy to the Government of the Bolivarian Republic of Venezuela.

Please accept the assurances of our highest consideration.

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

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

Annex

Reference to international human rights law

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

We refer to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, which 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.”

Furthermore, we wish to point to article 25 (1) of the Universal Declaration of Human Rights which provide for an adequate standard of living and health for themselves and their families, including medical care and necessary social services. The description 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.

We would like to refer to 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.

We additionally call your attention to the UN Guiding Principles on Business and Human Rights, which apply to all states and companies and recognize “(t)he role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights.” Guiding Principle 11 calls on companies to “avoid infringing on the human rights of others and (...) address adverse human rights impacts with which they are involved.” It also says companies “should not undermine States’ abilities to meet their own human rights obligations.”

We further refer to Guiding Principle 13, which states that “the responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.”

We call your attention to Guiding Principle 15, which calls on each company to have in place a policy and a process to meet its responsibility to respect human rights. It should also have a human rights due diligence process to identify, prevent, mitigate and account for how it addresses the impact its activities have on human rights, and a remediation process to correct any adverse human rights impact it causes or to which it contributes. Guiding Principle 22 states that a company which has,

through its due diligence process, identified a human rights problem that it has caused or contributed to, should provide for or cooperate in the problem's remediation.

We also refer to Guiding Principle 17, which details how human rights due diligence should be carried out: "The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed," and "should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships."

We point out that Guiding Principle 18 calls on each company to "identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation." The commentary to Guiding Principle 18 states that "(i)n this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability (...)."

We also refer to Guiding Principle 19, which calls on companies to take appropriate action to prevent and mitigate adverse human rights impacts.

With respect to inhuman treatment, we would like to draw your attention 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 like to recall 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, which the United Kingdom ratified on 8 December 1988. 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 to preventive, curative and palliative health services.

Finally, we would like to refer to resolution 27/21 of the Human Rights Council, which, *inter alia*, expresses grave concern about 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.