

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 extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; 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; the Special Rapporteur on minority issues; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights to safe drinking water and sanitation and the Working Group on discrimination against women and girls

Ref.: AL USA 6/2022
(Please use this reference in your reply)

6 April 2022

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 extrajudicial, summary or arbitrary executions; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; 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; Special Rapporteur on minority issues; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on the human rights to safe drinking water and sanitation and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 45/5, 42/23, 44/5, 32/8, 34/3, 42/16, 45/4, 44/11, 43/8, 44/13, 41/17, 42/5 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the critical humanitarian situation faced by millions in Afghanistan since the collapse of the former government in August 2021 and the decision of your Excellency's Government to block the foreign assets of Afghanistan's central bank (Da Afghanistan Bank) as an addition to the applicable sanctions regime, and which may have serious adverse effects on all efforts to support basic human needs in the country.**

According to the information received:

It is generally recognized that Afghanistan is facing today a dire humanitarian crisis and staggering regression in many areas of economic life, compounded by the ongoing adverse effects of the COVID-19 pandemic as well as

environmental disasters, such as prolonged and frequent droughts, in particular since 2018.

According to international assessments, the country has now the highest number of people in emergency food insecurity in the world, with more than 23 million – more than half of the population – in need of food assistance, and with approximately 95 per cent of the population, and nearly 100 per cent of female-headed households, facing insufficient food consumption. Of particular concern is the vulnerability of more than 4 million internally displaced persons across the country, including persons belonging to minorities, and the serious challenges they face in accessing food, safe drinking water and sanitation, as well as adequate shelter, which are also exacerbated by the worst droughts in decades. More than 3,5 million people have left Afghanistan seeking refuge in the neighbouring countries, including Iran and Pakistan.

In the words of the UN Secretary-General, Afghanistan is facing “an epic humanitarian crisis and is on the verge of a development catastrophe”. According to UN estimates, more than USD \$200 million of humanitarian aid a month is needed to avert the humanitarian disaster, and the international donor pledges are unlikely to meet the currently-compounded and pre-existing humanitarian needs. Other estimates raise this amount between USD \$6 billion to 8 billion per year, for the purpose of ensuring the sufficient support of basic services, as well as the country’s economic growth.

Furthermore, the already fragile economy of the country has been also seriously affected by the interruption of international development assistance and humanitarian aid, as well as the blocking of foreign assets. Afghanistan’s economic base is reportedly too small for supporting a population of around 40 million people and international aid had been contributing as much as 40 percent of GDP and 75 to 80 percent of the budget expenditures. The suspension of international aid, as a response to the events of August 2021, has led to an institutional paralysis and posed serious challenges in the existing channels of humanitarian assistance provision, while the seizure and blocking of foreign assets, the restrictions in banking services and suspensions in international financial support have created a liquidity crisis, rising inflation and a climate of uncertainty among investors and donors.

Poverty is rampant, with UN projections showing that it may become nearly universal, affecting more than 90 percent of the population by mid-2022. More than 80% of Afghans have lost income since August 2021, while the spike in prices of food, cooking oil and fuel have seriously affected the Afghan households. Civil society organisations depict this critical situation via surveys showing that up to one fifth of families in Afghanistan have been forced to send their children out to work to cover the reported loss of household income.

Existing vulnerabilities within the population have been exacerbated, notably for women and girls, who face disproportionately greater difficulties in obtaining

food and accessing health care services. Given the general ban imposed by the de facto authorities on women working outside the house, and on moving freely without a male guardian, women have been unable to independently earn any income. This situation is particularly devastating for female-headed households and widows. Reports indicate that this has resulted in the increase of harmful practices such as child marriage, in exchange for dowries

On 22 December 2021, concerned about the alarming humanitarian situation in the country, including food insecurity, the United Nations Security Council unanimously adopted resolution 2615 providing for a humanitarian exemption to the existing sanctions regime, enabling the provision of humanitarian aid and allowing for the payment of funds, other financial assets or economic resources, and the provision of goods and services necessary to ensure the timely delivery of such assistance. The text was introduced by the representative of the United States of America, who highlighted the importance of the resolution for the provision of a broad range of humanitarian assistance, and which aims at dispelling the existing fears among humanitarian actors who hesitate to provide such assistance due to risks associated with providing direct or indirect assistance to listed Afghan entities.

In another resolution, 2626(2022) of 17 March 2022, the UN Security Council recognized the need to help address the dire economic and humanitarian situation in Afghanistan, including “through efforts to restore the banking and financial systems and efforts to enable the use of assets belonging to Afghanistan’s Central Bank for the benefit of the Afghan people”.

However, and despite this positive development, the US Government has kept frozen since August 2021 assets belonging to Afghanistan’s central bank (Da Afghanistan Bank - DAB) amounting to more than USD \$7 billion. It has been claimed that the frozen amount could be used to sustain approximately 15 months of imports, in the current context of a widespread commercial and financial isolation of the country, and the meagre international pledges of funds for humanitarian assistance. There are also voices calling for the release of this amount, given that the Da Afghanistan Bank is not an entity designated by the UN Security Council.

On 11 February 2022, the US Presidential Executive Order no. 14064 provided that these assets would remain blocked and “may not be transferred, paid, exported, withdrawn, or otherwise dealt in, except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order”. It instructed US financial institutions to transfer all blocked assets to a consolidated account held by the Federal Reserve Bank in New York.

It has also been reported that the intention of the US Government is to use 3,5 billion of the blocked assets to pay compensation to the victims of September 11 terrorist attacks.

On 25 February 2022, following the issuance of Executive Order no. 14064, the US Treasury Department issued a General Licence No. 20, allowing for all transactions involving Afghanistan or governing institution in Afghanistan with exception of financial transfers to the Taliban, the Haqqani Network, any associated entity, and any blocked individual who is in leadership role of a governing institution in Afghanistan. The expressed purpose of this general licence is to facilitate “transactions and activities needed to provide aid to and support the basic human needs of the people of Afghanistan”.

However, there is no clarity on whether the General Licence No. 20 is directly linked to the Executive Order no. 14064; whether the frozen assets of the Da Afghanistan Bank – and what proportion of them – will be used for the provision of humanitarian assistance; and, whether these assets will be accessible by the de facto authorities in Afghanistan. At the time of this letter, the central bank’s credentials remain revoked by the US Government, and it remains cut off from the international banking system.

At the same time, it has been reported that since August 2021, donor governments, including the US, have been instructing the main international financial institutions, including The World Bank and the International Monetary Fund to suspend disbursements for development and humanitarian purposes of approximately USD \$2 billion, despite the fact that the healthcare and education system in the country have been mainly supported by funds coming from these institutions, such as The World Bank’s Afghanistan Reconstructive Trust Fund (ARTF).

There are growing calls among international humanitarian actors for the resumption of the international development aid flows to Afghanistan, in order to enable the delivery of the desperately needed public services and to effectively address the basic needs of millions in the country.

While we do not wish to prejudge the accuracy of the above-mentioned facts, we wish to express our grave concern at the growing humanitarian crisis in Afghanistan, with serious adverse effects on the lives of millions of people and in particular with regard to the full enjoyment of their fundamental rights, including security, the right to adequate standard of living, the right to food, to safe drinking water and sanitation, adequate housing, and the right to the highest attainable standard of health. Based on the current policies and regression led by the de facto authorities targeting women and girls, we are especially concerned about the compounded and disproportionate impact of the current humanitarian crisis on women and girls. It is concerning that in the current context of the humanitarian crisis briefly described above, and despite the widely acknowledged pre-existing humanitarian challenges, the additional socio-economic shocks following the August 2021 events, and the country’s weak economic basis, which has been predominantly supported by international aid, your Excellency’s Government undertook unilateral measures to further isolate Afghanistan both commercially and financially, including by blocking the country’s central bank’s

foreign assets, blocking any access to international financial support and instructing, in coordination with other donor governments, international financial institutions to withhold disbursements for development and humanitarian projects.

Such actions and means of pressure are deemed as unilateral coercive measures, as they are undertaken without or beyond the formal authorisation by the United Nations and appear to be incompatible with your Excellency's Government's international obligations, including its obligations under international human rights law. Furthermore, they may go against the standards of judicial immunities of Central bank assets from the foreign jurisdiction under customary norms of international law (e.g. art. 5, 21 of the UN Convention on Judicial immunities of states and their property).

We also take note of the recent General Licence No. 20 of 25 February 2022 and the expressed intentions by your Excellency's Government to enable all transactions and activities needed to provide aid to and support the basic human needs of the people of Afghanistan. However, it is not clear whether this latest licence would resolve the issue of the Da Afghanistan Bank blocked assets of more than USD \$7 billion, and whether it would constitute a sufficient factor in reversing the general climate of uncertainty and fear among humanitarian and financial actors who wish to engage with Afghanistan and its governing institutions in financial transactions and in the delivery of humanitarian assistance.

We also note with concern the provisions in Section 3 of the Presidential Executive Order no. 14064, which prohibits "any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions" and "any conspiracy formed to violate any of the prohibitions set forth in this order". Such overly broad formulations may exacerbate the climate of uncertainty among relevant actors, including banks, businesses and humanitarian donors, resulting in zero-risk policies and over-compliance thus preventing people of Afghanistan from any access to basic humanitarian goods.

It should be mentioned that states have an obligation under international human rights law to guarantee that activity under their jurisdiction or control does not result in human rights violations. This obligation, affirmed by your Excellency's Government through its ratification of numerous international human rights conventions, applies, *inter alia*, to the activity of state-owned entities.

In addition, it is important to note that non-recognition of a government does not eliminate the personality of a state. 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 international law.¹

¹ 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

The factual assessment of the situation described above causes serious concerns regarding the legality of the measures being taken, and their impact on the human rights of the people in Afghanistan. Among specific rights negatively impacted are the rights to food, safe drinking water and sanitation, health, social security and education, and by extension the rights to life and to freedom from inhuman treatment. These rights are recognized in the Universal Declaration of Human Rights, in articles 3, 5, 25, and 26, and constitute an integral part of the right to development. Furthermore, the rights to food, health, social security, education and development are enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in articles 1, 9, 11, 12, 13; 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) in articles 1, 6 and 7. The right to freedom from inhuman treatment is further enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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 any comment you may have on the above-mentioned allegations.
2. Please explain the nature, extent and form of any assessment of humanitarian impact including the gender impact assessment of such measures that your Excellency's Government conducted before undertaking the decision to block the Da Afghanistan Bank's foreign assets and to instruct international financial institutions to suspend their disbursements to Afghanistan.
3. Please provide detailed information on the specific implications of the Presidential Executive Order no. 14064 of 11 February 2022 and the US Treasury Department's General Licence no. 20 of 25 February 2022 with regard to the delivery of humanitarian assistance in Afghanistan and the investment flows for development purposes.
4. Please explain how the initial decision to block the Da Afghanistan Bank's assets and to advocate for the suspension of any humanitarian and development support of Afghanistan is compatible with your Excellency's Government's obligations under international law including international human rights law.
5. Please provide detailed information on the concrete steps to be undertaken by your Excellency's Government to effectively address the

ongoing humanitarian crisis in Afghanistan and to ensure that no other unilateral measure is to be implemented, which would further exacerbate the already critical situation in the country affecting tens of millions of people.

6. Please provide updated information on the current status of Da Afghanistan Bank's credentials and the steps undertaken to resolve this issue.
7. Please provide detailed information about the measures that have been taken by your Excellency's Government to prevent any over-compliance from the side of banks, private businesses, donors of humanitarian aid, humanitarian organizations and to enable, inter alia, the delivery of humanitarian aid in accordance with the UN Security Council resolutions 2615(2021) and 2626 (2022).

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.

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

Saad Alfarargi
Special Rapporteur on the right to development

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri
Special Rapporteur on the right to food

Attiya Waris
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

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

Fernand de Varennas
Special Rapporteur on minority issues

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Reem Alsalem
Special Rapporteur on violence against women, its causes and consequences

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the fundamental rights in accordance with the principles and rights set forth in articles 1, 9, 11, 12, 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as articles 1, 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the protection of everyone's right to adequate standard of living, food, health, social security, education, development, as well as the right to life and to freedom from inhuman treatment. Your Excellency's Government has signed both Covenants on 5 October 1977, and ratified only the ICCPR on 8 June 1992. While your Excellency's Government is not a State party to the ICESCR, it is a signatory to that treaty and according to the Vienna Convention on the Law of the Treaties (article 18) it is obliged to refrain from acts which would defeat its object and purpose

The human rights to safe drinking water and sanitation - both the human right to water and the human right to sanitation - are components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights as stipulated in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and CESCR, General Comment No. 15 (2002) (E/C.12/2002/11). The human right to water and sanitation was explicitly recognized by the General Assembly in its resolution 70/169, which "[recognized] that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use".

In this regard, we reiterate that the obligation to protect the right to life requires States to take special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, General Comment No. 36, para. 23). We note that the right to life is linked to the positive obligation to ensure access to the basic conditions necessary to sustain life (CCPR General Comment No. 6, para 5; CCPR General Comment No. 36, para 21). Measures, including the obstruction of humanitarian assistance, which restrict access to basic and life-saving goods and services such as food, health, electricity and safe water and sanitation run counter to the right to life (CCPR/C/ISR/CO/4, para. 12; A/73/314, para. 27). We recall that any deaths attributable to such measures amount to an arbitrary deprivation of life, which engages the responsibility of the State (A/73/314, para. 13). In addition, the human rights to water and sanitation apply even in times of armed conflict, or other emergency situations (and CESCR, General Comment No. 15 (2002) (E/C.12/2002/11), para. 22). States therefore have an obligation to provide water and sanitation services during emergencies like the COVID 19 pandemic and to forcibly displaced persons.

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 Draft Articles on Responsibility of States for Internationally Wrongful Acts. Article 2 states that “(t)here is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.”

With regard to the involvement of US financial institutions in the process of assets blocking and assets transfer to the Federal Reserve Bank of New York (as per the Presidential Executive Order No. 14064), we wish to recall 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”.

In particular, Guiding Principle 2 directs states to “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.” Although a company’s operations may be carried out entirely within a state’s territory, they can affect the rights of foreign individuals, and this principle may be deemed to refer to them as it sets no geographic limits.

We highlight also Guiding Principle 5, which calls on states to “exercise adequate oversight in order to meet their international human rights obligations when they (...) legislate for business enterprises to provide services that may impact upon the enjoyment of human rights”; Guiding Principle 11, which calls on business enterprises to “avoid infringing on the human rights of others and (...) address adverse human rights impacts with which they are involved;” and to “not undermine States’ abilities to meet their own human rights obligations”; and, 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”.

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”.

In addition, 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.

The Working Group on discrimination against women and girls in its report on Women’s and girls’ sexual and reproductive health rights in Crisis, A/HRC/47/38, stated that women and girls had been disproportionately affected in all types of crises, including humanitarian crisis and their specific needs are neglected.

In its report on discrimination against women in economic and social life, with a focus on economic crisis A/HRC/26/39, the Working Group on discrimination against women and girls stated that vulnerability and economic disadvantage for women are exacerbated by macroeconomic policies that increase inequalities and reduce social protection floors. The correlation between income and development and gender equality is well established. Both theory and empirical evidence indicate that empowering women means a more efficient use of a nation’s human capital endowment and that reducing gender inequality enhances productivity and economic growth.

The Special Rapporteur on the human rights to safe drinking water and sanitation in his report on forcibly displaced persons, in particular internally displaced persons (A/HRC/39/55) establishes that equitable access to water, sanitation and hygiene is one of the principles applied to life-saving interventions in humanitarian contexts. Providing equitable facilities is, however, not sufficient to ensure equitable access. The human rights principle of equality and non-discrimination requires actions targeting those “most at risk” and ensuring equal access. In this regard the Special Rapporteur highlights that particular attention should be given to needs of women and girls. The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.

We also recall the Guiding Principles on human rights impact assessment of economic reform, A/HRC/40/57, elaborated by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights. In particular, we refer to principle 13, which focuses on international assistance and cooperation, and notes: “States have an obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights. As part of their obligations with regard to international cooperation and assistance, States have an obligation to respect and protect the enjoyment of human rights of people outside their borders. This involves avoiding conduct that would foreseeably impair the enjoyment

of human rights by persons living beyond their borders, contributing to the creation of an international environment that enables the fulfilment of human rights, as well as conducting assessments of the extraterritorial impacts of laws, policies and practices”.