

**Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to development and the Independent Expert on human rights and international solidarity**

Ref.: AL USA 9/2022  
(Please use this reference in your reply)

22 June 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 in the field of cultural rights; Special Rapporteur on the right to development and Independent Expert on human rights and international solidarity, pursuant to Human Rights Council resolutions 45/5, 46/9, 42/23 and 44/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning serious challenges faced by scholars and authors in accessing scientific publication processes due to the imposed restrictions under US sanctions and regulations on publishing and other activities and their interpretation by the United States Office of Foreign Assets Control.

According to the information received:

A number of international publishing companies hosting a significant number of scientific journals have included in their websites sections referring to submissions from authors based in sanctioned countries and territories.

Several of these clauses, which are included in the ethical integrity and code of conduct sections of the publishing companies' websites, merely encourage the journals' editors to treat with special caution any submission emanating from a sanctioned country and refer them to additional legal advice for any further assessment, without providing any detailed guidance or clarification.

Others make specific reference to the interpretative guidance issued on 28 October 2016 by the United States Office of Foreign Assets Control (OFAC) on the publishing of general licenses and certain exemptions found in the Iranian Transactions and Sanctions Regulations (ITSR), 31 C.F.R. §§ 560.210, 560.538, the Cuban Assets Control Regulations (CACR), 31 C.F.R. §§ 515.206, 515.577, the Sudanese Sanctions Regulations (SSR), 31 C.F.R. §§ 538.212, 538.529, and the Syrian Sanctions Regulations (SySR), 31 C.F.R. §§ 542.211, 542.532.

According to the OFAC interpretative guidance, if the authors are located in a sanctioned country and they are not Specially Designated Nationals, then the editing and publication of their articles or submissions may be "generally authorised" only when a) the authors act in their "personal capacity" and "not as an official representative or otherwise on behalf of a sanctioned government"; b) the authors act on behalf an "employing entity" having research and/or teaching as the "primary function", even if the entity "may be characterisable as an agency or instrumentality of a sanctioned government".

In addition, the guidance refers to activities that “may qualify as exempt” and be authorised, because “they do not involve the substantive or artistic alteration or enhancement of informational materials, or the provision of marketing and business consulting services to a sanctioned person”. This may be the case of articles submitted by authors from sanctioned countries, including sanctioned government officials, representing entities whose primary function is not research and/or teaching. For these articles or submissions, the reviewers or publishers will be authorised to publish them, but without substantive editing prior to their publication.

However, in spite of these permissible criteria, the OFAC guidance clearly stipulates that the assessment of the author’s affiliation (whether or not the author is employed by a sanctioned government) and the employing institution’s primary function (whether or not the employing institution is a “research institution”) is the responsibility of the “person relying on a publishing general license”, thus imposing an additional burden on publishing companies and journals’ editors, who may not have the adequate means to conduct a thorough due diligence procedure.

The complexity of the imposed regulations and authorised activities in the scientific publication processes, and the inability to clearly distinguish between publications in “personal capacity” and those that may be supported by sanctioned countries’ public institutions including public universities or research establishments, and public funds, could lead publishing companies, editors and reviewers to summarily reject submissions from sanctioned countries for fear of repercussions including personal liability. In certain cases, the rejection (even to start editorial process) responses do not even provide any explanation to the concerned authors, but merely referring in broad terms to the publishing company’s obligation to comply with laws and regulations applied by certain countries.

While we do not wish to prejudge the accuracy of the understanding described above, we express our serious concern at the extension and application of sanction regimes and restrictions in the area of scientific and academic research and publishing and subjecting them to the complex and often opaque licensing procedures, thus preventing the free flow of information and ideas indispensable to cross-fertilisation. These regulations and their direct and indirect adverse effects may constitute a serious threat to international human rights norms and standards, including the rights to freedom of thought and freedom of expression enshrined in articles 18 and 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the right to education including academic freedom, the freedom indispensable for scientific research and creative activity and the right of everyone to participate in cultural life and share in scientific advancement and its benefits, provided in articles 26 and 27 of the UDHR and 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). They may also contravene the fundamental and universal principle of non-discrimination on any grounds, including national or social origin, political or other opinion, as well as any other status. These international human rights law instruments, ratified by the State of the USA, imply that scientific and academic research and the dissemination of their findings should not be conditioned by decisions falling in realms outside of the scientific and academic community itself and should not be contingent upon political decisions and designations of individuals or entities.

We are also concerned at the potential impact of complex, broadly-worded and vague regulations on the behaviour of publishing companies, editors and reviewers, who out of fear of enforcement, repercussions, as well as “reputational damage”, may feel compelled to over-comply to otherwise authorised activities and would opt for a complete disengagement and summary rejection of submissions by authors from sanctioned countries.

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 provide any clarification with regard to the OFAC interpretation of the regulations and exemptions regarding publishing activities, and explain how these regulations do not contravene the obligations of United States of America under international human rights law.
3. Please provide information on the measures undertaken to eliminate overcompliance, including via providing all necessary information to publishing companies, as well as the necessary assistance and guidance in order that would exclude otherwise authorised publications.
4. Please explain how such regulations are in line with international human rights norms and standards, including the rights to freedom of thought and expression, as well as the rights to education, to participate in cultural life and the right of everyone to enjoy the benefits of scientific progress and its applications.

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 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.

Although we may publicly express our concerns in the future about this matter, we reiterate our commitment to give priority to what we regard as an indispensable dialogue with Your Excellency’s Government to cooperate on this and other issues of concern - in the same spirit of independence, impartiality, objectivity and mutual respect that inspires and guides our mandates and work. We believe that the matter raised in this communication merits serious attention and warrants

clarification. Any public expression on our part would 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

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

Saad Alfarargi  
Special Rapporteur on the right to development

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 the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, and in particular articles 2, 18, 19, and 26, which provide for the principle of non-discrimination as well as the rights to freedom of thought and freedom of expression.

Furthermore, we wish to refer to the Universal Declaration of Human Rights, which in articles 26 and 27 recognize the right of everyone to education, to freely participate in the cultural life of the community, and to share in scientific advancement and its benefits. We also wish to refer to the International Covenant on Economic, Social and Cultural Rights, signed by the United States of America on 5 October 1977. We refer in particular to articles 13 and 15, which provide for the right to education, the right to take part in cultural life, the freedom indispensable for scientific research and creative activity and the right of everyone to enjoy the benefits of scientific progress and its applications. We wish to remind your Excellency's Government that upon signing the ICESCR, a State is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty (Vienna Convention on the Law of Treaties, article 18).

The UN Committee on Economic, Social and Cultural Rights has stated that the right to education can only be enjoyed if accompanied by the academic freedom of staff and students, and the freedom of the members of the academic community, individually or collectively, to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation and writing. It has also found that the enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds (see CESCR General Comment No. 13, paras 38 and 39).

With regard to article 15 of the ICESCR, the Committee has endorsed UNESCO's definition of the term "science", which is the enterprise whereby humankind makes an organised attempt, by means of the objective study of the observed phenomena and its validation through sharing of findings and data through peer review... with the opportunity of using, to its own advantage, understand processes and phenomena in nature and society. And it understands the "benefits" of science not only as the material results, but also as the development and dissemination of the knowledge itself for the purpose of forming critical and responsible individuals to fully participate in society. Furthermore, the Committee includes in the term "freedom of research", the freedom of researchers to cooperate with other researchers, both nationally and internationally, and their freedom to share scientific data and analyses (see E/C.12/GC/25).

The UNESCO Convention against discrimination in education of 1960 in art 5(1a) stipulates that ‘Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace’.

We also would like to refer to article 1 of the Declaration on the Right to Development states that the right to development is an inalienable human right 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, in which all human rights and fundamental freedoms can be fully realized. The right to development, as established in the Declaration, is an equal right among all universal, inalienable, interrelated, interdependent and indivisible human rights. The right to science, which has been defined by the Committee on Economic, Social and Cultural Rights to signify a right to participate in and to enjoy the benefits of scientific progress and its applications, has a direct impact on the ability of persons and peoples to participate in multiple aspects of all aspects of development. The Declaration on the right to development 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 further recall that the spirit of solidarity and international cooperation is enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, which provides that States have a duty to cooperate in the various fields irrespective of differences in their political, economic and social systems. The Declaration stipulates that States are obliged to cooperate, inter alia, in the protection and promotion of human rights; in the economic, social and cultural fields as well as the field of science and technology; in the promotion of international cultural and educational progress; and in the promotion of economic growth, especially in developing countries (General Assembly resolution 2625 (XXV), annex, fourth principle).