

**Mandates of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights and the Independent expert on the promotion of a democratic and equitable international order**

Ref.: AL USA 1/2025  
(Please use this reference in your reply)

24 February 2025

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 and Independent expert on the promotion of a democratic and equitable international order, pursuant to Human Rights Council resolutions 52/13 and 57/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the reported use of the rebuttable presumption of wrongdoing or presumption of guilt, the de facto reversal of the burden of proof, and the lower evidentiary threshold, as recurrent practices in sanctions designations cases, as well as in sanctions review and de-listing procedures.** These issues have been briefly addressed by the Special Rapporteur on the negative impact of unilateral coercive measures in her thematic report to the 79th session of the UN General Assembly on "Access to justice in the face of unilateral sanctions and over-compliance" ([A/79/183](#)).

According to the information received:

The concept of "rebuttable presumption of wrongdoing" and the reversal of the burden of proof can be found in sanctions laws and regulations in different jurisdictions. Within the U.S. sanctions framework, the "rebuttable presumption" is included in several laws and regulations. For example, Countering America's Adversaries Through Sanctions Act (CAATSA), section 321(b) (22 U.S.C. § 9241a), creates a rebuttable presumption that significant goods, wares, merchandise, and articles mined, produced, or manufactured wholly or in part by North Korean nationals or North Korean citizens anywhere in the world are forced-labor goods which are prohibited from importation and if they enter United States territory they may be subject to detention, seizure, and forfeiture, with consequent civil penalties and criminal prosecution. The presumed prohibition may be rebutted/overcome by "clear and convincing evidence", with the burden of this rebuttal lying with the importer of such goods or concerned businesses.<sup>1</sup>

Similar "rebuttable presumption" is created by section 3 of the Uyghur Forced Labor Prevention Act (UFLPA), Public Law No. 117-78, of 23 December 2021, with respect to any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China or any entity described in section 2(d)(2)(B) of UFLPA namely, a) an entity in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles and

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<sup>1</sup> <https://www.dhs.gov/archive/news/2018/03/30/caatsa-title-iii-section-321b-faqs>

merchandise with forced labor; b) an entity working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or labor of Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region c) an entity exporting products mined, produced, or manufactured wholly or in part by entities described above; and d) a facility and entity, including the Xinjiang Production and Construction Corps, that sources material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of the Xinjiang Uyghur Autonomous Region or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” or any other government labor scheme that uses forced labor.<sup>2</sup>

Entities and businesses allegedly violating the UFLPA are placed in the UFLPA Entity List by decision of the U.S. Forced Labor Enforcement Task Force (FLETF), chaired by the Secretary of the Department of Homeland Security (DHS). Removal from the list can be considered by the FLETF, through an administrative procedure, following submission of compelling arguments and evidence by the listed entities or businesses, demonstrating why the U.S. Government made a mistake to include them in the UFLPA entity list. If FLETF decides to maintain the listing, the listed entity may appeal before the U.S. Court of International Trade (CIT). No listed entity has been removed since the initial listing action that took place on 2 August 2023, while the standard for adding an entity to the UFLPA Entity List is the “reasonable cause to believe” rather than “beyond reasonable doubt”. In addition, the removal process is neither included in the UFLPA itself nor in any implementing regulation. Instead, it is mentioned in each Federal Register Notice that updates the UFLPA Entity List and on the Department of Homeland Security’s UFLPA dedicated webpage.

There are reported discussions and proposals to expand the use of the “rebuttable presumption” for “U.S. national security and foreign policy objectives”, and for the purpose of filling perceived regulatory and enforcement gaps in U.S. export control frameworks under the authority of the Bureau of Industry and Security (BIS).

Furthermore, under the Trading with the Enemy Act of 1917, the Immigration and Nationality Act of 1952, the National Emergencies Act of 1976, the International Emergency Economic Powers Act (IEEPA) of 1977, the Global Magnitsky Human Rights Accountability Act of 2016, and other laws and regulations, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) administers the list of Specially Designated Nationals and Blocked Persons (SDN list) with asset freezes and prohibitions of any transactions with the listed persons (individuals or entities). For its designations, OFAC relies on third-party information and evidence and applies a standard of proof which is lower than for criminal or civil trials. OFAC follows an administrative process for considering the removal of listed persons pursuant to 31 CFR § 501.807. However, it is not a periodic review undertaken on OFAC’s own initiative, but instead a case-by-case review which is triggered only following a submission, by the listed person of evidence that refutes the SDN listing, or upon

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/BILLS-117hr6256enr/pdf/BILLS-117hr6256enr.pdf>

confirmation of a negotiated settlement between the listed person and OFAC. If following the submission of additional information and evidence the administrative reconsideration is denied by OFAC, then the listed person can appeal through a judicial procedure before the U.S. District Court, by challenging OFAC's decision under the U.S. Administrative Procedures Act (APA).

Appealing OFAC's listing under APA is a very challenging endeavor given the reported high deference to OFAC's actions, particularly regarding foreign policy and national security. Although many OFAC's actions and imposed restrictions resemble those of forfeiture, the person designated by the OFAC does not have the same rights available in a civil forfeiture action. In civil forfeiture, the government should file a lawsuit and bear the burden of proof, which is not the case for OFAC, which undertakes administrative actions and imposes penalties and restrictions prior to any judicial procedure. Similarly, in civil forfeiture the accused has the right to request the evidence that has been collected to substantiate the action, a right which is not guaranteed in OFAC-related procedures, because in certain OFAC sanctions designation cases the evidence used for the designation may constitute classified information, which is not disclosed to the designated person.

A presumption of guilt is any presumption that a person is guilty of a criminal offense until proven to be innocent. Similarly, in sanctions-related cases, the application of the presumption of wrongdoing imposes an obligation to the concerned individual or entity to prove that an act or conduct was not wrong and should not be subject of sanctions, which are often themselves similar to criminal penalties in terms of severity. It is a reversal of the principle of the presumption of innocence, which is the cornerstone of due process and minimum guarantees of fairness, whereby a person charged with a criminal offense is presumed innocent unless found to be guilty according to law, and which provides that no guilt can be presumed until the charge is proved beyond reasonable doubt.

However, it is often the case that designations and listings of primary targets of unilateral sanctions (individuals or entities), or of those who have any nexus with these primary targets, are decided and enforced extraterritorially, without prior judicial review or ruling, on a presumption of guilt with regards to a perceived or reported violation of either domestic or international law.

In addition, when a designated person or entity wishes to appeal against the designation and the consequent sanctions-related restrictions and penalties, the review of the case and the possible decision for delisting require the submission by the designated person or entity of evidence against the presumed wrongdoing or violation. However, during this process the concerned designated/listed person or entity may not have access to evidence or facts motivating and substantiating the decision of the designation/listing in the first place. This constitutes a reversal of the burden of proof in the review or appeal process of the designation/listing, which itself may have been taken and enforced based on a lower evidentiary threshold than that of "beyond a reasonable doubt", given that it is implemented outside any formal judicial procedure.

Such practice demonstrates certain commonalities with the practice of “non-conviction-based proceedings” (NCBs) under several jurisdictions, including in cases of forfeiture, seizure and confiscation. NCBs can be undertaken independently of and prior to any eventual criminal proceeding against the alleged offender; the guilt of the alleged offender does not have to be examined; they are reportedly applied also in circumstances where a conviction is not feasible; they apply a reversed burden of proof; and, the presumption of innocence cannot be invoked. NCBs in cases of forfeiture, seizure and confiscation bear similarities with the administrative process of asset freezes and commodity seizures enforced as a result of the sanctions designations of individuals or entities, and both reportedly feature a lower standard of proof, such as balance of probabilities as opposed to the criminal standard of beyond reasonable doubt.

While we do not wish to prejudge the accuracy of the received information, we wish to express our concern at the reported use of the concept of rebuttable presumption of wrongdoing and the de facto reversal of the burden of proof in sanctions-related cases, as described above. We are concerned that these reported practices may undermine fundamental principles of the presumption of innocence, due process and fairness enshrined in international law and relevant international human rights instruments. It is also of concern that although sanctions-related restrictions and prohibitions are imposed through administrative procedures, outside formal judicial processes, they appear to be commensurate with criminal or civil penalties. In this context, decisions on and enforcement of such measures appear not to abide by the same due process standards as those of criminal or civil proceedings, including the respect of the presumption of innocence, and instead allow for extensive deference to the authorities undertaking such actions, if challenged.

Of particular concern is also the reported low evidentiary threshold to trigger and substantiate the sanctions designations of targeted persons and entities, which is significantly lower than criminal standard of “beyond reasonable doubt”, even though the enforcement of restrictions and penalties in sanctions-related matters are commensurate to criminal or civil penalties.

In addition, the principle of fairness appears to be undermined by the reported practice of notifying the targeted persons and entities of their designations only after the designation has been confirmed. Furthermore, and particularly with regards to the U.S. sanctions regulations and procedures, when listed persons and entities engage with the administrative process of challenging a designation, their efforts may be significantly undermined by their inability to access information and evidence that triggered their designation in the first place. This is incompatible with the right to information and the right to “adequate facilities”, according to article 14 of the International Covenant on Civil and Political Rights, which must include access to documents and other evidence.

It is generally agreed in criminal, administrative and any other public law processes that the burden of proving the wrongfulness of a behavior lies with the claimant, which in the case of sanctions is the competent state authority. Targeted individuals or entities cannot be obliged to prove that they behaved in a compliant manner or in good faith, and therefore the burden of proof should not be shifted.

In essence, the presumption of wrongdoing and the reversal of burden of proof, which are deviations from the standards and principles of due process and fair trial, are reportedly used in sanctions-related procedures which although being of administrative nature, they impose penalties the severity and impact of which are similar to criminal or civil penalties. In addition, the observed adverse effects of such practices on the rights of targeted persons are further compounded by arbitrary treatment and restrictions in the name of national security and foreign policy considerations and priorities, including obstacles in accessing evidence and relevant information motivating the designations, delays in examining requests for review of the designations and removal from sanctions lists, as well as absence of impartiality in judicial procedures examining the appeal of the targeted person or entity.

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 detailed information on the use of rebuttable presumption of wrongdoing in sanctions-related procedures, with specific reference to relevant laws, regulations and decisions, and please explain how this practice is compatible with international human rights law, including the standards of due process.
3. Please provide detailed information on the practice of the reversal of the burden of proof in sanctions-related cases, with specific references to relevant regulations and decisions and please explain how this practice is compatible with international human rights law, including the standards of due process.
4. Please provide detailed information on how a listed persons or entity can appeal the sanctions designation, and what judicial means are available to challenge the legality of such designation and the veracity of the presented evidence.

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.

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 to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the European Union.

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

George Katrougalos

Independent expert on the promotion of a democratic and equitable international order

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described. We reiterate our observation that sanctions-related procedures and decisions are of an executive and administrative nature. They, however, impose penalties and restrictions which are commensurable to criminal or civil penalties which are enforced following formal conviction through judicial proceedings. In this context, we wish to highlight specifically the international standards on due process and fair trial guarantees enshrined in the international human rights instruments, in particular the International Covenant on Civil and Political Rights (ICCPR).

Article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In addition, article 14 of the ICCPR provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including presumption of innocence; the right to be promptly and in detail informed about the nature and cause of the charge; to have adequate facilities for the preparation of the defense; to communicate with counsel of his own choosing; to be tried without undue delay; and the right of appeal. These guarantees must be respected by State parties, regardless of their legal traditions and their domestic law.

In its General Comment No. 32 (2007), the Human Rights Committee states that deviating from the fundamental principles of fair trial, including presumption of innocence, is prohibited at all times, including in circumstances of emergency. Furthermore, it states that access to administration of justice must be effectively guaranteed to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status.

Similarly, the right to equality before courts and tribunals also ensure equality of arms, which provides that each party is given equal opportunity to contest all the arguments and evidence adduced by the other party (para. 13).

General Comment No. 32 refers also to the notion of fair trial which includes the guarantee of fairness of proceedings, which entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and whatever motive (para. 25), as well as the avoidance of undue delays (para. 27).

Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has

been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused (para. 30).

The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such (para. 31).

Article 14 3(b) of ICCPR provides that accused persons must have adequate time and facilities for the preparation of their defense and to communicate with counsel of their own choosing. This provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms. According to Human Rights Committee, “adequate facilities” must include access to documents and other evidence. This access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory (para. 32).

Finally, considering that in the majority of cases the alleged conduct which triggers the imposition of sanctions is not considered to be a criminal offense, while at the same time the imposed sanctions are often commensurable to criminal penalties, we wish to recall article 15 of ICCPR which stipulates that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.