Mandates of 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 to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

REFERENCE: AL USA 8/2016:

29 September 2016

Excellency,

We have the honour to address you in our capacities as 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 to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolutions 25/16, 22/9, 24/6, and 31/09.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Puerto Rico's crippling public debt level, which reportedly endangers the ability of many of its 3.5 million inhabitants to fully enjoy economic and social rights. Certain provisions of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), enacted to solve the debt crisis, have conferred to a financial oversight and management board powers that could, if not carefully applied, further undermine the enjoyment of economic and social rights in the territory.**

According to the information received:

Nearing $70 billion at the end of 2015, Puerto Rico's public debt represents approximately 68% of its Gross Domestic Product.[1] Numerous factors have been associated with the territory's failing finances. Puerto Rico has historically deferred public costs, failing to set aside revenue to fund pensions and development and maintenance of infrastructure, and instead using revenue for operating expenses and issuing debt instruments to cover up deficits. As a result, over $48 billion of the territory's public sector debt in 2015 was attributable to debt issued by public corporations, including the electric and transportation authorities. The commonwealth does not tax capital gains or locally-sourced interest or dividends, and levies only a 4% resident income tax. Meanwhile, it collects up to 39% in graduated corporate income tax on businesses operating in Puerto Rico. Favoured tax status for such businesses was phased out over a 10-year period ending in 2006, eventually depleting capital investment and employment opportunities. The economic downturn accelerated emigration, and according to figures provided by the United States Census Bureau, Puerto Rico's population decreased by one-tenth between 2005 and 2015. Demographic factors compound the challenges facing the commonwealth, as its birth rate has plummeted by one-third over the past 15 years, while its population over the age of 65 has simultaneously increased.

Impact of "vulture" hedge funds on Puerto Rico's finances

Almost half of the territory's debt consists of interest that accrued on capital appreciation bonds, which are high interest rate general obligation bonds requiring no principal or interest payments until the bonds reach maturity. Mainland investors, including hedge funds, purchased these securities from Puerto Rico in large volumes, because the interest on the bonds is triply exempt from tax at the local, state and federal levels. In addition, the bonds were perceived as low-risk, because the commonwealth is ineligible for federal bankruptcy protection from creditor demands, under a 1984 amendment to Chapter 9 of the Bankruptcy Code).[2] Puerto Rico, on the other hand, has been detrimentally affected by its decision to issue these bonds, which led it to over-borrowing in order to balance its budget. Starting in late 2012, fears of a debt crisis in the territory led to the downgrade of its general obligation bonds. They continued this downward tumble until reaching 'junk' status in early 2014. At fire sale prices, initial creditors sold large amounts of the bonds, writing them off as bad debt. So-called vulture hedge funds, as secondary market investors targeting distressed debt in troubled economies, were then able to buy these bonds for as little as five cents on the

[1] See Government Development Bank for Puerto Rico, Financial Information and Operating Data Report, 6 November 2015, p. 119; http://www.bgfpr.com/documents/CommonwealthReport11-06-15.pdf ; http://www.gdb-pur.com/spa/economy/statistical-appendix.html (citing GDP of $102,906 million in 2015); ; http://www.gdb-pur.com/spa/documents/PonenciaPresupuesto-BGF-5-30-16.pdf (citing public debt of $69,214 million as of 31 December 2015).

[2] See 11 United States Code §§ 109 (c), 101(40).

dollar, with interest continuing to accrue. While Puerto Rico has $37.8 billion in outstanding capital appreciation bonds, the underlying principal on this debt is reportedly just $4.3 billion. The remaining $33.5 billion represents investor profit in the form of interest. It has been estimated that approximately 37 per cent of the territory's municipal bonds are held by vulture funds. While these vulture funds may have provided a service to investors who sold the distressed bonds out of a fear of incurring total losses, the financial power they have acquired could be wielded towards Puerto Rico in a damaging way.

While the island's economy leaves almost half of its residents mired in poverty, outside investors have been attempting to reap significant profits by demanding repayment at full face value and opposing debt restructuring efforts that disadvantage them. In July 2015, a group of former International Monetary Fund economists issued a report commissioned by a group of 34 hedge funds holding Puerto Rico bonds worth $5.2 billion.[3] The report advised the commonwealth to avoid defaulting on its debts by increasing tax revenue collection and drastically reducing public spending in education and health. No consideration to human rights was paid in this document.

Debt moratorium and debt audit

On 1 July 2015, the territorial legislature established a commission to audit Puerto Rico's public debt (Comisión para la Auditoría Integral del Crédito Público) on the basis of Law No. 97. With insufficient funds, the Commission has struggled to conduct its work.[4] According to the Commission's published analysis in 2016, up to $30 billion of Puerto Rico's public debt may have been sold in violation of Puerto Rico's Constitution.

In April 2016, to address the increasing public debt level, Puerto Rico's governor signed a law imposing a debt moratorium and declaring a state of fiscal emergency.[5] This was promptly followed by lawsuits filed against Puerto Rican authorities in New York by several US investment groups holding Puerto Rican bonds.

PROMESA

After approval by both houses of Congress, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was signed into law by President Barack Obama on 30 June 2016. PROMESA allows the territory's government to enter into a bankruptcy-like restructuring process. It also requires the President of the United States to appoint a seven-member financial oversight

[3] This report can be accessed at: http://www.centennial-group.com/downloads/For%20Puerto%20Rico%20There%20is%20a%20Better%20Way.pdf
[4] Ley Núm. 97 de 1 de Julio de 2015, http://www2.pr.gov/ogp/BVirtual/LeyesOrganicas/pdf/97-2015.pdf
[5] Act 21-2016, Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, as amended http://www.reuters.com/article/us-puertorico-debt-legislatiion-idUSKCN0X31GJ

and management board to oversee any debt restructuring and monitor the commonwealth's budget.[6] The task of the Board is to facilitate negotiations between the government and creditors, or, if these fail, to bring about a court-supervised process akin to bankruptcy proceedings.

Under PROMESA, the Governor of Puerto Rico (who is an ex officio, non-voting member of the Oversight Board), must submit to the Board a five-year fiscal plan and annual budgets for the territory and its instrumentalities.[7] The Board evaluates the compliance of the plan with a number of statutory requirements. Inter alia, the plan must: aim to achieve fiscal responsibility and access to capital markets; provide for the elimination of structural deficits; improve fiscal governance, accountability and internal controls; include a debt-sustainability analysis; and ensure the funding of essential public services and adequate funding for the public pension system.

If the Governor and legislature do not provide a compliant territorial budget for the fiscal year by the first day of that year, the Board has the authority to certify its own budget as compliant and have it enter into force. In addition, the territorial government may not engage in public debt-related transactions (issuance, exchange, redemption, etc.) without prior approval from the Board. The Board therefore has significant oversight power over Puerto Rico's finances.

PROMESA requires neither a transparent and participatory audit of Puerto Rico's debt nor a human rights impact assessment prior to the implementation of any austerity or debt restructuring plans. It does establish a retroactive stay on creditor lawsuits seeking repayment from the commonwealth; the stay expires in February 2017. PROMESA also provides for expedited procedures for approving critical infrastructure projects. It establishes a task force whose duties include reporting on impediments to Puerto Rico's economic growth in federal law and federal programs; and recommending relevant changes which, if adopted, would spur sustainable long-term economic growth and job creation, reduce child poverty, and attract investment.

PROMESA also allows the governor to exempt employers from paying certain employees the federal minimum wage of $7.25 an hour, in favour of a reduced hourly wage of $4.25. This exemption would apply to workers who are initially employed after the enactment of PROMESA and are 25 years or younger. The exemption, subject to the Oversight Board's approval, would be in effect for a period of no more than four years.

The day after the legislation was signed, Puerto Rico defaulted on $779 million of general obligation bonds, constitutionally-guaranteed securities that the government is supposed to repay before even covering the cost of essential

[6] https://www.gpo.gov/fdsys/pkg/BILLS-114s2328enr/pdf/BILLS-114s2328enr.pdf

[7] PROMESA defines territorial instrumentality as a "political subdivision, public agency, instrumentality—including any instrumentality that is also a bank—or public corporation of a territory."

services, such as education, police and sanitation services. As a result, Standard and Poor's and Fitch Ratings downgraded Puerto Rico's general obligation bonds to the D (default) level, the lowest possible rating.

Impact of the debt crisis on the people of Puerto Rico

Poverty and income inequality

Puerto Rico's dire financial situation has serious economic and social consequences for its people. Some members of the United States Congress have already warned of a potential humanitarian crisis in light of the territory's inability to pay for basic services. While the commonwealth receives over $6 billion each year from the federal government in assistance for food, housing, health and education, the island is one of the most impoverished regions of the United States of America.[8] In 2014, almost half of its residents lived under the poverty line.[9] The number of working poor doubled between 2010 and 2014, affecting one out of five workers. There has also been an increase in income inequality within the island. The Gini-coefficient, which measures income inequality, increased from 0.535 in 2006 to 0.547 in 2013, and is higher in Puerto Rico than in any of the 50 states.

Unemployment

As of June 2016, the unemployment rate in Puerto Rico has remained above 11%.[10] Formal workforce participation has declined by 20% over the past decade, and currently sits at about 40%. In August 2016, the authorities announced the layoff of over 7,800 public workers, in the first batch of up to 30,000 public sector job cuts.

Food

Basic necessities are slipping out of financial reach for many residents. Per United States Census Bureau figures, in 2014, 37.7% of Puerto Rican households received food stamps financed by the federal government, whereas in 2010, this figure was 33.1%.[11] Food staples are costly, since the territory imports 82% of its food, including rice, beans and coffee. The high cost of living on the island is exacerbated by the retail effects of the so-called Jones Act, a 1920 federal law requiring all maritime cargo carriers bringing goods to Puerto Rico to use American vessels built in America and employing predominantly American crews.[12]

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[8] See http://www.census.gov/newsroom/press-releases/2015/cb15-157.html

[9] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1701&prodType=table

[10] http://data.bls.gov/timeseries/LASST720000000000003

[11] http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S2201&prodType=table

[12] Section 27 of the Merchant Marine Act of 1920, Pub. L. No. 66-261, 41 Stat. 988, 999

Affordable housing and utility services

The housing mortgage crisis in 2008 contributed to the economy's malaise, and the number of foreclosures in Puerto Rico has almost doubled since then. With large subsidies provided by the federal government, the commonwealth administers affordable public housing benefitting about 160,000 individuals, mostly in households headed by women. In recent years, there have been concerns about increasing numbers of residents who, unable to pay their utility bills, face eviction orders and disconnection of electricity and water services. During the last six years (2009-2015), courts issued 63,357 eviction orders, including 9,376 during the last fiscal year. In addition, in June 2016, the commonwealth's publicly-owned electric company (PREPA) announced its plan to raise electricity rates by 24%; these rates are already higher than in any mainland state. The extra money will be earmarked to pay debt service on up to $9.3 billion that PREPA plans to issue to replace its old debt.

Health care

Puerto Rico's health care system is seriously affected by the financial crisis. On average, one doctor emigrates from Puerto Rico each day, thus creating long waiting lists for patient care. 60% of residents are covered by either Medicaid or Medicare, and a significant portion of Puerto Rico's debt burden (an estimated $25 billion) represents health care costs that Puerto Rico is obligated to pay. In particular, Medicaid ("Mi Salud") provides coverage to 45% of residents and costs $2.5 billion per year, and Puerto Rico has had to borrow for years in order to sustain it. This is in part because Puerto Rico receives less federal funding for healthcare per publicly-insured individual than most states, even though it pays its share of social security and Medicare taxes.

In August 2016, a public health emergency was declared on the island in response to an outbreak of the Zika virus, which propagated due to the tropical climate, poverty and lack of infrastructure for mosquito control. Reportedly debt crisis related cuts to public programmes, including basic health and environmental control services, the lay-off of civic workers, and the blockage of funds in Congress to respond to the Zika crisis have put constrains on local and federal authorities to fight against the many breeding grounds of mosquitos or to run other preventive measures on the island.

The health care system is the second-largest employment sector and accounts for 20% of Puerto Rico's Gross Domestic Product; thus, its funding woes threaten the economy as a whole. On 29 June 2016, the Governor of Puerto Rico noted that due to the public debt, the government owes its suppliers more than $2 billion. He expressed concern that without supplier credit, medication and supplies for public hospitals and air-ambulance service to trauma centres are currently in jeopardy.

(1920) (codified as amended at 46 U.S.C. § 55102)

Although Puerto Rico received additional one-time federal grants for Mi Salud in 2011 through the federal Affordable Care Act, this funding may run out as early as the end of 2016, raising fears that as many as one million subscribers will then be dropped from medical coverage.

Education

As residents migrate to the mainland, many public schools are closing. According to Puerto Rico's Education Secretary, by 2015, school enrolment had plunged by 41% over the previous three decades, and an additional 22% drop is expected by 2020. The budget for primary and secondary education has been cut by 17% during the past three years (2013-2016). The quality of education may suffer as a result, and Puerto Rico already spends over $2,000 less per student than the average American state. School closures may also exacerbate declines in enrolment, especially in sparsely-populated areas where children may be unable to travel long distances to attend classes, and where child poverty rates are much higher than in urban areas. The high rate of poverty in Puerto Rico is one of the main obstacles to accessing higher education: 48% of all male adolescents and 38% of all female adolescents living below the poverty level do not obtain high school diplomas, compared to only 18% of male adolescents and 15% of female adolescents living above the poverty level.

Pensions

While PROMESA includes a provision requiring adequate funding for the public pension system, it is not clear how this will be achieved, given that Puerto Rico's largest public pension (the Employees' Retirement System) is now insolvent, and the territory's three pension schemes combined have among the largest funding gaps ever seen in U.S. history (about $43 billion). Thus, retirees in Puerto Rico might not timely receive pension benefits to which they are entitled in the near future.

It is also noted that over 19% of the island's public debt is held by Puerto Rican individual investors, including retirees. Many pensioners, having few assets with which to diversify their investment portfolios, face severe financial consequences from the decline in bond prices. Significantly, PROMESA does not establish legal protections for pensioners by putting them on equal footing with other creditors.

Participation in decision-making

PROMESA does not require the Oversight Board to engage in meaningful consultations with Puerto Rican residents, nor does it provide any effective remedies to those who may be adversely affected by planned austerity measures. Moreover, the Board's decisions are made in closed sessions inaccessible to the public, and its working language is English.

PROMESA's retroactive stay on creditor litigation has not stopped hedge fund investors from filing federal lawsuits to enforce prior repayment demands, or to challenge PROMESA's constitutionality. After expiring in early 2017, the stay will almost certainly be followed by additional litigation asserting that general obligation bond repayment takes precedence over provision of vital services such as water, power and hospital supplies. PROMESA does not provide a mechanism for ensuring that the Oversight Board, if faced with pressure from outside creditors, will nevertheless take into account the economic and social impact of its decisions on the local population.

Without wishing to prejudge the accuracy of the aforementioned information, we wish to express our serious concern over the impact of this situation on the economic, social and cultural rights on all residents in Puerto Ricans. In many ways, PROMESA has significant potential to resolve the financial crisis in Puerto Rico. PROMESA responds to the broad consensus that fiscal governance, accountability and internal oversight of public spending need to be strengthened in Puerto Rico. PROMESA also provides immediate protection from creditor lawsuits, thus ensuring continued provision of critical services in health care, public transportation and law enforcement. If Puerto Rico had been forced to pay its debt obligations, essential public services in the territory could have collapsed, with even more serious adverse impacts on the enjoyment of economic and social rights.

However, we are concerned that PROMESA does not include sufficient safeguards to ensure that fiscal reform measures will fully respect economic and social rights. In our view, PROMESA includes only two limited safeguards in this respect, requiring that the territory's fiscal plan and budget ensure the "funding of essential public services" and "provide adequate funding for the public pension system."

As explained above, many individuals living in Puerto Rico are increasingly unable to access basic necessities. Dramatic cuts in public spending would not constitute a sustainable financial and social model, and could undermine the enjoyment of several economic and social rights in the territory, including the rights to an adequate standard of living, including food and housing, as well as the rights to social security, health and education. Puerto Rico's people would not benefit from fiscal reforms if their basic needs were disregarded and priority was given to demands of outside creditors. Indeed, Puerto Rico's leadership has already warned about the adverse consequences of public spending cuts by noting that "extreme austerity [alone] is not a viable solution for an economy already on its knees." Worries about the adverse impact of the public debt crisis in Puerto Rico on economic, social and cultural rights were also expressed during a hearing at the Inter-American Commission on Human Rights on 4 April 2016.[13]

Serious concern is expressed that as a result of fiscal adjustment measures, an increasing number of individuals in Puerto Rico might be unable to access affordable health care, earned pension benefits, accessible and affordable housing and utilities, and

[13] Inter-American Commission on Human Rights, Report 157 Period of sessions, 2-15 April 2015, p. 13, available from: https://www.oas.org/es/cidh/prensa/docs/Report-157.pdf

just and favourable conditions of employment. We therefore urge the Oversight Board to engage in meaningful public consultations with civil society representatives and elected legislative representatives in Puerto Rico, in order to address such concerns when reviewing fiscal plans and budget proposals. International human rights obligations should be carefully considered when making this exercise.

We would stress in order to ensure that the Oversight Board's decisions are fair, it is of paramount importance that the Board members act independently and free of conflicts of interest. The fact that the Oversight Board will conduct its work in English during closed meetings raises concern that the public may encounter linguistic barriers impeding access to relevant information and documentation, and may not have sufficient opportunity to participate in the development of Puerto Rico's fiscal plans.

We would like to recall that the debt crisis in Puerto Rico raises the issue of co-responsibility of debtors and lenders[14], as both irresponsible lending and borrowing have contributed to the crisis. Consequently, accountability needs to be established on both sides. This implies as well that the losses related to the debt crisis must be distributed in a fair manner, without undermining the enjoyment of human rights of individuals within Puerto Rico who overwhelmingly are not personally responsible for the crisis. In this regard, we are concerned that PROMESA does not require a transparent and participatory audit of Puerto Rico's debt prior to the implementation of any austerity or debt restructuring plans.

While the binding nature of contracts is often raised in the context of debt service default, we would encourage you to share our view that the principle of *pacta sunt servanda* ("agreements must be kept") has built-in boundaries set by larger norms, such as international human rights law.[15] Any contract between two or more parties, including sovereign States, is subject to the rules of the broader community. Thus, the notion of *pacta sunt servanda* is not absolute and must, in the realm of debt restructuring, take into account community obligations, including the economic and social rights established by international standards.

In this context, we would like to note that the Human Rights Council, in its resolution 27/30, called upon States to consider implementing legal frameworks to curtail predatory vulture fund activities within their jurisdictions, in order to prevent these funds from undermining the enjoyment of human rights. PROMESA provides temporary protection against excessive demands by such funds; however concerns persist that this stay of litigation will expire in February 2017.

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[14] See UNCTAD's Principles on promoting responsible sovereign lending and borrowing, available at: http://unctad.org/en/PublicationsLibrary/gdsddf2012misc1_en.pdf and Guiding Principles on foreign debt and human rights, (A/HRC/20/23, para 23).

[15] See U.N. General Assembly Report of the Independent Expert on foreign debt, "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," (A/70/275), 4 August 2015, paras. 35-41.

We welcome that the legislature of Puerto Rico established a commission to audit Puerto Rico's public debt, as recommended in the Guiding principles on foreign debt and human rights (A/HRC/20/23, para. 67). However, we would like to express concern that the Comisión de Auditoría Integral del Crédito Público has allegedly not received adequate financial support to conduct its work.

We would like to bring to the attention of the Oversight Board and the local Government of Puerto Rico a recent statement of the Committee on Economic, Social and Cultural Rights that outlines the human rights obligation of States and other actors when considering austerity measures (U.N. Document E/C.12/2016/1). In our view, the statement provides helpful guidance for ensuring that fiscal adjustment programs are implemented only after careful consideration of all available alternatives and in a human rights compliant manner.

In particular, we would like to underline that planned fiscal consolidation measures in Puerto Rico should be subjected to a human rights impact assessment, as suggested by the Committee on Economic, Social and Cultural Rights (E/C.12/2016/1) and recommended by the Guiding principles on foreign debt and human rights (A/HRC/20/23, para 12-14) and the Guiding Principles on extreme poverty and human rights (A/HRC/21/39, para 92).

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.

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 if you could kindly share this letter with the territorial government of Puerto Rico and the members of the Oversight Board established under PROMESA for their respective comments. We would therefore be pleased to receive your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the aforementioned information, concerns and allegations.

2. Please explain whether any planned fiscal consolidation measures proposed by the territorial Government and certified by the Oversight Board will be preceded by: (1) an audit of Puerto Rico's debt; and (2) a human rights impact assessment analyzing the effect of the planned measures on the economic and social rights of Puerto Rico's residents, including their effect on income distribution and poverty within the territory.

3. Does PROMESA provide legal and institutional mechanisms for balancing creditor's and debtor's rights so as to ensure that the economic and social rights of Puerto Rico's people will be prioritized?

4. We note that section 201 (b)(1) of PROMESA requires that Puerto Rico's fiscal plan ensure the funding of essential public services and pension systems. Please provide details on the criteria that the Oversight Board appointed under PROMESA will use in order to implement this provision, so that education, electricity, water and health care remain accessible and affordable for all residents, and that pension benefits allow retirees a dignified living standard. Please also explain the extent to which the Oversight Board will be guided by international human rights norms during this process.

5. Please provide details on any measures that have been or will be taken to ensure that the Oversight Board appointed under PROMESA will engage in public consultation to ensure that economic and social rights of the people in Puerto Rico are duly respected. If no such measures will be taken, please explain why.

6. What measures are federal and territorial authorities or the Oversight Board considering to uphold affordable access to quality public health care for Puerto Ricans and to mitigate the adverse effects the debt crisis has on its health care system?

7. To what extent will federal and territorial authorities, including the Oversight Board, consider ILO's Social Protection Floor Recommendation No. 202 when considering reforms to improve the financial sustainability of Puerto Rico's pension system?

8. Please specify the efforts that federal and territorial authorities are planning to undertake to ensure that planned adjustment measures do not further increase inequality and poverty? If no such measures have been taken, please explain why.

9. Please specify the financial and other resources that have been made available to support the Comisión de Auditoría Integral del Crédito Público established by the legislature of Puerto Rico in July 2015. Please explain how the Board will coordinate with the Comisión in order to ensure the consistency of their work.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent further adverse human rights impact on the population in Puerto Rico and to ensure their right to meaningful public participation in matters of their concern. In addition, appropriate accountability of persons and institutions that are entrusted with effective responses to the debt crisis, or may have been responsible for it, should be established.

We intend to 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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Juan Pablo Bohoslavsky
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

Hilal Elver
Special Rapporteur on the right to food

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

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Annex
Reference to international human rights law

In connection with the aforementioned alleged facts and concerns, we would like to draw your attention to the human rights standards set forth below.

The United States of America signed the International Covenant on Economic, Social and Cultural Rights on 5 October 1977. Although it has not ratified the Covenant, it is obliged to refrain from acts that would defeat the Covenant's object or purpose, in conformity with article 18 of the Vienna Convention on the Law of Treaties. All States, including the United States of America, are furthermore obliged to protect and guarantee the rights enshrined in the Universal Declaration of Human Rights which has in the meantime become a source and expression of international customary law. The Universal Declaration of Human Rights includes in articles 22 to 26 the rights of everyone to social security, to work and just and favourable conditions of work, to an adequate standard of living, including food, housing and medical care, and to education. It proclaims in essence rights reaffirmed by the International Covenant on Economic, Social and Cultural Rights. The debt crisis in Puerto Rico and its impact on the island's people appear to engage the obligations of the United States of America under several articles of the Covenant, as explained below.

Right to an adequate standard of living

We wish to draw your Excellency's Government's attention to article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. According to the Committee, "the right to housing should be ensured to all persons irrespective of income or access to economic resources."

As explained in its General Comment No. 12, the Committee considers that the core content of the right to adequate food implies, *inter alia*, both economic and physical accessibility of food (para. 7).

Article 2 (1) of the Covenant obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights for all members of society (General Comment 3, para. 10).

Right to health

We would like to draw your Excellency's Government's attention to article 12 of the ICESCR, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which states that "While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect". (GC 14, Para.30). States parties have immediate obligations, such as the guarantee that the right to health will be exercised without discrimination of any kind and the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to health. (GC 14, Para.30). The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health.

Right to education

Article 13 of the Covenant protects the right of everyone to education. This right includes free and available primary education for all. In its General Comment No. 13, the Committee explains that education must be accessible to all, and that accessibility includes physical and economic components as well as non-discriminatory application.

Right to social security

Article 9 of the Covenant provides that States parties "recognize the right of everyone to social security." The Committee's General Comment No. 6 states that the term "social security" "implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control" (para. 26.)

Under the International Labour Organization Social Protection Floors Recommendation (2012, No. 202), States should ensure basic income security for all older persons, at least at a nationally-defined minimum level.

Right to work

Under article 6 of the Covenant, States parties recognize the right to work, "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts." This provision requires States parties to take appropriate steps to safeguard this right.

Right to just and favourable conditions of work

Under article 7 (a) of the Covenant, State parties recognize the right of everyone to just and favourable conditions of work, and in particular to "remuneration which provides all workers at a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind. The remuneration shall further ensure "a decent living for themselves and their families in accordance with the provisions of the Covenant."

Right to participate in decision-making

Under article 25 (a) of the International Covenant on Civil and Political Rights, to which the United States of America is a party, every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

Fiscal measures and human rights

We would also like to draw your attention to the Guiding principles on foreign debt and human rights (U.N. Document A/HRC/20/23), endorsed by the Human Rights Council through its resolution 20/10. Under these principles, States, international financial institutions and private companies are obligated to respect human rights. The Guiding principles state, inter alia, that:

- States must design and implement policies and programs to further the delivery of basic services essential for the enjoyment of all human rights, particularly economic, social and cultural rights, in an equal and non-discriminatory manner. (Principle 11.)

- States should analyze policies and programs, including those relating to external debt, macroeconomic stability, structural reform and investment, with respect to their impact on poverty and inequality, social development and the enjoyment of human rights, as well as their gender implications, and adjust them as appropriate, to promote a more equitable and non-discriminatory distribution of the benefits of growth and services. (Principle 12.)

- Creditors and debtors share responsibility for preventing and resolving unsustainable debt situations. For creditors, this includes the obligation to perform due diligence on the creditworthiness and ability to repay of the borrower as well as the duty to refrain from providing a loan in circumstances where the lender is aware that the funds will be used for non-public purposes or for a non-viable project. For debtor States, this entails an obligation to contract loans and use the loan funds in ways that serve the public interest and repay the debt in a timely fashion. (Principle 23).

- Borrower States should conduct transparent and participatory periodic audits of their debt portfolios in accordance with national legislation designed for this purpose. The findings of such audits must be publicly disclosed to ensure transparency and accountability in the management of the State's external debt stock and should inform future borrowing decisions by the State as well as its debt strategy, development expenditure and human rights action plans. (Principle 67)

- Public audits of debt portfolios should assess the loan contraction process, use of loan funds and the impact of debt on development and the realization of human rights. (Principle 68).

In addition, the Statement of the Committee on Economic, Social and Cultural Rights on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2016/1) outlines the human rights obligation of States and other actors when considering structural adjustment and fiscal consolidation measures.

According to the Committee, retrogressive measures in the area of economic, social and cultural rights are only permissible if they are unavoidable, necessary and proportionate, in that the adoption of any other policy or failure to act would be more detrimental to economic, social and cultural rights. Such measures should remain in place only insofar as they are necessary; should not result in discrimination; should mitigate inequalities that can increase in times of crisis and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and should not affect the minimum core content of the rights protected under the Covenant. According to the Committee, before embarking on fiscal consolidation and structural reform policies, States need to comprehensively examine alternatives and ensure genuine participation of affected groups in examining the proposed measures and alternatives (para 4). The Statement also reaffirms the view that a human rights impact assessment of imposed reforms should be carried out (para. 11).