

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the right to development; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights

Ref.: AL USA 3/2024
(Please use this reference in your reply)

25 January 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the right to development; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, pursuant to Human Rights Council resolutions 49/13, 51/7, 53/10 and 52/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the damaging impact of the unilateral economic coercive measures imposed on Cuba for the past 62 years by the USA, on Cuba's ability to guarantee the right to food and to an adequate standard of living for its citizens and residents.**

According to the information received:

Since 2020, access to basic food and medical supplies in Cuba has worsened due to several factors. One of the most prominent factors affecting food security in the country is the strengthening of economic, commercial and financial embargo imposed by the USA against Cuba, exasperated by the impact of the COVID-19 pandemic and Cuba's exposure to extreme hydro-meteorological events, as well as the re-designation by the U.S. Government, in 2021, of Cuba as a state sponsor of terrorism. Despite the existence of the rationing system (whereby basic food items and other essentials are distributed to Cuban citizens in monthly quotas at subsidized prices) aimed at ensuring access to proper nutrition for all population groups, in the last decade, a large part of the Cuban population has experienced a shortage of some sort or an interruption of basic food supplies, alongside an overall increase in prices for the majority of products.

Cuba imports around 70-80 percent of the food it needs and 50 percent of the subsidized monthly food basket for the entire population¹, making the country highly vulnerable to economic and monetary crisis and global supply chain disruptions and high international food prices. This dependency is highly impacted by the embargo imposed by the USA on Cuba. The embargo hinders access to the nearest, most competitive import destination, the US market as well as prevents foreign companies from delivering essential products to Cuba including food samples, baby formula, medication and other types of goods of humanitarian nature. As a result, the cost of importing food to Cuba from other markets has been estimated to cause an increase of 30 percent in prices, due to higher purchase and shipping costs of food purchased from more expensive

1 WFP, Evaluation of Cuba WFP Country Strategic Plan 2021-2024, <https://docs.wfp.org/api/documents/WFP-0000145485/download/>.

and more distant markets.²

As of 2023, the embargo is primarily upheld through various legislative acts, including the Trading with the Enemy Act of 1917, the Foreign Assistance Act of 1961, the Cuban Assets Control Regulations of 1963, the Cuban Democracy Act of 1992, the Helms–Burton Act of 1996, and the Trade Sanction Reform and Export Enhancement Act of 2000. The Cuban Democracy Act of 1992 explicitly aims to sustain sanctions on Cuba until the Cuban government demonstrates a commitment to democratization and greater respect for human rights.

As a result of this legislation, all third country exports of goods containing 10 percent US manufactured components must receive a license from the US Treasury Department, which reportedly can take months to be issued and is often not granted. This would be the case even if the transactions originated and terminated outside the US and were not subject to any sanctions in the countries of origin/destination or in the US. This legislation also imposes a ban on “U-turn” international transactions, obliging banks with a presence in the US to freeze and report any transaction connected to Cuba. Similarly, financial hurdles may occur when a U.S. financial institution intervenes as an intermediary for U.S. dollar transaction clearing purposes.

The embargo also prohibits ships from loading or unloading cargo in US ports for 180 days after delivering cargo to Cuba, discouraging shippers from delivering cargo (even humanitarian), raising shipping costs and further constricting the flow of food and medical supplies.

Due to the above-mentioned measures, Cuba’s ability to access foreign currencies and to import food commodities at competitive prices has been severely hindered. According to the World Food Program, Cuba’s high dependence on imports and limited access to foreign currencies significantly reduced the availability of domestic and imported food commodities in 2022, experiencing food shortages on major food staples and protein-rich food, including cereals, vegetables, dairy products and meat, affecting the most vulnerable in the country through the lack of proper nutrition, making them more susceptible to tuberculosis, measles, and other infectious diseases.³

The embargo has also restricted Cuba’s access to external multilateral financing for programs in agriculture and rural development, and for rehabilitating and modernizing agricultural equipment and infrastructure. Even the implementation of FAO projects, for example, is hampered by an increase in transportation costs for imports and the cancellation of contracts for maritime transportation by transport companies⁴. These measures have led to restricted access to essential supplies, raw materials, chemicals, and technologies crucial for the food producing industry. Consequently, it has resulted in a significant decline in domestic agricultural production and meat production in the country and insufficient external financing for reinvestment

2 http://www.oajre.ir/article_122980_652593ecf8e85ef4e23e1af05946a31c.pdf, p. 28.

3 WPF, Cuba Annual Country Report 2022, p. 7. https://www.wfp.org/operations/annual-country-report?operation_id=CU03&year=2022#/24191 ; Roshan N.A., Abbasi M. The Impact of the US Economic Sanctions on Health in Cuba, p. 22 http://www.oajre.ir/article_122980_652593ecf8e85ef4e23e1af05946a31c.pdf

4 UN General Assembly, A/75/8, p. 124

and the creation of a solid infrastructure in the food sector.

Agricultural products from the US can be imported into Cuba under certain conditions, governed by permits and regulations established by the US embargo. These imports often involve specific limitations and restrictions, such as the necessity for advance payment without access to credit financing. Although the 2000 US Trade Sanctions Reform and Export Enhancement Act eased exports of US agricultural products to Cuba, speeding up the process for obtaining licenses, the “cash before transfer of title and control” requirement (whereby cash payment and title to the goods is transferred while the goods are in transit) continues to hinder transactions, and shippers continued to be discouraged from delivering US agricultural products to Cuba because of the “180-days rule”. The stepped-up enforcement of the US embargo since 2021 has also generated severe cuts in trade in international food and agricultural market due to overcompliance reasons. There is also loss of gain for not taking advantage of the export potential (coffee, honey, tobacco, rum, seafood) to the nearest market (US).

The embargo, in conjunction with other factors, has diminished the standard of living and access to food for the Cuban population, who particularly in recent years has encountered severe shortages of medicines, food and fuel. These circumstances not only erode people’s quality of life but also undermine their human dignity.

In the period between March 2022 and February 2023, the Cuban government registered a loss of USD 273,390,800 in the agricultural sector due to the embargo. Similarly, the negative effect of the embargo on agricultural exports to the US increased by 8 percent in respect to the previous period, reaching USD 248,900,000.

In the first ten months of 2022 alone, inflation has reportedly caused an increase of almost 29 percent in the average cost of basic goods and services. From October 2021 to October 2022 inflation has in fact increased by almost 40 percent. The rise in inflation is also reportedly linked to the lack of access to hard currency (USD and EUR), the loss of exports due to the embargo and the poor performance of the tourism industry. The high inflation rates pose a critical situation for the livelihoods of Cuban population and their access to food, given that a significant proportion of household expenditure, between 55 percent and 65 percent, is on food.⁵ The unprecedented increase in food prices has strongly affected households, resulting in 72 percent of Cubans living close to poverty levels. The negative effects of the inflation are exacerbated in view of the reported challenges to transfer remittances to Cuba, even between family members.

Data published by the National Office for Information and Statistics (ONEI) shows that between August of 2021 and 2022 the prices for a basket of goods and services had registered a general inflation rate of 34,3 percent, with food products being the most affected.

5 WFP, Country Brief, Cuba, <https://www.wfp.org/countries/cuba>

Throughout 2020 and 2021, the impact of the COVID-19 pandemic led the state of food insecurity in the country to increase exponentially, resulting in scarcity of supplies, in particular of basic food and medical products. In the first half of 2021, Cuba had registered the highest weekly rates of COVID-19 cases in the Caribbean region. The prolonged situation, due to all these factors, has brought the country to being classified as having a moderate to severe situation of food insecurity by FAO in 2022, with food stocks and supplies becoming rapidly unavailable since the beginning of 2022.⁶

Between 2022 to 2023, product stocking has substantially decreased, along with a drastic surge in prices, which has impacted essential staple food such as rice, sugar, oil and other dairy and meat products. The generalized increment in poverty and inflation rates has resulted in further barriers to access the basic food basket.

The embargo, the inflation, and the deepening food insecurity particularly affect vulnerable groups, inter alia older persons, women, children, persons with non-communicable diseases and Afro descendants.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concerns regarding the possible negative effects of the long-lasting and all-encompassing embargo imposed by your Excellency's Government on Cuba on the enjoyment of the right to food and adequate standard of living of the Cuban population.

We would like to call your Government's attention to the fact that unilateral coercive measures, such as the current embargo imposed for more than 60 years on Cuba, alongside other measures of pressure, constitute serious violations of international law, including the principle of non-intervention into domestic affairs, the principle of sovereign equality of states and the obligation to settle disputes by peaceful means, with severe consequences on the lives and well-being of the country's population. The need to lift the embargo has been repeatedly underscored and reiterated, including through UN resolutions, appeals from international organizations and global civil society, regrettably to no avail. The comprehensive framework of restrictions as well as threats for imposing secondary sanctions against third parties, including States, entities and individuals who may be suspected of maintaining relations with Cuba, further exacerbate the country's isolation, cause harm to the economy and violate the human rights of the people of Cuba, including the rights to life, adequate food and nutrition, the highest attainable standard of health, freedom from poverty, freedom from discrimination, and development.

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 therefore be grateful for your observations on the following matters:

⁶ FAO, The State of Food Security and Nutrition in the World 2022
<https://www.fao.org/documents/card/en/c/CC0639EN>

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been taken by your Excellency's Government to ensure that the measures taken by your Excellency's Government against Cuba are, in each case, compliant with the obligations of the United States under international law.
3. Please indicate what measures your Excellency's Government has taken to ensure that the unilateral sanctions do not violate or interfere with internationally recognized human rights, and in particular, what measures are being taken to safeguard the right to food and the right to an adequate standard of living of the people of Cuba.
4. Please, indicate what measures have been taken by Your Excellency's Government to ensure unimpeded delivery of humanitarian goods necessary to ensure food security and sustainability, like baby formula, food for people with special needs, medicines, seeds, fertilizer and vaccines for livestock.
5. Please indicate what steps have been to ensure the right to enjoy economic, social, cultural and political development of the individuals is not affected by the measures taken by your Excellency's Government against Cuba.

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 negative effects of the long-lasting and all-encompassing embargo and prevent their re-occurrence.

Please be informed that a copy of this letter will be shared for information with the Government of Cuba.

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

Michael Fakhri
Special Rapporteur on the right to food

Surya Deva
Special Rapporteur on the right to development

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to draw your attention to the obligations under article 25 of the Universal Declaration of Human Rights (UDHR), which recognizes that everyone has the right to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control. Although not legally binding, the provisions under the UDHR enjoy undisputed international recognition and are therefore considered part of customary international law.

Furthermore, the United States has ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992 and has signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977, constituting a mean of authentication, and expressing the willingness of the state to continue the treaty-making process. The rights enshrined in the ICESCR constitute universally recognized norms of customary international law. Article 1 of ICESCR states that all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development by virtue of the right to self-determination. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. Article 11(1) of ICESCR recognizes the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. This Article must be read in conjunction with article 2(2), which further enshrines the obligation to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Thus, article 11 of ICESCR recognizes the fundamental right of everyone to be free from hunger and calls on States to consider, individually and through international co-operation, the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The ICESCR further requires States to "take appropriate steps to ensure the realization of this right" and the Committee on Economic Social and Cultural Rights has defined the corresponding obligations of States to respect, protect and fulfil the right to food in its general comment no. 12. In interpreting article 11, the Committee stressed that the core content of the right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing, and market systems (para. 12). It entails both economic and physical accessibility of food, as well as the sustainability of food access for both present and future generations (para. 7).

According to the Committee, the obligation to respect existing access to adequate food requires State parties to refrain from taking any pressures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood. The right to be free from hunger and malnutrition is not subjected to progressive realization, as it must be fulfilled in a more urgent manner (para. 1.) The Committee also recalled that the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food may constitute a violation of this right. Furthermore, States must guarantee that food is available, which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well- functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand. Access to food must be sustainable i.e., food must be accessible for both present and future generations. Accessibility implies physical accessibility for everyone, including children, the elderly, persons with disabilities and displaced populations. Economic accessibility means that food must be affordable to all; expenses for food must not be so high as to compromise the enjoyment of other human rights, such as to housing, water, health or education.

Moreover, article 11(2) requires the States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, to take, individually and through international co-operation, the measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.

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 would further like to bring your Government's attention to general comment no. 8 of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights where the Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights, cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions. It has been observed that although this General Comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures (A/HRC/28/74, para. 15).

Furthermore, recalling its position stated in the aforementioned general comment 8, in its general comment no. 12, the Committee on Economic, Social and Cultural Rights calls on States to refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other

countries.

Moreover, the Vienna Declaration and Programme of Action calls upon States to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food.

Resolution 27/21 of the Human Rights Council expresses grave concern by 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, of targeted States.

Finally, we wish to recall operative paragraph 1 of the same resolution which “[C]alls upon all States to stop adopting, maintaining or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development.”

Moreover, we wish 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 cooperation 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. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.

We also refer to the Guidelines and recommendations on the practical implementation of the right to development developed by the Special Rapporteur on the right to development (A/HRC/42/38). Paragraph 83 of the Guidelines recommends that States should counter adverse trends, such as the imposition of unilateral coercive measures, that negatively affect multilateral cooperation and create obstacles to development.