

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

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(Please use this reference in your reply)

4 May 2022

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights pursuant to Human Rights Council resolution 45/5.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the fact that the joint stock companies Belaruskali, a state-owned enterprise in the Republic of Belarus which mines potash, and Belarus Potash Company (BPC), a state-owned enterprise that markets and exports the potash, are being blocked from transporting it through the Republic of Lithuania as a result of its response to unilateral sanctions imposed by the European Union and the United States of America. I am also writing concerning the fact banks in Lithuania have impeded transactions pertaining to trade in Belarusian potash. **I am concerned that these actions are having a detrimental effect on human rights internationally, particularly the right to adequate food in a number of countries but also other rights that are associated with it.**

According to the information received:

Potash is an essential mineral component of chemical fertilizers that increase crop yields. Nearly all potash mined in the world is used for this purpose.¹ Potash is considered vital for achieving food security and eliminating hunger internationally. Note that I do not express at this point, any judgement about the ecological merits or value, good or bad, of the use of potash as a fertilizer, or about its effects long-term on the soil or the political economy of food production. These important matters are outside my sphere of expertise.

Potash is mined in large quantities in only a few countries, with two-thirds of the world's output concentrated in Canada, Russia and Belarus. In 2020, Belarus was the third largest producer and second largest exporter of potash, accounting for 17.6% of global output and 21% of global exports.²

Potash mines and factories that process it into fertilizer take months or years to adjust their output, so shortages from one source cannot be eased rapidly or replaced by others.³

Potash produced in Belarus is mined by Belaruskali, a state-owned enterprise. Belaruskali is the main shareholder in Belarus Potash Company (BPC), which markets and exports the potash. Other state-owned enterprises hold the

¹ Newcastle University, "Sustainable Use of Potassium for Feeding the World," <https://www.ncl.ac.uk/globalchallenges/food-security/using-potassium-for-feeding-the-world/>

² Government of Canada, "Potash Facts," <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/minerals-metals-facts/potash-facts/20521>
International Fertilizer Association, "Fact Sheet – Global Food Security," 2021, file:///C:/Users/asus/Downloads/2021_IFA_Fact_Sheet_Global_Food_Security_.pdf

remaining shares in BPC.

Belarusian potash is mostly exported through Lithuania. It is taken by rail to the seaport at Klaipeda, where it is put onto vessels for destinations around the world.

BPC has been a supplier of potash to most countries classified by the UN Food and Agriculture Organization as “hunger hotspots” in recent years, including Chad, Mali, Nigeria, Madagascar, Kenya, Nigeria, Myanmar, Venezuela, Colombia and Honduras, among others. Some of these hotspots (Chad, Mali and Madagascar) as well as other countries with food insecurity (Malawi)⁴ have relied almost 100% on Belarus for potash supplies. Venezuela imported up to 84% of its potash needs from Belarus before unilateral sanctions against that country blocked imports in 2019.

In response to the forced landing on 23 May 2021 of a Ryanair flight in Minsk the European Union imposed on 24 June 2021 sanctions against Belarus that banned most imports of potassium chloride, the most frequently produced form of potash.⁵

Between 6 and 11 August 2021, Canada and the United Kingdom imposed sanctions against Belarus that banned most imports and Switzerland banned all imports of potassium chloride. Switzerland aligned its ban with those of Canada and the United Kingdom on 30 September 2021.

On 9 August 2021, the United States imposed sanctions against Belaruskali under Executive Order 14038, “Blocking Property of Additional Persons Contributing to the Situation in Belarus,” relating to concerns about human rights and democracy. Belaruskali’s assets over which the U.S. made jurisdictional claims were frozen, and transactions with the company were blocked.⁶ Banks in the Republic of Lithuania immediately stated that they would strictly adhere to the U.S. sanctions and would not serve companies or engage in operations that would violate them.

On 2 December 2021, the United Kingdom⁷ added Belaruskali to its sanctions list by freezing assets over which it had jurisdiction.

On 2 December 2021, the United States added BPC to its sanctions list while allowing U.S. dollar transactions with it to continue until 1 April 2022.⁸

On 2 March 2022, the EU expanded its sanctions against Belarus to ban imports of all Belarusian potash.⁹ The Republic of Northern Macedonia, Montenegro, Albania, Iceland and Norway all joined the EU decision.

⁴ Food and Agriculture Organization, “Malawi: Acute Food Insecurity Situation Update,” 7 January 2021, <https://www.fao.org/in-action/kore/publications/publications-details/en/c/1371396/>

⁵ Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus.

⁶ Executive Order 14038, 9 August 2021.

⁷ Foreign, Commonwealth & Development Office, “UK imposes further sanctions to hold Lukashenko regime to account for human rights violations in Belarus,” 2 December 2021, <https://www.gov.uk/government/news/uk-imposes-further-sanctions-to-hold-lukashenko-regime-to-account-for-human-rights-violations-in-belarus>

⁸ Department of the Treasury, “Treasury Expands Sanctions Against Belarusian Regime with Partners and Allies,” press release, 2 December 2021, <https://home.treasury.gov/news/press-releases/jy0512>

⁹ EU Council Regulation (EC) No. 2022/355, amending Regulation (EC) No. 765/2006.

Amid concerns about the extraterritorial enforcement of the U.S. sanctions through the imposition of secondary sanctions (sanctions against parties doing business with sanctioned entities) and other penalties, there is a high degree of over-compliance. Most non-U.S. banks, clients, ship owners, container lines and others doing business with Belaruskali terminated these relations. Companies that continued their business with Belaruskali been reported to face obstacles from banks, including extensive delays in payment transactions, refusals to conduct transactions and refusals to open credit lines in U.S. dollars or other currencies. Companies interacting with BPC also reported such treatment even before BPC was added to the U.S. sanctions list.

On 17 December 2021, Lithuanian Railways, a state-owned enterprise, said it received a letter of assurance from the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) that secondary sanctions would not be imposed against it for transporting potash produced by Belaruskali to Klaipeda.

On 21 December 2021, Lithuanian Prime Minister Ingrida Šimonytė said the letter from OFAC did not, in fact, completely rule out the potential for Lithuanian Railways to be targeted by U.S. secondary sanctions if it continued to transport the Belarusian potash.

On 1 February 2022, the Lithuanian Government stopped allowing potash from Belarus to transit through Lithuania. It declared the contract between Belaruskali and Lithuanian Railways to be void as of that date and rejected initial applications by other companies to transport Belaruskali products through Lithuania.

Without prejudging the accuracy of the information received, I wish to express my grave concerns about the actions of your Excellency's Government, including those pertinent to the actions of Lithuanian Railways and of Lithuanian banks, in response to U.S. and other unilateral sanctions relating to Belarusian potash, Belaruskali and BPC. By impeding financing and transactions for, and transportation of, a significant portion of the world's potash, these actions reinforce and exacerbate the impact of the sanctions as a key factor in the current global shortage of fertilizers. This is highly damaging to the enjoyment of the right to adequate food and other human rights by millions of individuals in many countries depending on it to produce their food.

It must be emphasized that the range of human rights affected by the shortage of fertilizers and their resulting high prices on the international market is rather wide. According to Art 11 of the ICESCR, the right to food is part of the right to an adequate standard of living, and when food is insufficient the right to health and the right to life are prejudiced. The right to education is also harmed as hunger and malnutrition have been identified as obstacles to children's learning.¹⁰ Some of these rights are enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) while others are elaborated in the International Covenant on Civil and Political Rights (ICCPR), to both of which Lithuania acceded on 20 November 1991. Most are also recognized in the Universal Declaration of Human Rights.

¹⁰ OHCHR, "OHCHR and the right to food," <https://www.ohchr.org/En/Issues/ESCR/Pages/food.aspx>

The paramount importance of the right to food was affirmed by the United Nations when it stated that “(t)he human right to adequate food is of crucial importance for the enjoyment of all rights.”¹¹ Meanwhile, the right to freedom from hunger is today considered a norm of customary international law that is binding on all states.¹² The Food and Agriculture Organization and the World Food Programme expect acute food insecurity to worsen in many countries ranging from numerous African states to Afghanistan, Myanmar, Yemen, Syria, Haiti, Colombia and others by May 2022, and say urgent fertilizer shipments are needed to address these emergencies¹³ as critical goods.

Insufficient fertilizer impedes the achievement of the Sustainable Development Goals, most directly SDG 2: “End hunger, achieve food security and improved nutrition and promote sustainable agriculture.” The United Nations refers to “boosting yields on existing agricultural lands” as a means to achieve this goal.¹⁴ Progress toward other SDGs is also affected, particularly SDG 1 (no poverty) and SDG 3 (good health and well-being).

I further wish to highlight that decline in crop yields can lead to large-scale food shortages, malnutrition, and in the worst case famine and related emigration and internal displacements,¹⁵ prolonging and expanding the range of human rights problems that arise from insufficient food, particularly for vulnerable groups such as women, children, the elderly and persons with disabilities or diseases. Migrants can be exposed to hunger and ill health while not being able to legally work, obtain housing or access health care, education or other basic services.¹⁶

I also note that reduced crop output due to fertilizer being unavailable or too costly not only harms the enjoyment of human rights in the countries where the crops are grown but also in other countries whose populations rely on imports of these crops.

Moreover, I express my deep concerns about reports of jobs lost or jeopardized at Lithuanian Railways and the Klaipeda port, in addition to jobs at Belaruskali, BPC and at ports, transport companies and fertilizer manufacturers in importing countries, that depend on shipments of Belarusian potash through Lithuania. Besides the rights to work and to freely choose one’s employment, particularly for persons with specialized jobs in state entities for which no alternative employers exist, this erodes the rights of their families to health, education and an

¹¹ Economic and Social Council, General Comment No. 12, “The Right to Adequate Food,” 1999, p. 1, <https://undocs.org/E/C.12/1999/5>

¹² FAO, *The Right to Food Guidelines: Information Papers and Case Studies* (Rome, 2006), pp. 103–106.; OHCHR, “The Right to Adequate Food,” p. 9, <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

¹³ FAO and WFP, “Hunger Hotspots,” February to May 2022 outlook, <https://www.fao.org/3/cb8376en/cb8376en.pdf>

¹⁴ UN Department of Economic and Social Affairs, “Food security and nutrition and sustainable agriculture,” <https://sdgs.un.org/topics/food-security-and-nutrition-and-sustainable-agriculture#:~:text=The%20Sustainable%20Development%20Goal%20to,rural%20poverty%2C%20ensuring%20healthy%20lifestyles%2C>

¹⁵ Shuaizhang Feng, Alan B. Krueger and Michael Oppenheimer, “Linkages among climate change, crop yields and Mexico-US cross-border migration,” *Proceedings of the National Academy of Sciences* 107 (32), 2010, pp. 14257–62, <https://www.pnas.org/content/pnas/107/32/14257.full.pdf>

¹⁶ Report of the Office of the United Nations High Commissioner for Human Rights, “Situation of migrants in transit,” 27 January 2016, para. 28, document A/HRC/31/35, <https://undocs.org/en/A/HRC/31/35>

adequate standard of living when these are linked to the jobs.

Additionally, the human right of the Belarusian people to freely dispose of a natural resource that acts as a means of subsistence is being violated by the blockage of Belaruskali's potash shipments through Lithuania. This right is enshrined in both the ICESCR and the ICCPR, and is given effect through the UN Convention on the Law of the Sea, which grants land-locked countries like Belarus the right of access to the sea via freedom of transit through the territory of a transit state. Belarusian potash exports in 2020 totaled more than \$2.4 billion U.S. dollars, accounting for 4% of the country's gross domestic product.¹⁷

As regards the actions of Lithuanian Railways and banks in Lithuania, I wish to point out that states are obliged by international human rights law to ensure that activity under their jurisdiction or control does not result in human rights abuses. This obligation, affirmed by your Excellency's Government through its accession to and ratification of international human rights conventions, applies, *inter alia*, to the activities of state-owned and private companies on Lithuanian territory. Their responsibility to protect human rights, in turn, is set out in the UN Guiding Principles on Business and Human Rights¹⁸ (Guiding Principles), which apply to their activity without any geographic restriction.

The role of states in implementing the Guiding Principles is one of due diligence that entails "taking appropriate steps to prevent, investigate, punish and redress" human rights abuses by companies (Guiding Principle 1) through actions such as laws, policies, guidance and encouragement that aim to protect human rights (Guiding Principle 3).

These Guiding Principles call on states to be particularly attentive with respect to the activities of state-owned enterprises that affect human rights (Guiding Principle 4). It is noted that "(w)here a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations."¹⁹ While Lithuanian Railways is a joint stock company with a legal personality, it may be deemed a state organ on grounds that the state makes decisions relating to its activities and operations.²⁰ Thus, while Lithuanian Railways may be solely responsible for its acts and omissions in the context of domestic law, the Draft Articles on Responsibility for Internationally Wrongful Acts (DARS) consider that at the international level "the State is treated as a unity, consistent with its recognition as a single legal person under international law."²¹ The European Court of Human Rights has similarly affirmed that "the fact that (a) company was a separate legal entity under domestic law cannot be decisive to rule out the State's direct responsibility."²²

Finally, with respect to the actions taken by Lithuanian banks in response to the U.S. sanctions against Belaruskali and BPC, I remind that any over-compliance on

¹⁷ Medha Bhardwaj, "Potash War: Double-edged sword for Lithuania and Belarus," *Modern Diplomacy*, 29 January 2022, <https://moderndiplomacy.eu/2022/01/29/potash-war-double-edged-sword-for-lithuania-and-belarus/>

¹⁸ https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf

¹⁹ Guiding Principles on Business and Human Rights, commentary to Guiding Principle 4, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

²⁰ Government of the Republic of Lithuania, "Cabinet: contract between AB Lietuvos Geležinkeliai and OAO Belaruskalij is in conflict with national security interests," press release, 13 January 2022.

²¹ Commentary to article 2 of DARS.

²² *Dimitar Yordanov v. Bulgaria*, ECHR App. No., 3401/09 ¶60 (2018).

their part, which impedes the ability of countries relying on Belarusian potash to obtain it, or to obtain fertilizers made with it, has the effect of expanding the negative impact of the sanctions on the right to adequate food and the other rights mentioned above for the populations of those countries.

In connection with the above information and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites additional international human rights instruments and standards relevant to the issues discussed.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 explain the nature, extent and form of any human rights due diligence and due process of law that your Excellency's Government conducted with respect to its decisions (a) to terminate the contract by which Lithuanian Railways transported potash produced in Belarus by Belaruskali to the seaport of Klaipeda, and (b) to not approve initial applications from other potential transporters.
3. Please specify any action that your Excellency's Government has taken to ensure that banks in Lithuania are not engaged in over-compliance sanctions against Belaruskali or BPC through actions that negatively affect human rights by impeding transactions or trade involving Belarusian potash.
4. I would be grateful to know if your Excellency's Government has made, or will make, assessments of how food security in countries that rely on Belarusian potash is affected by their inability to obtain it, and whether your Excellency's Government has taken, or will take, measures to halt or mitigate any damage to the right to adequate food or other rights in those countries that may be attributable to its own actions or those of Lithuanian entities.
5. Please explain whether your Excellency's Government requires state-owned enterprises and private-sector businesses to carry out human rights due diligence in line with the Guiding Principles, and provide details of the relevant laws and regulations as well as the state organ or agency that monitors compliance.
6. Kindly provide information regarding any step that is being taken to assess the impact of blocking the transit of potash from Belarus, on such fundamental rights to food, life and health globally, and about any steps to review that policy in accordance with Lithuania's obligations under international human rights law.

While awaiting a reply, I urge that all necessary steps be promptly considered by the Government, to measure, assess and remedy the adverse impact on the human

rights to food and subsistence of millions of people worldwide, of blocking the sale internationally of potash and other fertilizers products of which depends food production in numerous countries. Such review of both due diligence and due process, which are critical to any human rights guided policy should evaluate responsibilities and determine accountability for possible violations of human rights.

Given the importance of this matter, I may consider to publicly express its concerns in this regard. Although the information at hand has been verified and appears to be reliable, I would appreciate, before considering this possible step, any clarification that Your Excellency's Government may be willing to share with my mandate and, through it, to the United Nations Human Rights Council. I believe that the matter raised in this letter is not a light one, and ought to be considered at the highest level with undivided attention. I believe that is indeed, is a matter for the international public to be aware of. Any public expression of concern on my part will reflect that we have been in contact with Your Excellency's Government to seek clarification.

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.

Please be informed that a letter on the same subject has also been sent to the European Union and to the United States.

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

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 the above concerns, I 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.

With respect to the right to adequate food, I refer to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines "the right of everyone to an adequate standard of living for himself and his family, including adequate food" (Article 11(1)).

The role of chemical fertilizer, and thus of potash, in ensuring this right is covered by an obligation in the ICESCR for states to take measures "to improve methods of production (...) of food by making full use of technical and scientific knowledge" (Article 11(1)(a)).

The ICESCR also alludes to the necessity of a state's freedom to export goods that are essential to the process of producing food abroad, stating that the obligation above is intended "to ensure an equitable distribution of world food supplies in relation to need" (Article 11(1)(b)).

With respect to the right to health, I refer to Article 25 of the Universal Declaration of Human Rights, in which paragraph 1 states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including (...) medical care (...)." The ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Article 12(1)).

Intricately linked to the right to health is the right to life, which is addressed by the International Covenant on Civil and Political Rights (ICCPR) in its recognition that "Every human being has the inherent right to life" (Article 6(1)). I refer to the UN Human Rights Committee's General Comment No. 36 (2018), in which it states that the right to life "should not be interpreted narrowly" and that it "concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death."

Referring to the impact of adequate food on learning, I note that the ICESCR enshrines "the right of everyone to education" (Article 13).

With respect to labor rights, I refer to the Universal Declaration of Human Rights, which states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" (Article 23(1)).

Regarding the right of the Belarusian people to freely dispose of the country's potash, I refer to the ICESCR and the ICCPR, which both state that "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" (common Article 1(2)). The UN Convention on the Law of the Sea gives effect to this right by

recognizing for Belarus, as a land-locked state, “the right of access to and from the sea” and the right to enjoy “freedom of transit through the territory of transit States by all means of transport” (Article 125(1)).

I additionally call your attention to the UN Guiding Principles on Business and Human Rights, which apply to all states and recognize their existing obligations to respect, protect and fulfil human rights.

Guiding Principle 1 outlines the duty of states to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Guiding Principle 2 encourages this protection to be made extraterritorial, calling on states to “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”

In conjunction with this, I refer to Guiding Principle 3, which elaborates how this is to be done through legislation and policies. Paragraph (a) calls on states to “(e)nforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;” while Paragraph (b) reminds states to ensure that other laws pertaining to businesses, such as corporate law, “do not constrain but enable business respect for human rights.” Paragraph (c) calls on states to “(p)rovide effective guidance to business enterprises on how to respect human rights throughout their operations,” which in the case of transnational enterprises entail their foreign as well as domestic activities.

As for Lithuanian Railways, I call your attention to Guiding Principle 4, which calls on states to “take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”

Finally, I refer to the Sustainable Development Goals and the objective of achieving them by 2030, agreed under the auspices of the United Nations. Besides SDG 2, “End hunger, achieve food security and improved nutrition and promote sustainable agriculture,” others that bear particular mention are SDG 1, “End poverty in all its forms everywhere,” and SDG 3, “Ensure healthy lives and promote well-being for all at all ages.” These goals contribute to the aims of the Declaration on the Right to Development, in which states are called upon to take “all necessary measures” to ensure access to food (Article 8(1)).