

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

Ref.: AL OTH 27/2022
(Please use this reference in your reply)

4 May 2022

Dear Ms. De Waele and Ms. Nedeá,

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 your attention information I have received concerning the fact that the European Union has imposed sanctions blocking imports, purchases and transfers of potassium chloride (potash) from Belarus, initially under Council Regulation (EU) 2021/1030 of 24 June 2021 regarding potash with certain specifications, and subsequently under Council Regulation (EU) 2022/355 of 2 March 2022 regarding all potash from Belarus. I am concerned that these **sanctions 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

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

markets and exports the potash.

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.

Belarus Potash Company 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 in 23 May 2021 of a Ryanair flight in Minsk, on, the European Union imposed on 24 June 2021 sanctions against Belarus under which it was “prohibited to import, purchase or transfer, directly or indirectly, potassium chloride (‘potash’) products [...] from Belarus, whether or not originating in Belarus.” The products affected included potassium chloride with a potassium content evaluated as K₂O, by weight, either not exceeding 40% or exceeding 62 % on the dry anhydrous product; mineral or chemical fertilisers containing the three fertilising elements nitrogen, phosphorus and potassium; mineral or chemical fertilisers containing the two fertilising elements phosphorus and potassium; and other fertilisers containing potassium chloride.⁵

On 2 March 2022, citing “actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine,”⁶ the EU expanded its sanctions against Belarus to ban imports, purchases or transfers of all Belarusian potash.⁷

The EU sanctions were joined by the Republic of Northern Macedonia, Montenegro, Albania, Iceland and Norway.

After the initial EU sanctions were in effect, the United States of America imposed sanctions against Belaruskali and Belarus Potash Company, freezing their assets and blocking transactions, on the basis of Executive Order 14038 of 9 August 2021.

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

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 Regulation (EU) 2021/1030 of 24 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus, Article 1i(1) and Annex VIII, *Official Journal of the European Union*, 24 June 2021, L 224 I, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:224I:FULL&from=EN>

⁶ Council of the EU, “Belarus’ role in the Russian military aggression of Ukraine: Council imposes sanctions on additional 22 individuals and further restrictions on trade,” press release, 2 March 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/03/02/belarus-role-in-the-russian-military-aggression-of-ukraine-council-imposes-sanctions-on-additional-22-individuals-and-further-restrictions-on-trade/>

⁷ Council Regulation (EU) 2022/355 of 2 March 2022 amending Regulation (EC) No. 765/2006 concerning restrictive measures in view of the situation in Belarus, Annex VIII, *Official Journal of the European Union*, 2 March 2022, L 67, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:067:FULL&from=EN>

over-compliance with the U.S. sanctions and thus with the EU sanctions as well because of their overlapping coverage. 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 faced 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.

On 1 February 2022, the Lithuanian Government stopped allowing potash from Belarus to transit through Lithuania by rail to Klaipeda. 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.⁸

Without prejudging the accuracy of the information received, I wish to express my grave concerns about the restrictions imposed by the European Union on Belarusian potash. By impeding financing and transactions for, and transportation of, a significant portion of the world's potash, the EU sanctions constitute 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. The right to food is part of the right to a decent 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.⁹ 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 which EU member states are parties. Most are also recognized in the Universal Declaration of Human Rights.

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."¹⁰ Meanwhile, the right to freedom from hunger is today considered a norm of customary international law that is binding on all states.¹¹ 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 and Colombia and others by May 2022, and say urgent fertilizer shipments are needed to address these emergencies¹² as critical goods.

⁸ Lithuanian Railways, "LTG netenkins prašymų vežti „Belaruskalij“ krovinius, kol neturės vyriausybės komisijos išvados" ["LTG will not satisfy requests to transport Belaruskali cargo until the conclusion of the government commission"], press release, 31 January 2022, <https://www.litrail.lt/en/naujienu-archyvas>

⁹ OHCHR, "OHCHR and the right to food," <https://www.ohchr.org/En/Issues/ESCR/Pages/food.aspx>

¹⁰ Economic and Social Council, General Comment No. 12, "The Right to Adequate Food," 1999, p. 1, <https://undocs.org/E/C.12/1999/5>

¹¹ OHCHR, "The Right to Adequate Food," p. 9, <https://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

AO and WFP, "Hunger Hotspots," February to May 2022 outlook, <https://www.fao.org/3/cb8376en/cb8376en.pdf>

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.¹³ 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 declines in crop yields can lead to large-scale food shortages, malnutrition, and in the worst case famine and related emigration and internal displacements,¹⁴ 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.¹⁵

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, Belarus Potash Company and at ports, transport companies and fertilizer manufacturers in importing countries, that depend on transactions in, and shipments of, Belarusian potash. 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 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 transactions and trade in Belarusian potash. This right is enshrined in both the ICESCR and the ICCPR. Belarusian potash exports in 2020 totaled more than \$2.4 billion U.S. dollars, accounting for 4% of the country’s gross domestic product.¹⁶

I further call your attention to the fact that Belaruskali has developed “its own unique technologies, innovative products and a research and production cluster”¹⁷ which enhance the importance of Belarusian potash to global food security. The right to conduct research unimpeded by sanctions is essential to satisfying the right of all

¹³ 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>

¹⁴ 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>

¹⁵ 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>

¹⁶ Polina Devitt, “EU sanctions damage lifeline transit of Belarus potash via Lithuania,” *Reuters*, 24 June 2021, <https://www.reuters.com/world/europe/eu-sanctions-damage-lifeline-transit-belarus-potash-via-lithuania-2021-06-24/>; Medha Bhardwaj, “Potash War: Double-edged sword for Lithuania and Belarus,” *Modern Diplomacy*, 29 January 2022, <https://modern diplomacy.eu/2022/01/29/potash-war-double-edged-sword-for-lithuania-and-belarus/>

¹⁷ OAO Belaruskali, “About company,” <https://webcache.googleusercontent.com/search?q=cache:lt2u-sTyCWoj:https://kali.by/en/company/+&cd=1&hl=en&ct=clnk&gl=de> (Google cache of <https://kali.by/en/company/> as it appeared on 3 April 2022).

individuals to benefit from scientific progress, as elaborated in the ICESCR and the UDHR. The ICESCR further obliges states to actively affirm this right by taking steps necessary for the development of science. This also pertains to external research related to Belaruskali's potash operations, some of which addresses other concerns of numerous EU member states, such as the storage of radioactive waste.¹⁸

It bears mention that a noted scholar of international law considers that “scientific research is of utmost importance for development and poverty reduction,” adding that “there is an inherent link between the right to enjoy the benefits of scientific progress and other human rights, in particular the right to an adequate standard of living, the right to education, the right to health, the right to information and the right to food.”¹⁹

EU treaties also must be borne in mind with respect to the sanctions affecting Belarusian potash. The Treaty on European Union affirms the EU's commitment to human rights and, in this context, pledges the EU to “promote multilateral solutions to common problems;” while the Treaty on the Functioning of the European Union affirms the EU's policy toward promoting development and eradicating poverty.

Moreover, the EU sanctions against Belarusian potash are inconsistent with the EU policy of fighting global malnutrition, for which it pledged 2.5 billion euros in 2021.²⁰

Finally, by targeting the entire Belarusian potash sector, the EU sanctions, together with the U.S. sanctions, create an environment that is conducive to over-compliance. This impedes adherence by companies to the UN Guiding Principles on Business and Human Rights, further damaging the right to food and the other human rights elaborated above.

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 the Council of the European Union conducted prior to Council Decision (CFSP) 2021/1031 of 24

¹⁸ L. Fuks, I. Herdzik-Konienko and L. Moskalchuk, “Clay-salt slimes of the “Belaruskali” prospective sorbents for management of the liquid radioactive wastes and decontamination of aqueous solutions,” *Sakharov readings 2019: Environmental problems of the XXI century*, Belarusian State University, 2019, p. 103-105, https://inis.iaea.org/collection/NCLCollectionStore/_Public/50/071/50071434.pdf?r=1

¹⁹ Yvonne Donders, “The Right to Enjoy the Benefits of Scientific Progress and its Applications,” UNESCO document SHS/RSP/HRS-GED/2007/PI/H/3, 10 December 2007, <https://unesdoc.unesco.org/ark:/48223/pf0000158691>
The pledge was made at the Nutrition for Growth Summit in Tokyo (European Commission, “EU pledges €2.5 billion to combat malnutrition with partner countries,” press release, 7 December 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6644

June 2021 and Council Decision (CFSP) 2022/356 of 2 March 2022, which led respectively to Council Regulation (EU) 2021/1030 of 24 June 2021 and Council Regulation (EU) 2022/355 of 2 March 2022.

2. I would be grateful to know if any European Union organ has made, or will make, assessments of how food security in countries that rely on Belarusian potash is affected by the EU sanctions, and whether the EU has taken, or will take, measures to halt or mitigate any damage to the right to adequate food or other rights in the countries concerned.
3. Please explain if any legal proceedings against any actor in the Belarusian potash sector have been initiated by the European Union, a member state or any other state for any alleged criminal or other illegal conduct; if so, please specify the alleged act(s), and if not, please explain the legal ground(s) for imposing penalties against them.
4. Please indicate what measures have been taken by the European Union to ensure that its sanctions affecting Belarusian potash are compliant with the EU's obligations under the UN Charter, international human rights law and other international obligations to guarantee that the rule of law is observed.
5. I would be grateful to receive 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 the EU's international 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, my mandate may consider to publicly express its concerns in this regard. Although the information at hand has been verified and appears to be reliable, we would appreciate, before considering this possible step, any clarification that you may be willing to share with my mandate and, through it, to the United Nations Human Rights Council. We 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.

We believe that is indeed, is a matter for the international public to be aware of. Any public expression of concern on our part will reflect that we have been in contact with you to seek clarification.

This communication and any response received from your organization 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 government of Lithuania and the government of the United States of America.

Please accept 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 you 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)).

Regarding the right to conduct research, I refer to the ICESCR, in which states recognize “the right of everyone (...) (t)o enjoy the benefits of scientific progress and its applications” (Article 15(1)(b)). Additionally, “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for (...) the development (...) of science” (Article 15(2)). Moreover, the States Parties “undertake to respect the freedom indispensable for scientific research (...)” (Article 15(3)). This right is also embodied in the UDHR, which states that “Everyone has the right freely to (...) share in scientific advancement and its benefits” (Article 27(1)).

I additionally call your attention to the UN Guiding Principles on Business and Human Rights, which outlines the responsibility of business enterprises to ensure human rights throughout their activities and business relationships, and recognizes the obligation of states to guarantee that this occurs as part of their broader obligation 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.”

As for the obligation of every member state of the United Nations to promote universal respect for and observance of human rights for all, this is found in the Charter of the United Nations (Article 55). I equally refer to the pledge of each member state to “take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55 (Article 56).

With respect to EU law, I refer to the Treaty on European Union, in which it is stated that the European Union “shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world,” including “the universality and indivisibility of human rights and fundamental freedoms (...) and respect for the principles of the United Nations Charter and international law.” The EU also “shall promote multilateral solution to common problems, in particular in the framework of the United Nations” (Article 21(1)).

The Treaty on the Functioning of the European Union enshrines the EU’s development cooperation policy, which “shall have as its primary objective the reduction and, in the long term, the eradication of poverty,” and states that the EU “shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries” (Article 208(1)).

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)).

