

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

Ref.: AL OTH 108/2023
(Please use this reference in your reply)

11 September 2023

Mr. Zlatko Rihter,

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 49/6.

As an independent human rights expert appointed by the United Nations Human Rights Council, I am mandated to report and advise on human rights issues from a thematic or country-specific perspective. I am part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. I am sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, I have received information from various sources concerning the **discontinuation by Mölnlycke Health Care AB (Sweden) of the provision of medical dressings for Belarusian patients suffering from the skin disease Epidermolysis Bullosa (EB), following the decisions a number of countries to impose and expand sanctions against Belarus, even though the imposed restrictions explicitly exempt the delivery of goods of a humanitarian nature, especially medicine and medical equipment. In addition, although payments and deliveries for such goods may be possible, in practice they become more complicated due to sanctions-induced restrictions and over-compliance.**

According to the information received:

Epidermolysis Bullosa (EB) comprises a set of rare genetic skin conditions in which patients, including children, lack the anchor that connects the skin's outer and inner layers, causing each to move separately. EB patients have extremely fragile skin and recurrent blisters and sores resulting from routine

Mölnlycke Health Care AB

friction between the layers or trauma. It is reported that some types of EB can lead to early death.

Dressings applied to wounds on the skin of EB patients must be changed very frequently, which can result in further damage, bleeding and pain. Silicone-based dressings minimize these effects while protecting the surrounding skin and facilitating healing.

Special dressings for the EB patients in Belarus used to be procured through procurement companies, paid from the state budget and provided to all those in need around the country. Lists of patients are compiled and updated by the Belarussian health authorities. In 2023, procurement companies reported on the impossibility to deliver dressings and bandages for the Belarussian EB patients because of the refusal by Mölnlycke Health Care AB to continue provision of these medical goods, without providing any explanation about the reasons of such a decision.

As of August 2023, the remaining stock of dressings and bandages for Belarussian EB patients can only cover the needs for a maximum period of 2 months (approximately until October 2023). The situation is critical and concerns several goods, including Mepitel, Mepilex, Mepilex lite and Mepilex transfer. The reported shortages have a serious impact on the treatment of 124 patients suffering from EB in the country, with 17 of them suffering from what is called a "dystrophic epidermolysis bullosa" (DEB).

As commonly known, care for EB patients focuses solely on managing the condition given that no cure for EB has been developed yet. The presence of multiple wounds of varying duration combined with systemic factors, which can impact negatively on the ability to heal, makes the management of EB wounds difficult and complex. The use of an atraumatic dressing to prevent skin and wound bed damage is of utmost importance. The most commonly used dressings are those designed to be removed easily, such as those coated with soft silicone, foam or mesh, lipido-colloid and polymeric membrane produced by Mölnlycke Health Care AB (Mepilex, Mepilex EM, Mepilex Transfer, Mepilex Ag, etc.).¹ Other types of dressings have been proved less effective.²

The reported decision by Mölnlycke Health Care AB to discontinue its business relations with procurement companies supplying bandages to the EB patients in Belarus has caused additional suffering to these patients and has resulted in the severe deterioration of their health condition with heightened risks of death, the same way it occurred in other countries, as previously communicated to your company through relevant communications (case no. [AL OTH 95/2022](#)).

¹ <https://www.molnlycke.pl/SysSiteAssets/master-and-local-markets/documents/eb-handbook-master.pdf>, p. 26

² Pillay E., Clapham J. Development of best clinical practice guidelines for epidermolysis bullosa, 2018, at <https://woundsinternational.com/wp-content/uploads/sites/8/2023/02/83e41a6d33fa875ba1efbf1ade2f1230.pdf>

While I do not wish to prejudge the accuracy of the information received, I express serious concern about the reported shortages of specialized medical bandages for EB patients in Belarus, and the serious adverse effects on their right to life, health, and adequate standard of living, among others. I would like to emphasize that no business considerations should be evoked to restrict access to basic goods, including specialized medicines and medical equipment in violation of the right to life, health, as well as the right to be protected against inhuman treatment.

Maintaining the principled position on the illegality of unilateral coercive measures, I wish to reiterate that medicine, medical equipment and pharmaceutical goods are exempted from existing unilateral sanctions regimes against Belarus. Under the EU Council Regulation (EC) No 765/2006, restrictive measures (prohibitions) do not apply to the sale, supply, transfer or export of such goods and/or technologies (para. 3(b) art. 1e, para. 3(b) art. 1f, para. 2(b) art. 1s, et al.).³ Therefore, formally there are no grounds for interruption of supplies by Mölnlycke Health Care AB to Belarus for the medical needs of the Belarusian EB patients.

In view of the seriousness of the situation and the reported very limited stock of bandages available for the EB patients in Belarus, I would appreciate a response on the initial steps taken by your company to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 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 indicate the main grounds for the interruption of supply of dressings and bandages for the EB patients in Belarus.
3. Please provide information on any perceived or reported risks and on specific legal or reputational challenges faced by Mölnlycke Health Care AB as a result of its supply of bandages to Belarus.
4. Please, indicate whether the company's decision to discontinue the supply of dressings and bandages to Belarus is directly linked to the recent imposition and expansion of sanctions against Belarus. If this is the case, please explain why the company decided to interrupt the deliveries although these medical goods are explicitly exempted from the imposed sanctions regimes.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R0765-20230228>

5. I would be grateful to know if your company has assessed the human rights impact of its decision, and whether it has taken or plans to take any action to mitigate the harmful effects on human rights in accordance with international law and relevant international standards and principles, including the Guiding Principles on Business and Human Rights.
6. Please provide information on steps undertaken by your company to establish and operate effective complaint procedures and mechanisms to receive and process reports on human rights adverse impact linked to its operations.

Given the reported absence of any alternatives to the dressings and bandages produced by Mölnlycke Health Care AB, and taking into account the direct negative impact of the reported shortages on the right of patients to life, health, freedom to live with dignity and without suffering, right to education, right to work and other human rights, I urge Mölnlycke Health Care AB to promptly renew the supply of bandages and dressings for Belarusian patients.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

I would appreciate receiving a response as soon as possible, within 60 days. Past this delay, this communication and any response received will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may consider to publicly express my concerns about this issue in the future as in my view the information thus far available to me is reasonably reliable and a matter of obvious human, human rights and public interest. Any public expression of concern on my part will indicate that I have been in contact with your company to bring these matters to your attention and to seek clarification.

Please be informed that letters on this matter will be also sent to the Governments of Sweden and of the United States of America, as well as to the European Union.

Please accept, Mr. Zlatko Rihter, 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 above alleged facts and concerns, I would like to refer to the relevant international norms and standards that are applicable to the issues brought forth by the situation described.

Reference is made to the international human rights standards on the right to life, in particular article 6 of the International Covenant on Civil and Political Rights (ICCPR), which provides for the positive obligation to ensure access to the basic conditions necessary to sustain life (CCPR general comment no. 6, para. 5; CCPR general comment no. 36, para. 21) and which requires special measures to protect persons in vulnerable situations whose lives are particularly endangered by specific threats (CCPR, general comment no. 36, para. 23). Measures, including the obstruction of humanitarian assistance, and of access to basic and life-saving goods and services such as food, health, electricity and safe water and sanitation run counter to the right to life (CCPR/C/ISR/CO/4, para. 12; A/73/314, para. 27). I wish to recall that any deaths attributable to such measures amount to an arbitrary deprivation of life (A/73/314, para. 13).

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (art. 12(1)). The realization of the right to health entails, inter alia, the “treatment and control” of diseases (art. 12(2)(c)) and conditions to ensure “all medical service and medical attention in the event of sickness” (art. 12(2)(d)). General Comment No. 14 (2000) of the CESCR, which states that the agreed interpretation of the right to health includes, inter alia, the availability and the physical accessibility of goods necessary to ensure this right (paras 12(a, b)), with these goods being “medically appropriate and of good quality” (para 12(d)). I also refer to paragraph 50 of the same General Comment no. 14 which notes that violations of the right to health can include “the denial of access to health facilities, goods and services to particular individuals or groups”.

Moreover, deterioration of one’s health condition as well as growing physical and psychological suffering due to the unavailability of adequate and appropriate medical treatment may have adverse effects on the enjoyment of other human rights including the right to education, the right to work, human dignity, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement (CESCR, general comment no. 14, E/C.12/2000/4, para. 3).

Regarding children, who comprise most patients suffering from EB, I recall States’ obligations under the Convention on the Right of the Child (CRC), particularly with reference to articles 23 and 24, with specific focus on mentally or physically disabled children who should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate their active participation in the community. Similar obligations are provided under the Convention on the Rights

of Persons with Disabilities (CRPD).

Regarding the withholding of medical treatment or acts that cause treatment to be withheld, such as obstacles causing delays, I refer to the prohibition of inhuman treatment that is contained in article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Convention on the Rights of Persons with Disabilities (CRPD) provides for the obligation “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” and to “refrain from engaging in any act or practice that is inconsistent with the present Convention” as having universal extraterritorial character. Unavailability of bandages for EB patients prevents them from the possibility to be integrated in the society and to live a life with dignity, and affecting a broad range of human rights, including access to physical environment (art. 9), freedom from torture and inhuman treatment (art. 15), right to live independently and to be involved in the community (art. 19), to education (art. 24), to health, habilitation and rehabilitation (art. 25-26) of the CRPD.

Reference is also made to the UN Guiding Principles on Business and Human Rights (A/HRC/17/31, Annex), which highlight States’ and businesses’ responsibility to respect all internationally recognized human rights at minimum those set forth in the Bill of Rights (the UN Declaration on Human Rights and the two Covenants) (principles 11 – 13 of the Guiding Principles) and put forward global standards with regards to the expected conduct for all business enterprises wherever they operate, which should not lead to violations of human rights, including in the case of Belarus, the right to health and the protection against torture and other cruel, inhuman or degrading treatment or punishment.

Under the UN Guiding Principles on Business and Human Rights, responsibility of businesses to respect human rights includes their obligation to “(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13). Business enterprise’s “activities” are understood to include both actions and omissions.

Principles 17-21 lay down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. Furthermore, business enterprises should remedy any actual adverse impacts that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy

should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to the guiding principle 25).