

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

Ref.: AL SWE 3/2023
(Please use this reference in your reply)

11 September 2023

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 49/6.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received 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), in the context of the decisions by the European Union and other 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.

I also wish to take this opportunity to acknowledge your Excellency's Government's constructive engagement and response to similar situations occurring in other countries under sanctions, addressed through previous joint communications (i.e. [SWE 3/2021](#) and [SWE 4/2022](#))

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 friction between the layers or trauma.

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 Belarusian 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 Belarusian 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 led to a severe deterioration of their health condition with heightened risks of death the same way it occurred in other countries. Uncertainties around the provision of such bandages have reportedly resulted in additional suffering and stress for all patients and their relatives.

While I do not wish to prejudge the accuracy of the information received, I express serious concern about the reported shortages in 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 also wish to express serious concerns at the reported business conduct of Mölnlycke Health Care AB with its refusal to deliver the specialized medical products to Belarus, following the imposition of economic and other sanctions against this country.

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 the interruption of the delivery of medical supplies by Mölnlycke Health Care AB to Belarus and the Belarusian EB patients.

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/8/2023/02/83e41a6d33fa875ba1efbflade2f1230.pdf>

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

In its response to a previous communication with regards to the company's conduct vis-à-vis another country, your Excellency's Government stated *inter alia* that "EU operators are free to conduct their business at their own discretion, in conformity with EU law and national law. This means that they may choose to initiate, continue or end their business with third countries".⁴ 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.

Furthermore, it is important to mention that the company has reportedly not indicated the reason of its refusal to continue its medical deliveries to Belarus, which were taking place prior to the imposition of sanctions against Belarus. In a similar letter addressed to the company, I have kindly asked for clarification of its position.

As for the deliveries to Belarus I also note that both payments and deliveries to the countries are possible under the existing sanctions regimes although more complicated. Therefore, inability to process payments should not be evoked as the reason for the company's reported non-engagement.

It needs to be reiterated here that overcompliance with sanctions exacerbates the negative impact that the sanctions have on the enjoyment of human rights and can result from interpreting sanctions overcautiously to avoid any risks. Taking into consideration that I have not received any response from the company to my previous communications, I kindly ask for your Excellency's Government assistance in clarifying the reasons of the company's conduct as regards the delivery of life-saving medicines to Belarus, taking into account the absence of effective alternatives to such medicines.

I note that according to the UN Guiding Principles on Business and Human Rights, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations in cases where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While states generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

In view of the seriousness of the situation and the very limited stock of bandages available for the EB patients in Belarus, I urge your Excellency's Government to take prompt action to enable resumption of the supply by Mölnlycke Health Care AB of the specialized bandages for Belarusian EB patients.

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.

⁴ Response by the Swedish Ministry for Foreign Affairs to special procedures communication [SWE 4/2022](#)

As it is my responsibility, under the mandates 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 indicated the measures undertaken by your Excellency's Government to ensure that businesses domiciled in its territory and/or jurisdiction act in full compliance with human rights standards, including by fully respecting existing sanctions exemptions of humanitarian goods, including medicine, medical equipment, spare parts and other relevant medical supplies.
3. Please provide information on the steps undertaken in coordination with other sanctioning countries and organisations, within and outside the European Union, in order to effectively address the issue of overcompliance with currently imposed sanctions against Belarus and to clarify the scope of humanitarian exemptions to ensure that Swedish companies continue unhindered the delivery of humanitarian goods.

I would also appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government 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.

Please be informed that letters on this matter have been also sent to the concerned company, Mölnlycke Health Care AB, the Government of the United States of America, as well as to the European Commission and the European Parliament.

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 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).