

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on minority issues; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL BLR 7/2019

21 October 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on minority issues; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/22, 41/22, 34/6 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest and detention, as well as inhuman treatment by law enforcement officers on 16 May 2019 targeting Roma people, including women, children, and elderly people in the city of Mahilioŭ.

According to the information received:

On the evening of 16 May, the media stated that a 22-year-old traffic police lieutenant was kidnapped. A few hours later, his lifeless body was found in the suburbs of Mahilioŭ. On the same day, law enforcement officers organized a special operation to detain suspects. The media reported that the victim had allegedly managed to send a message before his death indicating that the attackers were "gypsies".

On the night of May 16 to May 17, law enforcement officers conducted operations in the areas of Čapajeŭka and Hrabianiova of the city of Mahilioŭ. Approximately two hundred Roma, mostly men, but also women and children, were arrested and one hundred were subsequently detained. In the course of the raids, law enforcement officers used excessive force, insulted and threatened members of the Roma community. In one case, the officers rammed through the gates of one house while children were in the courtyard, in another they fired shots into the ceiling of the house, while in another they used force against children in the presence of their parents and grandparents. Law enforcement officers did not identify themselves, nor did they present arrest or search warrants.

Late at night, the detained Roma were taken to the police stations of the Kastryčnicki district and Lieninski district for individual interrogations. Some detainees were subjected to beatings, verbal abuses and threats during the interrogation. Moreover, most of the detainees were deprived of food and water. About half of the individuals were released that night and early the following

morning, while the other half was taken to the temporary detention facility (IVS) in Mahilioŭ, where they were detained until 19 May. During the period of their detention, they were not provided with legal counsel and were not allowed to receive parcels from their relatives. The official reason for their detention is unknown.

On 20 May, members of the Investigative Committee of Belarus concluded that the police lieutenant had committed suicide. On 23 May, Mr. Igar Šunievič, the Minister of Internal Affairs at the time, publicly reacted concerning this incident and justified the actions of the law enforcement forces stating that there were no grounds to ask forgiveness from the arrested Roma people. On the same day, Mrs. Natallia Kačanava, the head of the Administration of the President of Belarus, held a meeting with members of the Roma community and apologized for these events.

On 31 May, the General Prosecutor's office publicly announced the creation of a working group to evaluate the actions of the Ministry of Internal Affairs officers during these events. On 25 June, a representative of the General Prosecutor's Office of the Republic of Belarus announced the result of the investigation conducted by the working group and informed that the law enforcement officers proceeded correctly and proportionately during the operations.

The Roma victims did not file complaints against the police for fear of reprisals. Allegedly, some of the victims received threatening telephone calls warning them not to complain to higher authorities.

Without prejudging the accuracy of the information we have received, we express serious concerns over the police operations in the city of Mahilioŭ and the massive arrests and detention of members of the Roma minority, on the mere suspicion that they may have been involved in the kidnapping and killing of a traffic police lieutenant; a suspicion, which was later disproved by the Investigative Committee's report indicating that the lieutenant had committed suicide. We also express our serious concerns over the reported police misconduct against some of the arrested and detained Roma, who suffered racially motivated physical and verbal abuse during interrogation.

Finally, we also express concerns over the reported intimidation and threats against some of the arrested and abused Roma, which prevented them from seeking justice and redress for their suffering and the violations of their human rights committed by law enforcement officers.

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 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 provide information on the legal grounds for the arrest and detention of the members of the Roma minority in the case above, including whether arrest and search warrants were presented.
3. Please provide detailed information on the number of individuals arrested and subsequently detained in the course of the operation mentioned above, including whether they had access to legal counsel during their detention and if not, please explain why.
4. Please indicate what measures have been taken to ensure an effective investigation of the arbitrary detention and inhumane treatment of members of the Roma minority in the case mentioned above. If no investigation or inquiry has been initiated or is inconclusive, please explain why.
5. Please provide information on the work of the working group created by the General Prosecutor's office to examine the conduct of the Ministry of Internal Affairs officers and how it reached its conclusions.
6. Please indicate what measures have been taken to ensure protection and promotion of the rights of persons belonging to the Roma minority in Belarus, in line with the Government's obligations under the relevant international human rights treaties.
7. Please indicate if any measures have been taken to effectively address discrimination against, and racial profiling of Roma by law enforcement officials, including through human rights training and awareness raising programmes.

We would appreciate receiving a response within 60 days. Thereafter, 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.

We would like to inform your Excellency's Government that having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present

communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

Anaïs Marin  
Special Rapporteur on the situation of human rights in Belarus

Fernand de Varennes  
Special Rapporteur on minority issues

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's attention to articles 2, 7, 9, 14, 17, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, which establish the principle of non-discrimination on any grounds, and guarantee protection from torture and cruel, inhuman or degrading treating or punishment, the right to liberty and security of the person, equality before the law, the rights of persons belonging to ethnic, religious and linguistic minorities, and protection against interference with one's privacy, family and home.

With regards to security of person, we specifically recall that, as established by the Human Rights Committee, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, "the right to personal security also obliges States parties to take appropriate measures [...] to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental [...] actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury". We would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".

With regards to the right to legal assistance, we recall that, according to principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.

Furthermore, we would like to recall that "States have a duty to prevent and redress unjustifiable use of force in law enforcement" (CCPR/C/GC/35, para. 9). In this regard, we would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." Furthermore, Principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any

injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also like to draw your attention to the Concluding Observations of the Human Rights Committee on the fifth periodic report of Belarus, which “remains concerned about reports of manifestations of discrimination against Roma, including hate speech and racial profiling by law enforcement officials” (CCPR/C/BLR/CO/5, para. 17).

We would also like to remind your Excellency’s Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Belarus on 8 April 1969. Article 1 (1) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. In addition, article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. Moreover, article 5 (b) of ICERD guarantees the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to reiterate the concerns raised by the Committee on the Elimination of Racial Discrimination (CERD) in its 2017 Concluding Observations on Belarus in which it stressed that “Roma face racial discrimination and profiling by the State party’s law enforcement and criminal justice authorities and restrictions on their freedom of movement within the State party’s territory through measures including compulsory fingerprinting and arbitrary detention.” (CERD/C/BLR/CO/20-23, para. 23).

We would further like to draw the attention of your Excellency’s Government to the CERD’s General Recommendation No. XXXI (A/60/18) on the prevention of racial discrimination in the administration and functioning of the criminal justice system which stresses in its paragraph 21 that States parties should prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights committed by State officials, in particular the police, against persons belonging to Roma community. Paragraph 23 also states that parties should “guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments..., in particular the right not to be arbitrarily arrested or

detained, the right to be informed of the reasons for their arrest, ... [and] the right to the assistance of counsel”.

Furthermore, the CERD, in its General Recommendation No. XXVII on discrimination against Roma, calls on States to “ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them” and asks the States “to take measures to prevent the use of illegal force by the police against Roma, in particular in connection with arrest and detention.” (A/55/18, paras. 12 and 13). Additionally, the Durban Declaration and Programme of Action “urges States, including their law enforcement agencies, to design and fully implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers... which is motivated by racism, racial discrimination, xenophobia and related intolerance, and to prosecute perpetrators of such misconduct” (Programme of Action, para. 71).

We finally wish to recall the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the UN General Assembly in 1992, and which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).