

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
UA BLR 5/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 41/22, 34/18, 41/12, 42/16, 34/5 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning detention of over 120 persons in connection with their participation in protests or for having otherwise peacefully expressed their views.

According to the information received:

Since 6 May 2020, at least 120 persons have been arrested. These arrests were carried out following the arrest by the police of a well-known critical blogger, Mr. Siarhei Tsikhanouski, in Mahilioŭ, who was placed in administrative detention for 15 days. The blogger, who runs a YouTube channel, is known for his critical stance on government policies. He had recently announced his intent to run for President in the upcoming elections in August 2020.

Following the arrest of Mr. Tsikhanouski, his supporters organised protests across the country to demand his immediate release. The police disrupted peaceful assemblies and at least 38 individuals were fined or sentenced to up to 15 days of detention on charges of violating the procedure for holding a protest.

Some of them were released after facing charges, while 17 stood trial and were sentenced from 2 to 15 days of detention. Trials were held in Lida, Mahilioŭ,

Homieĺ, Viciebsk, Hrodna and other cities throughout Belarus. More hearings are scheduled for later in May.

The police also reportedly detained human rights defenders who monitored the protests. At least four journalists who covered the protests were detained by the police and subsequently sentenced to 10 days in detention. Two medical workers were detained for allegedly sharing COVID-19 related concerns with Mr. Tsikhanouski during an online streaming event and sentenced to seven days in detention.

Everyone who was detained was reportedly charged with ‘violation of the rules of holding mass events’ under article 23.34 of the Code of Administrative Offenses, the sanction for which is a fine or administrative detention.

Those charged with administrative offences faced several irregularities in the pre-trial and trial stages. Before the court hearings, defendants remained in pre-trial detention facilities without access to their lawyers. Restrictions on access to lawyers was reportedly a measure implemented due to the COVID-19 pandemic. In some instances, defendants remained in the detention facility while the trial took place. However, they were allowed to connect to the trial via video link.

Reportedly, in the cases concerning participation in illegal assemblies, convictions were solely based on testimonies of police officers. Defendants were restricted from providing testimonies or from summoning witnesses. Moreover, many of the trials held were not open to the public. This was justified reportedly by the judges as a preventive measure during the COVID-19 pandemic, despite the fact that there are no in-country physical distance provisions by health authorities. No such measures have been introduced on the legislative level, and the Supreme Court has not yet issued any instructions limiting the public nature of court hearings.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns that the arrests of human rights defenders, journalists and bloggers seem connected to their exercise of the fundamental freedoms of peaceful assembly and freedom of opinion and expression. In this regard, we would like to refer to article 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973.

We remind your Excellency’s Government that repressive measures taken simply as a reaction to the voicing of critical opinions about the government or its policies are incompatible with the rights to freedom of opinion and expression enshrined in article 19 of the ICCPR. More broadly, such measures have a serious chilling effect on journalism and critical expressions, and thus run contrary to the duty of the State to promote an environment conducive to the exercise of the right to freedom of expression. Restrictions

to the right to freedom of expression are particularly serious when done in the lead-up to elections. In this regard, we reiterate the close connection between article 19 and 25 of the ICCPR.

We are concerned that the charges could be used as a tool to silence the critical voices of human rights defenders, journalists, bloggers and other members of civil society, including medical workers. In this regard, we would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1, 2, 6 and 11.

Furthermore, we would like to highlight that any restrictions on the exercise of the right to peaceful assembly must be provided by law and be necessary and proportionate to the aim pursued.

Without expressing at this stage an opinion on the facts of the cases referred to above and on whether the reported detentions are arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the rights of the 120 persons arrested not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

We would like to further refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Belarus on 12 November 1973, which protects the right to health. This right is inclusive (General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, E/C.12/2000/4, para 11), closely linked to and dependent on other rights, such as the right to request, receive and disseminate information and ideas about health-related issues (para 12.b.iv). Violations of the right to health result from, inter alia, the deliberate withholding or misrepresentation of information vital to health protection or treatment (para 50). States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assist in the realization of this right (para 62). Moreover, States must protect health care workers as they are essential for ensuring availability of health care services. Arrests and other forms of intimidation and attacks against health care workers not only violate the right to health of people affected by a situation of crisis, but may also cripple the health care system as a whole (A/68/297).

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the charges against human rights defenders, journalists, bloggers, medical workers and protesters and their factual and legal basis. Please explain how the charges are compatible with the obligations of Belarus under international human rights law and specifically under articles 19 and 21 of the ICCPR.
3. Please indicate what measures have been taken to ensure journalists can operate in an enabling environment and carry out their legitimate activities without fear of reprisals, threats, harassment or criminalization of any kind.
4. Please explain how trials of human rights defenders, protesters, journalists and bloggers were conducted in a manner that was consistent with international fair trial and due process standards, including the right to have access to a lawyer of one's own choice and to a fair and public hearing.

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.

We would like to inform your Excellency's Government that after 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 to the present communication and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras
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Mary Lawlor
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Diego García-Sayán
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we refer to the obligations of your Excellency's Government under the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified on 12 November 1973.

Article 19 of the ICCPR protects the right to freedom of expression. It guarantees the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. The protection of journalists under article 19 is particularly strong. As expressed by the Human Rights Committee, "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society" (CCPR/C/GC/34 para. 13). Journalism however, is to be understood broadly. As expressed by the Committee, it "is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere" (id. para 44).

Particularly in the lead-up to elections, the safeguarding of the rights under article 19 of the ICCPR is essential. As expressed by the Committee, there is a close interrelationship between articles 19 and 25. Consequently, "[i]n order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential" (CCPR/C/21/Rev.1/Add.7, paras. 12 and 25).

Likewise, and as expressed by the Special Rapporteur on the freedom of opinion and expression, it is crucial that the State take measures to protect the right to freedom of opinion and expression, particularly the freedom of information, in times of global pandemic (see joint statement issued on 19 March 2020 by the UN Special Rapporteur on freedom of opinion and expression together with regional mechanisms).

Any restrictions to the freedom of expression must satisfy the requirements under article 19 (3). That is, they must pursue one of the legitimate aims enumerated, be provided by law, and be necessary and proportionate. The State has the burden of proof to demonstrate that restrictions are compatible with the Covenant. (See CCPR/C/GC/34 paras. 24 35).

As indicated by the Human Rights Committee, the "penalization of a ... journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression" (CCPR/C/GC/34 para. 42). Moreover, States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (id. para. 23). Attacks, including arbitrary detention and

prosecution of individuals for their legitimate exercise of their freedom of expression, particularly for the express or implied purpose of silencing them, would constitute a violation of the Covenant.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to remind you of articles 6 and 11 of the Declaration which guarantee the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters and the right to the lawful exercise of his or her profession, respectively.

We would like to further refer to Belarus' obligations under article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Belarus on 12 November 1973. The Committee on Economic, Social and Cultural Rights in its General Comment 14 (E/C.12/2000/4) establishes that the right to health is an inclusive right (para 11) closely linked and dependent on other rights, including the rights to privacy and access to information (para 3). The right to health encompasses the right to request, receive and disseminate information and ideas about health-related issues. Violations of the right to health result from, inter alia, the deliberate withholding or misrepresentation of information vital to health protection or treatment (para 50).

In this context, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assist in the realization of this right (para 62). Moreover, States must protect health care workers as they are essential for ensuring availability of health care services. Arrests and other forms of intimidation and attacks against health care workers not only violate the right to health of people affected by a situation of crisis, but may also cripple the health care system as a whole (A/68/297).