

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

REFERENCE:  
AL BLR 6/2020

27 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 41/22, 42/22, 36/6, 43/4, 41/12 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegation of torture and ill-treatment against detained protesters. As well, the detention of over 6700 people of which at least 100 remain in custody for their participation in peaceful protests, including approximately 100 individuals who are accused of criminal acts and at least seven cases of enforced disappearances.

According to the information received:

Since the Presidential election on 9 August 2020, large peaceful protests have taken place in Minsk and many other cities in Belarus. In the period between 9 to 14 August, state agents belonging to the Ministry of Internal Affairs of Belarus have committed numerous human rights abuses against thousands of peaceful protesters who took to the street to demonstrate against an alleged rigged presidential poll. In response, they were subjected to disproportionate and indiscriminate violence. Security forces resorted to *en masse* detentions and excessive use of force against peaceful and unarmed protesters. Many of the victims received bodily injuries caused by baton blows, tear gas, water cannons, stun grenades and rubber bullets. There were also reports of injuries caused by firearms. The Government confirmed the detention of at least 6700 people and according to the latest available data over 100 people remain in custody, including approximately 60 individuals who are accused of criminal acts, involving "mass disorder" and resistance and violent acts against law enforcement officials - and carrying prison sentences of up to eight years (for "mass disorder"). Mass arrests during the week of protests led to severely overcrowded cells, with limited access to drinking water, food and toilet facilities for those in detention.

Belarusian NGOs and released protesters reported more than 450 cases of torture and other cruel, inhuman or degrading treatment or punishment in detention corroborated with photographs and videos. According to many testimonies, all detainees without exception have been beaten by the police, including journalists, women, and children. During the transportation, detainees were ill-treated and beaten, and often stacked on top of each other. In detention and other facilities, ill-treatment was reportedly used to obtain a renunciation of the political convictions of the detainees. They were subjected to multiple blows on the lower part of the back in order to induce involuntary urination and defecation. During these beatings, detainees were forced to pose in a way intended to humiliate, shout slogans, read prayers, and sing the national anthem. Detainees were forced to stand for several hours or lay down facing the ground their hands tied with zip ties, described as soiled by blood and dust.

There are reports of women detainees experiencing sexist and humiliating treatment including reports of rape using rubber truncheons. There are reports of cases of sexual violence, rape and death threats against protesters kept in detention centers.

Reportedly, no preventive measures against the risk of infection with the COVID-19 virus were in place. Consequently, at least 6 people have already tested positive for COVID-19 after their release from detention.

In numerous reported cases, protesters are alleged to have been forcibly disappeared for more than 24 hours without any information about their whereabouts shared with their relatives. According to the information received, there are still 7 persons unaccounted for whose whereabouts and state of health are unknown.

Despite numerous and consistent reports about the commission of crimes by employees of the internal affairs bodies, the Investigative Committee has not opened a single criminal case and accordingly, has not detained or suspended any of the persons who were directly involved in the organization and commission of the crimes against protesters and passersby. More than 300 officers who were deployed as part of the crackdown, were awarded with medals and honours for excellent service. The complaint procedures are reported to be complicated by interruptions in the receipt of documents, in part due to Internet disruptions. Investigative Committee branches often close during working hours, or failed to open for two days at a time. Moreover, many applicants had difficulties in obtaining a referral for a forensic expert examination of their injuries. Many applicants reported threats from investigators who promised to initiate criminal prosecutions for participation in the protests. There is a fear that delays will cause evidence to be lost.

While we do not want to prejudge the accuracy of these allegations, we express our serious concerns on alleged excessive and lethal use of force on peaceful protesters

during protests across Belarus. We express our dismay at the allegations of enforced disappearances and of widespread practices of torture and ill-treatment against detained protesters without any follow up action apparently undertaken by the authorities to investigate the numerous allegations of serious human rights violations.

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 International Covenant on Civil and Political Rights (ICCPR). Disproportionate use of force and arrest of peaceful protesters violate the individual rights of people to come together and collectively express, promote, pursue, and defend their collective or shared ideas as well as their right to personal liberty. We recall that according to Article 21 of the ICCPR, "Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give a warning if it is absolutely necessary to use force, unless doing either would be manifestly ineffective. Any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force." (CCPR/C/GC/37 para. 78).

Rape and sexual violence by State agents, the beating and humiliation of detainees and similar treatment, amounts to torture and other forms of cruel, inhuman or degrading treatment. Any such acts, if true, would constitute a violation of the obligations of your Excellency's Government under article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In the same manner, we remind your Excellency's Government of the obligations under the Declaration for the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances (article 2). In particular, the Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. In this regard, we also underline that a failure to acknowledge deprivation of liberty by state agents and a refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

We are gravely concerned that the alleged practices may become institutionalized and used as part of a systematic policy of silencing the critical voices of activists, journalists, bloggers and other members of civil society. 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 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 over 100 persons remaining in detention, 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.

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 and 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 the factual and legal grounds for the arrest and detention of protesters. Please explain how the charges are compatible with the obligations of Belarus under international human rights law and specifically under articles 9, 19 and 21 of the ICCPR.
3. Please provide information on the whereabouts and the state of health of 7 individuals who are still reportedly unaccounted for.
4. Please provide information on the fundamental safeguards provided by your Excellency's Government with a view to preventing enforced disappearances and ensuring respect for the rights of persons deprived of liberty and their families, particularly during the COVID-19 pandemic, including immediate registration and judicial oversight of detention, notification of family members as soon as an individual is deprived of liberty, the hiring of a defence lawyer of one's choice, lawyer-client privilege and access to adequate medical care.
5. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried

out, or which are foreseen, into the allegations of enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment, including sexual violence committed by State agents. If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Belarus.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan  
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

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 wish to bring to the attention of your Excellency's Government 7, 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Belarus on 12 November 1973, as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ratified on 13 March 1987, which codify the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Article 19 of the ICCPR protects the right to freedom of opinion and of expression. The freedom of opinion is absolute and protects the right of everyone to hold opinions of all kind. Attacks against individuals, including the arbitrary detention, and violations of their bodily and mental integrity for reasons of holding specific political opinions is incompatible with article 19, see CCPR/C/GC/34 para 9. Likewise, the attacks, including through arbitrary detention, torture or inhuman or degrading treatment or punishment, against individuals for exercising the right to freedom of expression, are incompatible with article 19, see *id.* para. 23.

Article 21 of the ICCPR ensures the right of peaceful assembly. In this regard, we would like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/31/66. The reports states that: "The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit" (paras. 57 and 58). Furthermore, according to Human Rights Council resolution 31/66 States have an obligation to not only refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them, and to facilitate an enabling environment (A/HRC/31/66 para.13)

Article 10 (1) of the ICCPR provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. We would therefore like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988, in which principle

1 provides that “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”. We reiterate to your Excellency’s Government the call in General Assembly resolution 68/156 (para 28) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment. The reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the “Mandela Rules”) provide inter alia for a model system of penal institutions, to ensure that they do not lead to conditions of detention amounting to torture.

Furthermore, we would also to refer to the paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture”.

The Declaration on the Protection of All Persons from Enforced Disappearances stipulates that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). It also proclaims that each State shall ensure the right to be held in an officially recognized place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention; and accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (Article 10). The Declaration outlines the obligation of States to promptly, thoroughly and impartially investigate any acts constituting enforced disappearance (Article 13) and prevent enforced disappearance of children (Article 20).

In the General Comment no. 36 on the right to life, the Human Rights Committee underscores that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life. The deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. It thus results in a violation of the right to life as well as other rights recognized in the

Covenant, in particular, article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person) and article 16 (right to recognition as a person before the law).

We recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. In this context, I wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendations No. 19 (1992) and No. 35 (2017), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 4 February 1981), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 35, the CEDAW Committee establishes that gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices. According to CEDAW and CAT jurisprudence, rape perpetrated by public officials, at their instigation or with their consent or acquiescence constitutes torture (see Communications No. 262/2005, V.L. v Switzerland, Decision adopted by the Committee against Torture on 20 November 2006, para. 8.10; No. 279/2005, C.T. and K.M. v Sweden, Decision adopted by the Committee against Torture on 17 November 2006, para. 7.5).

Moreover, we would like to refer to article 9 ICCPR enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21) and freedom of association (art. 22). It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary.