

Mandates of the the Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL BLR 7/2020

16 September 2020

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/6, 42/22, 41/22, , 44/5, 43/4, 41/12, 43/20 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning an alleged enforced disappearance of **Ms. Maria Kalesnikava**, a prominent member of the opposition and one of the leaders of peaceful protests in Belarus. We have also received information on what appears to be a systematic targeting and persecution by security forces of the members of the opposition associated with the Coordination Council. According to the reports received, most of them were also subjected to enforced disappearance.

Concerns regarding the repressive measures used against dissidents prior to the presidential elections and in connection to the peaceful demonstrations following the elections on 9 August 2020 was the subject of previous communications dated 19 May 2020 (AL BLR 5/2020) and 27 August 2020 (AL BLR 6/2020) and the subject of press statements on 5 June 2020 and 1 September 2020, in particular calling for the prevention of enforced disappearances. We thank your Excellency's Government for its response to the latter communication on 31 August 2020.

According to the information received:

On 7 September 2020, at 10.05 a.m., Ms. Maria Kalesnikava, a prominent member of the opposition in Belarus was abducted near the National Art Museum in Minsk by a group of masked individuals in plainclothes allegedly affiliated with Belarusian security services. The abduction was witnessed by several bystanders, who confirmed that she was surrounded and bundled into a

dark minibus “Sobol” with the inscription ‘Connection’ on its body. Ms. Kalesnikava dropped her phone onto the pavement, which was taken by one of the abductors.

Until the evening of 7 September 2020, there was no information about her whereabouts or the state of health, despite repeated inquiries made by her lawyer and colleagues with law enforcement agencies. On the same day, Ms. Kalesnikava’s relatives filed a complaint with the Department of Internal Affairs of the Pervomaisky District of Minsk. In addition, her lawyer filed a notice of acceptance of the defense to the bodies authorized to investigate criminal cases, notably the Investigative Committee, the State Security Committee, and the Department of Financial Investigations. The lawyer did not receive any information about the detention of Ms. Kalesnikava or that her conduct was within the scope of a criminal investigation initiated by the said bodies.

On the morning of 8 September 2020, the State Border Committee of Belarus acknowledged that she had been detained at the Ukraine – Belarus border, but failed to provide information as to her whereabouts and her state of health at the time. According to reports, Ms. Kalesnikava had ripped up her passport to thwart any attempts by the Belarusian authorities to expel her from the country. On 10 September, three days after her disappearance, the authorities disclosed that she was being held in a pre-trial detention facility in Minsk where her lawyer visited her.

Ms. Kalesnikava was actively involved in the election campaign for one of the opposition candidates. Following the presidential election on 9 August 2020, she joined the Coordinating Council and was then elected to its Presidium, a body that aims to overcome the ongoing political crisis through negotiations, develop mechanisms for restoring the rule of law and administering a re-run of the elections. On 20 August 2020, the Prosecutor General of Belarus launched criminal proceedings into allegations that the Council’s alleged intention to seize state power and undermine national security. On 27 August 2020, Ms. Kalesnikava was questioned as a witness by the Investigative Committee.

In the weeks following the presidential elections, Ms. Kalesnikava actively participated in peaceful demonstrations, during which she advocated for free and fair elections, the release of political prisoners, the cessation of political repression and violence against civilians by government officials, and the prosecution of those responsible for reported human rights violations. It is further reported that Ms. Kalesnikava and her peers from the opposition block have been routinely harassed and intimidated by security services. Several members of the Council are presumed to have been forcibly taken to the border with Poland, Ukraine and Lithuania and subsequently expelled from Belarus. Credible reports suggest that they were abducted by a group of masked individuals, taken away in dark vans, and transferred to the border where they were forced to leave the country permanently. Those who refused

to comply with the orders were subjected to enforced disappearance and their whereabouts and fate are presently unknown.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that Ms. Kalesnikava was subjected to enforced disappearance including gender based violence because of her role as a member of the opposition and in the organization of and participation in peaceful assemblies. We are particularly concerned that the authorities refused to disclose information for three days about Ms. Kalesnikava's whereabouts and the state of health to her relatives, colleagues and lawyers. In this regard, we would like to remind your Excellency's Government that enforced disappearances may amount to a particularly aggravated form of arbitrary detention as well as torture or other cruel, inhuman or degrading treatment or punishment and is prohibited in articles 2 and 16 of the Convention against Torture ratified by Belarus on 13 March 1987. The Committee against Torture¹ and the Human Rights Committee² have affirmed that enforced disappearances may also amount to torture and other forms of ill-treatment of the family, on the basis of the anguish and uncertainty concerning the fate and whereabouts of loved-ones which the disappearance creates.

At the same time, we remain seriously concerned that enforced disappearances have been systematically practiced, particularly against the members of the Coordination Council, in an effort to sow fear, quash popular protests and stifle dissent. Consequently, it is further disconcerting that the cases of enforced disappearances may proliferate should heavy-handed response to the peaceful protests continue. In this regard, we remind that attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, enforced disappearance, the torture or ill-treatment, would constitute a violation of article 19 of the International Covenant on Civil and Political Rights (ICCPR) (see CCPR/C/GC/34, para 23). We further note with great concern that attacks against public opposition figures and individuals affiliated in the campaign for such figures are likely to produce a chilling effect on the free exchange of ideas on political issues and the exercise of the right to political participation, protected also under article 25 of the ICCPR.

Recalling BLR 1/2020 and BLR 3/2020, we remain preoccupied that a pervasive culture of impunity in Belarus may impede any impartial and independent investigations into cases of enforced disappearances, torture and other ill-treatment as well as other human rights violations perpetrated against Ms. Kalesnikava, members of the opposition and peaceful protesters.

In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced

¹ See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

² CCPR/C/50/D/440/1990 (24 March 1994), para. 5.4.

disappearance, even if it is of a short duration. We therefore underline that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent human rights violations. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for Ms. Kalesnikava's arrest and detention, on any charges against her, as well as on the reasons making necessary and proportional for her to be held under pre-trial detention. Please provide relevant information concerning the judicial proceedings against Ms. Kalesnikava.
3. Please provide specific information 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 aforementioned allegations of enforced disappearance perpetrated against Ms. Kalesnikava. If no such inquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Belarus.
4. Please outline the measures taken to comply with fundamental safeguards enshrined in national legislation and international human rights law, most notably 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 information on the measures implemented to prevent, investigate and prosecute enforced disappearances and steps taken to ensure that the right to an effective remedy for victims and their families is protected.

We urge Your Excellency's Government to conduct prompt and effective investigations into the alleged disappearance of **Ms. Maria Kalesnikava**, to ensure

that her rights are protected, and if the allegations are confirmed, to identify, try and bring to justice those responsible for this alleged enforced disappearance.

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.

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 an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

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, 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.

We wish to underscore the Human Rights Committee's General Comment No. 36 on the right to life, which outlines 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 ICCPR, in particular article 7 (prohibition of torture and other 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).

In the same manner, we wish to draw attention of your Excellency's Government to the Declaration on the Protection of All Persons from Enforced Disappearances, which 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).

In its General Comment on women affected by enforced disappearances (A/HRC/WGEID/98/2), the Working Group on Enforced or Involuntary Disappearances stresses, *inter alia*, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures.

We would also like to remind your Excellency's Government that article 9 of the ICCPR requires that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. This includes the guarantee that anyone arrested is informed, at the time, of the reasons for such deprivation of liberty and that the person is promptly brought before a court, as well as allowed to challenge the legality of the detention, which requires prompt access to effective legal assistance. Moreover, article 9 also states that the detention of persons awaiting trial shall not be the general rule, but an exceptional measure of last resort, which entails the consideration of alternatives to custody. In addition, we would like to highlight 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 freedom of assembly and freedom of association (CCPR/C/GC/35).

Furthermore, we would like to stress that the Human Rights Council its resolution 15/21 calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections. In addition to the notion of democracy, the rights to freedom of peaceful assembly and of association are implicit in the right to take part in the Government of one's country, as affirmed in the Universal Declaration of Human Rights, which states in article 21 (3) that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". The Human Rights Committee recognizes that the full enjoyment of those rights depends on the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives, which requires the free exercise of the rights to peaceful assembly and association, among other rights (General Comment No. 25, para. 25).

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).

In her 2018 report to the General Assembly (A/73/301), the Special Rapporteur on violence against women described the widespread and systematic nature of violence against women in politics, and outlined its chilling impact on the political ambition of young women, with inter-generational consequences for the full realization of their political rights and impacts on society as a whole. She also urged States to meet their due diligence obligations to prevent, investigate and punish acts of violence against women, whether they are perpetrated by State or non-State actors.