

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL BLR 8/2021

7 September 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 44/19, 43/4 and 41/12.

In this connection we would like to bring to the attention of your Excellency's Government information we have received regarding multiple raids of human rights organisations, the initiation of liquidation proceedings against scores of them and the detention and charges brought against large numbers of human rights defenders in Belarus.

We previously communicated concerns on crackdowns on human rights defenders, journalists and lawyers in the aftermath of the August 2020 Presidential elections in BLR 4/2021 sent on 12 March 2021, BLR 8/2020 sent on 23 October 2020 and BLR 6/2020 sent on 27 August 2020. We thank your Excellency's Government for the replies received to the latter communications, however we regret that no reply was received to BLR 4/2021 and that we continue to receive information that the persecution of human rights defenders carries on unabated.

Mr. **Yahor Martsinovich** (editor-in-chief), Mr. **Andrey Skurko** (editor), Mr. **Andrey Dynko** (editor) and Ms. **Olga Rakovich** (accountant) are journalists and human rights defenders with an independent weekly newspaper, *Nasha Niva*.

Ihar Kazmerchak is an editor of *Orsha.eu*, a regional independent news website in Belarus.

Mr. **Uladzimir Labkovich** is a human rights defender and lawyer for the Human Rights Center (HRC) *Viasna*, based in Minsk.

Mr. **Valiantsin Stefanovich** is a board member for HRC *Viasna* and vice-president of the International Federation for Human Rights (FIDH).

Mr. **Ales Bialiatski** is the head and founder of HRC *Viasna*.

Mr. **Viktar Sazonau**, is a human rights defender and *Viasna*'s representative in the city of Hrodna.

Ms. **Alena Laptsenak** is a woman human rights defender and active member of HRC *Viasna*.

Mr. **Andrei Paluda** is the coordinator of a Viasna-led campaign to end the death penalty in Belarus.

Mr. **Aleh Matskevich** is a human rights defender and member of Viasna in the area of Barysau. He principally advocates for freedom of peaceful assembly, freedom of expression, and the rights of people with disabilities.

Mr. **Siarhei Sys** is a journalist and human rights defender who has been outspoken in media particularly on human rights violations that have occurred since the 2020 Presidential elections in Belarus.

Mr. **Kyril Kafanau** is a human rights defender and lawyer with Human Constanta, a human rights organisation.

Mr. **Ales Kaputski** is a human rights defender and member of Viasna in Maladzechna. He is an active participant in the Viasna-led campaign ‘Human Rights Defenders for Free Elections’.

Mr. **Aleh Hruzdilovich** and Ms. **Inesa Studzinskaya** are journalists and human rights defenders with Radio Liberty in Belarus.

Ms **Hanna Haliota** and Mr. **Ihar Iliash** are human rights defenders and journalists from the independent media outlet Belsat.

Mr. **Siarhei Skulavets** is a freelance journalist who frequently writes on human rights issues for various Belarussian media outlets.

Mr. **Andrei Myadzvedzieu** is a journalist and human rights defender with Viasna.

Mr. **Viktoryia Fyodarava**, Ms. **Halina Ustsinava** and Mr. **Yauhen Puhach** are human rights defenders and board members of the Legal Initiative Centre, a civil society organisation.

Ms. **Marfa Rabkova** is a woman human rights defender and volunteer coordinator at HRC Viasna. She has been involved in documenting instances of torture and ill-treatment against detained protesters since the beginning of the demonstrations. Ms. Rabkova has been detained since 17 September 2020. She has been the subject of the above-mentioned communications BLR 4/2021 and BLR 8/2020, in which we expressed concern over the charges she faces for “mass disorder” and subsequently “involvement in a criminal organisation”. She faces up to 12 years in prison.

According to the information received:

Background

In July 2021, Belarussian authorities carried out a major crackdown on human rights defenders and civil society organisations, largely formed around the detention of and criminal charges brought against human rights defenders, liquidation orders on their non-governmental organisations (NGOs) and searches carried out at their offices and homes. While warrants were presented

for the searches that took place at homes and offices from 14-16 July, lawyers were not allowed to observe the searches. Warrants are not required under Belarusian legislation to remand and detain an individual.

The whereabouts of most human rights defenders remained unknown for several hours after their arrest, in some cases for as many as 10 hours, as police did not inform families of the status or whereabouts of the detainees. Lawyers were invited to be present during interrogation but in some cases were not allowed to visit their clients in temporary detention facilities thereafter. Some were released following interrogation, others were charged and held for 72 hours before release.

Unless otherwise stated, all human rights defenders mentioned in this communication were detained for a period of 72 hours or more. Those held for 72 hours and released were held as “suspects” as part of an investigation of criminal charges for “organisation and preparation of actions violating public order or active participation in such actions” (para. 1 and 2 of Article 342 of the Criminal Code of Belarus), and “tax evasion” (para. 2, Article 243 of the Criminal Code of Belarus).

Those who were detained for over 72 hours – Mr. Ales Bialiatski, Mr. Valentsin Stefanovich and Mr. Uladzimir Labkovich – are held as “defendants” under investigation for the same charges. As their lawyers have signed strict non-disclosure agreements, it is unknown whether they face any additional charges. Their detention was extended beyond the 72 hours by decision of a prosecutor in accordance with national legislation. Mr. Bialiatski, Mr. Stefanovich and Mr. Labkovich were transferred to pre-trial detention centre no.1 in Minsk, where they were allowed to meet with their lawyers. The three human rights defenders will remain in detention for two months, which can be extended to six months, pending trial.

There are reports that some human rights defenders were not provided with mattresses or bed linen in detention centres, were prohibited from exercising, showering or receiving packages from relatives. Most remained detained for three days in the clothing they were arrested in, without hygiene products. Mr. Bialiatski, Mr. Stefanovich and Mr. Labkovich were permitted to receive parcels once transferred to pre-trial detention centre No. 1 in Minsk. During detention in Akrestina, Andrey Skurko’s medicine (insulin) was kept unrefrigerated in hot conditions, and he was also deprived of physical exercise essential for people with diabetes.

8 July 2021

On 8 July 2021, searches were carried out in the offices of a number of independent media organisations in Belarus. Mr. **Yahor Martsinovich**, Mr. **Andrey Skurko**, Mr. **Andrey Dynko** and Ms. **Olga Rakovich** of *Nasha Niva*, an independent weekly newspaper, were detained. Mr. Dynko and Ms. Rakovich were released a number of days later, while Mr. Martsinovich and Mr. Skurko reportedly remain in detention at the time of writing.

Access to the website of *Nasha Niva* was blocked the same day for posting “unlawful information”, according to the Ministry of Information, which gave

no further details on the allegations. It has reportedly since come back online.

Also, on 8 July, Mr. **Ihar Kazmerchak**'s, editor of Orsha.eu independent news website, had his home searched and he was detained for 72 hours. He was detained again on 14 July 2021 and released following interrogation.

14 July 2021

On 14 July 2021, police allegedly arbitrarily arrested a number of human rights defenders following searches from the early hours of the morning at their offices and homes.

A large number of human rights defenders, who are members of or work for HRC Viasna in particular, had their homes searched or were detained. Lawyer from HRC Viasna Mr. **Uladzimir Labkovich** and Viasna board member and Vice-President of the International Federation for Human Rights (FIDH) Mr. **Valiantsin Stefanovich** were detained following searches at their respective homes. Both of their computing equipment was reportedly seized. The head and founder of HRC Viasna, Mr. **Ales Bialiatski**, was also detained on 14 July 2021. Viasna member Mr. **Viktar Sazonau**'s home was searched in the city of Hrodna, and he was detained. Police reportedly seized his computer and mobile phones. Woman human rights defender and Viasna member Ms. **Alena Lapsenak** also had her home searched and was detained. Mr. **Andrei Paluda**, coordinator of a Viasna-led campaign to end the death penalty in Belarus, had his home searched but he was not detained. Mr. **Aleh Matskevich**, a human rights defender from Viasna in Barysnau, was also detained and released after interrogation.

The homes of journalist and human rights defender Mr. **Siarhei Sys**, and human rights lawyer with Human Constanta, Mr. **Kyril Kafanau**, were searched and both were respectively detained.

Searches were also carried out at the **Belarusian Helsinki Committee**, **Imena journal**, **LawTrend**, **Human Constanta** and several other civil society organisations working on human rights in Belarus. Authorities who carried out the searches seized computers, mobile phones, laptops and documents.

15 July 2021

On 15 July 2021, more searches were carried out at the homes and offices of civil society organisations, reportedly bringing the total number of searches carried out in a 48-hour period to in excess of 40. Another human rights defender and member of Viasna, Mr. **Ales Kaputski** was detained at his workplace in the city of Maladzechna.

Police also returned to Nasha Niva offices on 15 July to carry out another search.

16 July 2021

On 16 July 2021, there were further arrests of journalists, following searches at a number of media outlets, including **Radio Liberty Belarus** where

Mr. **Aleh Hruzdilovich** and Ms. **Inesa Studzinskaya** were detained. Ms **Hanna Haliota** and Mr. **Ihar Iliash**, of independent media outlet **Belsat**, and freelance journalist Mr. **Siarhei Skulavets**, from Brest, were also detained. Mr. Skulavets was released after questioning. Human rights defender, journalist and Viasna member Mr. **Andrei Myadzvedzieu** was detained after a search at his home.

Mr. **Viktoryia Fyodarava**, Ms. **Halina Ustsinava** and Mr. **Yauhen Puhach**, board members of the Legal Initiative Centre, had their homes searched on 16 July 2021 but were not detained.

22 July 2021

On 22 July 2021, in a government meeting, President Alexander Lukashenko reportedly made a statement in which he conflated the work of non-governmental and non-profit organisations with “gangsters and foreign agents”, saying that they were “thoughtlessly” registered by the Government, and their employees were “brainwashed with foreign money”.

On the same day, the Ministry of Justice initiated a civil case at the Supreme Court of Belarus for the liquidation of roughly 20 non-governmental organisations. These organisations, registered as “public associations”, can only be formally closed by court order. Among those against whom proceedings were initiated are the **Belarussian Association of Journalists**, **Belarusian PEN Centre**, **Ecodom** and **Press Club Belarus**. Reportedly, no reason was provided for the liquidation proceedings.

23 July 2021

On 23 July 2021, a further 48 non-governmental organisations discovered that their respective City Executive Committees had handed down orders to strip them of their legal registration and legal personality. Among those liquidated are **Human Constanta** and the **Office for the Rights of Persons with Disabilities**. These organisations must cease their work with immediate effect. Those based in Minsk were reportedly not notified of the liquidation nor explained the reasons for which they were carried out. On 3 August 2021, the General Prosecutor of Belarus stated on its Telegram channel that the organisations were being liquidated on the basis that “the activities of these organizations did not meet the goals and subject matter specified in their charters”.

The case of Ms. Marfa Rabkova

On 21 June 2021, woman human rights defender Ms. **Marfa Rabkova** was made aware that her detention had been extended until 17 September 2021. By that time, she will have spent a full year in pre-trial detention. She has reportedly lost 12 kilograms since she was detained on 17 September 2020. She was permitted to send a letter to her husband for the first time in April 2021, however she has not been allowed to see him at any point.

On 25 July 2021, Ms. **Rabkova**, lost consciousness while walking in SIZO-1 remand centre. She received medical treatment and is being kept resting in her

cell due to severe weakness.

Without prejudging the accuracy of the allegations, we express our profound concern over the renewed crackdown against human rights defenders and civil society in Belarus. We express our dismay that scores of human rights and civil society organisations are being liquidated without prior notice, without being communicated the reasons for the punitive action, and without a court order. We fear that this new affront against civil society will have major implications for the enjoyment of human rights of all Belarussian citizens, who can no longer count on the support of many civil society organisations in cases where their rights are violated. It is of particular concern that these events unfolded in the context of the adoption of the UN Human Rights Council resolution 47/19 on the situation of human rights in Belarus and the renewal of the mandate of the Special Rapporteur on the situation of human rights in Belarus on 13 July 2021. The resolution urges the Belarussian authorities to respect, protect and fulfil all their international human rights obligations including by releasing all persons arbitrarily or unlawfully detained

We are furthermore concerned by the statement made by the President of the Republic of Belarus which stigmatized the work carried out by non-governmental organisations, and the human rights defenders working for them. We are concerned that the work of these organisations was conflated with criminal and “foreign” activity, particularly when many of the organisations that were liquidated thereafter carry out work in defence of universal human rights, which are recognised by Belarus. We note with concern the apparent retaliatory measures taken against human rights defenders, for exercising their right to freedom of opinion and expression and reiterate our concerns expressed in communication BLR 1/2021 over the use of non-disclosure agreements to criminalise the sharing of information, including on human rights, by lawyers and human rights defenders.

We are concerned also at the physical and psychological health of Ms. Marfa Rabkova, whose condition appears to be deteriorating in prison. While we are encouraged by reports that she received medical attention, we reiterate our concern over her detention in the first place, which appears to be connected with her human rights activities, and with the length of her pre-trial detention.

We express our concern at the reports that human rights defenders have been detained, for periods of 72 hours or longer, with restricted access to their lawyers and/or family members. We are also deeply concerned that in some cases detainees were not provided with adequate hygiene or clothing or accommodations.

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.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 factual basis for the arrest and charges brought against the human rights defenders mentioned in this communication and explain how these are consistent with your obligations under international law, including the right to contact a legal representative and/or family members during detention. In particular, explain why Mr. Bialiatski, Mr. Stefanovich and Mr. Labkovich were not released after the initial 72-hour detention period.
3. Please provide information on the factual and legal basis for the confiscation of private property (computing equipment and mobile phones) of the mentioned human rights defenders and of the non-profit organizations.
4. Please provide information on the factual and legal basis for the liquidation of large numbers of non-governmental and non-profit organisation in Belarus, including a number of independent media outlets, explaining how this is consistent with your obligations under international law, in particular relating to the rights to freedom of opinion, expression, assembly and association.
5. Please provide information on the standards of treatment afforded to Ms. Marfa Rabkova in prison and all those held for 72 hours in detention centres in Belarus.
6. Please explain the measures in place to ensure that human rights defenders can carry out their work in Belarus in a safe environment, without fear of intimidation or retaliation for their legitimate human rights work.

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.

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.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to 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. We would like to make particular reference to articles 7, 9, 19, 21 and 22 of the Covenant, which guarantee the right to freedom from arbitrary arrest and detention, freedom of opinion and expression, freedom of peaceful assembly and freedom of association.

We would like to refer to the absolute prohibition of arbitrary detention, as set forth in article 9 of the ICCPR. Article 9 establishes 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, and that anyone who is arrested shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pre-trial detention should thus be the exception rather than the rule (CCPR/C/GC/35, para. 38). We further note that a person may only be deprived of liberty in accordance with national laws and procedural safeguards governing detention (including in relation to arrest and search warrants), and where the detention is not otherwise arbitrary. In this respect, we wish to highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary (CCPR/C/GC/35, para. 17). In this regard, we would like to refer to the recent report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on the importance of guaranteeing access to justice in the context of the mentioned rights, whereas he stressed that legal assistance must be made available to everyone without discrimination. He further indicates that legal assistance should be given to everyone by counsel of their choice, in full respect of confidentiality, and at any time during custody or detention (A/HRC/47/24, para. 40).

Article 19 of the ICCPR enshrines the rights to freedom of opinion and expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11) as well as expression of criticism or dissent. The Human Rights Committee has recommended States to take "effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression" (General Comment 34 para. 23). In the same General Comment, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be *provided by law*, pursue a *legitimate* aim, and be *necessary* and *proportionate*. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. As interpreted by the Human Rights Committee, article 19 (3) may never be invoked to

justify the muzzling of any advocacy of human rights (*idem*, paragraph 23).

In this regard, we would also like to draw your Excellency's Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the [right] to freedom of... association are in accordance with their obligations under international human rights law".

We would like to refer to the report of (former) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association whereas she states that "[...] the suspension and involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law" (A/HRC/20/27 para. 75). In the same paragraph, she further states that these severe restrictions can only be imposed when softer measures are deemed insufficient.

Would also like to refer your Excellency's Government to the absolute and non-derogable prohibition of torture and other ill-treatment, as codified in article 7 of the ICCPR, and enshrined in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would further 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 the following articles of the Declaration on Human Rights Defenders, which state that everyone has the right, individually and in association with others:

- Article 9 (1) "to benefit from an effective remedy and to be protected in the event of the violation of those rights";
- Article 9 (3)(c) "[t]o offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms";
- Article 12 (c) "to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms".