

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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 situation of human rights defenders; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL BLR 10/2021
(Please use this reference in your reply)

11 January 2022

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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 situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 44/19, 43/4, 41/12, 43/16, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged **arbitrary arrest and detention of Olga Gorbunova, publicly known for her work as a women's human rights defender**.

We previously raised concerns with your Excellency's Government regarding the targeting of human rights defenders and journalists in BLR 8/2021, sent on 7 September 2021, 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 three of the communications, which provide additional information on the subjects. Regrettably, no response has been received to BLR 4/2021, and we continue to receive information on the targeting of human rights defenders by State actors.

According to the information received:

Ms. Gorbunova is a women's human rights defender, and lesbian, gay, bisexual and trans (LGBT) activist. She is the former head of the non-governmental organisation Radislava, established in 2002 by survivors of gender-based violence to help and offer support to women who are suffering from domestic and gender-based violence. She first publicly spoke about her sexual orientation as a lesbian woman in a radio program in 2019. She has allegedly been detained by the police several times for participating in protests, such as the Women's Marches, a series of weekly peaceful marches held in Minsk in late 2020 which contested election results and rallied against widespread arbitrary detention of human rights defenders and protesters.

On 9 November 2021, Ms. Gorbunova was arrested and detained by State agents in Minsk. The State agents did not provide a warrant at the time of her

arrest. She was interrogated without the presence of her lawyer by officials of the Main Directorate for Combating Crime and Corruption (GUBOPiK) of the Ministry of Internal Affairs. On 10 November 2021, a short clip of her interrogation was posted to the Telegram channel of the Ministry of the Interior. According to the Ministry of Internal Affairs, she was detained under Art. 342 of the Belarussian Criminal Code (organization and preparation of actions that grossly violate public order), primarily for her involvement in the country's 2020 Women's Marches.

Formal charges have not yet been filed against Ms. Gorbunova, although she was reportedly held in a detention centre on Akrestsina Street until 20 November 2021. During her detention at Okrestina Street detention centre, Ms. Gorbunova was reportedly transferred between cells multiple times. Regarding the conditions of her detention, her cell reportedly lacked the most basic conditions or apparel, such as heating, bed linen or a mattress. She was also allegedly deprived of sleep and denied regular walks. It is reported that she was only allowed to have a brief consultation with legal counsel six days after being arrested.

Allegedly, on 20 November 2021 she was transferred to detention centre SIZO No. 1 on Volodarskaya street, where it is reported that she has now access to a mattress, has been permitted visits from her lawyer and her friends have been allowed to provide her with warm clothes, food and bed linen.

If convicted, Ms. Gorbunova could reportedly face up to three years in detention, although she is yet to be formally indicted.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the arrest and detention of Ms. Olga Gorbunova, which reportedly took place without the presentation of a warrant. We are additionally concerned that a clip of Ms. Gorbunova's interrogation was posted on the Ministry of Interior's social media page three days before she was allowed to meet with a lawyer. If proven to be true, this would be a gross violation of due process. We are concerned that the charges brought against Ms. Gorbunova appear to be in retaliation for her work as a human rights defender, including her work on gender-based violence, and exercise of her right to peaceful assembly.

We would like to also reiterate our concern regarding the apparent criminalisation of human rights defenders in Belarus in connection to their human rights work. Particularly in light of communications BLR 8/2020 and BLR 1/2021, which raised concern over the criminalisation of women and LGBT human rights defenders. We are concerned that Belarussian authorities are seeking to silence all forms of dissent, by criminalising those who exercise their fundamental rights, and those who work to defend those rights. Such acts, when perpetrated against human rights defenders, create an atmosphere detrimental to the enjoyment of human rights, in which alleged violations go unchallenged and unpunished.

We also raise concern over alleged instances of ill-treatment and violations of due process. We remind Your Excellency's Government of the absolute prohibition of arbitrary detention and of the need to provide timely access to legal assistance. We are concerned by the lack of formal charges filed against Ms. Olga Gorbunova, and by the fact that her detention appears to be in retaliation for exercising her participation in

civil society activities and legitimate exercise of her right to freedom of opinion and expression, as well as of peaceful assembly and association. Furthermore, we find the allegations of inadequate detention conditions deeply troubling. We previously raised concerns over the poor conditions of the detention centre in Okrestina Street in communications BLR 8/2021 and BLR 8/2020. While we thank your Excellency's Government for the reply providing clarifications in this regard, we continue to receive information about the inadequate conditions in which detainees are being held.

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 detailed information about the factual and legal grounds for the arrest and continued detention of Olga Gorbunova, including why no warrant was presented at the time of her detention and why she was not accompanied by a lawyer during questioning. Please clarify the charges brought against her and provide details on measures taken to ensure that their fair trial and due process rights have been respected in the context of the trial proceedings. Please also clarify how this arrest and detention comply with your Excellency's Government's international human rights obligations under article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide information on the conditions of detention for Olga Gorbunova while under state custody, particularly considering how her safety and well-being are ensured considering she publicly identifies as a lesbian woman. In particular, please provide information about the prison conditions in Okrestina Street detention centre, and how they are consistent with your obligations under international law.
4. Please provide information as to the specific measures put in place to ensure that human rights defenders and civil society organizations in Belarus can carry out their legitimate work in a safe and enabling environment, without fear of harassment and intimidation from the authorities or any other agent acting on their behalf or with their acquiescence. Please provide information as to the specific measures that have been put in place to ensure the above for woman human rights defenders.

We would appreciate receiving a response within 60 days. Past this delay, 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.

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.

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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
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Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Reem Alsalem
Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

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 9, 14, 19 and 21 of the Covenant, which guarantee the right to freedom from arbitrary arrest and detention, the right to a fair trial, freedom of expression and freedom of peaceful assembly.

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).

Article 14 of the ICCPR provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. She should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

Article 19 of the ICCPR enshrines the rights to freedom of opinion and expression. 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, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', 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. 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 also draw the attention of your Excellency's Government to article 21 of the ICCPR which states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34).

We would like to reiterate to your Excellency's Government the obligations of Belarus through its ratification in 1981 of the International Convention on the Elimination of Discrimination against Women (CEDAW), ratified by your Excellency's Government on 4 February 1981, in particular article 7 which provides that States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

In this context, we would also like to bring to Your Excellency's attention article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Moreover, the Committee on the Elimination of Discrimination against Women in its General Recommendation No.19 (1992), updated by General Recommendation 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 CEDAW, whether perpetrated by a State official or a private citizen, in public or private life.

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. Sexual and gender non-conforming women are disproportionately targeted for social control based on their

perceived challenge to or “transgression of” established norms of gender roles and sexuality (A/HRC/23/50, para. 47). As a result, they face increased vulnerability to criminalization and deprivation of liberty. Even in cases where such women are not expressly criminalized based on their sexual orientation or gender identities, they may face a heightened risk of encountering the criminal justice system. For example, transgender women are arbitrarily profiled and targeted for prostitution/sex work. The Working Group recommended to accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfil women’s human rights and to improve the enabling conditions for women’s participation in political and public life. In its thematic report on women deprived of liberty (A/HRC/41/33), the Working Group underlined the increasing risk faced by women human rights defenders of criminalization and detention as a result of their legitimate work and recommended States to support and protect women’s engagement in public and political life, including the work of women human rights defenders.

In a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. Today’s rising fundamentalisms of all kinds and political populism, as well as unchecked authoritarian rule and uncontrolled greed for profit-making further fuel discrimination against women, intensifying the obstacles facing women human rights defenders. In addition to the risks of threats, attacks and violence faced by all human rights defenders, women human rights defenders are exposed to specific risks, such as misogynistic attacks, gender-based violence (including sexual violence), lack of protection and access to justice as well as lack of resources. Those working on rights contested by fundamentalist groups, such as sexual and reproductive health and rights, at heightened risk to attacks and violence.¹

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.

In that vein, the Declaration on Human Rights Defenders clearly states that everyone has the right, individually and in association with others:

- Article 5
 - (a) “To meet or assemble peacefully;
 - (b) “To form, join and participate in non-governmental organizations, associations or groups;

¹ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20938&LangID=E>

- Article 9
 - (1) “to benefit from an effective remedy and to be protected in the event of the violation of those rights”;
 - (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”.

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

We would like to recall resolutions 17/19 and 27/32 of the Human Rights Council, expressing grave concern for acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity and recommendations of UN human rights treaty bodies and special procedures mandate holders that States inter alia prohibit discrimination on the basis of gender identity, give legal recognition to the gender identity of transgender persons without abusive preconditions, and combat transphobic violence, including through effectively investigating such acts, prosecuting alleged perpetrators, providing remedy to victims, and training law enforcement officers (A/HRC/29/23, A/HRC/19/41).

We would also like to refer to Human Rights Council resolution 22/6, which urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (operative paragraph 5).

Finally, we would like to refer to the General Comment No. 34 (2011) of the Human Rights Committee, which provides in paragraph 9 that “All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature... The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1.” (ICCPR)