

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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 and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ref.: AL BLR 7/2022
(Please use this reference in your reply)

17 November 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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 and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/16, 42/22, 50/20, 43/4, 50/17 and 51/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the administrative detention of Mr. Uladzimir Tseliapun and Ms. Nasta Loika.

Mr. **Uladzimir Tseliapun** is a human rights defender working in Mazyr, Belarus, on the intersection of environmental and access to information issues, focusing particularly on access to information related to the Chernobyl disaster. Mr. Tseliapun's work also focused on fair elections and local community gatherings.

He was the subject of a previous communication, BLR 2/2011, sent to your Excellency's Government on 25 February 2011.

Ms. **Nasta Loika** is a woman human rights defender who has been focusing on repressive "anti-extremist" laws, and on the protection of the migrants and stateless people rights in Belarus. She previously worked with the NGO Human Constanta, which was shut down in the summer of 2021. Ms. Loika was previously the subject of communications 1/2010, 2/2011 and 1/2018.

According to the information received:

The case of Mr. Uladzimir Tseliapun

On 3 September 2022, Mr. Tseliapun was arrested. On 6 September 2022 the Mazyr District Court sentenced the human rights defender to 10 days of administrative detention for "circulating extremist information on Facebook" under article 19.11 of the Code of Administrative Offences. The information on which the prosecution is based refers to a link posted by Mr. Tseliapun on Facebook on 18 October 2021. It is a link leading to "Polelsye", a Belarusian online media outlet that the government outlawed and labelled as extremist.

On 16 September 2022, the Mazyr District Court sentenced him to 15 days of administrative detention for the same offence in the temporary detention facility in Mazyr.

Mr. Tseliapun's health has been deteriorating due to existing heart problems and the fact that he is reported to be detained in a cell with people with signs of respiratory disease. The other inmates in his cell reportedly have fevers, and the cell window is allegedly broken, leading to extremely low temperatures.

It is also reported that he has not been given a mattress nor bed linen. Mr. Tseliapun is not allowed to take daily walks and has no access to shower. At night, the bright lighting in the cell is kept on, and every two hours throughout the night the staff of the temporary detention facility force the detainees to stand up and give their names. Mr. Tseliapun is only allowed to move in handcuffs outside his cell. According to reports, the police refused to accept warm clothes and medication meant for Mr. Tselyapun, from his relatives.

Mr. Tseliapun reportedly has no access to a lawyer in the temporary detention facility. He can only communicate with his lawyer during court sessions.

The case of Ms. Nasta Loika

On 6 September 2022, Belarusian law enforcement officials arrested and detained Ms. Loika near the premises of the Minsk City Court. On 7 September 2022 she was sentenced to 15 days of administrative arrest, on "petty hooliganism" charges, a violation under article 19.1 of the Code of Administrative Offences. The arrest of Ms. Nasta Loika took place as she was leaving a court hearing on the "Revolutionary Action", related to the sentencing of a group of individuals, including human rights defenders, to lengthy prison sentences.

On 22 September 2022, the Frunze District Court in Minsk sentenced Ms. Nasta Loika to another 15 days of administrative arrest on "petty hooliganism" charges, under the same article. Ms. Loika was not present in court, and she also reportedly did not have access to her lawyer, as the court denied the motion to invite her attorney. It is reported that Ms. Loika was unable to receive any medication, warm clothes, nor hygiene necessities in detention due to the transfer services interruption to Okrestina Detention Center. On 6 October 2022, she was released from jail.

On 28 October 2022, three weeks after Ms. Loika was released from detention after serving two consecutive sentences, she was arrested for the third time. On the day of her arrest, a "forced confession video" appeared showing Ms. Loika in handcuffs giving unofficial testimony about her engagement in human rights work, including her work with Human Constanta. The location and the source of this video are not clear. The video was circulated on a Telegram channel along with other discrediting information, in what appears to be a smear campaign aimed at vilifying Ms. Loika for her human rights work.

On 31 October 2022, Ms. Loika was sentenced to 15 days of administrative arrest, and, on 14 November 2022, she was sentenced to another 15 days of

administrative arrest on charges of “petty hooliganism” under article 19.1 of the Code of Administrative Offenses of the Republic of Belarus. Her sanctioning was grounded in unsubstantiated allegations against Ms. Loika’s behaviors under arrest and detention, which was considered by the court to be “in breach of public order” and “showing disrespect to the society.” The motions of the defense were not satisfied during the hearing.

It is reported that, during her detention at Okrestina, Ms. Loika has been taken twice to the Main Directorate for Combating Organized Crime and Corruption (GUBOPiK) for questioning, where the police officers hit her with a stun gun, causing electric shock. Moreover, in detention, Ms. Loika has been subjected to humiliating and degrading treatment and held in unhygienic and inadequate conditions. She was prevented from receiving any packages, including medication. Ms. Loika remains imprisoned without warm clothes and hygienic essentials.

It is also reported that Ms. Loika’s health deteriorated after she was forced to the inner yard of the Okrestina Detention Center, on 11 November 2022, and kept there for 8 hours with no outerwear in temperatures below 10 degrees Celsius. The cold, in combination with lack of access to medical assistance and poor diet, undermine her recovery and further endanger her health.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the arrest, detention and sentencing on administrative offences of Mr. Tseliapun and Ms. Loika which appear to be in retaliation of their work as human rights defenders, and for exercising their rights to freedom of expression and of peaceful assembly. We express further concerns about the conditions in detention of Mr. Tseliapun in light of his pre-existing health condition.

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 information on the legal basis for the sentencing to administrative detention of Mr. Tseliapun and Ms. Loika, and explain how these measures are compatible with Belarus’s obligations under international human rights law.
3. Please provide information as to the specific measures put in place to ensure that human rights defenders and civil society actors 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.

4. Please provide information on the measures undertaken by your Excellency's Government to ensure Mr. Tseliapun and Ms. Loika with adequate access to health care services, including medication and ensure him with the enjoyment of the highest attainable standard of physical and mental health.

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.

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 the case 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 allegation letter 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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex

Reference to international human rights law

In connection with 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.

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.

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 also bring to the attention of your Excellency’s Government article 12, coupled with article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Belarus on 12 November 1973, which enshrines the right of everyone, including people prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights reiterates that “States are obliged to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.” Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (Rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (Rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (Rule 27).

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he made reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.¹ In addition the mandate

¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, para. 18.

holder indicated that [b]earing in mind the goal of progressive realization of the right to health, measures are needed to ensure its realization in closed settings, including a plan to end forced confinement in hospitals”.² He also stressed that “for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality”.³ In addition, the former Special Rapporteur urged States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.⁴

² *Ibid.* para. 24.

³ *Ibid.* para. 34.

⁴ *Ibid.* para. 98 (a).