

Mandates of the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants

Ref.: AL LVA 1/2023
(Please use this reference in your reply)

2 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 43/16, 44/11 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the alleged undue use of criminal proceedings against human rights defenders Ieva Raubiško and Egils Grasmanis.**

Ms. **Ieva Raubiško** and Mr. **Egils Grasmanis** are human rights defenders and members of I Want to Help Refugees (*Gribu palīdzēt bēgļiem - GPB*), an association which grew out of a Latvian social movement which emerged in response to increased arrivals of asylum seekers in Europe in 2015 and 2016. The association offers practical and immediate support, including assistance with integration, to refugees and asylum seekers in Latvia.

According to the information received:

On 10 August 2021, through the Law on Emergency Situation and State of Exception (*Par ārkārtējo situāciju un izņēmuma stāvokli*, hereafter, the 'Law'), Latvia introduced a state of emergency in four administrative territories near the country's border with Belarus. The state of emergency empowered the State Border Guard to return to Belarus third country nationals crossing the border irregularly without any prior assessment on their individual circumstances and their protection needs and without providing them with the possibility to lodge claims for asylum, effectively legalizing summary collective expulsions, a practice incompatible with the State's obligations under international and regional human rights law and refugee law. The Law provided for the use of physical force and "special means" by the Border Guard in order to oblige migrants/foreign nationals to return to Belarus in cases where they deemed to have crossed the border irregularly. The Law also restricted access to the border areas affected for members of civil society, journalists and international organisations, including UNHCR, and the Latvian Ombudsperson.

In April 2022, the Law was amended to re-permit the possibility of making asylum claims at the immigration detention centre in the city of Daugavpils and at border crossing points, with the possibility to make claims remaining frustrated at all other points along the land border with Belarus. At the time of finalising this communication, the state of emergency remains in place, having been repeatedly extended since its inception. According to the Ministry of

Interior, at least 9,652 migrants, including asylum seekers, have been “deterred from crossing the State border illegally” since the state of emergency was imposed.¹ The regime and its impact on human rights, in particular the rights of migrants, have been criticised by the Council of Europe Human Rights Commissioner², UNHCR³ and the European Parliament's Committee on Civil Liberties, Justice and Home Affairs⁴, among others.

On 31 December 2022, Mr. Grasmanis received information about a group of five Syrian nationals who had arrived in Latvia seeking to apply for asylum. At least one of them was in need of medical attention, and upon learning of their location, Mr. Grasmanis called the emergency medical service to inform them of their situation. After receiving medical care, all but one member of the group were obliged to cross the border back to Belarus without having been permitted the opportunity to apply for international protection and without any prior assessment on their individual circumstances and their protection needs.

In early January 2023, the members of the group of Syrians who had been forced to leave Latvia contacted I Want to Help Refugees asking for help and authorising Ms. Raubiško to raise their case with the European Court of Human Rights (ECtHR). Members of the group told I Want to Help Refugees that they had been present at the Latvian-Belarusian border since mid-December 2022 and had been pushed back and forth between Latvia and Belarus by state authorities on more than 10 occasions during that period. Ms. Raubiško subsequently applied to the ECtHR for interim measures under Rule 39 of the Rules of the Court to prevent their summary expulsion from the country. On 11 January 2023, the group sent I Want to Help Refugees photographs of themselves in front of a border post in Latvian territory. In one of the photos, the members of the group held handwritten notes stating their desire to apply for asylum in response to risks to their lives in their country of origin. Ms. Raubiško shared this information with the ECtHR, who ordered interim measures in respect to the group of Syrian nationals on the same day, however all of them were forcibly returned to Belarus.

On 12 January 2023, Ms. Raubiško and Mr. Grasmanis travelled to the border area where the group of asylum seekers had been, committing an administrative offence under the State of Emergency in the process. The group of persons seeking to apply for asylum had indicated their intention to return to their previous location in Latvia, and Ms. Raubiško and Mr. Grasmanis went to ensure they would not be forcibly returned to Belarus. When the group of asylum seekers arrived in Latvia, Ms. Raubiško and Mr. Grasmanis gave them food and water and immediately called the State Border Guard and emergency services. Upon the arrival of the authorities, two members of the group of asylum seekers were taken to hospital for treatment, while the others, along with Ms. Raubiško and Mr. Grasmanis, were taken to the closest Border Guard post.

Upon arrival at the Border Guard post, Ms. Raubiško and Mr. Grasmanis were interviewed by a member of the Criminal Investigation Service of the Border

¹ <https://www.mk.gov.lv/en/article/state-emergency-latvia-belarus-border-extended-until-10-may-2023>
² <https://rm.coe.int/letter-to-latvia-minister-for-the-interior-by-dunja-mijatovic-council-/1680a9fdae> and <https://rm.coe.int/letter-to-kristaps-eklons-minister-of-interior-of-latvia-by-dunja-mija/1680a76afe>
³ <https://www.refworld.org/docid/61767bea4.html>
⁴ https://www.europarl.europa.eu/doceo/document/LIBE-CR-735432_EN.docx

Guard and informed that criminal proceedings were being initiated against them for their potential engagement in organising the ‘illegal movement of a group of persons across the state border’, under article 285, part 2, of the Latvian Criminal Code. Their phones were confiscated by the investigators and they were released, being ordered to present themselves to provide testimonies in the case at a later date. At the time of finalising this communication, the investigation into the two human rights defenders has been transferred to investigators in Riga and remains ongoing.

Without wishing to prejudge the accuracy of the information received, we express our serious concern as to the opening of the criminal investigation against Ms. Raubiško and Mr. Grasmanis, which we strongly fear to have been initiated in direct response to their legitimate acts of solidarity with asylum seekers, undertaken with the sole aim of seeking to prevent human rights violations.

We also wish to underline our serious concern as to the continuing state of emergency in the border region with Belarus, in particular in relation to its violation of human rights – most prominently the human rights of migrants and the right to seek asylum - and possible facilitation of grave human rights violations by State authorities, as well as its impact on human rights defenders seeking to monitor the human rights situation in the affected areas.

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 as to the justification for the opening of the criminal investigation against Ms. Raubiško and Mr. Grasmanis and the status of the investigation. Please include details as to the compatibility of any such investigation with the State's obligations under the UN Declaration on Human Rights Defenders, notably article 12.
3. Please provide information about measures taken to thoroughly review the Law on Emergency Situation and State of Exception to bring it in line with relevant standards under international human rights and refugee law. Please also provide information as to the state of emergency's impact on human rights defenders, particularly those working for the rights of migrants, refugees and asylum seekers, as well as journalists seeking to report on the situation in the border region.
4. Please indicate what measures have been taken by your Excellency's Government to protect the human rights of migrants at international

borders, including to ensure their access to legal representatives and their effective access to asylum and other international protection procedures, in accordance with Latvia's obligations under international human rights and refugee laws.

5. Please provide information on measures taken or to be taken by your Excellency's Government to ensure border management measures are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

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

Obiora C. Okafor
Independent Expert on human rights and international solidarity

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns connected to the state of emergency, and notably its impact on persons seeking to exercise their right to seek asylum, granted in article 14 of the Universal Declaration on Human Rights and subsequently fully articulated in the 1951 Refugee Convention and its 1967 Protocol. States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary or collective expulsions. The principle of non-refoulement is codified in articles 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Latvia is a party since 1992. Article 3 of the Convention provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture, ill-treatment or other irreparable harm. As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement under international human rights law is also more expansive than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterized by its absolute nature without any exception.

Collective expulsions, on the other hand, are prohibited as a principle of general international law. In this regard, we would like to draw the attention of your Government to paragraph 10 of General Comment No. 15 (1986) of the Human Rights Committee, where the Committee stressed that article 13 of the International Covenant on Civil and Political Rights “would not be satisfied with laws or decisions providing for collective or mass expulsions”.

We draw the attention of your Government to OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders. In particular guideline 9, which states that returns or removals should not violate the principle of non-refoulement and/or the prohibition of collective expulsion. In the case of forced returns, the Guideline calls on States to ensure that return procedures are not carried out at all costs, but are interrupted where the human rights of the migrant are compromised, and that migrants whose rights are violated during return processes can file complaints.

We wish to refer your Excellency's Government to articles 2 and 6(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Latvia acceded on 14 April 1992. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

Article 2 provides that each State Party to the present Covenant shall respect and ensure for all individuals within its territory and subject to jurisdiction the rights recognised in the Covenant without discrimination, including on the basis of national

origin or other status. Article 6(1) provides that every human being has the inherent right to life and that no one shall be arbitrarily deprived of one's life.

The Human Rights Committee, in its general comment no. 36 (CCPR/C/GC/36), confirmed that the right to life has crucial importance both for individuals and for society as a whole and that article 6 guarantees this right for all human beings, without distinction of any kind. The right is not to be narrowly interpreted and includes acts and omissions that would cause any unnatural or premature death. Its protection thus requires that the State adopt positive measures, which are only discharged if individuals are protected by the State against violations of its own agents, and private persons and entities alike. The Committee has made this clear, stating that the State duty to respect the right to life includes an obligation to take action in the case of foreseeable threats to the right to life and in life-threatening situations, even where those threats and situations are not caused directly by the State. Permitting or failing to take appropriate action to exercise due diligence to prevent the death of any individual on its territory or under its jurisdiction will result in a violation by the State party of the ICCPR and give rise to State responsibility.

The obligations borne by State Parties under article 6 may be broader than the scope of the principle of non-refoulement under international refugee law, as it may also require the protection of aliens not entitled to refugee status. States parties must allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement. The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats⁶⁸ or pre-existing patterns of violence. Such persons include children, especially unaccompanied migrant children, displaced persons, asylum seekers, refugees and stateless persons.

We would also like to stress that article 4 (1) of ICCPR provides that "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." Article 4(2) further stresses that "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." As stated by the Human Rights Committee in its general comment 29 (CCPR/C/GC/29), "the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from will be entirely inapplicable to the behaviour of a State party." (Para. 4).

We would also like to draw your attention to the thematic report of the Special Rapporteur on the human rights of migrants on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30). In this report, the Special Rapporteur stresses that migrants arriving at international borders, regardless of how they have travelled, should have access to individualised, prompt

examinations of their circumstances, and referral to competent authorities for a full evaluation of their human rights protection needs, including access to asylum, in an age-sensitive and gender-responsive manner. Effective access to territory is an essential precondition for exercising the right to seek asylum (para. 43).

We also wish to highlight the thematic report of the Special Rapporteur on the human rights of migrants on “human rights violations at international borders: trends, prevention and accountability” (A/HRC/50/31), in which the Special Rapporteur urged Member States to put an end to pushback practices, to suspend, cancel and revoke, as necessary, initiatives to legalize pushbacks, and to respect fully the prohibition of collective expulsion and uphold the principle of *non-refoulement* (para. 78).

In relation to our concerns as to the possible undue use of criminal proceedings against human rights defenders, we would 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 bring to the attention of your Excellency's Government article 12, paragraphs 2 and 3 of the Declaration, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, we would like to make reference to the recommendations made in the recent report of the Special Rapporteur on the situation of human rights defenders to the UN General Assembly (A/77/178), on the situation of defenders of the rights of refugees, migrants and asylum seekers. In particular, we wish to underline her key recommendation that States publicly promote the lifesaving work of defenders working on these issues, intervene to stop them from being attacked, desist from targeting them, including through spurious legal procedures, and provide a safe, accessible and supportive environment for their work, both in law and in practice.