

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the
Special Rapporteur on the situation of human rights in Belarus**

Ref.: OL BLR 2/2023
(Please use this reference in your reply)

22 March 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the situation of human rights in Belarus, pursuant to Human Rights Council resolutions 44/5 and 50/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning amendments to the criminal code of Belarus (Law No. 275-Z of 9 July 1999) introducing capital punishment for State officials and military personnel convicted of high treason.

According to the information received:

On 21 February 2023, the House of Representatives of the National Assembly of the Republic of Belarus adopted amendments to the criminal code of Belarus (Law No. 275-Z of 9 July 1999) introducing the death penalty for State officials and military personnel convicted of high treason (Part 2 of Article 356 of the criminal code), a crime previously sanctioned with imprisonment. Article 59 of the criminal code, on execution by firing squad, was also amended accordingly.

It is submitted that Article 356 of the criminal code, as amended, defines high treason as “the disclosure to a foreign State, international or foreign organization or their representatives of State secrets of the Republic of Belarus. It also defines it as information constituting State secrets of foreign States, international organizations, inter-State entities transferred to the Republic of Belarus on the basis of international treaties or in connection with its Belarus participation in such international organizations, inter-State entities, or espionage, or defection to the side of the enemy during a war or armed conflict, or other provision of assistance to a foreign State, international or foreign organization or their representatives in carrying out activities aimed at causing harm to the national security of the Republic of Belarus, intentionally committed by a citizen of the Republic of Belarus (treason against the State)”.

On 22 February 2023, the amendments were approved by the Council of the Republic, and, on 9 March 2023, they were signed into law by the President of Belarus.

On 14 March 2023, the Law No.256-Z containing these amendments was officially published. It shall accordingly enter into force ten days following its publication, on 25 March 2023.

According to reports, the new law is part of changes to the criminal code introduced with the aim of strengthening Belarus fight against “crimes of an

extremist (terrorist) and anti-State orientation.” It is feared that the proposed amendments to the criminal code may increase the risk that the death penalty will be imposed in an arbitrary, unlawful, and discriminatory manner.

This would be the second time, in the past year, that the scope of application of the death penalty in Belarus would be expanded¹.

While we do not wish to prejudge the accuracy of the information reported above, we are concerned that, if entering into force and implemented, Law no. 256-Z would expand the scope of application of the death penalty in contravention of Belarus’ international human rights obligations, particularly as they arise from Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1973, which protects everyone’s right to life.

We recall that States parties to the ICCPR may not transform into a capital offence any offence that, upon ratification of the Covenant or thereafter, did not entail the death penalty nor can they remove legal conditions from an existing offence with the result of permitting the imposition of the death penalty in circumstances in which it was not possible to impose it before²; we also stress that States that have not yet abolished the death penalty may only impose it for the “most serious crimes” which, under international law, can only be considered those of an extreme gravity, involving intentional killing³. We emphasize that “high treason” does not meet this threshold.

We also recall that Article 6 paragraph 6 of the ICCPR reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights. It is contrary to the object and purpose of Article 6 for States parties to take steps to increase de facto the rate of use of and the extent to which they resort to the death penalty, or to reduce the number of pardons and commutations they grant⁴.

Therefore, we respectfully call on your Excellency’s Government to halt the entry into force of the revised criminal code which, if implemented in the terms reported above, would enshrine in legislation a structural violation of international human rights law and standards related to the death penalty. In this regard, we also stress that the enforcement of any death sentence in contravention of a State’s obligations under international law is tantamount to an arbitrary execution and hence unlawful.

In light of the above, we also respectfully reiterate our call on Your Excellency’s Government to consider establishing an official moratorium on all executions as a first step towards fully abolishing the death penalty in the country.

¹ See OL BLR 3/2022: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27295>; thus far, no reply from the Government was received.

² See Human Rights Committee, General Comment no. 36, Article 6: right to life: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNjrrLLdefuuQjN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

³ *Ibid.*

⁴ *Ibid.*; see also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/77/270): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/452/71/PDF/N2245271.pdf?OpenElement>

We stand ready to support your Excellency's Government in all efforts necessary to limit the application of and/or abolishing the death penalty with a view to bringing national legislation into compliance with international human rights law and standards.

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 comment(s) you may have on the above-mentioned information.
2. Please explain how the revised criminal code, especially as far as the provision of the death penalty for the crime of high treason is concerned, would be compatible with Belarus' international human rights obligations, particularly in relation to the protection of the right to life, set forth in the International Covenant on Civil and political Rights.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Anaïs Marin

Special Rapporteur on the situation of human rights in Belarus