

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Enforced or Involuntary Disappearances; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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(Please use this reference in your reply)

25 May 2023

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Working Group on Enforced or Involuntary Disappearances; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/8, 50/20, 45/3, 52/9, 50/17, 51/21, 44/8, 49/10 and 52/7.

In this connection we would like to follow-up on the cases of Messrs Siarhei Tsikhanouski, Viktor Babaryka, and Maksim Znak based on new information received, including allegations of incommunicado detention of individuals sentenced on politically motivated charges, denial of visits by family members, lawyers and independent physicians, denial of communication and correspondence and concerns of cruel, inhuman or degrading treatment or torture that endanger their health and life, and danger that they are subjected to enforced disappearance.

The cases of the above-mentioned individuals were raised by UN Special Procedures on different occasions, namely in BLR 5/2020, BLR 9/2020, BLR 11/2021, as well as A/HRC/WGAD/2021/23 and A/HRC/WGAD/2022/24. We thank Your Excellency's Government for the replies to these communications. However, we remain concerned, given the allegations below.

According to the information received, it is alleged that:

The practice of *incommunicado* imprisonment of members of the political opposition and prominent figures, who were sentenced to lengthy imprisonment on politically motivated grounds for raising voices of dissent since 2020, has increased in 2023. While Belarusian prisons and penal colonies are notorious for their bad conditions, law enforcement bodies and

prison authorities appear to systematically expose persons detained on politically motivated grounds to gross human rights violations amounting to torture or other cruel, inhuman or degrading treatment or punishment, which result in irreversible and sometimes life-threatening health deterioration.

For months in a row, persons detained under politically motivated charges are incarcerated in so-called cell-type units (PKT) or punitive isolation (SHIZO), on grounds of “disciplinary violations”. Although such disciplinary measures can be formally appealed in court or before the prosecutor, in practice it is often impossible to do so in the absence of a lawyer. Moreover, court hearings on such appeals are rarely effective. Prisoners in PKT or SHIZO are deprived of access to lawyers, written correspondence and telephone calls, and prohibited from having any visits or receiving parcels and packages.

Moreover, lawyers representing the cases of political figures, human rights defenders or individuals who have raised voices of dissent are consistently denied access to their clients, depriving them of any meaningful possibility to report instances of torture or ill-treatment committed by law enforcement officers and prison personnel and eventually request remedy and investigation. Only a few lawyers agree to take on cases concerning political figures due to harassment and high risks of being deprived of practising licenses and/or facing criminal prosecution for the legitimate exercise of their professional functions, a concern raised by special procedures mandate holders in earlier communications to the Government of Belarus (BLR 9/2020 and BLR 5/2021).

Furthermore, persons detained on politically motivated grounds are denied access to timely medical examination and medical care, including in cases of emergencies, and have no access to independent medical specialists. Medical units are part of the prison administration, which restrains the independence of the medical staff and notably their ability to report on any injuries revealing signs of torture or ill-treatment they observe. The relatives are denied access to information concerning the health situation of their next-of-kin and are prevented from visiting or accessing the results of medical interventions.

In Belarus, independent human rights organizations are denied access to prison facilities to monitor the conditions of detention. There is no independent monitoring body or effective complaints system for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, as recommended by the Committee against Torture. To date, there is no information about any credible investigations initiated by the Office of the Prosecutor into allegations of torture and ill-treatment in the form of physical punishment and psychological abuse against persons detained in connection to the 2020 presidential election. Similarly, the authorities have failed to initiate criminal investigation into the circumstances of Mr. Vitold Ashurok’s death in custody in March 2021. Most recently, human rights organisations have reported about the death in custody, apparently due to lack of medical care, of a 61-year-old man with chronic disease and disability, incarcerated two months earlier for drawing a caricature of the incumbent President.

Case of Mr. Siarhei Tsikhanouski

Mr. Siarhei Tsikhanouski is an entrepreneur, blogger and founder of the YouTube channel “A country for living” a project aimed at exposing corruption in Belarus. Mr. Tsikhanouski and his work garnered unprecedented popularity in Belarus in 2019-2020. He announced his intention of running for the 2020 presidential election, however, the Belarus Central Electoral Commission refused to register his candidacy on procedural grounds. On 15 May 2020, his wife, Ms. Sviatlana Tsikhanouskaya submitted an application to register her name for the Presidency of Belarus and she was registered on 20 May 2020).

On 29 May 2020, Mr. Tsikhanouski was arrested under the pretext of having committed a crime envisaged in article 364 of the Criminal Code on the use of violence against police officers to obstruct their lawful actions. The arrest occurred following a protest at an election picket in support of Ms. Tsikhanouskaya’s candidacy (see A/75/173, para 68 and A/HRC/46/4, para 14).

Later, all charges under article 364 of the Criminal Code were dropped, however, he was kept in detention. On 11 March 2021, the Main Investigation Department of the Investigative Committee of Belarus charged Mr. Tsikhanouski with crimes under article 342 of the Criminal Code (on the organization and preparation of, or active participation in, actions that grossly violate the public order), article 293 (on organizing mass riots), article 191(2) (on obstructing the activities of the Central Electoral Commission) and article 130(3) (on inciting social hatred).

In September 2021, the Working Group on Arbitrary Detention determined that the arrest and detention of Mr. Tsikhanouski were arbitrary and contravened articles 2(1), 9, 14, 21, 25 and 26 of the International Covenant on Civil and Political Rights (see A/HRC/WGAD/2021/23). The Working Group requested Mr. Tsikhanouski’s immediate release and reparations, in accordance with international law.

On 14 December 2021, during a closed reading of the verdict, Mr. Tsikhanouski was sentenced to 18 years in prison. On 31 May 2022, the Supreme Court of Belarus began consideration of the appeal but left the verdict against Mr. Tsikhanouski unchanged.

On 28 June 2022, the State Security Committee of the Republic of Belarus added Mr. Tsikhanouski’s name to the list of persons “involved in terrorist activities.” On 4 November 2022, the Ministry of Internal Affairs included Mr. Tsikhanouski in the “List of Belarusian citizens, foreign citizens or stateless persons involved in extremist activities”.

On 22 February 2023, Mr. Tsikhanouski was sentenced to an additional 18-month imprisonment term under article 411 of the Criminal Code for

unsubstantiated “malicious disobedience to the requirements of the administration of the correctional institution.” Thus, the term of his imprisonment increased to 19 years and 6 months. According to human rights activists, new criminal sentences under article 411 of the Criminal Code are increasingly used as a retaliation method against persons incarcerated on politically motivated grounds.

His arbitrary arrest and detention in punitive conditions are motivated reportedly by Mr. Tsikhanouski’s ascending popularity and political activity, and those of his spouse, in breach of his rights to freedom of expression and freedom of assembly, as well as the right to take part in the public affairs of Belarus.

His sentencing to lengthy incarceration and its subsequent harshening has been marred by breaches to due process and fair trial standards. Mr. Tsikhanouski was reportedly denied presumption of innocence, full access to the materials of his case, representation by a lawyer of his own choice and lawyer-client confidentiality, which obstructed his possibility to prepare his defence. Five lawyers that worked on his case, between 2021 and 2023, were intimidated and stripped of their practising licenses in retaliation for their work on Mr. Tsikhanouski’s case.

Moreover, Mr. Tsikhanouski’s right to a public hearing by an independent and impartial tribunal, and the rule of law guarantees were allegedly violated. Namely, the Belarusian legal framework reportedly fails to ensure the independence of judges from the executive and vests them with broad powers of interpreting vaguely formulated criminal provisions, which do not comply with international human rights standards. Persisting procedures for the appointment and removal of judges are not consistent with judicial independence and pose obstacles to the transparency and objectivity of judicial processes. The independence of the judiciary from the executive branch of power is essential for the functioning of democracy and the promotion and protection of human rights.

Considering the above-listed substantive and procedural deficiencies, international and Belarusian human rights organisations have declared the imprisonment of Mr. Tsikhanouski as politically motivated. In detention, Mr. Tsikhanouski has been facing cruel, inhuman or degrading treatment, possibly amounting to torture, according to reports.

Initially, he was held at the penal colony in Mahiliou. However, on 10 August 2022, he was transferred to the Prison No. 8 in Zhodzina. Unlike the colony, the conditions of the prison regime entail 24/7 incarceration in unventilated cells behind concrete walls.

After his transfer to the Prison in Zhodzina, on 18 August 2022, Mr. Tsikhanouski was placed in a punishment cell “SHIZO” for two months. This punishment was repeated later. Isolation in a punishment cell involves a complete denial of visits: in fact, the purpose of the punishment cell is to

completely isolate the person from any engagements or contact with the outside world. Mr. Tsikhanouski was deprived of visits by close family and lawyers and denied correspondence. He was prohibited from receiving money on his personal account in prison, as a result of which he couldn't buy basic necessities and food. He cannot receive any parcels or packages, even from family members. The harshening of his detention regime was timed to Ms. Sviatlana Tsikhanouskaya's announcement of the United Transitional Cabinet of Belarus, established by opposition figures.

The last person who saw Mr. Tsikhanouski was his lawyer, who was allowed to visit him in detention on 9 March 2023. The last letter from Mr. Tsikhanouski is dated 19 March 2023. No one has received information from him since then. Bearing in mind the conditions of his deprivation of liberty, the circumstances here described, and his profile, there are substantial grounds to believe that he could be in danger of being subjected to enforced disappearance.

On 20 March 2023, his lawyer was arrested and searched. She had her computer, mobile phone and documents confiscated. On 21 March 2023, the Ministry of Justice deprived her of the lawyer's status.

Case of Mr. Viktor Babaryka

Mr. Babaryka is a Belarusian banker, philanthropist and political opposition figure who intended to run for the presidential election scheduled in 2020. On 20 May 2020, he registered his group for this initiative. The unprecedentedly large number of signatures backing up his candidacy and Internet poll results were indicating vast support in his favour. On 20 June 2020, Mr. Babaryka's team submitted the package of documents to the Central Election Commission of Belarus. However, on 14 July 2020, his request for registration as a candidate for the presidential election was rejected (A/HRC/46/4, paras 14-15).

In the meantime, on 18 June 2020, Mr. Babaryka was reportedly arbitrarily arrested and placed under pre-trial detention. On 20 June 2020, charges were pressed against Mr. Babaryka accusing him of criminal offences under part 2 of article 243 (tax and duties evasion on a massive scale), part 2 of article 235 (money laundering on a massive scale) and part 2 of article 431 (recurrent bribery or bribery on a massive scale) of the Criminal Code. However, the charges on which Mr. Babaryka was arrested in June 2020, were not considered in court.

In the criminal trial against Mr. Babaryka, which started on 17 February 2021, a completely different charge was considered under part 3 of article 430 (taking a bribe by an organized criminal group) and part 2 of article 235 of the Criminal Code (legalization of proceeds from crime). Mr. Babaryka rejected all accusations and pleaded not guilty to all charges.

On 6 July 2021, he was sentenced to 14 years in prison. His sentencing to lengthy incarceration has been reportedly marred by breaches of due process and fair trial standards, including denial of the presumption of innocence and access to representation by a lawyer of his own choice, which obstructed his possibility to prepare his defence. According to the information received, several lawyers who worked on his case were intimidated and stripped of their practising licenses.

Moreover, Mr. Babaryka's right to a public hearing by an independent and impartial tribunal and the rule of law guarantees were allegedly violated. As stated above, the Belarusian legal framework reportedly fails to ensure the independence of judges from the executive and vests them with broad powers of interpreting vaguely formulated criminal provisions, which can be applied on discretion to target political opponents to the incumbent President.

Considering the above-listed reported substantive and procedural deficiencies, International and Belarusian human rights organisations have declared the imprisonment of Mr. Babaryka as politically motivated.

Since August 2021, Mr. Babaryka has been incarcerated at the penal colony No.1 in Novopolatsk. Human rights organisations report that this institution is notable for its systemic inhumane conditions and ill-treatment, including beatings and other gross human rights violations perpetrated by the prison administration.

For the past three months, Mr. Babaryka has reportedly been kept *incommunicado*. The last letter from him is dated 22 January 2023, and the last phone call and meeting with a lawyer took place on 6 February 2023. No one received information from him since then. Bearing in mind the conditions of his deprivation of liberty, the circumstances here described, and his profile, there are substantial grounds to believe that he could be in danger of being subjected to enforced disappearance.

The lawyer repeatedly tried to visit Mr. Babaryka in the penal colony on 20 February, 6 March, and 13 March. He was refused entry each time on spurious grounds, such as the lack of an application from Mr. Babaryka to meet with a lawyer or the prohibition to meet with a lawyer during a prisoner's mandatory working hours. On each occasion, prison authorities set up arbitrary obstacles preventing the lawyer from meeting Mr. Babaryka which undermined Mr. Babryka's possibilities to seek protection of his rights in prison, including the deterrence against torture and other ill-treatment.

On 20 March 2023, Mr. Babaryka's lawyer was summoned by law enforcement officers for questioning. His phone was seized. He no longer is allowed access to visit his client in the penal colony.

On 26 April 2023, it became known from anonymous sources that Mr. Babaryka was taken for emergency hospitalisation to the city hospital of Novopolatsk due to injuries allegedly resulting from heavy beating. On

27 April 2023, the deputy head physician of the hospital confirmed Mr. Babaryka's pneumothorax diagnosis and need for professional treatment. However, the doctor refused to explain the causes of the disease. On 27 April 2023 already, Mr. Babaryka was returned to the penal colony.

On 28 April 2023, Mr. Babryka's sister met the administration of the penal colony no.1. However, they refused to provide her with any information about and access to Mr. Babaryka, allegedly in an attempt to prevent her from seeing evidence of torture and ill-treatment. All subsequent requests for information about his health condition and treatment were rejected.

On 28 April 2023, the Department for the Execution of Punishments of the Ministry of the Internal Affairs was informed about the situation and concerns about Mr. Babaryka's seriously endangered physical health and life in detention. To date, Mr. Babaryka's family is unaware of any credible investigation into these allegations and has no reliable information about his condition.

Case of Mr. Maksim Znak

Mr. Znak was the electoral campaign lawyer of Mr. Viktor Babaryka, who was arrested on 18 June 2020 and later sentenced to 14 years of imprisonment. Also, Mr. Znak represented presidential candidate, Ms. Sviatlana Tsikhanouskaya.

On 9 September 2020, Mr. Znak was arrested by members of the main investigative department of the Investigative Committee of Belarus at Mr. Babaryka's election headquarters in Minsk as a suspect indicted in a criminal case that had been initiated under article 361(3) of the Criminal Code of Belarus, on inciting actions aimed at inflicting harm to national security.

After the search, Mr. Znak was taken to the offices of the Investigative Committee for interrogation. On the evening of 9 September 2020, Mr. Znak was placed in pretrial detention facility no.1 in Minsk. On 18 September 2020, an investigator charged him with a crime under article 361(3) of the Criminal Code. Two new charges were later brought against him, for the creation of an extremist formation and conspiracy for the purpose of seizing State power (art. 361-1(1) and art. 357(1), respectively, of the Criminal Code), reportedly to prolong his detention until the trial.

The trial against Mr. Znak was held in August 2021, behind closed doors. The facts and evidence on which the actions of Mr. Znak were recognized as a crime were not made public. On 6 September 2021, Mr. Znak was sentenced to 10 years in prison in a correctional colony under a high-security regime. On 24 December 2021, the Supreme Court upheld the sentence against Mr. Znak.

On 24 May 2022, the State Security Committee of the Republic of Belarus added Mr. Znak to the "List of persons involved in terrorist activities".

His sentencing to lengthy incarceration has reportedly been marred by breaches of due process and fair trial standards, as well as the right to a public hearing by an independent and impartial tribunal. Rule of law guarantees were also violated. International and Belarusian human rights organisations have declared the imprisonment of Mr. Znak as politically motivated.

In May 2022, the Working Group on Arbitrary Detention determined that the arrest and detention of Mr. Znak were arbitrary and considered that the mistreatment of Mr. Znak was an act of retaliation for his activism and is incompatible with the obligations that Belarus has undertaken under international human rights instruments. The Working Group asked that Mr. Znak be immediately released and benefited from compensation and reparation in accordance with international law (see A/HRC/WGAD/2022/24).

In early January 2022, Mr. Znak was transferred to penal colony No. 3 near Viciebsk. The conditions of Mr. Znak's detention in pretrial detention facility no. 1 allegedly amount to cruel and inhuman treatment. It is known that the penal colony administration placed Mr. Znak in a punishment cell three times, and then, in the beginning of December 2022, they placed him in a tighter security cell. According to the information received in the beginning of May 2023, the Mr. Znak has hardly ever left the punishment cell since February 2023. Bearing in mind the conditions of his deprivation of liberty, the circumstances here described, and his profile, there are substantial grounds to believe that he could be in danger of being subjected to enforced disappearance

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are alarmed at the lengthy incommunicado detention of Mr. Tsikhanouski, Mr. Babaryka and Mr. Znak, as well as their reported detention in inhuman conditions and the risk that they are subjected to enforced disappearance. We are equally concerned that the inhumane conditions have had an adverse impact on the physical and mental health of the detainees. Mr. Babaryka's health appears to have seriously deteriorated and his family has no access to information nor the possibility to visit him in detention. The incommunicado detention appears to be part of a strategy to punish political opponents and conceal evidence of their ill-treatment and torture at the hands of law enforcement and prison authorities.

We are very concerned about the lack of transparency in the Belarus prison system and the denial of access by independent human rights monitors to identify and prevent human rights violations stemming from conditions of detention in Belarus prisons. All the allegations concerning Mr. Tsikhanouski, Mr. Babaryka, and Mr. Znak should therefore be promptly, thoroughly and impartially investigated, those responsible brought to justice and effective remedies provided.

Noting that Mr. Tsikhanouski and Mr. Znak have been charged with offences such as the "organization and preparation of, or active participation in, actions that grossly violate the public order", "creation of an extremist formation" and "conspiracy for the purpose of seizing State power" we would like to remind your Excellency's Government that the anti-terrorism and extremist legal framework of

Belarus have been the subject of previous communications sent by Special Procedures (BLR 2/2021; BLR 3/2022 and BLR 3/2023) which raised concerns about the vague definition and discriminatory application of these criminal provisions targeting citizens for the mere exercise of their human rights and freedoms, including peaceful assembly and freedom of opinion and expression. We reiterate the need to bring the Belarusian Law on Countering Extremism and the related Criminal Code provisions in compliance with the international human rights law standards in light of the human rights violations it produces in the name of preventing so-called “extremism”. A range of behaviors that are legitimate and necessary in rights-based societies, such as peaceful participation in protests, fall within the scope of the law on countering “extremism”, in breach of article 21 of the International Covenant on Civil and Political Rights. In the same vein, we are concerned by the broad classification of various forms of speech and expression as acts of “extremism”, such as defamatory and offending expressions in the address of a public authority or persons on official duty, as well as discrediting public institutions or the international reputation of Belarus.

We are also concerned of the alleged inclusion of Mr. Tsikhanouski’s name to the list of persons “involved in terrorist activities” and on the “List of Belarusian citizens, foreign citizens or stateless persons involved in extremist activities”. We bring to the attention of your Excellency’s Government that the placement of individuals or groups on a terrorism watchlist should be necessary and proportionate and therefore only in response to an actual, distinct, and measurable terrorism act or demonstrated threats of an act of terrorism. Only through an adequately constructed definition of terrorist acts can the necessity and proportionality elements for listing be met to ensure that the Government’s listing is in response to an actual, distinct, and measurable threat as defined by law.

In connection to this, we would like to remind your Excellency’s Government of obligations binding on Belarus under international human rights treaties.

States should guarantee the right to the highest attainable standard of physical and mental health as per article 12 of the International Covenant on Economic Social and Cultural Rights, ratified by Belarus on 12 November 1973. This includes access to an independent and confidential medical examination for all persons deprived of liberty.

We wish to also raise concerns regarding the right to life guaranteed under article 6 of the International Covenant on Civil and Political Rights. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health. A heightened duty to protect the right to life also applies to individuals in liberty-restricting State-run facilities, such as mental health facilities (Human Rights Committee, general comment no. 36). In this regard, these allegations seem to contravene articles 12 and 2.2 of the International Covenant on Economic Social and Cultural Rights, also ratified on 12 November 1973, which establishes an obligation 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 (Committee on Economic, Social and Cultural Rights (CESCR), general comment

no. 14, para. 34).

In addition, access to independent medical professionals is essential for detecting and documenting signs of torture, cruel or inhuman treatment, preventing further harm and providing healthcare for restoring and repairing the harm suffered by victims of human rights violations in state custody.

We would like to remind your Excellency's Government that torture or cruel, inhuman or degrading treatment or punishment, is prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, ratified by Belarus on 12 November 1973, and articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belarus on 13 March 1987. We would also like to remind you of the obligation to protect alleged victims and witnesses who have made complaints of torture or other ill-treatment from intimidation or further ill-treatment for having made such a complaint (article 13), that all allegations of torture or ill-treatment shall be impartially and promptly investigated (article 12), and that victims are entitled to support and rehabilitation (article 14). We would like to underline the provisions of article 10 of the International Covenant on Civil and Political Rights, guaranteeing that all persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person.

We would furthermore like to refer to article 9 of the ICCPR, which provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. As interpreted by the Human Rights Committee in general comment no. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same General Comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9). We further recall that detention conditions and treatment should always comply with international standards, in particular, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), taking into account any personal vulnerability due to factors such as medical condition, among others.

Furthermore, rule 58(b) provides that prisoners shall be allowed to communicate with their family, at regular intervals, by receiving visits and rule 69 provides that individuals designed by a prisoner to receive his or her information shall be notified by the director of the prisoner's serious illness or transfer to a health institution, among others.

Rule 46 stresses that health-care personnel shall “pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff” and that “[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.” We also draw the attention that under the Mandela Rules solitary confinement of longer than 22 hours per day, or continuously 15 days constitutes prohibited conduct per the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment, even when applied as disciplinary sanctions or restrictive measures.

In addition, we would like to draw the attention of your Excellency's Government to the Declaration on the Protection of all Persons from Enforced Disappearance, according to article 3 of which the States shall prevent and terminate acts of enforced disappearance and take effective legislative, judicial or other relevant measures. With a view of preventing enforced disappearance of persons deprived of their liberty, article 9 of the Declaration guarantees the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty, and the requires that competent national authorities shall have access to all places of detention or places which are believed to be used for detention purposes.

Noting that the three individuals have been charged with offences such as “conspiracy to seize state power in an unconstitutional manner” and “establishing and leading an extremist organization”, we would like to remind your Excellency's Government that the anti-terrorism and extremist legal framework of Belarus have been the subject of previous communications sent by Special Procedures. These include the communications sent on date 3 March 2021 (BLR 2/2021) and 23 May 2022 (BLR 3/2022) which raised concerns about the vague definition and discriminatory application of these criminal provisions targeting citizens for the mere exercise of their human rights and freedoms, including peaceful assembly and association, and freedom of opinion and expression in connection to the contested Presidential elections of August 2020.

We wish to remind your Excellency's Government 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. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary

arrest, torture, threats to life and killing, cannot be compatible with article 19 (Human Rights Committee, general comment no. 34).

We recall that the “principle of legal certainty” under international law, enshrined in article 9(1) International Covenant on Civil and Political Rights and article 11 of the Universal Declaration of Human Rights, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. States must ensure that counter-terrorism legislation is limited to criminalizing properly and precisely defined conduct based on the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality.

We respectfully recall that article 14(1) of the ICCPR, sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. 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.

These guarantees provide that lawyers are entitled to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards.

We further would like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that ‘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’. A range of behaviours that are legitimate and necessary in rights-based societies, such as peaceful participation in protests, fall within the scope of the law in Belarus on countering “extremism”, in breach of article 21 of the International Covenant on Civil and Political Rights. In the same vein, we are concerned by the broad classification of various forms of speech and expression as acts of “extremism”, such as defamatory and offending expressions in the address of a public authority or persons on official duty, as well as discrediting public institutions or the international reputation of Belarus. We would like to remind your Excellency’s Government that the legitimate exercise of freedom of expression is protected under article 19 of the International Covenant on Civil and Political Rights.

Furthermore, we bring to your attention 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 particular, we wish to remind your Excellency's Government that any restrictions on the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. No restrictions may be placed on the exercise of this right other than those which are prescribed by 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. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right (International Covenant on Civil and Political Rights, article 22(2)).

We would also like to refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to prevent irreparable harm to the life and personal integrity of Mr. Tsikhanouski, Mr. Babaryka, and Mr. Znak and to safeguard their rights in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of the above-mentioned 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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the steps undertaken to ensure the right to health of Mr. Tsikhanouski, Mr. Babarika and Mr. Znak and explain why they are not allowed access to independent medical examinations and what has been done to ensure access to adequate medical treatment.
3. Please provide information as to the legal and factual basis for the arrest, detention and prosecution of Mr. Tsikhanouski, Mr. Babarika and Mr. Znak. Please clarify whether safeguards were put in place to ensure a fair trial and due process standards, including access to

lawyers and how they were effectively implemented with respect to the defendants. Please also provide information on their exact whereabouts.

4. Please provide information on the safeguards in place to ensure those judges conducting criminal trials are able to function independently and impartially.
5. Please provide detailed information on the extremism and terrorism-related charges against the accused. Please explain how their conviction respected the principles of legality, necessity, proportionality and non-discrimination.
6. Please indicate what measures have been taken to prevent and protect Mr. Tsikhanouski, Mr. Babarika and Mr. Znak against any form of treatment that may amount to torture or other cruel, inhumane, degrading treatment or punishment, and from the danger of being subjected to enforced disappearance.
7. Please provide information on the legal and factual basis for adding Mr. Tsikhanouski name to the list of persons “involved in terrorist activities” and on the “list of Belarusian citizens, foreign citizens or stateless persons involved in extremist activities”. Please indicate the process required and undertaken to support such a determination and how these measures are compatible with Belarus’s international human rights obligations and comply with the principles of proportionality, necessity, and non-discrimination.
8. Please clarify whether any investigation was launched into the allegations of torture and other cruel, inhuman or degrading treatment or punishment and their results, particularly in terms of accountability. Please explain whether any such investigation was conducted in compliance with international standards, including the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition). If no investigation was conducted, please explain why.
9. Please provide information on the access of families and lawyers to visit Mr. Tsikhanouski, Mr. Babarika and Mr. Znak in detention and ensure confidential conversations and exchange of correspondence at regular intervals.
10. Please indicate what measures have been taken to ensure that political opposition and activists can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

11. Please explain what complaint mechanisms are available in detention in order to bring grievances about their prison conditions to the attention of the authorities and indicate what follow-up mechanisms are in place.
12. Please explain what measures have been taken by Your Excellency's Government to implement the Working Group on Arbitrary Detention's opinion no. 23/2021, concerning the arbitrary deprivation of liberty of Mr. Tsikhanouski and opinion no. 24/2022 concerning the arbitrary deprivation of liberty of Mr. Znak.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of Mr. Tsikhanouski, Mr. Babarika and Mr. Znak 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 responsible of the alleged violations.

Further, 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 of Mr. Viktor Babarika 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 urgent appeal 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 to clarify the issue/s in question.

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.

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

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment