

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief

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(Please use this reference in your reply)

28 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 50/20, 50/17 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the proposed Bill on the Freedom of Conscience and Religious Organisations**, which was recently developed by the chief state religious affairs official, Plenipotentiary for Religious and Ethnic Affairs. On 2 June 2023, the draft was publicly shared to obtain views and comments from concerned stakeholders. We are aware that the period for comments was limited to from 5 to 15 June 2023. Although the deadline for submission of comments is passed, we offer the following analysis as certain provisions in the draft Bill would fail to meet Belarus' obligations under international human rights law.

According to the information received:

On 30 December 2022, President Aliaksandr Lukashenka issued decree no. 467 stating that the Council of Ministers should prepare amendments to the draft religion law by June 2023 and for these amendments to be presented in Parliament in September 2023. The Bill is expected to regulate legal relations in the field of "human and civil rights to freedom of conscience and freedom of religion and for determining the legal basis for the creation and activities of religious organisations". This proposed "law on freedom of conscience and religious organisations", is set to become the new edition of the Law no. 2054-XII of 17 December 1992 on the law on Freedom of Conscience and Religious Organisations replacing the October 2002 edition which is currently in force. On 2 June 2023, the draft was publicly shared to obtain views and comments from the stakeholders. The time period for comments was limited to from 5 to 15 June 2023.

According to the version shared publicly, the Bill's main purpose is to regulate legal relations in "the field of human and civil rights to freedom of conscience and freedom of religion, and to determine the legal basis for the creation and activities of religious organisations based on: the right of everyone to freedom of conscience and freedom of religion, as well as to equality before the law, regardless of their attitude to religion; equality of religions before the law; recognition of the special role of the Belarusian Orthodox Church in the historical formation and development of spiritual, cultural and state traditions of the Belarusian people; the spiritual, cultural and historical role of the Catholic Church on the territory of Belarus; the inseparability from the

common history of the people of Belarus of religious organisations of other directions of Christianity, Judaism and Islam; and the need to promote mutual understanding, tolerance and respect for the religious feelings of citizens in matters of freedom of conscience and religion”.

Issues pertaining to registration of all religious organisations.

Mandatory state registration

The Bill reproduces the provision requiring all religious organisations to register with the state to operate as provided for in the October 2002 edition of this law. Article 16 of the Bill on state registration of religious organisations states that “religious organisations are subject to mandatory state registration”. This registration allows a religious organisation to gain the status of a legal entity. A new inclusion in this provision is that it explicitly states that the activities of unregistered religious organisations in the territory of the Republic of Belarus are prohibited. Therefore, the status quo of an unregistered organization remains a criminal offence, per article 193.1 of the criminal code of Belarus which criminalises the conduct of all unregistered organisations. The punishment under article 193.1 is a fine or imprisonment up to two years.

Compulsory re-registration

Article 3 of concluding provisions in the Bill requires all religious organisations registered prior to the entry into force of this law is to re-register. Accordingly, these organisations “shall bring their charter documents in line with this proposed law and submit them to the registration bodies for state re-registration of religious organisations within one year after this law enters into force”. Until their re-registration process is complete, these religious organisations are to act in a manner that does not contradict with this Bill. The relevant state authorities are expected to carry out the re-registration within six months of submission.

Tighter registration restrictions and conditions

The procedure for registration as provided for in the Bill contains several new measures that impose tighter timelines and conditions. For instance, article 16 states that, records on the state registration of a religious organisation shall be made by the registering authority in the Unified State Register of Legal Entities and Individual Entrepreneurs within three days after the decision on state registration is made in accordance with the procedure established by law. Thereafter, within five working days from the date of making an entry on the state registration of a business entity in the Unified State Register of Legal Entities and Individual Entrepreneurs, the registering authority issues a document confirming registration with the tax authorities, state statistics bodies, bodies of the Social Protection Fund of the Ministry of Labor and Social Protection, and with the Belarusian Republican Unitary Insurance Enterprise "Belgosstrakh". Religious organisations are obliged to submit to the registering body a notification of the appointment of the head of a religious organisation within ten working days from the date of such appointment.

The International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973, protects in its article 18 the right to freedom of thought, conscience and religion. International human rights law recognizes freedom of thought, conscience, and religion regardless of registration status. Thus, any step taken to criminalize the activities of an unregistered religious organisation in the territory of the Republic of Belarus would be contrary to it.

Registration practices should not limit the right of persons to manifest their religion or belief, either alone or in community and in public or private. Any limitation to the freedom to manifest one's religion or belief must not only be prescribed by law but must also be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, according to article 18 paragraph 3 of the International Covenant on Civil and Political Rights.

The Special Rapporteur on freedom of religion or belief has stressed that “administrative procedures to obtain legal personality should be enacted in a spirit of servicing the full enjoyment of freedom of religion or belief for everyone and should thus be quick, transparent, fair, inclusive and non-discriminatory” (See A/HRC/19/60, para. 73).

The Special Rapporteur has identified several points to take into consideration with regard to registration that, “should not be compulsory, i.e. it should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. Registration procedures should be easy and quick and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed. Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc. And religious group should not be empowered to decide about the registration of another religious group” (See E/CN.4/2005/61, para 58).

We also recall that the Republic of Belarus was called upon to guarantee the “effective exercise of the freedom of religion in law and in practice, including by repealing the requirement of mandatory State registration of religious communities, and should refrain from any action that may restrict that freedom beyond the narrowly construed restrictions permitted under article 18 of the Covenant” (See CCPR/C/BLR/CO/5 para 46). In 2020, Belarus also supported a recommendation during the Universal Periodic Review to ensure that no restrictions are imposed on the right to freedom of religion and belief (A/HRC/46/5 para. 138.153).

The Special Rapporteur on the situation of human rights in Belarus has expressed concerns over broader difficulties in registering an association in Belarus in her reports (see [A/HRC/50/58](#) paras. 91-92, 96 and [A/HRC/53/53](#) para. 74).

Increased monitoring and surveillance of religious organisations

Mandatory reporting for religious organisations on their educational activities

Article 10 provides for the right of religious organisations to create Sunday religious schools for the religious education of children, in accordance with the organisation's charter. Sunday religious schools are defined in article 3 as “a structural subdivision of a religious organization for the religious education of children, the activities of which are regulated by the charter of a religious organization”. However, this provision also notes that the content of religious education programs implemented at Sunday religious schools for children and religious education groups for adults should not contradict the “ideology of the universally recognized traditional values of the Belarusian state” and justify the propaganda of war, social, national, religious and racial hatred.

The Special Rapporteur on the situation of human rights in Belarus, in her report to the Human Rights Council focusing on the 2022 constitutional reform, expressed concerns about the “ideologization” of society that stems from some constitutional amendments and appear to contradict article 33 of the Constitution which proclaims that “no one may be compelled to express or renounce his or her convictions” (see [A/HCR/50/58](#), para. 50, and [A/HRC/53/53](#) para. 62 - 63).

More importantly, this provision introduces a new requirement by stating that religious organisations must annually submit to the local executive and administrative bodies in the territory of which they are registered, information on the activities for religious education of children attending Sunday religious schools, in the manner and composition determined by the Ministry of Education and the national body of state administration for religious affairs. The annual deadline for these submissions is specified as October 31 of each year.

Restrictions on religious literature and items

The Bill provides for the right of religious organisations to produce, acquire, export, import and distribute religious literature, other printed, audio and video materials, as well as other religious items. However, we observe that article 28 limits this right by stating that the content of religious literature, other printed, audio and video materials “should not contradict the ideology of the Belarusian state and contain propaganda of war, social, national, religious and racial hatred and other extremist activities.” Further, religious literature, other printed, audio and video materials imported into the Republic of Belarus for missionary and other non-religious activities must be submitted by religious organisations to the national body of state administration for religious affairs to determine the expediency of conducting a state religious examination. And when distributing religious literature, other printed, audio and video materials, a state religious examination may be carried out by decision of the national body of state administration for religious affairs.

Article 28 also prohibits the receipt of religious literature in the library collections of educational institutions and other organisations engaged in educational activities.

Monitoring and inspection of religious organisations

The Bill permits the national body for state administration for religious affairs, local executive and administrative bodies to monitor religious organisations and exercise control over the compliance of their activities with the Constitution of the Republic of Belarus, other legislative acts and their charters. According to article 40 of the Bill, state bodies which are empowered to monitor the “implementation of legislation on freedom of conscience, religion and religious organisations have the right to: conduct inspections and monitoring of the compliance of the activities of a religious organisation with the legislation and its charter; request and receive from a religious organisation documents on the activities, including confirming the number of its founders for more than six months from the date of registration; send their representatives to attend events held by a religious organisation, religious ceremonies, and Sunday religious schools”. Thereafter, based on the results of the inspection or monitoring, the relevant registration authority may apply liability measures in accordance with the law.

In cases of violation of the above provision by a religious organisation, such as failure to provide information on the activities for religious education of children attending Sunday religious schools, according to article 41, the registering authority shall issue a written warning indicating the violation and the deadline for its elimination, which shall be sent within three days to the governing body of a religious organisation. If identified violations have not been eliminated within six months or have occurred repeatedly within a year, the registering authority shall have the right to apply to the court with an application for the liquidation of a religious organisation. At the same time, the registering authority has the right to make a decision to suspend the activities of a religious organisation until a court decision is issued, which ends the consideration of the case on the merits. As per article 42, in case of suspension of activities, a religious organisation shall not have the right to carry out religious, entrepreneurial and other activities.

The above legal provisions have a potential to curtail the space available to religious or belief organisations to exercise the right to freedom of religion or belief in worship, observance, practice and teaching as per article 18 of the ICCPR. For instance, measures such as empowering the state authorities to ensure their physical presence and surveillance of religious meetings and services and requirement of submission of information on the activities for religious education would intensify the degree of surveillance and monitoring that religious organisations are subject to.

The practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications (See general comment no.22, para.4). Thus, subjecting such religious material to a state religious examination could result in practice in undue limitation to the right to freedom of religion or belief.

Expansion of legal grounds allowing state authorities to dissolve religious organisations

Article 24 of the proposed law expands the grounds under which a religious organisation can be liquidated together with an elaborate liquidation process for cases where liquidation of the religious organisation is expected. For instance, the Bill contains new detailed grounds such as mandating liquidation of religious organisations where court decisions have been given for ‘...carrying out activities directed against the sovereignty of the Republic of Belarus, its constitutional system and civil consent, discrediting the state power of the Republic of Belarus; propaganda of war, social, national, religious, racial hatred, other extremist activities, humiliation of national honour and dignity; inconsistencies between the activities of religious organisations and the main directions of domestic and foreign policy, the concept of national security’. The new grounds also include court decisions handed out in cases where there was ‘...coercion of participants and followers of a religious organisation and other persons to alienate their property in favour of a religious organisation, coercion of citizens to refuse to fulfil civil duties organisation to submit (two or more times) within the prescribed period information on changes in the data necessary for making changes to the State Register of Religious Organisations’. Failure to eliminate the violations that served as the basis for issuing a written warning within six months, or committing such violations again within a year after the issuance of the said warning, is a new ground to initiate liquidation. Additionally, establishing the fact that false information was provided during the state registration of a religious organisation, including the absence of the required number of founders in a religious organisation for more than six months from the date of its registration provided for by this Law, is another ground as per this article 24.

In the Bill, the above noted grounds are now coupled a stringent process of liquidation. This process now includes new measures such as publishing information on the fact that a religious organisation is in the process of liquidation, on the procedure and deadline for filing claims by its creditors which are to be posted on the official website of the institution in accordance with the procedure established by the Council of Ministers of the Republic of Belarus.

Phrases such as “discrediting the state power of the Republic of Belarus” and “inconsistencies between the activities of religious organisations and the main directions of domestic and foreign policy” cited in article 24, appear to be vague as they remain undefined in the Bill. The use of these vague terms could encourage arbitrary decision making, which could in turn create a climate of intimidation for any unwelcome religious activities (See A/71/269, para. 49). Further, “depriving a religious or belief community of legal status can have a tremendous impact on the collective aspects of the right to freedom of religion or belief, including the ability of adherents to practice their faith together with others — jeopardizing the viability of the community itself” (See A/73/362, para. 17). In this case, the combination of the vague formulation of the causes of liquidation and the fact that activities of unregistered religious organisations are prohibited and criminally punishable create concerns, as it could result in the arbitrary liquidation of religious organisation and the consequent denial of

their adherents to enjoy their freedom of religion or belief collectively.

New restrictions on religious charitable activity

Article 30 empowers religious organisations to have the right to carry out charitable and social activities in accordance with the procedure established by law. However, this provision thereafter limits the scope of religious charitable activity, as it states specific the areas within which religious organisations are allowed to participate in solving social problems of society by engaging in charitable activities. For instance, religious organisations may create, in accordance with the procedure established by law, legal entities and structural units for the provision of social services to “elderly citizens, disabled people, social rehabilitation of citizens dependent on psychoactive substances; children's homes in coordination with the relevant regional or Minsk City Executive Committee.”

According to article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), the right to freedom of thought, conscience, religion or belief includes the freedom: (b) to establish and maintain appropriate charitable or humanitarian institutions; and (f) to solicit and receive voluntary financial and other contributions from individuals and institutions. Thus, the scope of charitable activity should not be arbitrarily limited by the state. We note that “[w]hile the right to establish religious, charitable or humanitarian institutions and to receive funding is not unlimited, any restrictions imposed must be prescribed by law and must be necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others” (A/65/207 para. 36).

In the light of the above comments, which the Special Rapporteurs wish to share for consideration, we respectfully encourage your Excellency's Government to review and reconsider certain key aspects of the law to ensure that it complies with Belarus' international human rights law obligations.

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 analysis.
2. Please explain how the provisions flagged above are compatible with international human rights standards regarding the right to freedom of religion or belief, included as provided for in the ICCPR, which Belarus has ratified.
3. Please provide information on measures your Excellency's government has taken, or is planning to take, to ensure the compliance of the Bill with Belarus' obligations under international human rights law and to bring its legislation on freedom of religion or belief into compliance with international human rights law.

4. Please provide information on positive measures undertaken to facilitate a meaningful dialogue on the Bill with all stakeholders, including religious or belief groups and religious or belief minorities in the country, that would result affected should this be adopted.

While awaiting a reply, we respectfully urge that all necessary interim measures be taken to review that Bill, to ensure that all the concerns raised are carefully considered, and not to rush the process of promulgating that law.

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.

Anaïs Marin

Special Rapporteur on the situation of human rights in Belarus

Clement Nyaletsossi Voule

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

Nazila Ghanea

Special Rapporteur on freedom of religion or belief