

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in Belarus; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

Ref.: AL BLR 11/2023
(Please use this reference in your reply)

6 December 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights in Belarus; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 52/4, 51/8, 53/19, 52/9, 50/17, 51/21, 49/10, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the Supreme Court of Belarus's decision to sentence woman human rights defender Nasta Loika to seven years of imprisonment.

Ms. Nasta Loika is a woman human rights defender who has been focusing on repressive "anti-extremist" laws, the protection of the rights of migrants and stateless persons and human rights education in Belarus. Ms. Loika previously worked in the human rights organization Human Constanta, which was shut down in 2021. In 2022, the Belarus Human Rights House named Nasta Loika the 'Woman Human Rights Defender of the Year'.

Ms. Loika was the subject of four previous communications UA BLR (3/2023), AL BLR (7/2022), AL BLR (1/2018), and UA BLR (2/2011). We thank your Excellency for the responses received on 19 July 2018 and 1 February 2022, but we regret that no response was received concerning the allegations contained in the most recent communication UA BLR (3/2023). We strongly urge your Excellency to respond to the requests in our prior communications.

According to the information received:

On 6 September 2022, Ms. Loika was detained for 15 days under "petty hooliganism" charges, a violation under article 19.1 of the Code of Administrative Offences. On 22 September, the Frunzenski District Court of

Minsk sentenced her to another 15-day term in detention under the same charges. On 6 October 2022, she was released from jail.

On 28 October 2022, Ms. Loika was detained again in Minsk and on 31 October sentenced to 15 days in detention under the same charges of “petty hooliganism”. On the day of the arrest, a “confession video” featuring Ms. Loika in handcuffs giving unofficial testimony about her engagement in human rights work, including her work with Human Constanta and the fact that she received funding from international organisations to carry out her human rights work, appeared on a Telegram channel. Reportedly, the Main Directorate for Combating Organized Crime and Corruption of the Belarusian Ministry of Internal Affairs (GUBOPiK) has repeatedly extracted such video “confessions” under torture and other ill-treatment or duress from Government critics, activists and human rights defenders.

On 14 November 2022, Ms. Loika was not released after serving her 15-day detention. The alleged reason was that accusations of “petty hooliganism” were brought against her. According to the information received, while in detention, Ms. Loika had been tortured with electric shocks during questioning and that she was left for eight hours in the low temperatures of Akrestina Detention Centre’s courtyard without outerwear, after which she fell ill. In addition, the Akrestina Detention Centre authorities reportedly prevented the delivery of packages from Ms. Loika’s colleagues which contained medicines, personal hygiene products and warm clothing.

On 24 December 2022, Ms. Loika was charged under articles 342(1) of the Criminal Code on the “organization and preparation of actions that grossly violate public order, or active participation in them” and article 130(3) of the Criminal Code on “inciting racial, national, religious or other social enmity or discord”. The basis for these accusations is reportedly connected to her human rights work, including scrutiny of police activities, which the prosecution has described as “inciting enmity” against police officers as “a professional group”, conduct which the prosecution states is a form of extremism.

After the imposition of criminal charges, Ms. Loika was moved from Akrestina Detention Center to Pre-trial Detention Center nb. 1 on Volodarskogo street. Although the conditions in Volodarskogo Detention Center are reportedly better, she has continued to experience degrading conditions while in detention, including a ban on correspondence and inability to keep a vegan based diet as per her personal convictions.

On 20 June 2023, the Minsk City Court found Ms. Loika guilty of “inciting racial, national, religious or other social enmity or discord” under article 130(3) of the Criminal Code and sentenced her to seven years in prison in a closed-door trial. On 3 October 2023, the Supreme Court of Belarus upheld the sentence.

On 13 October 2023, the Belarus Committee for State Security’s (KGB) decision to include Ms. Loika on a list of “persons, participating in terrorist activities” was made public. This designation impacts her ability to receive money transfers while in detention and puts those who try to transfer money to her while she’s in detention at risk of being included on a watch list for people financing terrorism.

Since her detention, Ms. Loika has been systematically denied the exercise of her rights. In addition to the prohibition on her sending or receiving personal correspondence and keeping her vegan diet, she has also been denied access to a dentist despite her requests and medical need for one. Ms. Loika's defense attorneys were subsequently subjected to various forms of retaliation, including detention and disbarment by the Qualification Commission of the Ministry of Justice. The targeting of human rights lawyers in this way constitutes a systemic violation of the human rights defenders' rights to legal counsel.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the arrest, detention and sentencing of Ms. Nasta Loika and the allegations that these were conducted in retaliation for her work as a human rights defender. Noting that Ms Loika has been charged with national security, extremist and terrorist-related offenses, we reiterate our concerns in relation to the Belorussian counter-terrorist and countering extremism legal framework (BLR 2/2021; BLR 3/2022; BLR 3/2023 BLR 4/2023 and BLR 9/2023) which, due to its vague nature and discriminatory application, is susceptible to target citizens for the mere exercise of their human rights and freedoms, including freedom of opinion and expression.

We express further concerns about placing her on the list of "persons participating in terrorist activities", which can discriminatorily limit her access to support both in pre-trial detention and in prison. We bring to the attention of your Excellency's Government that individuals or groups may only be placed on a terrorism watchlist where it is necessary and proportionate in response to an actual, distinct, and measurable terrorist act or threat, following a fair and accountable legal process and subject to effective judicial safeguards (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Human Rights Principles Applicable to Watchlisting 2000). The underlying definitions of terrorism must also be consistent with those in the terrorism suppression conventions and United Nations Security Council resolution 1566 or be otherwise consistent with international law. We would like to further bring to your Government's attention that this list is susceptible to excessively restricting and impairing their enjoyment of rights and freedoms, including the exercise of freedom of expression, opinion, association and assembly, as well as all economic, social and cultural rights.

The judicial harassment of Ms. Loika reflects a wider trend of increased targeting of human rights defenders and civil society by the authorities in Belarus. We are seriously concerned by the general conditions of detention in female prisons in Belarus, and the alleged discrimination against women convicted and imprisoned on politically motivated charges.

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.

We are issuing this appeal in order to safeguard the rights of the above mentioned individual 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the arrest, detention, and prosecution of Ms. Nasta Loika, and explain how these measures are compatible with Belarus's obligations under international human rights law.
3. Please provide detailed information on the extremism and terrorism-related charges against the accused.
4. Please clarify whether any investigation was launched into the allegations of torture and other cruel, inhuman, or degrading treatment or punishment against Ms. Loika and their results, particularly with the goal of determining the accountable party. 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.
5. Please provide detailed information on the current health situation of Ms. Loika and explain whether she is allowed and able to access independent medical examinations and adequate medical treatment. Please also confirm whether or not Ms. Loika has access to food that satisfies her dietary needs.
6. Please provide information as to the specific measures put in place to ensure that human rights defenders and civil society actors in Belarus can carry out their legitimate work in a safe and enabling environment, without fear of harassment and intimidation from the authorities or any other agent acting on their behalf.

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.

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 through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence. In the event that the

investigations support or suggest the allegations to be true, we ask that the government of Belarus immediately hold to account any person(s) responsible for the alleged violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Dorothy Estrada-Tanck
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we refer to the obligations of your Excellency's Government under the International Covenant on Civil and Political Rights (ICCPR), which Belarus ratified on 12 November 1973. Focusing primarily on articles 9, 14, 19, 21 and 22 of the Covenant, which guarantee the right to freedom from arbitrary arrest and detention, the rights to a fair trial, freedom of expression, freedom of peaceful assembly and to freedom of association.

Article 9 of the ICCPR prohibits arbitrary detention. Specifically, it establishes that no one shall be deprived of his or her liberty (unless it is in accordance with appropriate laws), and that anyone who is arrested shall be brought promptly before a judge or officer authorized by law to exercise judicial power, and that anyone arrested shall be entitled to trial within a reasonable time. Pre-trial detention should thus be the exception rather than the rule (CCPR/C/GC/35, para. 38). We further note that a person may only be deprived of liberty in accordance with national laws and procedural safeguards governing detention (including in relation to arrest and search warrants), and where the detention is not otherwise arbitrary. In this respect, we highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary (CCPR/C/GC/35, para. 17). In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

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, counsel of their own choosing. In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused be granted prompt access to counsel. Counsel should be able to meet their clients in private and communicate with them in conditions that fully respect the confidentiality of their communications. They should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

Article 19 of the ICCPR enshrines the rights to freedom of opinion and expression. The Human Rights Committee has recommended States to take "effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression" (General Comment 34, para. 23). In the same General Comment, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism," subject only to admissible restrictions, including the prohibitions of propaganda that promotes and/or incites hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a

legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest and torture, cannot be compatible with article 19. (general comment 34, para. 23)

We also draw the attention of your Excellency's Government to article 22 of the ICCPR which states that everyone shall have the right to freedom of association and no restrictions may be placed on the exercise of this right other than those prescribed by law 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.

We would like to reiterate to your Excellency's Government the obligations of Belarus through its ratification in 1981 of the International Convention on the Elimination of Discrimination against Women (CEDAW), ratified by your Excellency's Government on 4 February 1981. Article 7 of CEDAW provides that States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, articles 1 and 2 of the Declaration hold 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5(a), which establishes the right to meet or assemble peacefully for the purpose of promoting and protecting human rights;
- Article 12 (1 and 3), which provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

Women human rights defenders warrant protection under the General Assembly Resolution 68/181, which was adopted on 18 December 2013. Specifically, articles 7, 9, and 10 require States to publicly acknowledge the importance of women human rights defenders and take practical steps to prevent threats, harassment, and violence against them. States must also combat impunity for such violations and abuses, and ensure that all legal provisions, administrative

measures and policies affecting these defenders are compatible with relevant provisions of international human rights law.

The Working Group on discrimination against women and girls also issued a report on women's participation in public life (A/HRC/23/50). The report demonstrates that women human rights defenders are often the target of gender-specific violence, such as intimidation, attacks, and death threats, which are sometimes condoned or perpetrated by State actors. The Working Group has further called upon States to eliminate all forms of violence against women in order to fulfil women's human rights and to improve the enabling condition for women's participation in political and public life.

Moreover, the Working Group on discrimination against women and girls noted in its thematic report on women deprived of their liberty (A/HRC/41/33) that deprivation of liberty is deeply linked to gender. The Working Group underlined that, women human rights defenders, perceived as challenging traditional notions of family and gender roles in society, are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism, and are likely to be subject to criminal prosecution and imprisonment. It recommended that States eliminate any laws or policy measures aimed at criminalizing women's public role.

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

We would like to further recall the Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), which affirm that States should provide gender-specific measures that meet the needs of women detainees, provide access to facilities and materials that meet women's personal hygiene needs, including good quality and free sanitary pads, and meet basic standards in terms of food and accommodation. The failure to develop and implement such policies may amount to discrimination against women, and thus fall within the scope of the CEDAW.

Moreover, we note the report of the Special Rapporteur on the situation of human rights in Belarus. In it, she called "the situation of women human rights defenders in detention is particularly appalling. [...] The arbitrary detention of Nasta Loika since 28 October 2022 highlights the risks that carrying out human rights work entails in Belarus. Ms. Loika was first sentenced to administrative detention and

allegedly subjected to torture and ill-treatment. On 24 December 2022, she was transferred to pretrial detention and charged with organization of group actions that grossly violate public order and incitement of ... social enmity. [...] The criminal charges brought against Ms. Loika, which appear to be politically motivated, are inconsistent with international law and the human rights obligations binding on Belarus” (A/HRC/53/53, para. 77).

She also indicated that “[t]his is particularly alarming, given that Belarusian legislation provides a vague and open-ended definition of terrorism, contrary to the international human rights principle of legality, which requires that criminal legislation be sufficiently precise. That principle embodies the recognition that ambiguous and/or overly broad laws are open to arbitrary application and abuse. Yet the authorities of Belarus have been referring to civil society actors and dissidents as terrorists” (A/HRC/53/53, para. 97).

We would like to remind your Excellency’s Government that the counter-terrorist and the countering 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), 23 May 2022 (BLR 3/2022) and 27 April 2023 (UA 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 freedom of opinion and expression.

We are concerned that this vague terminology contravenes the requirement of legality as required by the ICCPR, as well as the guarantee of *nullum crimen sine lege* under international law and is vulnerable to abuse without further precision. In this context, we observe how globally the lack of semantic and conceptual clarity surrounding the term “extremism” risks hindering the effective implementation of human rights-compliant strategies and policies to prevent and counter violent extremism and terrorism (A/HRC/43/46, para. 12-14).

We bring your attention to the ‘principle of legal certainty’ under article 15(1) of the ICCPR, ratified by Belarus on 12 November 1973, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international obligations (A/73/361, para. 34).