

Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to food; 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 Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Working Group on discrimination against women and girls

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5 December 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in Belarus; Working Group on Arbitrary Detention; Special Rapporteur on the right to food; 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; Independent Expert on the enjoyment of all human rights by older persons; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/19, 51/8, 49/13, 50/17, 51/21, 51/4, 49/10 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **prosecution under terrorism charges of Ms. Iryna Melkher and her alleged ill-treatment in the women's correctional colony no. 4 in Homyel.**

According to the information received:

Ms. Iryna Melkher, a retired woman of 68, is serving a prison sentence in the women's correctional colony no. 4 in Homyel (st. Antoshkina, 3, Homyel).

She was arrested on 8 December 2020 under terrorism charges, authorities alleging she had participated in a group of persons who had set fire on and exploded cars and a house belonging to police officers. In February 2021, her name was added to the "List of persons involved in terrorist activities" by the State Security Committee of the Republic of Belarus (KGB). On 12 May 2023, Ms. Melkher's name was included by the Ministry of Internal Affairs in the "List of citizens of Belarus, foreign citizens, and stateless persons involved in extremist activities".

Her trial began on 18 May 2022 in the pre-trial detention center of Prison No. 1 in Hrodna and lasted five months. During the trial, Ms. Melkher was placed in a metal cage.

On 17 October 2022, the Hrodna Regional Court convicted her for preparation of an act of terrorism by an organized group (articles 13(1) and 289(3) of the Criminal Code), participation in a criminal organization (article 285(2) of the Criminal Code), attempted seizure of state power by unconstitutional means

(articles 14(1) and 357(2) of the Criminal Code) and active participation in actions that grossly violate public order (article 342(1) of the Criminal Code). The latter conviction was allegedly due to Ms. Melkher's having participated in a peaceful protest, a circle dance in the centre of Brest, on 13 September 2020. She was sentenced to 17 years of imprisonment and a fine of 22,400 Belarusian rubles (equivalent to USD 8,800).

Eleven other persons tried in the same criminal case also spent 22 months in custody prior to their conviction and received sentences ranging between two and 25 years. The judicial panel allegedly included the judge Maksim Filatau and the people's assessors Stavorka, Zhdanovich, and Nichypor. The prosecution was allegedly represented by the Deputy chair of the Public Prosecutor's Office Liudmila Herasimenka and the Senior Assistant Prosecutor Uladzimir Rabau. On 31 March 2023, the Supreme Court upheld the verdict against Ms. Melkher.

On 15 May 2023, she was transferred to the women's penal colony No. 4 in Homyel. On 15 August 2023, she was placed into a punitive isolation cell (SHIZO) for 10 days as a disciplinary sanction for violation of prison rules. This punishment has been imposed several times, resulting in Ms. Melkher's *incommunicado* detention.

In accordance with article 114 (1) of the Penal Execution Code, prisoners placed in SHIZO are prohibited from receiving any visits, and telephone conversations; they are not allowed to purchase food and essential items, receive parcels and packages, send and receive letters, use board games nor smoke. They are not provided with bedding or allowed to take walks outside the cell.

Prisoners in SHIZO are allegedly deprived of access to lawyers and are subjected to inhuman conditions, including extreme temperatures and sleep deprivation. The cells are very small and cold. Lights remain on around-the-clock and the bunk bed is unfastened only between 9 p.m. and 5 a.m. Prisoners are allowed to either walk around the cell or sit on a designated stone. They are not allowed to sit on the floor, otherwise they risk a new punishment. At 5 a.m., the radio plays loudly. Prisoners suffer from hunger because they subsist solely on insufficient prison rations. They cannot have any personal items except for toilet paper, soap, a small towel, toothpaste and a brush. Conditions are reportedly made harsher for prisoners sentenced in cases considered as "political", although there exists no legal or regulatory disposition for discriminating among prisoners on such grounds.

Even though it is possible to appeal disciplinary punishments in court or before the prosecutor, it is often impossible to do so in the absence of a lawyer. Moreover, court hearings on such appeals are allegedly rarely effective.

When outside SHIZO, Ms. Melkher is allowed to have phone conversations with her relatives for a maximum duration of 4 to 5 minutes, even though domestic legislation allows for 15-minute phone calls for prisoners.

Because Ms. Melkher's name has been added to the "List of persons involved in terrorist activities", she cannot receive money transfers. In addition, her spending limit has been decreased from 220 BYN (USD 66) to 74 BYN (USD 22) per month, presumably as a disciplinary sanction. As a result, Ms. Melkher cannot purchase sufficient food.

Due to dire detention and working conditions, the limit imposed on her spending and lack of adequate medical care, Ms. Melkher has lost 15 kilograms, her vision has deteriorated, she is experiencing gallbladder issues and has lost almost all her teeth. The prison doctor can only extract the teeth. Ms. Melkher is not allowed to be visited by a dentist or attend a dental clinic.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to alert your Excellency's Government about incompatibility of the above-mentioned allegations with the following provisions of the international human rights law.

The conduct of the trial

We would like to express concerns about the prolonged custody reportedly imposed on Ms. Melkher and eleven other persons prosecuted under the same criminal case, all of whom allegedly spent 22 months in detention prior to their conviction. Furthermore, we are concerned about the alleged placement of Ms. Melkher in a metal cage during her trial.

Under article 9(3) of the of the International Covenant on Civil and Political Rights (ICCPR), anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody. Extremely prolonged pretrial detention may jeopardize the presumption of innocence (*Human Rights Committee, general comment no. 35 (2014), para. 37*). Under article 14(3)(c) of the Covenant, everyone charged with a criminal offence shall have the right to be tried without undue delay.

Keeping defendants in cages during trials or otherwise presenting them to the court in a manner indicating that they may be dangerous criminals is incompatible with the guarantee of the presumption of innocence under article 14(2) of the ICCPR (*Human Rights Committee, general comment no. 32 (2007), CCPR/C/GC/32, para. 30; Mikhalenya v. Belarus, Views of 21 July 2021, CCPR/C/132/D/3105/2018, para. 8.3*).

Conviction for terrorism

We take note of the information that Ms. Melkher and other persons under the same criminal case have been convicted of terrorism and received lengthy prison sentences, going up to 25 years of imprisonment.

Without wishing to prejudge the fairness of these sanctions, we would like to remind your Excellency's Government that the counter-terrorism and countering extremist legal framework of Belarus have been the subject of previous communications sent by Special Procedures. These include the communications sent on dates 3 March 2021 (BLR 2/2021), 23 May 2022 (BLR 3/2022), 27 April 2023

(BLR 3/2023), 25 May 2023 (BLR 4/2023) and 27 October 2023 (BLR 9/2023), which raised concerns about the vague definition and discriminatory application of the relevant criminal provisions, targeting citizens for the mere exercise of their human rights and freedoms, including the rights to freedom of opinion and expression, and freedom of peaceful assembly and association.

We note that Ms. Melkher's name has been included in public lists of persons involved in terrorist and extremist activities by the State Security Committee and the Ministry of Internal Affairs. We also note with concern that Ms. Melkher's name has been included in public lists of persons involved in terrorist and extremist activities by the State Security Committee and the Ministry of Internal Affairs. With regard to the inclusion of Ms. Melkher in the terrorist list, 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 threats, following a fair and accountable legal process of an act of terrorism 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 recall that the principle of legal certainty, enshrined in article 15 of the ICCPR and article 11 of the Universal Declaration of Human Rights, requires that criminal laws are sufficiently precise so it is clear what types of behavior 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.

With regard to inclusion on the list of extremist activities, we recall that "the term 'extremism' has no place in binding international legal standards and, when operating as a criminal legal category, is irreconcilable with the principle of legal certainty; it is therefore per se incompatible with the exercise of certain fundamental human rights" (A/HRC/43/46, para. 14).

In this regard, we would like to draw your attention to the conclusions and recommendations of the 2023 report of the Special Rapporteur on the situation of human rights in Belarus to the General Assembly (A/78/327), which examines the increasing practice of abusive and disproportionate use of counter-terrorism and anti-extremism legislation in Belarus.

We would like to further emphasize that the lists of persons involved in terrorist and extremist activities are susceptible to excessively restricting and impairing the 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. We would like to underline that any restriction on expression or information or peaceful assembly or association that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest, and must be

strictly necessary and proportionate in pursuit of that interest, as required by articles 19(3), 21 and 22 of the ICCPR, ratified by Belarus on 12 November 1973.

We wish to call on your Excellency's Government to bring the Belarusian legislation on countering terrorism and countering extremism and the related Criminal Code provisions into compliance with the international human rights law standards.

Inappropriate conditions of detention

We would like to express our deep concerns about the alleged ill-treatment of Ms. Melkher in prison, including her repeated submission to disciplinary sanctions involving detention in inhuman conditions, *incommunicado* detention, deprivation of walks and recreational activities and reduction of the spending limit. We are profoundly disturbed by the alleged deterioration of Ms. Melkher's health, the reported lack of adequate medical care in the prison and insufficiency of food provided to her. We are concerned about the alleged deprivation of Ms. Melkher of access to a lawyer, preventing her from the possibility of challenging the disciplinary sanctions imposed on her.

We would like to remind your Excellency's Government that torture and cruel, inhuman or degrading treatment or punishment are prohibited under article 5 of the Universal Declaration of Human Rights, article 7 of the ICCPR, 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.

Under article 10 of the ICCPR, all persons deprived of their liberty shall be treated humanely and with respect for the inherent dignity of the human person. Paragraph 1 of the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, and rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provide that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. Articles 7 and 10 of the ICCPR require that "persons deprived of their liberty must not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty". (*Human Rights Committee, Dafnis v. Greece, Views of 19 July 2022, CCPR/C/135/D/3740/2020, para. 8.5*).

We wish to recall that under rules 4 and 5 of the Nelson Mandela Rules, the purposes of a sentence of imprisonment are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the respect due to the prisoners' dignity as human beings.

Under rule 13, all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. Under rule 22, every prisoner

shall be provided with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. In accordance with rule 23, every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

As per article 12 of the International Covenant on Economic Social and Cultural Rights, ratified by Belarus on 12 November 1973, States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and take steps to achieve the full realization of this right, including those necessary for improvement of all aspects of environmental hygiene and the creation of conditions which would assure to all medical service and medical attention in the event of sickness. In particular, States are under the obligation to respect the right to health by refraining from denying or limiting equal access for all persons, including prisoners (*CESCR, general comment no. 14 (2000), para. 34*).

The Basic Principles for the Treatment of Prisoners provide that prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9). Under the rule 24(f) the Nelson Mandela Rules, the provision of health care for prisoners is a State responsibility, free of charge, without discrimination and at the same level as the health care services provided in the community. 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”.

Under rule 58, prisoners shall be allowed to communicate with their family and friends at regular intervals by corresponding in writing and using, where available telecommunication, electronic, digital and other means, and by receiving visits.

According to rule 61(1) of the Nelson Mandela Rules, prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff, in order to secure the confidentiality of lawyer-client discussions.

We would like to remind your Excellency’s Government that the Human Rights Committee and the Committee against Torture have recommended that Belarus increase the use of non-custodial alternatives to detention and improve conditions of detention in prisons, including provision of adequate and timely medical care (*Human Rights Committee, Concluding observations on the fifth periodic report of Belarus (2018), CCPR/C/BLR/CO/5, para. 36(b)*; *CAT, Concluding observations on the fifth periodic report of Belarus (2018), CAT/C/BLR/CO/5, para. 22(f)*).

Regarding the imposition of disciplinary sanctions on prisoners, we would like to draw your Excellency’s Government’s attention to rule 39(2) of the Nelson Mandela Rules, which requires proportionality between a disciplinary sanction and the offence for which it is established and requires that prison administrations keep a proper record of all disciplinary sanctions imposed. Under rule 43, in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, including prolonged solitary

confinement. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact.

As per rule 41, any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay. Prisoners shall be informed without delay of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.

We would like to stress that prolonged *incommunicado* detention is incompatible with article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture (*CAT, Djamila Bendib v. Algeria, Decision of 8 November 2013, para. 6.4; CAT, Rached Jaïdane v. Tunisia, Decision of 11 August 2017, CAT/C/61/D/654/2015, para. 7.6*), and with the prohibition of torture, cruel, inhuman or degrading treatment or punishment under article 7 of the ICCPR (*Human Rights Committee, Salah Drif and Khoukha Rafraf v. Algeria, Views of 8 July 2022, CCPR/C/135/D/3321/2019, para. 8.6; Human Rights Committee, general comment no. 20 (1992)*).

We respectfully remind that the UN General Assembly has repeatedly affirmed that “prolonged *incommunicado* detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment” and urged “all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that prolonged *incommunicado* detention and secret places of detention and interrogation are abolished” (*GA, Resolutions of 15 December 2022 (A/RES/77/209, para. 18), 18 December 2019 (A/RES/74/143, para. 17), 19 December 2017 (A/RES/72/163, para. 16), 17 December 2015 (A/RES/70/146, para. 13), 18 December 2013 (A/RES/68/156), para. 27, 19 December 2011 (A/RES/66/150, para. 22), 18 December 2009 (A/RES/64/153, para. 20)*).

Protection of older women

We would like to underline that due to her gender and advanced age, Ms. Melkher may be disproportionately affected by inhumane conditions of detention.

We recall that under rule 2(2) of the Nelson Mandela Rules, in order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.

In this regard, we would like to refer to the United Nations Rules for the Treatment of Women Prisoner and Noncustodial Measures for Women Offenders (the Bangkok Rules) and particularly to its rule 1, which states that in order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules.

We wish to draw your attention to the report on the women deprived of liberty of the Working Group on discrimination against women and girls, which highlights devastating consequences on women's lives of the deprivation of liberty and the heightened risk of human rights violations faced in detention by women who experience intersectional forms of discrimination, such as older women (A/HRC/41/33, paras. 74, 78). The Working Group underlined that stereotypes about a woman's "proper" role dictate not only how she should (not) behave within the home but also in public, and defying those standards in public may put women at risk of deprivation of liberty. In particular, negative stereotypes about female ageing mean that elderly women are perceived as dangerous and in need of control in some societies.

We recall that, according to the United Nations Principles for Older Persons, adopted by the General Assembly resolution 46/91 on 16 December 1991, older persons should be able to live in dignity and security and should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness (paras. 11 and 17).

In her report on older persons deprived of liberty, the Independent Expert on the enjoyment of all human rights by older persons calls on paying special attention to applying the principles of necessity and proportionality when the deprivation of liberty is decided against older persons in the context of criminal justice, considering the severity of the offence, and whether the dignity of older persons is being protected based on their age and intersectional factors (A/HRC/51/27, para. 17). The expert warned that older persons face heightened risk of discrimination, abuse and violence at all stages of their incarceration (para. 41). Incarcerated older women have special requirements for protection against violence and specific gynecological, hygiene and other gender-sensitive healthcare needs. Failure to provide for those needs may amount to ill-treatment. Furthermore, detention facilities are often not designed to accommodate older persons or to respond to their needs (paras. 43-45).

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

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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 ensure immediate access of Ms. Iryna Melkher to legal counsel of her choosing.

3. Please adopt urgent measures to put an end to the alleged ill-treatment of Ms. Iryna Melkher in the women's correctional colony no. 4 in Homyel, including ensuring appropriate detention conditions for her age and gender, providing adequate medical care, including dental care, sufficient food, possibility for daily walks in the open air, recreational activities and regular communication with her family.
4. Please conduct a prompt, impartial and efficient investigation into the allegations of Ms. Iryna Melkher's ill-treatment in the women's correctional colony no. 4 in Homyel. If the allegations are confirmed, please take immediate measures to put an end to the violations of Iryna Melkher's human rights and sanction those responsible.
5. Please provide detailed information on the state of Ms. Iryna Melkher's health, the amount and quality of food distributed to her and the frequency and nature of medical care provided to her.
6. Please provide information about the reasons for the alleged repeated placement of Ms. Iryna Melkher into a punitive isolation cell and the reduction of her spending limit. Please provide information about the length of time spent by Ms. Melkher in the punitive isolation cell since her incarceration. Please explain how these disciplinary sanctions are proportionate the offences for which they are established.
7. Please provide information about the frequency and type of communication allowed to Ms. Iryna Melkher with her family and lawyer.
8. Please explain what complaint mechanisms are available to Ms. Iryna Melkher in order to bring grievances about her detention conditions to the attention of the authorities and indicate what follow-up mechanisms are in place.
9. Please provide information about the factual and legal basis for the arrest, detention, charging and conviction of Ms. Iryna Melkher and explain how these actions comply with Belarus's obligations under international human rights law, in particular the principles of necessity, proportionality, and non-discrimination.
10. Please indicate the legal and factual basis for adding Ms. Iryna Melkher's name into the lists of individuals involved in terrorist and extremist activities by the State Security Committee and by the Ministry of Interior, the former prior to Ms. Melkher's conviction. 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, including the principles of necessity proportionality, non-discrimination, due process and judicial protection.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the

accountability of any person responsible of the alleged violations.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

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

Michael Fakhri
Special Rapporteur on the right to food

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

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

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

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