

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 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; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

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13 June 2024

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; 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; 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 51/8, 53/19, 54/14, 52/9, 50/17, 51/21, 53/12, 51/4, 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 situation of **over 60 older persons who are deprived of liberty in Belarus, including Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasniew, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich and Mr. Aliaksandr Ilich Yarashuk.**

According to the information received:

Special Procedures have received a list of 63 persons aged over 60 years old, including 15 women, who are deprived of liberty in Belarus. Most of them are serving prison sentences, going up to 25 years, some are detained in pretrial detention, and some are submitted to compulsory psychiatric care. Several such detainees suffer chronic diseases, acute or grave illnesses, and some are persons with disabilities. Three prisoners aged over 60 are reportedly held *incommunicado*.

Some cases of older persons deprived of liberty in Belarus are described below.

Mr. Vyachaslau (Vatslau) Mikhaylavich Areshka, a trade union activist aged 69, was arrested in April 2022 in the context of an alleged large-scale campaign of persecution of independent trade union leaders and members. He suffers several chronic diseases, encounters problems with [REDACTED] and is in danger of [REDACTED]. Mr. Areshka was convicted behind closed doors in January 2023 to 8 years in prison under charges of calls for actions aimed at causing harm to national security (article 361 of the Criminal Code), creation of an extremist formation and participation therein (article 361-1 of the Criminal Code) and incitement to hatred (article 130 of the Criminal Code). His name has been included into the official list of persons involved in extremist activities.

Mr. Vasil Tskihanavich Berasnieu, another independent trade union leader, now aged 74, was convicted to 9 years in prison. Mr. Berasnieu has [REDACTED] and may suffer [REDACTED]. Mr. Berasnieu was convicted in 2023 under charges of calls for actions aimed at harming the national security (article 361 of the Criminal Code), creation of an extremist formation and participation therein (article 361-1 of the Criminal Code) and incitement to hatred (article 130 of the Criminal Code). His name has been included into the official list of persons involved in extremist activities.

Ms. Alena Piatrouna Hnauk, an activist aged 66, was arrested in January 2022 while serving a 2-year house arrest sentence for participating in a round dance protest on 13 September 2020 in Brest. She was transferred to a psychiatric hospital in 2022 and later convicted to a 3,5-year prison sentence under charges of organization and preparation of actions that grossly violate public order, or active participation therein (article 342 of the Criminal Code), slander against the President (article 367 of the Criminal Code), and discrediting Belarus (article 369-1 of the Criminal Code). She later received an additional 12-month imprisonment sentence for malicious disobedience to the demands of the administration of the correctional institution (article 411 of the Criminal Code).

Ms. Volha Uladzimirovna Mayorava, who will be turning 58 in August 2024, is serving a 20-year prison sentence. She was arrested in January 2021 and convicted in October 2022 under charges of incitement to hatred (article 130 of the Criminal Code), participation in a criminal organization (article 285 (2) of the Criminal Code), unlawful acts against firearms, ammunition and explosives (article 295 of the Criminal Code), calls for actions aimed at causing harm to the national security (article 361 of the Criminal Code), attempted conspiracy to seize state power by unconstitutional means (articles 14(1) and 357 (2) of the Criminal Code) and malicious disobedience to the demands of administration of the correctional institution (article 411 of the Criminal Code). She was one of several defendants in a high-profile trial for explosions of houses and cars of law enforcement officers. Her name has been included into the official lists of persons involved in terrorism, and extremism, in February 2021 and May 2023, respectively.

Ms. Mayorava is reportedly denied communication with her family and lawyer. Over 2023, she was placed on three occasions in a punitive isolation cell (SHIZO) and on one occasion in a cell-type facility (PKT) as a punishment for her refusal to do forced labour in a sewing factory and as a

cleaner in the correctional colony IK-4 in Homiel. Like with other prisoners, her clothes were taken away by the penitentiary administration but, due to prohibitions on money transfers and reception of packages imposed on her, she has been unable to obtain new clothes and other food prison ratios. She has been left with no other clothes than a tank top, a prison jacket, underwear and socks. Due to lack of clothes, her health has reportedly deteriorated, and she started suffering [REDACTED] without receiving any medical assistance.

Ms. Iryna Aliaksandrauna Melkher, aged 68 and convicted to 17 years in prison, is affected by chronic heart and kidney diseases. Ms. Melkher was detained on 8 December 2020 together with her son and prosecuted under the same criminal case as Ms. Volha Uladzimirovna Mayorava and for participation in a peaceful assembly. She was convicted in October 2022 under charges of 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). Her name has been included into the official lists of persons involved in extremism and terrorist activities.

Mr. Mikalai (Nikolay) Viktaravich Statkevich, aged 67 years, a prominent opposition politician, was arrested in 2020 and sentenced on 14 December 2021 to 14 years of imprisonment under article 293 of the Criminal Code (organization of mass riots). During his prison sentence, he has been subjected to over 20 disciplinary sanctions, has been hospitalized with pneumonia and denied a possibility to receive warm clothes from his family. He has been held *incommunicado* since February 2023 (BLR 13/2023). His family members and lawyers have been denied the possibility to meet them or to obtain any information on their whereabouts and condition (A/HRC/55/61, para. 35).

Mr. Aliaksandr Ilich Yarashuk, the Chair of the Belarusian Congress of Democratic Trade Unions, aged 72, is serving a 4-year prison sentence. He was convicted in December 2022 under charges of organization and preparation of actions that grossly violate public order, or active participation in them (article 342 of the Criminal Code) and calls for actions aimed at causing harm to the national security of the Republic of Belarus (article 361 of the Criminal Code). His name has been added into the official list of persons involved in extremist activities.

All the above-mentioned individuals have been recognized as political prisoners by the Human Rights Centre Viasna.

According to testimonies received, the detention conditions in the women's correctional colony No. 4 in Homiel, where Ms. Alena Hnauk, Ms. Volha Mayorava and Ms. Iryna Melkher have been placed may amount to inhuman or degrading treatment or punishment. There are only 4 toilets and shower cabins for approximately 100 prisoners. According to an eyewitness, convicted criminals are involved in the work of the penitentiary administration and submit co-detainees to ill-treatment. Detainees identified as "political prisoners", such as Ms. Hnauk, Ms. Mayorava and Ms. Melkher, are systematically denied access to healthcare and are disproportionately submitted

to forced labour, compared to other detainees.

On 30 May 2024, the House of Representatives of the National Assembly adopted, in first and second readings, a draft amnesty law. The draft law proposes to amnesty persons who have attained the pension age (63 years for men and 58 years for women), persons with I and II group disabilities and persons suffering certain diseases, including cancer of the second, third and fourth clinical groups.

However, according to the draft law, the amnesty would not apply, *inter alia*, to prisoners who have committed malicious disobedience while serving their sentences; to prisoners convicted under a long list of provisions of the Criminal Code which are reportedly frequently used for politically motivated convictions, including those which served as a basis for the conviction of Mr. Areshka, Mr. Berasnieu, Ms. Hnauk, Ms. Mayorava and Ms. Melkher and Mr. Yarashuk (articles 130, 285, 289, 295, 342, 357, 361, 367, 369 and 369-1). The amnesty would also not apply to prisoners included in the public lists of persons involved in terrorist and extremist activities.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express grave concerns about the allegedly high number of older persons, including Mr. **Vyachaslau Mikhaylavich Areshka**, Mr. **Vasil Tskihanavich Berasnieu**, Ms. **Alena Piatrouna Hnauk**, Ms. **Volha Mayorava**, Ms. **Iryna Aliaksandrauna Melkher**, Mr. **Mikalai Viktaravich Statkevich** and Mr. **Aliaksandr Ilich Yarashuk**, who are deprived of liberty in Belarus for lengthy periods of time in inhuman conditions, in some cases *incommunicado*. We are extremely concerned about the reports that some of those individuals suffer chronic diseases, acute or grave illnesses and do not have access to adequate medical care.

We recall that on 10 November 2022, Special Procedures brought to the attention of your Excellency's Government concerns about alleged imminent threats to the health and life of Mr. **Aliaksandr Yarashuk**, Mr. **Vasil Berasnieu** and [REDACTED] due to inadequate detention conditions and lack of access to necessary and proper medical care in detention (BLR 6/2022). To date, no response has been received to this communication from your Excellency's Government.

We recall that on 5 December 2023, Special Procedures mandate-holders addressed an urgent appeal to your Excellency's Government (BLR 12/2023), pointing to alleged repeated transfers of Ms. **Iryna Melkher** into a punitive isolation cell (SHIZO), deterioration of her health due to dire detention conditions and insufficiency of prison food ratios, and denial of adequate healthcare. To date, no response has been received to this communication from your Excellency's Government.

We recall that on 22 December 2023, Special Procedures mandate-holders addressed an urgent appeal to your Excellency's Government (BLR 13/2023) expressing concerns about alleged ill-treatment in detention of Mr. **Mikalai Statkevich** and his prolonged *incommunicado* detention, which may amount to an enforced disappearance. Today, Mr. Statkevich continues being held *incommunicado* and his whereabouts are unknown. No response from your Excellency's Government has been received to the urgent appeal.

Finally, we respectfully remind that on 15 February 2024 and 30 May 2024 (BLR 1/2024 and BLR 3/2024), Special Procedures mandate-holders transmitted to your Excellency's Government two urgent appeals in relation to the situation of another older person in detention, Mr. **Ryhor Kastusiou (Grigoriy Kostusev)**, aged 67, allegedly denied adequate healthcare despite a grave illness. We appreciate your Excellency's Government's response to some of the questions made in the communication 1/2024 and hope that your Excellency's Government will be able to provide a response to the remaining questions, as recalled in the communication BLR 3/2024.

Prohibition of torture, inhuman and degrading treatment and access to healthcare in detention

We recall 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 International Covenant on Civil and Political Rights (ICCPR), 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. 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. 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*).

Failure by a State party to provide medical treatment and care in detention adequate to the condition of the detainee constitutes a violation of the right to be treated with humanity and with respect for the inherent dignity of the human person under article 10(1) of the ICCPR (*Human Rights Committee, Views of 21 March 2017, CCPR/C/119/D/2146/2012, para. 8.7*), whereas lack of medical assistance and refusal of hospitalization of a detainee in critical condition "can be characterized as severe pain and suffering inflicted intentionally by an official," in violation of articles 1 and 2 of the Convention against Torture (*CAT, Decision of 31 July 2017, CAT/C/61/D/661/2015, paras. 8.2, 8.3*). Under the revised Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, denial of medical care and treatment should be considered as a potential method of inflicting torture or ill-treatment (*Istanbul Protocol, 2002, para. 372(o)*).

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*).

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee

stated that States parties to the ICCPR are required to guarantee the right to freedom 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 as well as the prohibition of propaganda for hatred and incitement to 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, torture, threats to life and killing, cannot be compatible with article 19. (GC34 paragraph 23)

The Basic Principles for the Treatment of Prisoners, adopted without vote by the General Assembly resolution 45/111 on 14 December 1990, provide that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings (principle 1). Prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation (principle 9).

Rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provides that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. Under the rule 24(f), the provision of health care for prisoners is a State’s responsibility, free of charge, without discrimination and at the same level as the health care services provided in the community. Rule 27 provides that prisoners requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

We would like to remind your Excellency’s Government that the Human Rights Committee has recommended that Belarus strengthen its efforts to improve conditions of detention and the provision of adequate and timely medical care, in accordance with the ICCPR and the Nelson Mandela Rules (*Human Rights Committee, Concluding observations on the fifth periodic report of Belarus (2018), CCPR/C/BLR/CO/5, para. 36(b)*). The Committee against Torture has recommended that Belarus “[i]mprove access to and the quality of health care, including psychiatric care, for prisoners in all places of deprivation of liberty” and “increase the number of professional medical staff in all detention facilities and ensure their independence and impartiality” (*CAT, Concluding observations on the fifth periodic report of Belarus (2018), CAT/C/BLR/CO/5, para. 22(f)*).

Furthermore, we recall that during its Universal Periodic Review in 2020, Belarus accepted as implemented a recommendation to improve access to and the quality of health care, including psychiatric care, for prisoners, and increase the number of professional medical staff in all detention facilities (recommendation 138.228, A/HRC/46/5 and A/HRC/46/5/Add.1).

Older persons in detention

We would like to 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.

We would like to stress that older persons may be disproportionately affected by inhumane conditions of detention. 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). States must treat older persons with dignity during the entire duration of their detention and must take into consideration their specific needs with respect to their age, health and disability status. Those considerations are especially critical at every stage of the criminal justice process (especially pretrial, trial, sentencing, appeal and post-sentencing detention) (para. 15). The expert warned that older persons face heightened risk of discrimination, abuse and violence at all stages of their incarceration (para. 41).

The report of the Independent Expert further notes that when older persons are detained in the criminal justice system, States have the obligation to uphold and protect their human rights and ensure their safety. As is done in some countries, it is good practice to adopt constitutional and legal age-related provisions ensuring the realization of the special needs of older persons lawfully deprived of liberty, in accordance with international human rights standards (para. 70). States have a positive obligation to protect the liberty of all individuals under their jurisdiction and should take measures to prevent the deprivation of their liberty. As a heterogeneous group with complex needs, alternatives to deprivation of liberty for older persons should be prioritized and encouraged through State actions (para. 71). In the criminal justice context, several promising practices have emerged offering alternative solutions for older persons, such as prioritizing house arrest for persons aged 70 or above during pre-trial and for minor offense convictions; prison sentences carried out (partially or fully) in hospitals, family care, in-home or in institutional care based on various criteria, including age; overruling life imprisonment for persons over age 65 and affording amnesty, parole, compassionate or early conditional release for older persons, based on their age, the time served in prison and health status (chronic and/or life-threatening illnesses); temporary release; pardon or amnesty; or electronic monitoring to track and supervise older persons convicted of minor offenses. Studies show that older persons are far less likely to reoffend following release from prison (para. 72). During the ongoing COVID-19 pandemic and due to the overcrowding in some detention settings, several States privileged non-custodial measures and allowed for the early release of older prisoners to ensure their protection and safety, as older age represents a significant risk for contracting the virus (para. 73)

In the context of criminal detention, the Independent Expert makes the following recommendations: (a) States must adopt age-sensitive policies and strategies in the criminal justice context to ensure respect for and protection of the human rights of older persons, in line with international and regional human rights

standards regulating the deprivation of liberty; (b) Age-friendly detention environments, including appropriate infrastructure, accommodations and living conditions, and age-sensitive training for custodial staff to foster respectful communication and informed decision-making should be ensured; older persons should have access to age-appropriate services and activities, including opportunities for lifelong learning and vocational training; (c) Appropriate health-care services for older persons should be provided to meet their individual needs, according to the principle of equality in health care; screening upon admission, transition and throughout the period of detention must be in place to identify the risks and specific needs of older detainees; (d) States should ensure that, when released, older persons have benefited from individualized pre-release programmes designed for their specific needs and wishes, including access to medical and mental health care for longstanding, undertreated health conditions, housing solutions, access to pensions and financial support; (e) Intersectional factors should be given due consideration throughout all stages of the criminal justice process, especially when older persons have other intersecting bases for discrimination, such as gender, disability, indigenous or ethnic identities; individual care plans should be created to ensure that older persons at higher risk of violence, ill-treatment and persecution are provided with security in detention, including older women, older lesbian, gay, bisexual, transgender and intersex persons and older persons belonging to ethnic, religious or indigenous groups; (f) States, through their judicial systems, should consider the necessity and proportionality of detaining older persons with complex health conditions and in need of palliative care; States should also examine the possibility of non-custodial alternatives at all stages of detention, including serving sentences in facilities where the needs of older persons would be addressed through or benefit from humanitarian or compassionate release (para. 88).

Older women in detention

We note with grave concern the allegations of inhuman treatment of detainees in women's correctional colony No. 4 in Homiel. We recall that allegations of inhuman treatment of detainees in this facility were brought to your Excellency's Government attention by a letter of 27 April 2023 (BLR 3/2023) but no response has yet been received.

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 2019 report on women deprived of liberty of the Working Group on discrimination against women and girls, which highlights devastating consequences of deprivation of liberty on women's lives 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 and 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.

Furthermore, the Working Group noted that measures to combat terrorism and national security measures sometimes profile and target women, in particular those from certain groups, and sometimes even women human rights defenders (A/HRC/41/33, para. 73). It has recommended States ensure that measures addressing conflict, crisis, terrorism, and national security incorporate a women's human rights focus and do not instrumentalize women's deprivation of liberty for the purposes of pursuing government aims (para. 82(b)).

In her 2022 report on older persons deprived of liberty, the Independent Expert on the enjoyment of all human rights by older persons has noted that 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).

Disciplinary measures imposed on prisoners

With regard to allegations received regarding the situation of Ms. Volha Mayorava, we would like to refer to several recent communications sent by Special Procedures mandate-holders to your Excellency's Government, which included concurrent allegations about inhuman detention conditions in SHIZO and PKT, where prisoners systematically find themselves in solitary confinement and *incommunicado* detention, frequent arbitrary use of these disciplinary sanctions by penitentiary administrations and lack of proper legal safeguards and effective remedies which would allow for preventing and challenging abusive resort to such disciplinary measures (BLR 3/2023, BLR 4/2023, BLR 9/2023, BLR 12/2023, BLR 13/2023, BLR 1/2024.)

We would like note that placements in SHIZO and PKT may constitute inhuman and degrading treatment and amount to arbitrary detention under article 9(1) of the ICCPR. The right to personal security protects interests in bodily and mental integrity and obliges States parties to protect individuals from foreseeable threats to life or bodily integrity (*Human Rights Committee, general comment 35, CCPR/C/GC/35, paras. 9 and 56*).

We would like to draw your Excellency's Government 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 and indefinite solitary confinement. 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 defense. 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.

Incommunicado detentions and enforced disappearances

We are gravely concerned about alleged *incommunicado* detentions of some older persons in Belarus and, in particular, about the *incommunicado* detention of Mr. Mikalai Viktaravich Statkevich, *inter alia*, since February 2023, which may amount to an enforced disappearance.

We would like to draw the attention of your Excellency's Government to the fact that prolonged *incommunicado* detention is incompatible with article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, decision of 8 November 2013, CAT/C/51/D/376/2009, para. 6.4; CAT, decision of 11 August 2017, CAT/C/61/D/654/2015, para. 7.6), and with article 7 of the ICCPR (Human Rights Committee, views of 8 July 2022, CCPR/C/135/D/3321/2019, para. 8.6; Human Rights Committee, General comment no. 20 (1992)).

The 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)).

We would like to recall the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the General Assembly resolution 47/133 on 18 December 1992. Pursuant to article 7 of the Declaration, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearance. Moreover, articles 9-12 establish the guarantees to be afforded to any person deprived of liberty. In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. Article 13 of the Declaration sets forth the State's obligation to investigate promptly, thoroughly and impartially any complaints of enforced disappearance. Article 19 of the Declaration requires that victims of acts of enforced disappearance and their family obtain redress and integral reparation for the harm suffered. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Enforced disappearances amount to violations of article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of person) and article 16 (right to recognition as a person before the law), read alone and in conjunction with article 2, para 3 (right to an effective remedy), of the ICCPR (Human Rights Committee,

general comment No. 35, CCPR/C/GC/35, para. 17; general comment No. 36, CCPR/C/GC/36, paras. 57-58; WGAD). The anguish and distress caused to family members of the disappeared persons due to lack of information about the fate or whereabouts of their loved ones amounts to cruel, inhuman and degrading treatment, prohibited by article 7 of the ICCPR and article 16 of the Convention against torture (*Human Rights Committee, CCPR/C/19/D/107/1981, para. 14; CAT, decision of 15 May 2015, CAT/C/54/D/456/2011, para. 6.10*).

We would like to remind your Excellency's Government that enforced disappearance has different impact depending on whom it targets. For instance, according to the Study on enforced or involuntary disappearances and economic, social and cultural rights by the Working Group on Enforced or Involuntary Disappearances (A/HRC/30/38/Add.5), human rights defenders are also targeted to intimidate and prevent others from claiming and exercising their rights. Due to collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community.

Misuse of article 411 of the Criminal Code for double punishment

With regard to the prison sentences imposed on Ms. Alena Piatrouna Hnauk and Ms. Volha Uladzimirovna Mayorava, we would like to refer to the letter sent to your Excellency's Government on 14 September 2023 by the Special Rapporteur on the situation of human rights in Belarus and the Working Group on Arbitrary Detention addressed (BLR 8/2023), which expresses concerns that article 411 of the Criminal Code may constitute a violation of the right not to be tried or punished twice for the same offence under article 14 of the International Covenant on Civil and Political Rights.

Misuse of counter-terrorism and anti-extremism legislation

Without wishing to prejudge the fairness of the convictions imposed on Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher and Mr. Aliaksandr Ilich Yarashuk, we would like to note that, according to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "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).

The definitions of terrorism under domestic legislation must be consistent with international law, including the United Nations Security Council resolution 1566 or be otherwise consistent with international law. 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.

We would like to remind your Excellency's Government that over the past three years, the counter-terrorism and anti-extremist legal framework of Belarus has been the subject of several communications sent by Special Procedures mandate-holders (BLR 2/2021, BLR 3/2022, BLR 3/2023, BLR 4/2023, BLR 9/2023, BLR 12/2023, BLR 10/2023), 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 would like to also draw your attention to the report presented by the Special Rapporteur on the situation of human rights in Belarus to the General Assembly in 2023 (A/78/327), which revealed a widespread practice of criminal prosecution on extremism and terrorism-related charges and of inclusion of persons' names into lists of individuals involved in extremist and terrorist activities as a way to restrict in an excessive manner the legitimate exercise of human rights, such as the rights to freedom of expression, peaceful assembly and association 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 recall that individuals or groups may only be placed on a terrorism list 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).

We wish to reiterate our call to your Excellency's Government to bring its counterterrorism and national security-related provisions, the Belarusian legislation on countering terrorism and extremism, and the related Criminal Code provisions into compliance with international law, including international human rights law standards.

While we welcome the adoption of the draft Amnesty Law in the first and second readings, we would like to encourage your Excellency's Government to extending the amnesty to also apply to, in light of our concerns expressed above, individuals listed in terrorist and extremist public lists. Amnesty is not, however, a substitute for the repeal of over-broad terrorism and extremism laws, which your Excellency's Government should pursue as a priority.

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.

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 any comment you may have on the above-mentioned allegations.
2. Please adopt urgent measures to ensure that Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich, Mr. Aliaksandr Ilich Yarashuk and other older persons deprived of liberty are treated humanely, are provided with access to their families and to lawyers of their choosing and have prompt access to adequate medical care, with regard to their specific vulnerabilities related to age, gender, health condition, and, where applicable, disabilities.
3. Please provide detailed information on the fate and whereabouts of Mr. Mikalai Statkevich, and the legal grounds for him being detained *incommunicado*.
4. Please indicate the legal and factual basis for conviction of Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich and Mr. Aliaksandr Ilich Yarashuk, including for the terrorist, extremist and national security related charges 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.
5. Please explain whether, when sentencing Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher and Mr. Aliaksandr Ilich Yarashuk, the courts took into account their age and health condition.
6. Please indicate the legal and factual basis for and legal consequences of the inclusion of Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich and Mr. Aliaksandr Ilich Yarashuk onto the list of individuals involved in extremist activities and of Ms. Melkher and Ms. Mayorava onto the list of individuals involved in

terrorist 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, including the principles of necessity, proportionality, non-discrimination, due process, and judicial protection.

7. Please provide information about investigations launched into allegations of inhuman treatment of detainees in the women's correctional colony No. 4 in Homiel transmitted to your Excellency's Government by the communication BLR 3/2023 and in the present communication.
8. Please provide responses to information queries and recommendations made in the communications BLR 6/2022 of 10 November 2022, BLR 12/2023 of 5 December 2023 and BLR 13/2023 of 22 December 2023.
9. Please provide detailed information on the current state of health and medical assistance available to Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich and Mr. Aliaksandr Ilich Yarashuk.
10. Please explain which remedies are available to Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich, Mr. Aliaksandr Ilich Yarashuk and other older persons for challenging compatibility of their conditions of detention and medical assistance provided to them with international human rights law.
11. Please explain which legal remedies are available to Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich, Mr. Aliaksandr Ilich Yarashuk and other older persons to request remission of their sentence due to their older age and/or health condition.
12. In light of their age and health, please consider granting Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich, Mr. Aliaksandr Ilich Yarashuk and all other older persons, without exception, pardon or remission of sentence, in accordance with the United Nations Standard Minimum Rules for Noncustodial Measures (Tokyo Rules).

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Vyachaslau Mikhaylavich Areshka, Mr. Vasil Tskihanavich Berasnieu, Ms. Alena Piatrouna

Hnauk, Ms. Volha Uladzimirovna Mayorava, Ms. Iryna Aliaksandrauna Melkher, Mr. Mikalai Viktaravich Statkevich, Mr. Aliaksandr Ilich Yarashuk, 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 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's 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.

We would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit the case of Mr. Mikalai Statkevich through its humanitarian procedure. The Government is required to respond separately for the present communication and the humanitarian procedure.

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.

Ganna Yudkivska
Vice-Chair on communications 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

Gina Romero
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

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

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