Mandates of the Special Rapporteur on the situation of human rights in Belarus; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL BLR 8/2024
(Please use this reference in your reply)

18 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Belarus; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 55/27, 51/8, 53/4, 52/9, 52/10, 52/4, 53/12 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **violations of the right to an effective remedy, the right to fair trial, the right to property, the right to an adequate standard of living, including housing, the right to freedom of expression and potential violations of the right to life of individuals prosecuted *in absentia* under the "special proceedings" (article 468-27 of the Criminal Procedure Code)**.

According to the information received:

In 2022, Belarus amended its Criminal Procedure Code (law No. 199-Z of 20 July 2022), introducing "special proceedings" i.e. *in absentia* criminal proceedings against Belarusian citizens charged under certain provisions of the Criminal Code who find themselves outside Belarus and fail to appear before the authority conducting the criminal proceedings, provided that the foreign State concerned refuses to extradite them to Belarus (articles 6 38-1 and 468-25(2.1) of the Criminal Procedure Code).

Information about the initiation of "special proceedings", the date, place and time of the trial, summons of the accused, the outcomes of the investigations and the sentences is published on "the Internet portal of the courts of general jurisdiction" (the website of the Supreme Court) within one working day after the adoption of the relevant decisions (article 468-27 of the Criminal Procedure Code). Unlike in regular criminal proceedings, under the "special

proceedings", no notifications are served to the accused or to their relatives. The accused are considered notified of the trial once their summons is published online. Since early 2022, Belarusian authorities have blocked access to the website of the Supreme Court from abroad, purportedly in order to counter cyberattacks.

Domestic law does not provide for remote participation in the "special proceedings", even though remote participation in investigations and trials is possible, under certain circumstances, under general provisions of the Criminal Procedure Code (articles 224-1, 286 and 343).

In the "special proceedings", copies of procedural documents and notifications affecting the rights or interests of the accused are not provided directly to the accused, but are shared only with their defence attorneys (article 468-27(4) of the Criminal Procedure Code). These documents and notifications include the indictment act, decisions on preventive measures, decisions on extensions of remand in custody or house arrests, referrals of criminal cases to a prosecutor for subsequent referral to a court, decisions on ordering a trial, and copies of judgements by courts of all instances (article 43(2) of the Criminal Procedure Code).

The suspects and the accused in "special proceedings" are not allowed to choose their own defence counsel and, according to multiple consistent reports, are unable to establish communication with their State-designated attorneys or to obtain their recusal. In some cases, the accused do not know the identity of their defence lawyers. As a result, the suspects, accused and convicted persons are precluded from accessing their criminal files and the verdicts handed down against them.

The provisions of the Criminal Code under which prosecution *in absentia* is possible foresee heavy penalties, including imprisonment of up to 15 years and the death penalty, including for offenses which do not meet the "most serious crimes" threshold for capital punishment. Moreover, individuals convicted *in absentia* under extremist charges or for causing grave prejudice to the interests of the Republic of Belarus can be deprived of Belarusian citizenship (law No. 242-Z of 5 January 2023 "On amendment of the law of the Republic of Belarus 'On the citizenship of the Republic of Belarus'").

As of September 2024, some 120 persons had been convicted *in absentia* under the "special proceedings", and there had not been a single acquittal. The sentences include lengthy prison terms and, in some cases, significant fines. Some of those sentenced to fines have seen their real-estate properties and housing seized and sold at auction to cover the fines. Properties, as well as housing belonging to individuals who find themselves abroad can be confiscated for "unfriendly actions" towards Belarus (law No. 240-Z| of 3 January 2024 "On the confiscation of property").

Several cases of "special proceedings" are described below.

The case of "Black Book of Belarus"

The Telegram channel 'Black Book of Belarus' used to publish the personal data of persons allegedly responsible for human rights violations in the context of the 2020 presidential elections. In 2021, the Ministry of Internal Affairs recognised it as an extremist formation.

On 27 September 2022, the Investigative Committee published on its Telegram channel information about the initiation of "special proceedings' against "administrators of an extremist formation 'Black Book of Belarus'". In relation to this case, on 21 November 2022, the website of the Supreme Court published summons for a hearing at Minsk City Court addressed to five individuals accused of offenses under articles 130(3) (incitement of hatred) and 203-1(3) (illegal collection and distribution of personal data) of the Criminal Code.

On 18 January 2023, the Minsk City Court convicted these five individuals *in absentia*, sentencing each of them to 12 years of imprisonment and to fines of 18,500 Belarusian rubles and ordering them to pay compensation of 600,000 Belarusian rubles for moral damage to the victims.

Ms. **Valeryia Zaniamonskaya** (**Валерия Занемонская**) is one of the individuals convicted under this case. She was not involved in the administration of the Telegram channel "Black Book of Belarus", but investigative authorities considered her to be related to it. She learnt from the mass media that according to the criminal case, she and other persons under this case were accused of "discrediting the authorities and law enforcement agencies, inciting social discord, enmity and hatred towards the power bloc and civil servants, as well as other persons who advocate the preservation of law and order and the current constitutional order in the country, dissemination of defamatory information about them, incitement to extremist offences".

On 24 November 2022, she filed a petition with the Minsk City Court, asking it to grant her access to the criminal case file, to share information about the identity of her State-appointed defence attorney and to allow her to participate in the trial via videoconferencing. On 6 December 2022, the Court informed her about the name and the place of work of her attorney. The Court denied her request for remote participation in the trial, noting that there were no grounds for her interrogation via videoconferencing under article 343-1(1) of the Criminal Procedure Code, and stated that domestic legislation did not foresee a possibility for sending copies of the criminal case file to parties. It informed her that she had to come to its premises in order to consult the case file and to participate in the trial.

On 7 December 2022, she wrote to the attorney's email address, which was listed on the website of the Minsk City Bar Association. She asked the attorney to communicate with her, to ask the Court to allow her to participate in the trial via videoconferencing and, in case of refusal, to appeal against this decision. The attorney did not respond.

On 8 December 2022, she requested recusal of the judge, claiming lack of independence and impartiality of the court, noting that her requests to consult the criminal case file and for participation in the trial via videoconferencing had been denied. On 21 December 2022, the court (Judge [redacted]) notified her of the rejection of her motion for recusal.

On 21 January 2023, three days after the publication of the guilty verdict on the website of the Supreme Court, she asked the Minsk City Court to share with her a copy of the verdict, audio recordings of the trial and copies of all materials of the criminal case file. On 26 January 2023, she received an e-mail reply from the Court denying her requests. The Court informed her that a copy of the verdict had been shared with her two defence attorneys and stated that domestic law did not provide for sending to the accused copies of case file materials, audio and video recordings of the hearings.

On 26 January 2023, she appealed the verdict before the Supreme Court, arguing that she had been unable to consult her criminal case file and the verdict, had not been represented by the legal counsel of her choosing and had been unable to establish communication with her State-appointed defence attorney. On the same day, she sent an email to her two attorneys asking for a copy of the verdict. They did not respond. On 12 May 2023, the Supreme Court upheld the verdict.

The case of the "Belarusian Sports Solidarity Foundation"

Ms. **Aliaksandra Herasimenia** (**Александра Герасименя**) is a swimmer, silver medalist at the 2012 Olympic Games, bronze medalist at the 2016 Olympic Games and gold medalist at the World and European Championships.

In August 2020, Ms. Herasimenia signed an open letter demanding that the results of the presidential election in Belarus be invalidated. At the same moment, she participated in the creation of the "Belarusian Sports Solidarity Foundation", aimed at helping athletes subjected to repression for their civic position. Between October 2020 and 19 April 2022, she chaired the Foundation. She has also spoken publicly against electoral fraud and violence against protesters in 2020.

On 21 April 2022, the Foundation was recognised by the State Security Committee (KGB) as an "extremist formation". On 1 December 2022, the website of the Supreme Court published information about "special proceedings" against her under article 361(3) of the Criminal Code ("calls for restrictive measures (sanctions) and other actions aimed at harming the national security of the Republic of Belarus").

Ms. Herasimenia learnt from the mass media that she and another person were prosecuted for their role in the creation of the Foundation, for distribution of false information about events in Belarus after the 2020 elections and their calls for sanctions against the National Olympic Committee of Belarus and other sports organizations.

On 26 December 2022, the website of the Supreme Court published a notice that she had been convicted by Minsk City Court under article 361(3) of the Criminal Code to 12 years of imprisonment. On the same day, she requested from the Minsk City Court a copy of the verdict, audio recordings of the trial, the criminal case file and information about the identity of her State-appointed defence attorney. On 5 January 2023, she received an email from the Court, informing her about the name and the place of work of the attorney and denying her other requests. The Court informed her that, under article 468-27(4) of the Criminal Procedure Code, a copy of the verdict had been shared with the attorney and could not be shared with her directly and that domestic legislation did not provide for sharing the criminal case, audio and video recordings of the trial via electronic or regular mail.

On 5 January 2023, she contacted the attorney via Viber on the phone number listed on the website of the Minsk City Bar Association. She asked the attorney to provide her a copy of the verdict, criminal case materials and a copy of the summary record of the trial. The attorney read the message but did not reply.

On 5 January 2023, she appealed against the verdict to the Supreme Court. She argued that she had been unable to consult her criminal case file, summary records of the trial and the verdict, to communicate with her State-appointed attorney and to have her interests represented by legal counsel of her choice. She claimed violation of her rights to fair trial and to freedom of expression. On 24 March 2023, the Supreme Court upheld the verdict.

The case of "Sviatlana Tsikhanouskaya Analysts"

On 25 January 2024, the Investigative Committee launched "special proceedings" against 20 citizens of Belarus. Their photos, names, dates of birth and information about criminal charges brought against them were published on the Committee's Telegram channel. The suspects were charged under articles 361-1(1) (creation or leadership of an extremist formation); 361-1(3) (participation in an extremist formation); 130(3) in conjunction with 16(6) (aiding and abetting incitement of hatred); 357(1) (conspiracy to seize State power by unconstitutional means); and 361(3) in conjunction with 16(6) (aiding and abetting public calls for sanctions and other actions aimed at harming national security) of the Criminal Code.

In a press statement issued on 27 March 2024, the Investigative Committee described these individuals as members of "the extremist formation 'Sviatlana Tsikhanouskaya Analysts'", which intended "to seize State power by unconstitutional means". According to the press statement, these individuals had developed "strategies and tactics of struggle against the Belarusian authorities", had drafted talking points for Sviatlana Tsikhanouskaya "and other participants of the conspiracy" and had prepared publications "aimed at fueling protest sentiments and deepening the split in the Belarusian society", all this by "selecting the 'right words' (…) under the guidance of [their] Western mentors". The press release accused them of "vile acts", such as calls

for international sanctions against Belarus, discrediting its law-enforcement agencies, organization of a strike movement aimed at paralyzing the national economy, lobbying against holding major international competitions on Belarusian territory and for excluding Belarusian athletes from international sports competitions.

On 1 July 2024, the Minsk Regional Court (judge [redacted]) found all the defendants guilty and handed down sentences ranging from 10 to 11.5 years of imprisonment and, in some cases, fines. Information about the verdict was shared in a press statement of the Minsk Regional Court on 1 July 2024. The operative part of the verdict was published on 2 July 2024 on the website of the Supreme Court. On 9 October 2024, the Supreme Court upheld the verdicts and, in addition, deprived three defendants of their military ranks.

On 24 October 2024, the State Security Committee (KGB) of Belarus added all those sentenced into its list of organizations and individuals involved in terrorist activities. Real estate properties and housing in Belarus belonging to the convicted persons have been seized.

Those convicted include the following six persons:

Mr. **Aliaksandr Lahvinets** (**Александр Логвинец**) is a political activist, commentator, translator and instructor. He was sentenced on 1 July 2024 to 10 years of imprisonment in a strict-regime colony under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3) of the Criminal Code.

Prior to his conviction, on 27 and 29 May 2024, he submitted two requests to the Minsk Regional Court, in the Belarusian language, asking for access to his criminal case file, enquiring about the name and contact details of his State-appointed defence attorney, asking for a possibility to waive the right to an attorney and defend himself and for the right to participate in the trial remotely. No response was received. On 31 May 2024, he submitted a motion, in Belarusian, arguing that his right to fair trial was violated and asking for the recusal of the judge. Again, no response was provided.

On 10 July 2024, following his conviction, he sent a request, in the Belarusian language, to the court asking for a copy of the verdict, for access to his criminal case file and for an audio recording of the trial. On 18 July 2024, the court responded in Russian, thereby violating article 18 of the Law on Applications of Citizens and Legal Entities No. 300-Z, which provides that written responses by public authorities to written requests are given in the language of the submission, both Belarusian and Russian languages being the State's official languages (article 17 of the Constitution). The Court informed Mr. Lahvinets that a copy of the verdict had been forwarded to his defence attorney, without disclosing the attorney's identity and contact details, and that there were no "legal grounds for forwarding a copy of the verdict to the accused, including via electronic mail". The Court invited Mr. Lahvinets to its premises to obtain a copy of the audio recording of the trial.

On 9 October 2024, the Supreme Court upheld the verdict.

Ms. **Hanna Liubakova** (**Анна Любакова**) is a journalist and analyst. She was sentenced on 1 July 2024 to 10 years of imprisonment under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3) of the Criminal Code.

Ms. Liubakova learnt about the criminal charges against her from the mass media. On 27 May 2024, she submitted a complaint to the Chair of the Belarusian Republican Bar and to the Chair of the Minsk City Bar, arguing that, in violation of articles 468-25 (5) and 45 and (3) of the Criminal Procedure Code, she had not been provided with legal counsel since the initiation of the "special proceedings" on 25 January 2024 and that she was unaware of the identity of her State-appointed defence attorney. She inquired about her attorney's name and contact details.

On the same day, she submitted a motion to the Minsk Regional Court asking for copies of procedural documents, for information about her State-appointed defence attorney and for the possibility to participate in the trial via videoconferencing. On 29 May 2024, the Court rejected her requests stating that participation of the accused under the "special proceedings" in the trial via videoconferencing was not foreseen by legislation and that, in accordance with article 468-2(4) of the Criminal Procedure Code, the procedural documents had been shared with the defence attorney. The name of the attorney was disclosed.

Following unsuccessful attempts to establish communication with the attorney, Ms. Liubakova submitted, on 5 June 2024, a motion for the recusal of the attorney to the Minsk Regional Court. In the absence of any response, she submitted, on 11 June 2024, a request for the judge's recusal. This request was also left without consideration.

Upon learning about her conviction from web sources, on 3 July 2024, Ms. Liubakova asked the Minsk Regional Court to share with her a copy of the verdict. On 5 July 2024, the Court denied her request, citing lack of legal grounds for sharing the verdict with the accused and informing her that, in accordance with article 468-27(4) of the Criminal Procedure Code, copies of procedural documents destined and notifications involving her interests had been transmitted to her attorney.

On 9 October 2024, the Supreme Court upheld the verdict.

Mr. **Alexander Dabravolski** (**Александр Добровольский**) is a member of the Political Council of the United Civil Party, director of the East European School of Political Studies and head of the Internal Policy Department in the office of Sviatlana Tihanouskaya. He was convicted on 1 July 2024 under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3), 361-1(1) of the Criminal Code to 11.5 years of imprisonment in a strict regime colony and a fine of 240,000 Belarusian rubles.

Mr. Dabravolski learnt about the criminal charges against him from the mass media. In May 2024, he wrote to the Belarusian Republican Bar, inquiring about the name and contact details of his defence attorney and asking the Bar to facilitate their communication.

On 20 May 2024, he submitted a request to the Minsk Regional Court, asking for copies of procedural documents, for information about the identity of his defence attorney and for a possibility to participate in the trial via videoconferencing. On 29 May 2024, the Court denied his requests, stating that domestic legislation did not foresee participation of the accused in trials under "special proceedings" via videoconferencing and that, in accordance with article 468-27(4) of the Criminal Procedure Code, copies of procedural acts and notifications involving his rights had been transmitted to his attorney. The name of the attorney was disclosed. Mr. Dabravolski unsuccessfully attempted to contact the attorney by email.

Upon learning about his conviction from web sources, Mr. Dabravolski requested, on 9 July 2024, that the Minsk Regional Court share with him a copy of the verdict. On 18 July 2024, the Court rejected his request, citing lack of legal grounds for sharing the verdict and informing him that, in accordance with article 468-27(4) of the Criminal Procedure Code, a copy of the verdict had been shared with his attorney.

On 9 October 2024, the Supreme Court rejected his appeal and handed down an additional punishment of stripping him of his military rank.

Ms. **Tatsiana Chulitskaya (Татьяна Чулицкая)** is a political scientist. She was convicted on 1 July 2024 under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3) of the Criminal Code to 10 years of imprisonment.

She learnt about the criminal case against her from a publication of 30 April 2024 of the Prosecutor General's Office.

On 6 May 2024, she filed a request with the Belarusian Republican Bar, inquiring about the identity and the contact details of her State-appointed defence attorney and asking the Bar to encourage the attorney to urgently establish communication with her. On the same day, she submitted a motion to the Minsk Regional Court, asking it to inform her about the hearing, inquiring about the identity and contact details of her attorney, asking for copies of the procedural documents and seeking permission to participate in the trial via videoconferencing. On 18 May 2024, the Court disclosed the name of the attorney but denied her other requests. The Court stated that, in accordance with article 468-27 (4) of the Criminal Procedure Code, the procedural documents had been shared with her attorney.

On 31 May 2024, she filed a motion for the judge's recusal, citing, among other reasons, the absence of information about the hearing on the website of the Supreme Court. The Court disregarded this motion. On 19 June 2024, she submitted observations to the Court, stating that her State-appointed defence attorney had not contacted her, and she was not informed about the charges

against her. She also argued that she could not be prosecuted under the "special proceedings" because she was not a citizen of the Republic of Belarus.

After learning about her conviction from web sources, she submitted, on 9 July 2024, a request to the Minsk Regional Court, asking for a copy of the verdict, a summary record of the trial, audio and video recordings of the hearing.

On 9 October 2024, the Supreme Court upheld the verdict on appeal.

Mr. **Yauheni Kryzhanouski (Евгений Крыжановский)** is a political scientist and researcher. He was sentenced on 1 July 2024 under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3) of the Criminal Code to 10 years of imprisonment.

Mr. Kryzhanouski learnt about the criminal case against him from a publication of 30 April 2024 on the website of the Prosecutor General's Office.

On 5 May 2024, he inquired with the Belarusian Republican Bar Association about the identity and contact details of his State-appointed defence attorney and asked the Bar to encourage the attorney to urgently contact him.

On the same day, he filed a motion to the Minsk Regional Court, asking it to inform him in advance about the hearing, inquiring about the identity and contact details of his State-appointed defence attorney, requesting copies of procedural documents and seeking permission to participate in the trial via videoconferencing. On 18 May 2024, the Court denied his requests, noting that domestic legislation did not foresee participation of the accused under the "special proceedings" in the trial via videoconferencing and referring to the lack of legal grounds for sharing with him procedural documents. The Court disclosed the identity of the defence attorney and noted that, in accordance with article 468-27(4) of the Criminal Procedure Code, all the procedural documents had been shared with the attorney.

On 31 May 2024, Mr. Kryzhanouski requested the judge's recusal, citing, among other reasons, the absence of information about the hearing on the website of the Minsk Regional Court. The motion was disregarded by the court.

On 19 June 2024, he submitted to the Court observations on his criminal case, noting that he had no communication with the State-appointed attorney and that he was not informed about the charges against him.

After his conviction, he submitted, on 9 June 2024, a request to the Minsk Regional Court, asking for a copy of the verdict, the summary record of the trial, audio and video recordings of the hearing.

On 9 October 2024, the Supreme Court upheld the verdict.

Mr. **Alexander Shlyk (Александр Шлык)** is an election expert. He was sentenced on 1 July 2024 under articles 357(1), 361-1(3), 16(6) and 361(3), 16(6) and 130(3) of the Criminal Code to 10 years of imprisonment and a fine of 200,000 Belarusian rubles.

He was not informed about the identity of his State-appointed defence attorney. After the publication of the operative part of the verdict, he filed, on 9 July 2024, a request with the Minsk Regional Court, asking for copies of the verdict, the summary record of the trial, audio and video recordings of the hearing. The Court disregarded these requests.

On 9 October 2024, the Supreme Court upheld the verdict.

The case of Mr. Leanid Sudalenka

Mr. **Leanid Sudalenka (Леонид Судаленко)** is a human rights defender and lawyer, who has been advocating for various human rights and for the abolition of the death penalty in Belarus.

On 21 July 2023, Mr. Sudalenka was set free after having served a 3-year prison sentence under article 342 of the Criminal Code (organization and preparation of actions gravely violating the public order, or participation therein). Following his release, he left Belarus and spoke publicly about his experience of ill-treatment in detention.

Later in 2023, a new criminal case was initiated against him under the "special proceedings". The case was transmitted to Homyel Regional Court for trial on 15 April 2024. On 17 June 2024, Mr. Sudalenka was convicted to 5 years of imprisonment in a strict-regime colony and a fine of 26,000 Belarusian rubles under article 361-4(2) of the Criminal Code (recidivism in recruitment, in other involvement of a person in extremist activities, training, and other facilitation of extremist activities).

On 20 June 2024, the Court denied Mr. Sudalenka's request to provide him with a copy of the verdict, noting that it had been communicated to his defence attorney. The attorney's name was provided. The Court informed Mr. Sudalenka that, under article 309(1) of the Criminal Procedure Code, summary records of the hearing and copies of audio and video recordings could not be communicated by electronic mail.

Mr. Sudalenka undertook unsuccessful attempts to contact his State-appointed attorney directly or via the attorney's law firm, including by telephone, messengers and social networks. He filed a criminal complaint against the attorney with Homyel Regional Prosecutor's Office under article 204 of the Criminal Code (unlawful refusal by an official to provide information to a citizen). By a letter of 17 July 2024, the Homyel Regional Department of the Investigative Committee refused to admit the criminal complaint, referring to the lack of objective and sufficient data about the attorney's alleged publicly dangerous acts. By a letter of 23 July 2024, the Deputy Prosecutor of Homyel

Region refused to initiate criminal proceedings noting that, under article 168 of the Criminal Procedure Code, criminal complaints could not be submitted in electronic form. Mr. Sudalenka also complained against the attorney to the Ministry of Justice. By a letter of 28 June 2024, the Ministry of Justice responded that domestic legislation did not recognize an obligation for attorneys to share copies of verdicts with the accused.

He appealed against the verdict to the Supreme Court. On 18 August 2024, he filed motions with the Court, asking it to transmit him procedural documents in order to allow him to prepare his appeal. He also filed a motion with the Court to let him participate in the hearing via videoconferencing and asked the Court to request that the Constitutional Court verify the constitutionality of chapter 49[3] of the Criminal Procedure Code, which regulates the "special proceedings".

On 17 October 2024, the Supreme Court denied his appeal.

The "case of an attempted coup"

On 3 March 2024, "special proceedings" were initiated against five individuals suspected of participation in an "extremist formation 'Forum of democratic forces of Belarus'". The persons concerned come from various professional backgrounds and, according to information received, have never engaged in any joint activities. They were charged under articles 357(1) (conspiracy with the aim of seizing state power), 361-4(1) and (2) (assistance to extremist activities), 361-1(1) and (3) (creation of an extremist formation), 369-1 (discrediting the Republic of Belarus) and 367(2) (slander against the President) of the Criminal Code.

On 8 July 2024, Brest Regional Court (Judge [redacted]) sentenced all the defendants to 12 years of imprisonment and to fines ranging from 40,000 to 600,000 Belarusian rubles, finding them guilty of conspiracy aimed at seizing State power by unconstitutional means and of other offenses. On 30 October 2024, the verdicts were upheld by the Supreme Court.

The following individuals are among those convicted under this case.

Ms. **Volha (Olga) Karach (Ольга Карач)** is a journalist, public activist, politician and human rights defender. She has worked with prominent human rights organizations in Belarus, advocating for the rights of at-risk groups, in particular women and children. She learnt about the "special proceedings" against her from the media.

In order to obtain additional information about the case, she sent requests via the "Single window" ("Odno okno"), a public online service which allows enquiries to be submitted to State authorities. It is impossible to use the system from outside Belarus, therefore she had to use a VPN.

On 8 July 2024, she was convicted under articles 357(1) (conspiracy aimed at seizing State power by unconstitutional means), 361-1(3) (participation in an

extremist formation), 369-1 (dissemination of false information which discredits the Republic of Belarus and of information aimed at harming State and public interests) of the Criminal Code to 12 years of imprisonment and a fine of 600,000 Belarusian rubles.

Unaware of her conviction, on 10 July 2024, she submitted several complaints to Brest Regional Court, asking it to cease the proceedings against her. She complained that legal requirements for initiating "special proceedings" against her were not fulfilled because she had not been avoiding appearing before an investigative body and because the foreign State where she resided had not received any extradition requests targeting her. She argued that she had not been notified of the trial because, as per article 468-27(2) of the Criminal Procedure Code, information about the hearing was published on the Internet portal of the courts of general jurisdictions, but access to this website was only possible from the territory of the Republic of Belarus. She also asked for permission to participate in the trial via the Internet or mobile phone.

By a letter of 17 July 2024, the Court informed her that the criminal procedure legislation did not provide for participation of the accused in trials via videoconferencing and that information about the results of the trial was published on web resources of courts of general jurisdiction. She complained to the Public Prosecutor's office about violation of fair trial guarantees.

Mr. **Yauheni Vilski (Евгений Вильский)** is one of the leaders of the Belarusian Independent Trade Union (BNP) in Novopolotsk.

During investigation under the "special proceedings", the KGB broke the metal door of his flat in Novopolotsk, searched the flat, crudely welded the door shut and sealed it.

Mr. Vilski learnt about the "special proceedings" against him from a human rights NGO. During five months from the beginning of the special proceedings until the trial, he did not receive any notifications about the criminal charges against him, the conduct of the investigation and the trial. He did not have any contacts with the investigator, his State-appointed attorney or the judge.

On 8 July 2024, he was convicted under articles 357(1) (conspiracy aimed at seizing State power by unconstitutional means), 361-1(3) (participation in an extremist formation), 361-4(1) (other extremist activities), 361-4(2) (other assistance to extremist activities) of the Criminal Code to 12 years of imprisonment, a fine of 480,000 Belarusian rubles and to stripping of his military rank. Because of the fine, there is a risk of Mr. Vilski's flat and other confiscated properties being sold in an auction.

In addition to the "special proceedings", two regular criminal cases have been initiated against Mr. Vilski. Their current state is unknown.

Ms. **Veronica Tsepkalo (Вероника Цепкало)** is a human rights and political activist, Chair of the Belarusian Women's Foundation and the wife of Mr. **Valery Tsepkalo (Валерий Цепкало)**, an opposition politician and

unregistered candidate for the 2020 presidential elections.

Ms. Tsepkalo learnt about the "special proceedings' against her from the media. She was surprised to learn that she would be tried by Brest Regional Court notwithstanding the fact that she had never resided or worked in this area. During the trial, she sent four motions by registered mail to the Brest Regional Court, asking for access to the criminal case file, for permission to participate in the trial remotely and to defend herself.

On 8 July 2024, she was convicted under articles 357(1) (conspiracy aimed at seizing State power by unconstitutional means), 361-1(3) (participation in an extremist formation), 367(2) (slander against the President) and 369-1 (dissemination of false information which discredits the Republic of Belarus and of information aimed at harming State and public interests) of the Criminal Code to 12 years of imprisonment and a fine of 40,000 Belarusian rubles. She requested a copy of the verdict from the Court but did not receive it. She appealed the verdict claiming that Brest City Court had not been competent under article 271 of the Criminal Procedure Code to hear the case and claiming that she was prosecuted on political motives and that the principle of the equality of arms was not respected.

Prior to her conviction, Ms. Veronica Tsepkalo was deprived of part of her property, as well as her home in Belarus due to *in absentia* criminal proceedings against her spouse, Mr. Valery Tsepkalo. On 6 June 2022, the house of the Tsepkalo family in Minsk was searched and vandalized by the Investigative Committee. On 7 April 2023, Mr. Valery Tsepkalo was convicted under "special proceedings" by Minsk Regional Court to 17 years of imprisonment and a fine under several charges, including prejudice to national security and financing terrorism. His assets were seized under the 2023 law "On the confiscation of property". On 9 April 2024, a flat in Minsk belonging to the couple was sold in auction at a price below its market value. Ms. Veronica Tsepkalo complained to the Chair of the Investigative Committee, the Prosecutor General, the Minsk City Court and the Ministry of Justice, stating that the flat also belonged to her and to their minor children and arguing that the flat's sale violated domestic legislation and the Constitution.

We would like to express our concern that, should the aforementioned allegations be true, **the prosecution and convictions *in absentia* under "special proceedings" (law No. 199-Z) of Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo appear to have taken place in violation of their rights to an effective remedy, to liberty and security of the person, and to a fair trial, protected under articles 2(3)(b), 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR)**.

In particular, we are concerned at **allegations about the lack of due notifications of the suspects about the initiation of criminal proceedings and of**

upcoming trials; the impossibility for the suspects and the accused to consult their criminal files in order to understand the nature and cause of criminal charges against them; their deprivation of access to effective legal assistance and the impossibility for them to be defended by legal counsel of their choosing or to defend themselves *pro se*; as well as **the impossibility for them to take part in the trials and to access related procedural documents**.

We note with concern that **whereas the domestic legislation appears to place the effectiveness of the defence under the "special proceedings" in total dependence on State-appointed attorneys, Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo were unable to establish communications with their defence counsel and there seems to be no legal safeguards in place against the counsel's professional negligence or breach of their ethical duties**.

We are concerned about **the allegations that trials under the "special proceedings" may be conducted in courts which do not have any jurisdictional connection to the accused (Ms. Veronica Tsepkalo), which creates a risk of politically motivated choices of the tribunals.** We are also concerned about **the alleged lack of effective remedies for obtaining judges' recusal, especially in light of evidence that the relevant courts do not comport with fair trial requirements of an independent and impartial tribunal**.

We are deeply concerned that **all these factors appear to have disrupted the equality of arms in favour of the prosecution and have placed the defendants in a less favourable position than defendants in regular criminal proceedings**.

We are also concerned that **Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo appear to have been precluded from effectively exercising their right to have their convictions and sentences reviewed by a higher tribunal according to law, under article 14(5) of the ICCPR, insofar as they were unable to consult the verdicts handed down against them by first-tier tribunals and to examine trial transcripts**.

We are particularly preoccupied that **these alleged violations of the right to an effective remedy, to liberty and security, and to fair trial appear to be of a systematic nature, due to shortcomings of domestic legislation provisions which govern the "special proceedings"**.

Furthermore, we note with concern that **photos, personal data and charges against the persons prosecuted under "special proceedings" appear to be publicly distributed by public authorities, which raise concerns about respecting the presumption of innocence in accordance with article 14 (2) of the ICCPR.**

We are preoccupied that, **according to allegations received, the legal safeguards provided by domestic legislation for "special proceedings" are not always observed in practice. In particular, suspects and the accused are effectively prevented from consulting information about criminal proceedings against them due to blocking access to the relevant public web resources from outside Belarus; and convicted *in absentia* when they do not fulfil the legal requirements for being tried under the "special proceedings", e.g. due to absence of Belarusian citizenship (Ms. Tatsiana Chulitskaya) or absence of requests for their extradition (Ms. Volha Karach)**.

Moreover, **it appears from the allegations received that courts systematically fail to respond to enquiries, complaints and motions submitted by the accused under the "special proceedings".** In this regard, we would like to express concern **about the allegations that, in the case of Mr. Aliaksandr Lahvinets, the judicial authorities either ignored his requests, including an enquiry about the identity of his defence attorney, or responded to him in the Russian language, despite his submissions being made in the Belarusian language. We are concerned that, according to the information received, this was done in violation of national law, and that this may amount to prohibited discrimination under 26 of the ICCPR, taken in conjunction with article 14(1)**.

We are alarmed at the reports that **trials under the "special proceedings" are conducted without proper fair trial guarantees and systematically result in guilty verdicts, including convictions to lengthy prison sentences and heavy fines, entailing in some cases property seizures and expropriation of housing. We are gravely concerned that the domestic legislation appears to allow for the imposition of the death penalty *in absentia*, without adequate due process and for offenses which do not meet the "most serious crimes" threshold, which could result in arbitrary deprivation of life under article 6 of the ICCPR. We are also deeply alarmed that convictions under "special proceedings" could lead to arbitrary deprivation of citizenship in violation of article 15 of the Universal Declaration of Human Rights and may even lead to statelessness**.

We emphasize the essential role of the right to access to information, particularly in criminal proceedings, and we note with great concern that this right appears to have been severely and repeatedly breached by the authorities in these cases. We are also concerned that **expropriations of real estate properties and housing belonging to persons convicted under "special proceedings" appear to be conducted notwithstanding the existence of other co-owners and official residents, including children (the case of Mr. Valery Tsepkalo and Ms. Veronica Tsepkalo). We would like to note that this may amount to violations of the right to property under article 17 of the Universal Declaration of Human Rights and the right to an adequate standard of living, including adequate housing, under article 11 of the International Covenant on Economic, Social and Cultural Rights and article 27 of the Convention on the Rights of the Child**.

We would like to recall that the Special Rapporteur on the situation of human rights in Belarus has repeatedly expressed concerns about the lack of fair trial guarantees during *in absentia* trials under "special proceedings", lengthy prison sentences handed down under these proceedings, going up to 20 years of

imprisonment, and expropriations of properties belonging to the accused (A/HRC/53/53, para. 33-39; A/HRC/56/65, paras. 28, 51, 55-56).

We note with alarm that **Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski and Mr. Alexander Shlyk appear to have been convicted without fair trial guarantees in relation to their public statements, which raises concerns about the respect their freedom of expression under article 19 of the ICCPR**.

We note with concern that **Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo appear to have been prosecuted under extremist and/or terrorist charges**. We recall that Special Procedures have repeatedly raised concerns about the vagueness of the Belarusian counter-terrorism and anti-extremism legal framework and its incompatibility with international human rights standards (BLR 2/2021, BLR 3/2022, BLR 3/2023, BLR 4/2023, BLR 9/2023, BLR 10/2023, BLR 12/2023, BLR 5/2024, BLR 6/2024; A/78/327).). In particular we are concerned that the vague concept of "extremism" has no basis in international law and does not satisfy the principle of legality under article 15 of the ICCPR. Vague preparatory offences relating to "extremism" or extremist organizations, including incitement, further infringe legality and enable misuse against the legitimate exercise of fundamental rights and freedoms. We are further concerned that the procedure for the designation of organisations as "extremist" and "terrorist" lack of due process and effective judicial safeguards. We 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 (see annex).

We are preoccupied that the initiation of *in absentia* criminal proceedings against Mr. Leanid Sudalenka, shortly after his public declarations about ill-treatment in Belarusian places of detention, may have amounted to retaliation for his legitimate human rights work, in violation of his freedom of expression under article 19 of the ICCPR and contrary to the provisions of the UN Declaration on Human Rights Defenders. We recall that, in the recent years, Special Procedures mandate-holders have sent two communications to your Excellency's Government, on 12 March 2021 (BLR 4/2021) and on 10 March 2022 (BLR 1/2022), raising concerns about alleged criminal prosecution and conviction of Mr. Sudalenka as a possible reprisal for his human rights work. We regret that no response has been provided by your Excellency's Government to these communications. **We are concerned that this is part of a broader and ongoing pattern of intimidation, harassment and repression of Belarusian civil society and human rights defenders, including those operating in exile, attempting to silence them and halt their legitimate human rights work.**

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.

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 statistical information about prosecutions and convictions under the "special proceedings" since the establishment of this procedure in 2022, including the number of guilty verdicts and acquittals.

3. Please provide information about both factual and legal grounds for the convictions under "special proceedings" of Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo. Please, explain the reasons why the verdicts handed in these cases have not been made public. In addition, please, provide information about the ongoing regular criminal proceedings against Mr. Yauheni Vilski.

4. Please provide information about the applicable legal provisions and the measures taken to ensure that the "special proceedings" against Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo respected their right to an effective remedy, to liberty and security, and to fair trial under articles 2(3)(b), 9 and 14 of the ICCPR, including: promptly informing the suspects and the accused of the charges against them; provision of adequate time and facilities for the preparation of their defence; the defendants' right to access information about their criminal cases; the possibility for them to be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing.

5. Please share information about the legal remedies in domestic legislation concerning professional negligence and breach of ethical duties by State-appointed attorneys under the "special proceedings", including for failure to communicate with their clients, to share with them verdicts and relevant procedural documents, and failure to assert a defence as instructed by their clients.

6. Please explain the reasons why Mr. Aliaksandr Lahvinets was not informed of the identity of his defence attorney. Please, explain the

reasons why Mr. Aliaksandr Lahvinets and Ms. Veronica Tsepkalo were not allowed to waive their right to an attorney and to defend themselves. Please, explain the reasons why the relevant judicial and criminal authorities disregarded complaints of Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Ms. Hanna Liubakova, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Leanid Sudalenka about the refusal of their State-appointed attorneys to communicate with them.

7. Please provide information about the territorial competence of courts under the "special proceedings". Please, explain the reasons why Ms. Veronica Tsepkalo was tried by the Brest Regional Court.

8. Please provide information about the applicable legal provisions which allow for obtaining the judge's recusal under the "special proceedings" including both the substantive grounds and the procedural steps for obtaining such recusal. Please, explain the reasons for the disregard of the requests for the judge's recusal submitted by Ms. Valeryia Zaniamonskaya, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Ms. Tatsiana Chulitskaya and Mr. Yauheni Kryzhanouski.

9. Please detail what information has been publicly distributed about Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo in relation to the "special proceedings" against them, prior to their conviction. Please explain what measures are taken to ensure the respect of their right to be presumed innocent under article 14(2) of the ICCPR.

10. Please explain the reasons for the alleged restrictions of access from outside Belarus to public web resources which publish information about the "special proceedings".

11. Please comment on the alleged prosecution under the "special proceedings" of individuals who do not fulfill legal requirements for being prosecuted in absentia due to lack of Belarusian citizenship (Ms. Tatsiana Chulitskaya) and due to absence of extradition requests targeting them (Ms. Volha Karach).

12. Please provide information about the legal provisions governing communication of suspects and the accused under the "special proceedings" with investigative and judicial authorities. Please, explain the reasons why requests submitted to judicial authorities by Mr. Aliaksandr Lahvinets in the Belarusian language were either ignored or responded to in the Russian language.

13. Please provide information about the legal provisions governing arrest and expropriation of property and housing belonging to persons

prosecuted and convicted under the "special proceedings". Please, provide information about legal provisions in place aimed at safeguarding the rights of other co-owners of this property and of children of those convicted. Please, explain how these provisions have been applied in the case of Mr. Valery Tsepkalo and Ms. Veronica Tsepkalo. Where relevant, please, provide details about the fate of properties and housing located in Belarus belonging to Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk, Mr. Leanid Sudalenka, Ms. Volha Karach, Mr. Yauheni Vilski, Ms. Veronica Tsepkalo and Mr. Valery Tsepkalo.

14. Insofar as Ms. Valeryia Zaniamonskaya, Ms. Aliaksandra Herasimenia, Mr. Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski, Mr. Alexander Shlyk and Mr. Leanid Sudalenka appear to have been prosecuted in relation to their public statements, please, explain how this constitutes a legitimate restriction of the right to freedom of expression under article 19(3) of the ICCPR

15. Please explain the reasons why Aliaksandr Lahvinets, Ms. Hanna Liubakova, Mr. Alexander Dabravolski, Ms. Tatsiana Chulitskaya, Mr. Yauheni Kryzhanouski and Mr. Alexander Shlyk have been included by the State Security Committee (KGB) in the list of persons 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.

16. Please provide responses to the communications BLR 4/2021 of 12 March 2021 and BLR 1/2022 of 10 March 2022 regarding the first criminal proceedings against Mr. Leanid Sudalenka.

17. Please provide information on steps taken to repeal the category of "extremism" in national law, amend the definition of "terrorism" to comply with international law, and amend the procedure for the listing and delisting of individuals and entities as "terrorist" to guarantee due process and independent judicial safeguards in accordance with international law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. 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 prejudges 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 occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for 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.

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

Nils Muižnieks
Special Rapporteur on the situation of human rights in Belarus

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Belarus on 12 November 1973.

Right to an effective remedy and to fair trial

We would like to recall that as per article paragraph 2(3)(b) of ICCPR, States parties undertake to ensure that any person claiming an effective remedy against violations of rights and freedoms recognized by ICCPR "*shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy*".

We would like to recall that under paragraph 1 of article 14 of ICCPR, "[*a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (…) any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children*".

The guarantee of the equality before courts and tribunals prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds; ensures the equality of arms of the parties to the proceedings; and requires that similar cases are dealt with in similar proceedings (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, paras. 9, 13, 14*).

Absence of effective remedies to challenge *in absentia* criminal proceedings without the necessity to travel to the State concerned may result in violation of article 2(3) taken in conjunction with article 14(1) if there is a well-founded fear for the person concerned of being subjected to arbitrary criminal proceedings that violate his or her rights and guarantees, and of the severe aggravation of those violations that would arise should the person be placed in pretrial detention (*Human Rights Committee, Brewer-Carías v. Venezuela, CCPR/C/133/3003/2017, paras. 9.7-9.8*).

Under paragraph 2 of article 14 of ICCPR, "*[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law*".

Under paragraph 3 of article 14 of ICCPR, "*[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate*

with counsel of his own choosing; (...) (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; (...)".

According to the Human Rights Committee, the right to be informed of the charge "promptly" requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such. In the case of trials *in absentia*, article 14, paragraph 3(a) requires that, notwithstanding the absence of the accused, all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 31*).

Under article 14, paragraph 3(b) of ICCPR, "adequate facilities" must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 33*). The refusal to issue copies of the investigation file may constitute a disproportionate burden on a defendant (*Human Rights Committee, Brewer-Carías v. Venezuela, CCPR/C/133/3003/2017, para. 9.6*). We emphasize that paragraph 7 of resolution A/HRC/RES/42/18 affirms the need to ensure "access to independent and adequate legal representation" in the context of countering terrorism.

Proceedings in the absence of the accused are only compatible with the right to be tried in one's presence under article 14, paragraph 3(d) if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 36*).

Article 14, paragraph 3(d) provides for a defence to be conducted in person "or" with legal assistance of one's own choosing, thus providing the possibility for the accused to reject being assisted by any counsel. Whereas the interests of justice may, in the case of a specific trial, require the assignment of a lawyer against the wishes of the accused, any restriction of the wish of accused persons to defend themselves must have an objective and sufficiently serious purpose and not go beyond what is necessary to uphold the interests of justice. Therefore, domestic law should avoid any absolute bar against the right to defend oneself in criminal proceedings without the assistance of counsel (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 37*).

Counsel provided by the competent authorities on the basis of article 14, paragraph 3(d), must be effective in the representation of the accused. Unlike in the case of privately retained lawyers, blatant misbehaviour or incompetence may entail the responsibility of the State concerned for a violation of article 14, paragraph 3(d), provided that it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 38*).

Under paragraph 5 of article 14 of ICCPR, "*[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law*"

According to the Human Rights Committee, the right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgement of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal, also to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 49*).

Prohibition of discrimination

We would like to stress that under article 26 of ICCPR, "[*a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (…) language*".

Furthermore, we recall the guarantee of the equality before courts and tribunals under article 14(1) of ICCPR prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds, including discrimination based on language (*Human Rights Committee, general comment No. 32, CCPR/C/GC/32, para. 9*).

Article 2 of the ICCPR further obligates States Parties to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the ICCPR, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Right to life

We would like to stress that under article 6(1) of ICCPR, "*[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*".

According to the Human Rights Committee, *death sentences may only be applied for the "the most serious crimes" which must be "read restrictively and appertain only to crimes of extreme gravity, involving intentional killing* (*Human Rights Committee, general comment No. 36, CCPR/C/GC/36, paras 5 and 25)*. Furthermore *"[v]iolation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant*" (*Ibid, para. 41*).

Right to a nationality

We would like to recall article 15 of the Universal Declaration of Human Rights, according to which "*[e]veryone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality*".

Right to property

Under article 17 of the Universal Declaration of Human Rights, everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.

Right to an adequate standard of living

We would like to recall that under article 11(1) of the International Covenant on Economic, Social and Cultural Rights, ratified by Belarus on 12 November 1973, the States Parties "*recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*".

In its general comment No. 4, the Committee on Economic, Social and Cultural Rights observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. The Committee has further clarified in general comment No. 7 that procedural guarantees should be applied in relation to forced evictions, including genuine consultation with those affected and the provision of legal aid. Evictions should not result in individuals being rendered homeless or vulnerable to other human rights violations.

The Special Rapporteur on the right to adequate housing has further called on States and other stakeholders to recognize in law, policy and practice that all human beings have a right to remain where they live and that, if they are forced to leave, they have a right to return to their place of residence (A(HRC/55/53).

Under article 27(1) and (3) of the Convention on the Rights of the Child, ratified by Belarus on 1 October 1990, "*1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. (…) 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing*."

Freedom of expression and opinion

We recall article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee, such information and ideas include, *inter alia*, political discourse, commentary on one's own and on public affairs and discussion of human rights (*Human Rights Committee general comment No. 34, CCPR/C/GC/34, para. 11*).

Restrictions to freedom of expression can only be imposed if adhering to the strict criteria established in article 19(3) of the Covenant. Restrictions are only

permissible if necessary for: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (ordre public), or of public health or morals. Restrictions must always meet the standards of (i) *legality,* meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; (ii) *necessity and proportionality,* meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and (iii) *legitimacy,* meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals.

We recall that the right to access information is an essential component of the right to freedom of opinion and expression and, as such, it is protected under international law, including article 19 ICCPR.

Respect for human rights while countering terrorism

Although no universal treaty generally defines "terrorism", States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,[1] the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004).[2] Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[3] provides clear, "best practice" guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements. We would like to note 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 and therefore per se incompatible with the exercise of certain fundamental human rights" (A/HRC/43/46, para. 14). The principle of legal certainty under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, to target civil society on political or other unjustified grounds.[4]

We respectfully refer your Excellency's Government to the many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirming that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.[5] Counter-terrorism measures must conform to fundamental requirements of legality, necessity, proportionality and non-discrimination. The wholesale adoption of

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1 See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.
2 A/RES/49/49, annex, para. 3.
3 A/HRC/16/51, para. 28.
4 A/70/371, para. 46(b).
5 Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.

security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

We emphasise that the designation of "terrorist" individuals or organizations must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (A/HRC/16/51, para. 35). Specifically, a listed organization must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights; there must be a right to apply for de-listing and to judicial review of any resulting decision; listings must lapse automatically after 12 months unless renewed afresh; and compensation must be available for wrongful listing. Any restrictive measures imposed must also be strictly necessary and proportionate and based on an underlying definition of terrorism that is in accordance with the principle of legality and international standards on definition.

We remind your Excellency's Government that States must ensure that measures to combat terrorism and preserve national security do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.[6]

Prosecution of human rights defenders

We would 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, adopted on 9 December 1998 (the UN Declaration on Human Rights Defenders). In particular, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- Articles 1 and 2 state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms.

- Article 9(1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights.

- Article 12(2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled,

[6] See A/HRC/RES/22/6, para. 10(a).

individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, we would like to refer your Excellency's Government to recommendations in the report of the Special Rapporteur on the situation of human rights defenders focusing on the long-term detention of human rights defenders (A/76/143), in which the Special Rapporteur emphasized that States should stop subjecting human rights defenders to unfair trials, torture, or cruel, inhuman, or degrading treatment, and ensure their legal rights, including prompt access to their lawyers (paragraph 158(c)-(e)).