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Agenda item 4

Human rights situations that require the Council's attention**Situation of human rights in Belarus****Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin***Summary*

In the present report, the Special Rapporteur on the situation of human rights in Belarus describes the trends, concerns and progress regarding the situation of civil, political, economic, social and cultural rights in Belarus. The mandate holder analyses the continuing repression of political dissent, the further curtailment of freedom of opinion and expression in the country, and the growing number of arbitrary arrests and detentions on politically motivated grounds. In the report, the Special Rapporteur pays particular attention to analysis of the constitutional reform in Belarus, noting the immediate negative and potentially far-reaching consequences of some of the newly adopted provisions of the new Constitution. The Special Rapporteur concludes that the Government's policies of systematic persecution, intimidation, harassment and the use of criminal and administrative charges in an attempt to suppress civic activism, freedom of the media and participation in public affairs have led to the virtual eradication of civic space, while the constitutional reform fails to address pressing issues. The mandate holder makes recommendations for addressing the deplorable human rights situation in Belarus.



I. Introduction

A. Summary

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established in 2012 in Human Rights Council resolution 20/13. The mandate has been renewed each year, in Council resolutions 23/15, 26/25, 29/17, 32/26, 35/27, 38/14, 41/22, 44/19 and 47/19.
2. The present report, submitted to the Human Rights Council pursuant to its resolution 47/19, covers the period from 1 April 2021 to 31 March 2022.
3. The Government of Belarus continued its policy of denying the Special Rapporteur recognition and access, thereby depriving itself of an opportunity to cooperate with the Human Rights Council-appointed mandate holder on upholding its human rights obligations.
4. The present report analyses the developments and trends that followed the contested¹ presidential election of 9 August 2020. The analysis shows that the Belarusian authorities neglected multiple calls and recommendations by domestic and international actors to find human rights-based solutions to the crisis. Instead, the repressive policies and hard-handed responses pursued to deter real and perceived opposition to the Government have led to the further deterioration of the human rights situation in the country.
5. The Special Rapporteur collected credible information which shows that the authorities have taken calculated measures to persecute political dissent, including by resorting to arbitrary arrests and detentions of political opponents, and continuing harassment and other forms of pressure and intimidation on human rights defenders and regular individuals for merely exercising their fundamental human rights and freedoms. Repression, including unfair dismissals, also affected employees of State-owned enterprises and public bodies, such as education, health-care and culture institutions.
6. The legislative changes introduced in 2021 further tighten already restrictive laws regulating freedom of expression, including access to information, and peaceful assembly and association, as well as other civil and political rights. Heavier penalties for certain criminal offences have been used retroactively against protesters and individuals who expressed their dissent in 2020.² The Special Rapporteur has paid particular attention to the recent constitutional reform in Belarus, which lacked transparency and inclusiveness in the preparatory process, while some articles and provisions of the new Constitution, adopted on 27 February 2022, bear risks for the enjoyment of human rights.
7. The authorities intensified their systematic attacks on Belarusian civil society by raiding non-governmental organizations and forcing their dissolution. Many members of non-governmental organizations and individual human rights defenders and practitioners have been arbitrarily arrested and faced politically motivated charges. Some suffered reprisals for cooperating with the United Nations and other international human rights organizations or mechanisms.³ These actions significantly restricted the civic space in Belarus.
8. The authorities continued to unduly restrict freedom of expression, carrying out raids on independent media premises, seizing equipment, and arresting and imprisoning their personnel. The authorities also tightened control of Internet-based information sources, severely limiting access to independent media in Belarus.

¹ [A/HRC/49/71](#), paras. 20–21.

² International Covenant on Civil and Political Rights, art. 15 (1).

³ [A/HRC/48/28](#), paras. 40–42.

9. The independence and impartiality of the judiciary,⁴ and the administration of justice,⁵ deteriorated further. This deprived many persons facing politically motivated charges of their right to due process and a fair trial. Lawyers defending persons who had expressed dissenting views faced disciplinary measures, and several lost their licences. This deterioration of the justice system has led to impunity and lack of accountability for the most serious violations of human rights, such as the right not to be subjected to arbitrary arrest or detention, the right not to be subjected to torture or ill-treatment, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

10. The above-mentioned systematic infringements have resulted in an atmosphere of fear that penetrates the entire Belarusian society. This brought about a mass exodus of Belarusians⁶ – opposition leaders and supporters, socially and politically active people, human rights defenders and practitioners, journalists, bloggers and media workers, scientists and cultural figures, and many others – who were either directly forced or otherwise compelled by circumstances to leave their country, for fear of repression.

11. The military offensive of the Russian Federation against Ukraine and the supportive role of the Government of Belarus in these hostilities raise numerous additional human rights concerns.⁷ In conditions of virtually eradicated civic space and in the absence of non-government-controlled media in Belarus, authorities have limited the population's access to comprehensive information regarding their country's use of territory and infrastructure to enable the aggression of the Russian Federation. Moreover, many Belarusians who were compelled to go into exile and temporarily relocate to Ukraine had to flee again and seek refuge in other countries. Those who could not do so may be in grave danger if apprehended and handed over to Belarus.

12. The Special Rapporteur is alarmed that the already precarious human rights situation in Belarus has deteriorated further and reiterates her view that the situation requires continuous attention and monitoring. She calls for dialogue and coordinated efforts to enhance respect for human rights.

B. Methodology

13. The Special Rapporteur performs her duties in line with the principles of truthfulness, impartiality and independence, in compliance with the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council. Accordingly, she sought to establish the facts, based on objective, reliable information emanating from relevant and duly cross-checked sources.

14. Following the usual practice, on 27 January 2022, the Special Rapporteur sent a letter to the Government of Belarus requesting access to the country in her official capacity. This request remains unanswered. The Special Rapporteur regrets this continuing lack of engagement with her mandate and reiterates her earlier calls to the Government to review its position.

15. Having no access to Belarus, the Special Rapporteur relied on publicly available official information – including government statements and responses to allegation letters; information that was transmitted to her by civil society actors, human rights defenders, and victims and witnesses of human rights violations; reports from the diplomatic community and international and regional organizations; the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR);⁸ reports of United Nations treaty bodies; and other relevant sources.

⁴ See the Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 and 40/146.

⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9 (United Nations publication, 2003).

⁶ A/HRC/49/71, para. 74.

⁷ General Assembly resolution ES-11/1.

⁸ A/HRC/49/71, prepared in accordance with the Council's mandate contained in its resolution 46/20.

16. On 19 January 2022, the Special Rapporteur issued a call for submissions, soliciting contributions concerning the new Constitution's potential human rights impact. These inputs from first-hand sources were duly verified and cross-checked to the extent possible.

17. The Special Rapporteur pays attention to the protection of sources of information while striving to ensure transparency. The high risk of reprisals that individuals and organizations face for engaging with international human rights mechanisms represents a serious human rights concern and a distressing indication of how the authorities view international human rights mechanisms and the individuals engaging with them. Unlike in previous years, the present report thus withholds information about the civil society organizations that contributed input.

II. Engagement with the international human rights system

18. In 2021, the Special Rapporteur noted a gradual toughening of the Government's position vis-à-vis international human rights organizations and mechanisms, which included the discontinuation of the Senior Human Rights Adviser's operation, thus ending the OHCHR presence in Belarus.

19. The Special Rapporteur noted the Government's lack of participation in the interactive dialogues on reports that she presented at the Human Rights Council session on 5 July 2021 and at the General Assembly session on 25 October 2021. The Special Rapporteur regrets such a position by the Government, as the interactive dialogues are a valuable platform for promoting human rights and accountability.

20. The Special Rapporteur welcomes the standing invitation in respect of nine thematic special procedure mandates.⁹ However, the selective nature of this invitation, the lack of genuine engagement with other mandate holders on civil and political rights, and the neglect of the mandate on the situation of human rights in Belarus make engagement with the special procedures of the Human Rights Council incomplete and flawed. The Special Rapporteur calls upon Belarus to cooperate with all special procedures for the improvement of the human rights situation on the ground.¹⁰

21. The Special Rapporteur calls upon the Government to reconsider its cherry-picking approach regarding cooperation with the international human rights system and enter into a genuine dialogue with all human rights institutions and mechanisms of the United Nations. The Government of Belarus refused to support Human Rights Council resolution 49/26. The Special Rapporteur reiterates her readiness to continue assisting the OHCHR examination of the human rights situation in Belarus with a view to contributing to accountability for perpetrators and justice for victims.

III. Legal framework and related developments

A. Legislative changes

22. In response to the mass peaceful protests and other manifestations of dissent since 2020, the Belarusian authorities have launched a legislative review process to tighten the already restrictive national legislation regulating freedoms of assembly, association and expression and other civil and political rights. The new legislative amendments suppress a vast spectrum of human rights, often introducing criminal responsibility for the exercise of rights guaranteed by the Constitution of Belarus and international human rights law.

23. On 1 March 2021, the new Code of Administrative Offences came into force, toughening the administrative penalties for violating "the established procedure for holding assemblies, rallies, marches, demonstrations, pickets and other mass gatherings", in

⁹ A/HRC/WG.6/36/BLR/1, para. 22.

¹⁰ Human Rights Council resolution 5/2.

particular by increasing the fine for participants in such mass events to 100 Basic Units¹¹ and increasing the maximum term of administrative arrest from 15 to 30 days.¹² The maximum penalty for organizers of mass events has been increased to 150 Basic Units for individuals and 200 Basic Units for legal entities. Legal responsibility was introduced for involving children in protests and mass gatherings held in violation of the established procedure.¹³ Such actions are now punishable by a fine of 5 to 30 Basic Units. New administrative offences have been introduced, including broad provisions sanctioning forms of expression that may be considered insults.¹⁴

24. Amendments to the Criminal Code of Belarus were adopted and entered into force on 19 June 2021.¹⁵ The definitions of acts described by these new provisions are either broad or vague or otherwise criminalize activities that may be part of the legitimate exercise of human rights. For example, criminal liability for “discrediting the Republic of Belarus” became subject to an increased penalty of four years of imprisonment. This broad provision encompasses, among other things, “dissemination of deliberately false information about the political, economic, social, military or international situation of the Republic of Belarus”.¹⁶ Due to propaganda¹⁷ fuelled by Belarusian authorities and in the absence of an independent judicial authority, such vague legal definitions may facilitate arbitrary application of the law, with a chilling effect on freedom of opinion and of expression, media freedoms and academic freedoms.

25. The Special Rapporteur recalls that imprisonment is never an appropriate penalty for defamation or expression of criticism.¹⁸ Criminal liability for “insulting a representative of authority” was expanded to include the authority’s relatives,¹⁹ while the penalty for defamation of the President of Belarus has been increased from four to five years in prison.²⁰

26. The maximum term of imprisonment for actions labelled as being aimed at “harming the national security of the Republic of Belarus”, such as “calls for sanctions”, has also been increased to five years.²¹ An increased penalty of up to three years in prison is prescribed for “posing resistance to law enforcement officers”.²² The maximum prison sentence for “assaulting or threatening to assault a public official or other person performing a public duty” was increased to seven years.²³ The Special Rapporteur believes that these amendments will negatively affect freedom of opinion and expression in Belarus.

27. Furthermore, the legislature introduced criminal liability for repeating a procedural violation concerning the organization and holding of mass gatherings²⁴ and for the repeated Internet-based distribution of prohibited information,²⁵ earlier sanctioned as an administrative offence.

28. On 22 January 2022, additional amendments to the Criminal Code entered into force, recriminalizing individual activities in unregistered or forcibly dissolved non-governmental

¹¹ According to resolution No. 783 of the Council of Ministers, of 30 December 2020, 1 Basic Unit equates to 29 Belarusian roubles, which at the time amounted to \$11.24.

¹² Code of Administrative Offences of 6 January 2021, Law No. 91-Z, art. 24.23 (1).

¹³ *Ibid.*, art. 19.4.

¹⁴ *Ibid.*, art. 10.2.

¹⁵ These amendments were made in Law No. 112-Z on amending the Criminal Code, dated 26 May 2021.

¹⁶ Criminal Code, Law No. 275-Z of 9 July 1999, art. 369-1.

¹⁷ The term propaganda is understood in line with the definition used in the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda – see <https://www.ohchr.org/en/press-releases/2017/03/freedom-expression-monitors-issue-joint-declaration-fake-news-disinformation?LangID=E&NewsID=21287>.

¹⁸ Human Rights Committee, general comment No. 34 (2011).

¹⁹ Criminal Code, art. 369.

²⁰ *Ibid.*, art. 367.

²¹ *Ibid.*, art. 361.

²² *Ibid.*, art. 363.

²³ *Ibid.*, art. 366.

²⁴ *Ibid.*, art. 342-2.

²⁵ *Ibid.*, art. 198-1.

organizations, political parties, religious organizations or foundations.²⁶ These amendments have the potential to severely undermine the rights to freedom of assembly, freedom of association and freedom of expression of civil society organizations and individuals and have a chilling effect on civic space.²⁷

29. The Special Rapporteur is also concerned by the new version of the law on countering extremism, of 16 June 2021, which has been deemed problematic by the relevant thematic mandate holder.²⁸ The concept of extremism (extremist activity) has been significantly expanded to cover a wide range of acts that can be perceived as threatening the country's constitutional order, sovereignty, independence and territorial integrity. Within this category fall such acts as disseminating deliberately false information about the political, economic, social or military situation of Belarus, and discrediting Belarus, as well as insulting a representative of power in connection with the performance of official duties, discrediting public authorities, and obstructing the lawful activities of State bodies.²⁹

30. The law also contains broad and non-specific definitions, including terms such as "extremist activity", "extremist organization" and "extremist materials", which can be used to undermine the realization of the rights to freedom of thought, conscience, religion or belief, and to freedom of expression and freedom of association and of peaceful assembly, and to shut down the right to participate in political and public life. The Special Rapporteur received concordant evidence that the law has since been used to sanction any expression of dissenting views, including retroactively.

31. The Special Rapporteur also notes with concern that access to government websites, including www.pravo.by, the only official source that publishes legislation,³⁰ is blocked for certain users based outside of Belarus, thereby restricting access to the legal framework, including for persons in exile. She draws the Government's attention to the fact that the Internet and other information and communications technology resources are essential to participation in a democratic and information-driven society.³¹ The Government should facilitate access to information, including legislation, for all, neither privileging nor restricting information based on content or type.

B. Constitutional reform

1. Human rights-based approach to constitutional reform

32. As the fundamental law of a country that defines the relationship between State and society, and between different State institutions, a constitution is the highest legal guarantee of people's human rights and fundamental freedoms. In determining the procedures through which the sovereign power-holder is entitled to act, the Constitution plays the role of a safeguard against arbitrary rule. Any constitutional reform is thus expected to strive towards better protection of international standards for democratic governance and human rights.³²

33. The key principles of ownership, inclusivity, participation and transparency should guide constitution-making processes.³³ The Human Rights Committee has stated that the

²⁶ Ibid., art. 193-1.

²⁷ See <https://www.omct.org/en/resources/statements/belarus-new-amendment-to-the-criminal-code-leaves-no-room-for-legal-human-rights-activities>.

²⁸ See BLR 2/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26032>.

²⁹ Law No. 203-Z on countering extremism, art. 1.

³⁰ Presidential Decree No. 3 on issues regarding the publication and entry into force of legislation of Belarus, of 24 February 2012.

³¹ Guidelines for States on the effective implementation of the right to participate in public affairs, endorsed in Human Rights Council resolution 39/11.

³² See Human Rights Council resolutions 19/36 and 28/14.

³³ Guidance note of the Secretary-General, United Nations assistance to constitution-making processes, available at https://www.un.org/ruleoflaw/files/Guidance_Note_United_Nations_Assistance_to_Constitution-making_Processes_FINAL.pdf.

citizen's right to take part in the conduct of public affairs includes constitutional processes.³⁴ The drafting of a constitution should thus allow for input from different parts of society, for a free and exhaustive debate on various options and for different segments within the constituency to be enabled to participate in the debate.³⁵

34. The process leading up to the adoption or the reforming of a constitution should be transparent and under fair and impartial supervision. Participants should be able to articulate their views freely, which presupposes that standards of freedom of expression, including the right to communicate one's opinion, freedom of the media, and freedom of association and assembly, are upheld.³⁶

2. Background to the 2022 constitutional reform in Belarus

35. The letter and spirit of the Constitution adopted on 15 March 1994 by the Supreme Soviet of Belarus were significantly altered following two major revisions in 1996 and 2004 respectively.

36. On 24 November 1996, the four proposals presented by the incumbent President were adopted at a referendum, which concerned the changing of the country's national day, an increase of the President's powers at the expense of Parliament, the retention of the death penalty and a ban on land sales. As a result of the 1996 reform, the Supreme Soviet was dissolved and replaced by a bicameral Parliament from which opposition parties were virtually excluded. This de facto elimination of the separation of powers, labelled as a "constitutional coup d'état", laid the ground for the consolidation of autocratic rule in Belarus. Presidential decrees acquired the force of law, the budget came under the President's almost exclusive control, and his term in office was extended for two years, until 2001.

37. Most international observers, notably the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE), assessed the 1996 referendum process as falling short of meeting democratic standards, due to violations of electoral norms, lack of transparency and inclusiveness, and the estrangement of the Central Electoral Commission, whose Chair, Viktor Hanchar, had been illegally dismissed ahead of the vote.³⁷

38. The following referendum, of 17 October 2004, was held in similar circumstances. In amending article 81 of the Constitution (although the Constitution was not open for revision, according to paragraph 112 of the Electoral Code),³⁸ the reform lifted the President's two-term limitation, allowing the incumbent to run again and subsequently be re-elected four times (in 2006, 2010, 2015 and 2020).

39. Following the most recent presidential election, on 9 August 2020, hundreds of thousands of Belarusians peacefully took to the streets to protest against what they saw as yet another manipulated vote. The authorities responded with unjustified and disproportionate use of force, which was followed by a violent crackdown against all dissenters that continues to this day.³⁹ The incumbent sought to solve the political crisis by announcing a new constitutional reform – ignoring demands to cease repression, release all those arbitrarily detained, and engage in an inclusive dialogue with civil society and the opposition.

3. The 2022 constitutional reform: processual overview

40. While the Special Rapporteur acknowledges that Belarus is entitled to reform its Constitution, she regrets that the 2022 constitutional reform process presents a number of concerns as to its compliance with international legal standards, mostly due to lack of

³⁴ Human Rights Committee, *Marshall v. Canada*, communication No. 205/1986.

³⁵ OHCHR, *Human Rights and Constitution Making* (United Nations publication, 2018), available at https://www.ohchr.org/Documents/Publications/ConstitutionMaking_EN.pdf, p. 19.

³⁶ OHCHR, *Human Rights and Constitution Making*, p. 3.

³⁷ Statement of OSCE troika ministers, issued on 16 November 1996, available at <https://www.osce.org/node/52453>.

³⁸ European Commission for Democracy through Law (Venice Commission), "Opinion on the referendum of 17 October 2004 in Belarus", CDL-AD(2004)029, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)029-e).

³⁹ See A/HRC/49/71.

transparency and inclusiveness.⁴⁰ She also deplores the fact that the drafting process ignored the constructive proposals made by the political opposition.⁴¹

41. The legislative branch was not involved in the drafting process either, although constitutional reform is an exclusive prerogative of Parliament according to article 138 of the Constitution of Belarus.⁴² Experts assessed as problematic the fact that the reform process “did not seem to meet the criterion of transparency which the legitimacy of constitutional amendments requires”, bypassed Parliament, was not managed by an independent body and ignored the demands of the political opposition.⁴³

42. A Constitutional Commission established on 15 March 2021 made proposals for amendments,⁴⁴ but the final text published on 27 December was likely drafted by experts appointed on 21 October who worked under the authority of the Presidential Administration. Although the public was invited to comment on the draft, calls for dialogue with civil society, including independent constitutionalists and the political opposition, regarding the purpose and content of the constitutional reform, appear to have been ignored.⁴⁵

43. Announced on 20 January 2022, the referendum was held on 27 February 2022. This left limited time for voters to become familiar with the proposed changes and for political forces to campaign. As no polling stations were established in consulates abroad, the diaspora and Belarusians who had gone into forced exile due to repression could not cast their ballots. Electoral commissions did not include any representatives from the opposition.⁴⁶ The OSCE Office for Democratic Institutions and Human Rights was not invited to deploy an observation mission, and independent domestic observers were allegedly prevented from monitoring the process.

44. Voters were given the choice of either supporting or rejecting the constitutional reform in full (a yes/no option). According to official results, 65.16 per cent of voters approved it, on a turnout of 86.62 per cent. The amended Constitution entered into force on 15 March 2022.

4. Legal analysis of constitutional amendments

45. The Special Rapporteur regrets that the main effect of the amendments adopted is to further hamper the enjoyment of internationally recognized human rights and hitherto constitutionally guaranteed fundamental freedoms in Belarus. She is also concerned about the risk that the amended Constitution will secure impunity for authors of human rights violations.

46. Whereas a human rights-based approach to constitutional reform implies that the individual (citizen) should be considered as a rights holder towards whom the State has obligations (the duty to respect, protect and fulfil), the 2022 Constitution of Belarus focuses first on the duties and obligations of individuals, relegating their rights and State obligations towards them to a secondary position. This is illustrated in amended article 2, which stipulates that “the citizen is responsible to the State for the strict fulfilment of the duties assigned to him by the Constitution”.

47. The revised Constitution puts additional obligations onto Belarusians. Amended article 21, dedicated to the rights and freedoms of citizens, creates new obligations by stating

⁴⁰ See <https://www.epde.org/en/documents/details/Constitutional-referendum-findings-and-conclusions-2.html>.

⁴¹ See <https://kanstytucyja.online/teksty-konstitutsii/draft-new-constitution-from-2021-10-26>.

⁴² Venice Commission, “Report on constitutional amendment”, CDL-AD(2010)001, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)001-e), paras. 191 and 240.

⁴³ Venice Commission, “Belarus: urgent interim opinion on the constitutional reform”, issued on 21 February 2022, CDL-AD(2022)008, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)008-e), paras. 28 and 32.

⁴⁴ See <https://ksds.by/constitution/>.

⁴⁵ Venice Commission, “Belarus: urgent interim opinion on the constitutional reform”, paras. 15–17.

⁴⁶ See <https://www.epde.org/en/documents/details/No-opposition-nominees-selected-for-PEC-seats-2.html>.

that “everyone should show social responsibility, and make a feasible contribution to the development of society and the State”. Amended article 45 states that citizens are “obliged to take measures to preserve and strengthen their health”.

48. The Special Rapporteur regrets that amended article 32 creates additional duties for parents to prepare their children for “socially useful work” and to instil “culture and respect for the laws and historical and national traditions of Belarus” – since failure to do so potentially exposes parents to having their children taken away from them following a court decision, as provided by unamended article 32 which states that “children may be separated from their family against the will of their parents” if the parents “fail to fulfil their duties”.

49. Several amendments could facilitate further restrictions on the right to hold opinions and to freedom of expression in Belarus. Amended article 15, for example, proclaims that “the State ensures the preservation of the historical truth and memory of the heroic feat of the Belarusian people during the Great Patriotic War”. Defenders of academic freedoms believe that this might orient and constrain the way in which historians study the events of 1939–1945. While preservation of historical memory is an important goal, and indeed a core function of higher education, mandating that members of society adhere to a particular historical narrative or viewpoint is inconsistent with fundamental principles enshrined in article 19 of the International Covenant on Civil and Political Rights. It also violates unamended article 33 of the Constitution, which forbids censorship.

50. The amended Constitution seems to legitimize a State ideology based on the celebration of Soviet heroism,⁴⁷ as encapsulated in amended article 54 which reads: “The manifestation of patriotism, and the preservation of the historical memory of the heroic past of the Belarusian people, is the duty of every citizen of the Republic of Belarus.” There are concerns as to how this can be compatible with article 33 of the Constitution, which proclaims that “no one may be compelled to express or renounce his or her convictions”.

51. In listing the individual’s obligations before listing his or her rights, in its amended redaction, the Constitution of Belarus appears to further subordinate individual freedoms to State interests. For example, article 16, dedicated to beliefs and religions, states that these are “equal before the law”, while also providing extensive ground for State control of religious organizations’ activities, and prohibiting those which “impede the fulfilment by citizens of their State, social and family duties or harm their health and morality”. It is only in article 31 that freedom of religion is formally guaranteed.

52. Against the backdrop of the military attack of the Russian Federation on Ukraine starting on 24 February 2022, another issue of concern is the deletion of the paragraph in article 18 of the 1994 Constitution which stated that “Belarus aims to make its territory a nuclear weapon-free zone, and its State a neutral one” (replaced by a paragraph that reads that “Belarus excludes military aggression from its territory against other States”).

53. The Special Rapporteur welcomes the introduction of constitutional guarantees of the right to freedom of association. Amended article 36 contains new provisions that specify that “citizens, in order to exercise and satisfy political, social, economic, cultural and other interests, have the right to form political parties and other public associations and to participate in their activities”. She encourages the Belarusian authorities to follow suit by easing the procedures for registering associations, to ensure a pluralistic representation of all opinions, which is essential to democratic life.

54. The Special Rapporteur underlines another positive development stemming from the introduction, in amended article 47, of a paragraph on the rights of persons with disabilities, which guarantees them “equal opportunities”, and compels the State to implement “a policy of social integration and to create an accessible environment, as well as to improve the quality of life of persons with disabilities and to support their families”. She encourages the Government of Belarus to consult with relevant stakeholders to develop appropriate organic laws guaranteeing the implementation of this constitutional provision.

⁴⁷ See comments by Andrei Mochalov available at <https://kanstytucyja.online/blogi/248-referendum-prekrashchenie-grazhdanstva-i-obyazatel-nyj-patriotizm>.

55. While formally recognizing a number of civil and political rights, the amended Constitution fails to provide safeguards and guarantees for their respect in practice, notably with regard to the protection of human dignity and integrity against torture and to the non-derogable prohibition of slavery. While proclaiming that “no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment”, unamended article 25 does not specify how such acts would be monitored and sanctioned. Similarly, article 41, while formally prohibiting forced labour, does not reflect the recommendations submitted by numerous human rights bodies and special procedure mandate holders for the eradication of forced labour, notably in places of detention and State-owned enterprises.⁴⁸

56. In a similar vein, the right to life, which is formally granted to everyone by unamended article 24, is limited by the fact that the Constitution still provides for the application of the death penalty “as an exceptional punishment for particularly serious crimes”. The Special Rapporteur regrets that, in spite of earlier official announcements,⁴⁹ the constitutional reform process failed to address the pending challenge of abolishing capital punishment altogether.

57. The Special Rapporteur commends the deletion of the paragraph in article 64 that prevented people held in pretrial detention from voting and being elected. She regrets, however, that the amended Constitution only partially integrates recommendations made by various human rights mechanisms regarding the protection and promotion of the right of everyone to participate in public life.

58. She also notes with concern that several amendments in chapter 3 (which deals with the electoral system and referenda) appear to further restrict the right to be elected. Amended article 80, for example, extends from 10 to 20 the number of years of permanent residence in Belarus mandatory for a citizen to be elected as President, while prohibiting persons who “previously had citizenship of a foreign State or a residence permit or other document of a foreign State entitling them to benefits” from running. This constitutional change seems geared to preventing the political opposition currently in exile from nominating a candidate for the presidency in future elections.

59. Regarding the institutional balance of power, the Special Rapporteur commends the introduction of amendments that restrict presidential powers, such as the restoration of the two-term presidential limit originally set in the 1994 Constitution (see amended art. 81). She deplores, however, the fact that this reform will only apply after the next presidential election (see amended art. 143, para. 2). She also notes with concern that amended article 89 grants the President life immunity after the expiry of his term for acts committed in the exercise of his official duties.

60. In denying presidential decrees the force of law (see amended art. 85) and in limiting the President’s prior overwhelming power to appoint and dismiss judges (see amended art. 84), the amended Constitution also revokes contested changes to the hierarchy of norms introduced by previous constitutional reforms.

61. That said, adequate checks and balances are not guaranteed by the amended Constitution, given that the most significant institutional change introduced by the 2022 reform is the constitutionalization of, and the attribution or transfer of numerous prerogatives to, the All-Belarusian People’s Assembly, a non-permanent consultative body which was established in 1996 and is currently composed of non-elected members.

62. For lack of an organic draft law specifying how the All-Belarusian People’s Assembly will be formed, and whether it will include elected members, it remains unclear under the amended Constitution whether this new institution will represent the will of the Belarusian people. Experts also foresee that due to its size (1,200 members), operational power will lie mostly with its Presidium (see art. 89), the chairmanship of which can be cumulated until the next presidential election with the presidency itself (see amended art. 144). This provision has been labelled as an “individually tailored rule” which is “questionable in principle”⁵⁰ as

⁴⁸ E/C.12/BLR/CO/7, paras. 17–18.

⁴⁹ A recurrent theme for discussion at Parliament since 2018, the issue of the abolition of the death penalty was raised on 28 September 2021 at an expanded meeting of the Constitutional Commission by the President himself, who admitted the possibility of holding a referendum on the topic.

⁵⁰ Venice Commission, “Belarus: urgent interim opinion on the constitutional reform”, para. 46.

it could enable the incumbent President to maintain preponderant control over all State institutions if he were to simultaneously chair the Presidium of the All-Belarusian People's Assembly.

63. Regarding the functioning of the judiciary, the Special Rapporteur commends the introduction of the right for individuals to refer to the Constitutional Court (see amended art. 116), which in accordance with procedures that still need to be established by law, may now issue decisions on citizens' complaints about violations of their constitutional rights and freedoms, checking the constitutionality of the laws applied in a particular case, if all other judicial remedies have been exhausted. She looks forward to seeing this new right being implemented in practice.

IV. Human rights concerns

A. Right to life and physical integrity

1. Death penalty

64. Belarus remains the only country in Europe that retains and applies the death penalty for certain serious crimes. On 10 March 2022, the Human Rights Committee issued a statement condemning Belarus for its execution of Viktor Paulau, whose petition was still being examined by the Committee.⁵¹ The Special Rapporteur is particularly concerned that the authorities have disregarded the international interim measures requiring a stay of execution, breaching their obligation to respect the procedures established by the International Covenant on Civil and Political Rights.⁵²

65. Two other persons sentenced to capital punishment, Viktor Serhel and Viktor Skrundzik, are being held in the SIZO-1 detention centre, awaiting execution. On 15 January 2021, Viktor Skrundzik was sentenced to death upon retrial. The final sentence entered into force, and the media reported allegations of his execution. The Special Rapporteur reiterates her concern that information on the death penalty in Belarus remains classified as "confidential" by the State. As a result, neither the convicted person nor their relatives receive information about the execution date and the burial site.

66. Taking note that authorities justify the retention of the death penalty citing public support,⁵³ the Special Rapporteur stresses that, in addition to the responsibility of public officials to lead the way in changing the legislation and to contribute to an informed public opinion, civil society plays a crucial role in the campaign to abolish capital punishment and should be allowed to continue to do so.

2. Arbitrary deprivation of life

67. The Special Rapporteur is concerned about reports of arbitrary deprivation of life in custody, and of impunity and lack of accountability associated with these cases. The authorities have failed to subject these cases to prompt, impartial and effective investigations through competent authorities independent of the detaining authority. On 21 May 2021, Vitold Ashurok died in Correctional Colony No. 17 in Shklov under unclear circumstances. There was no independent investigation into his death. Mr. Ashurok was a member of the Belarusian Popular Front opposition party and a coordinator of the "For Freedom" movement. In January 2021, he had been sentenced in a closed-door trial to five years in prison for participating in demonstrations in connection with the 2020 election.

68. Other arbitrary deaths are allegedly connected with the failure to prevent coronavirus disease (COVID-19) outbreaks in detention facilities and to provide vital medical care. The Special Rapporteur has been informed of two such cases – that of Elena Amelina, who died in September 2021 having been denied adequate medical care in a detention centre in Minsk,

⁵¹ See <https://www.ohchr.org/en/press-releases/2022/03/belarus-un-human-rights-committee-condemns-execution>.

⁵² Human Rights Committee, general comment No. 36 (2018), para. 46.

⁵³ See <https://president.gov.by/ru/events/uchastie-v-rasshirennoy-zasedanii-konstitucionnoy-komissii>.

and that of Sergei Shchetinko, whose death was reportedly caused by a COVID-19 infection contracted at the temporary detention centre in Osipovichi.⁵⁴

69. On 26 May 2021, 18-year-old Dzmitry Stakhouski committed suicide. In a note, he explained that his decision was motivated by the State Investigative Committee's intimidation and arbitrary criminal prosecution for participating in peaceful protests.

70. On 28 September 2021, information technology worker Andrei Zeltser was shot by members of the State Security Committee during a raid on his apartment, which resulted in a shootout and the death of a State Security Committee officer as well. Mr. Zeltser was subsequently declared a "particularly dangerous criminal" allegedly involved in extremist activities. His wife was arrested on suspicion of complicity in murdering a State security officer. Human rights groups question the credibility and independence of the investigation.

3. Torture and other cruel, inhuman or degrading treatment or punishment

71. The Belarusian authorities failed to conduct a proper investigation into some 5,000 complaints, including more than 100 from minors, relating to torture and other acts of ill-treatment committed mainly by law enforcement against participants in peaceful protests and other persons detained for expressing their dissent.⁵⁵ The mass scale of the violations reveals a lack of political will to combat torture and a blatant lack of respect for the international human rights obligations binding on Belarus.⁵⁶

72. According to more than 1,000 testimonies documented by the Viasna Human Rights Centre, torture and ill-treatment are perpetrated with systemic impunity and the corresponding absence of a system of accountability. This appears to be a deliberate government policy of deterring or silencing dissent and the exercise of fundamental civic and political freedoms.

73. From interviews conducted in 2021, the Viasna Human Rights Centre has documented 102 cases of torture and ill-treatment committed that year. The information collected and an analysis of it reveal that the authorities dismissed most complaints without initiating criminal investigations. Moreover, the authorities failed to collect and preserve evidence and refused to collect data on alleged perpetrators, including police and security officers. In addition, victims reported a lack of access or barriers preventing them from obtaining copies of their case files.

74. The conditions in places of deprivation of liberty, pretrial detention centres and prisons are deeply concerning. Prisoners convicted on politically motivated charges and persons arrested and detained for exercising their civil and political rights report widespread use of force and continued ill-treatment, which also includes overcrowding and unsanitary conditions.

75. In March, Vadzim Dzmitranok claimed before the Central District Court of Minsk that police officers had tortured him. He was taken to the hospital at his lawyer's request. A video released by the police shows traces of beatings on his face and signs of deteriorated general condition. The Special Rapporteur has also received allegations of torture carried out by law enforcement officers from seven persons, including one woman, whose names cannot be disclosed for protection reasons.

76. The Special Rapporteur notes that the systemic impunity for crimes of torture and other cruel, inhuman or degrading treatment or punishment in Belarus compels human rights groups to seek justice abroad. For example, the World Organization Against Torture and the European Centre for Constitutional and Human Rights filed a complaint in Germany against

⁵⁴ See <https://www.dw.com/ru/v-belarusi-administrativnyj-arest-mozhet-obernutsja-smertju-ot-kovida/a-59644306>.

⁵⁵ See A/HRC/49/71.

⁵⁶ In August 2021, the governmental Belarusian Investigative Committee completed its preliminary inquiry into the allegations of torture and other ill-treatment of peaceful protesters by law enforcement officers in August 2020 and stated that it found no grounds for launching criminal investigations into the 4,644 claims filed by or on behalf of the alleged victims.

six members of the Belarusian security service alleging that they had committed crimes against humanity.⁵⁷

77. In her report to the Human Rights Council on 17 March 2022, the United Nations High Commissioner for Human Rights noted that torture and ill-treatment were used systematically as a tool to punish and intimidate detainees. She further noted a widespread and systematic practice of torture and ill-treatment that was largely punitive in nature against individuals for their real or perceived opposition to the Government or the election results.⁵⁸ The Special Rapporteur echoes and expresses deep concern with these findings and reiterates her readiness to assist the High Commissioner in her efforts to contribute to accountability for perpetrators and justice for victims and, where possible, to identify those responsible.⁵⁹

4. Arbitrary arrest and detention

78. The Special Rapporteur remains dismayed at the growing numbers of arbitrary detentions of persons for merely exercising their right to freedom of expression, association or assembly. From 2020 until March 2022, more than 37,000 people were arrested and detained. The vast majority of those arrested were released after being fined or sentenced to up to 15 days of administrative detention. Reports confirm that by 31 March 2022, 1,085 persons remained arbitrarily detained on politically motivated grounds.⁶⁰

79. Considering the appalling conditions of detention and the lack of adequate medical care, the Special Rapporteur has called for the immediate release of the human rights defender Marfa Rabkova and some 60 other persons in arbitrary detention to avert serious risk to their health.⁶¹

80. Most of the above-mentioned arbitrary arrests took place either during the violent dispersal of peaceful protests, mainly in the second half of 2020, or during the subsequent mass raids of the offices of civil society organizations, independent media outlets and political opposition parties, which intensified during the reporting period. For example, during one such mass raid carried out in six cities in Belarus in July 2021, the Belarusian authorities detained more than 20 people, among whom were independent journalists, human rights defenders, lawyers, and political and social activists.⁶²

81. The Special Rapporteur is also concerned by the cases of arrests of Belarusian citizens abroad and their extradition to Belarus at the request of the Belarusian authorities. Such cases, reported in the Russian Federation, violate the principle of non-refoulement.

5. Administration of justice and right to a fair trial

82. While the country's judicial system has never been fully independent, in 2021 the authorities consolidated their control of the judiciary and the court system.⁶³ During the reporting period, the situation in regard to the administration of justice worsened, as the authorities systematically violated the right to a fair trial and used the judiciary and the courts as repressive instruments to silence dissent.

83. The sentencing of Belarusian political activist Maryia Kalesnikava and of lawyer and human rights defender Maksim Znak on 6 September 2021 to long prison sentences, of 11 and 10 years respectively, is emblematic of the abuse of the justice system.⁶⁴ They were sentenced to imprisonment under article 357 (1), article 361 (3) and article 361-1 (1) of the

⁵⁷ See <https://www.omct.org/en/resources/news-releases/germany-complaint-filed-against-6-members-of-the-belarus-security-apparatus>.

⁵⁸ A/HRC/49/71.

⁵⁹ Human Rights Council resolutions 46/20, para. 13 (a); and 49/26, paras. 13–14.

⁶⁰ See <https://prisoners.spring96.org/en>.

⁶¹ See BLR 8/2021, available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26612>.

⁶² See <https://www.omct.org/en/resources/urgent-interventions/belarus-coordinated-searches-and-detentions-of-journalists-and-human-rights-defenders>.

⁶³ A/75/173, paras. 3–4.

⁶⁴ See BLR 9/2020, available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25674>.

Criminal Code.⁶⁵ The Special Rapporteur recalls that Ms. Kalesnikova's legal adviser was disbarred, depriving her of the right to access counsel of her choice, and deterring other lawyers from taking up cases raising concerns relating to human rights violations.⁶⁶ Similarly, all the lawyers of imprisoned Belarusian opposition politician Viktor Babaryka were disbarred, revealing a pattern of intimidation of lawyers representing opposition figures.

84. The Special Rapporteur is deeply concerned by the significantly increased number of allegations of intimidation, administrative and criminal charges, disciplinary measures, revoking of licences and disbarment of defence lawyers by the Ministry of Justice Qualification Commission, a body that lacks independence and in which only two out of the 13 members are lawyers.⁶⁷

85. No fewer than 50 lawyers have been prevented from practising their profession through disbarment and the revoking of licences, and this trend continues.⁶⁸ Since February 2022, lawyers who have supported the petition against the war in Ukraine⁶⁹ have been targeted with disciplinary procedures that may result in disbarment.⁷⁰ The legislative amendments to the law on the bar and legal advocacy, which came into force in November 2021, undermined the independence of bar associations by expanding the control of the Ministry of Justice over them.⁷¹ Since then, over 200 lawyers have reportedly left the bar.

86. The Special Rapporteur stresses that the intimidation and punishment of independent lawyers is having a devastating effect on the administration of justice and the overall rule of law in Belarus. She urges the Belarusian authorities to put an end to the pressure and intimidation against lawyers and to fully respect the rights of victims of human rights violations to a fair trial and access to justice.

B. Rights to freedom of expression, association and peaceful assembly

1. Freedom of peaceful assembly

87. The Special Rapporteur is deeply concerned by the continued violations of the right to freedom of peaceful assembly, including the hundreds of cases of criminal prosecution of participants in unauthorized events. Among the victims are those who were dismissed from their jobs or expelled from educational institutions at the request of State security services, which have been methodically tracking and cracking down on all participants in online and offline peaceful protests.

88. The Special Rapporteur deplores the flaws of the legislation regulating the right to freedom of assembly in Belarus, which has been further tightened without any consultation with civil society and in violation of international human rights law. For example, on 26 June 2021, the amendments to the law on mass gatherings came into force, banning all protests without official permission. The amendments also introduced a ban on live coverage in the media, including Internet-based or other information networks, of mass events held in violation of the established procedures. Later that month, the authorities introduced criminal liability for joining at least two unauthorized protests over a year, and toughened the

⁶⁵ A/HRC/47/49, para. 51.

⁶⁶ See BLR 9/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25674>.

⁶⁷ See BLR 5/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26362>, and BLR 11/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26892>.

⁶⁸ See <https://www.icj.org/belarus-icj-deplores-the-continuing-reprisals-against-independent-lawyers/>.

⁶⁹ See https://docs.google.com/forms/d/e/1FAIpQLSeS3qeY6ArudbpFkP-O9tdU_i7TKCrFJqXyATnFWD584Veehg/viewform?fbzx=-1803078672296712396.

⁷⁰ See [EN_HRL_20220324_Belarus_Concerns-regarding-the-use-of-disciplinary-proceedings-against-lawyers.pdf \(ccbe.eu\)](#).

⁷¹ See <https://www.ibanet.org/Belarus-Attacks-on-the-legal-profession-condemned-in-new-report-by-IBAHRI-and-legal-groups>.

sanctions for calls for participation in unauthorized protests and significantly expanded the definition of extremist crimes to inhibit the effective exercise of freedom of assembly.⁷²

89. According to the amended law on combating extremism, any spontaneous or unauthorized mass event can be arbitrarily classified as “extremism”. Furthermore, the amended Code of Administrative Offences has tripled the maximum fine for violating the procedure for organizing and holding mass gatherings.

90. During the reporting period, the authorities did not authorize a single mass gathering of the opposition and supporters of change in Belarus. Spontaneous anti-war gatherings held in Belarus have been dispersed and hundreds of participants arrested. On 27 February 2022, the authorities carried out mass arrests and detention of participants in peaceful protests in connection with the constitutional referendum. The security forces reportedly detained more than 500 people in Minsk, Hrodna, Lida, Navapolatsk, Baranavichy, Viciebsk, Babruysk and other cities.⁷³

2. Freedom of association

91. The period under review has been particularly devastating for Belarusian civil society. Even before the human rights crisis of 2020, the Belarusian civic space was overregulated by restrictive legislation and was steadily shrinking. Many prominent civil society organizations – such as the Viasna Human Rights Centre – lost their registration decades ago,⁷⁴ whereas others have been denied registration from the outset. Even registered organizations were frequently subjected to pressure, intimidation and reprisals for their legitimate human rights work.

92. The situation dramatically deteriorated in 2021. The most frequently used criminal charges against human rights defenders and civic activists are “organization and preparation of actions violating public order or active participation in such actions”⁷⁵ and “tax evasion”.⁷⁶ The authorities further tightened the legislation by introducing amendments that broadened the definitions of crimes, extended the scope of criminal liability and toughened the corresponding punishment. Article 193-1 was reintroduced into the Criminal Code to prohibit and punish the organization of and participation in any activity organized by an unregistered association, making these punishable by up to two years in prison. The European Commission for Democracy through Law (Venice Commission) had earlier declared such a provision to be incompatible with international human rights standards.⁷⁷

93. The Special Rapporteur is concerned by the authorities’ policy of reprisals and judicial harassment against civil society organizations and individual human rights defenders.⁷⁸ The 2021 annual report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights⁷⁹ details two cases of reprisals, against the Office for the Rights of Persons with Disabilities and the Viasna Human Rights Centre.

94. During the reporting period, security officers conducted raids and searches at the offices of civil society organizations seen as defiant of the Government’s policies. The authorities were particularly targeting human rights organizations, such as the Viasna Human Rights Centre, whose offices in various cities of Belarus were repeatedly searched and whose staff members were detained. Uladzimir Labkovich, a Viasna lawyer, and Valiantsin Stefanovich, a Viasna board member, were detained following searches at their homes. Furthermore, Ales Bialiatski, the head and founder of Viasna, was arrested on 14 July 2021. Seven members of Viasna continue to be detained arbitrarily, including five who are in

⁷² See <https://www.hrw.org/world-report/2022/country-chapters/belarus>.

⁷³ See <https://www.ukr.net/news/details/world/90059621.html>.

⁷⁴ See *Belyatsky et al v. Belarus* (CCPR/C/90/D/1296/2004).

⁷⁵ Criminal Code, art. 342, paras. 1–2.

⁷⁶ *Ibid.*, art. 243, para. 2.

⁷⁷ See [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e).

⁷⁸ See BLR 4/2021, sent on 12 March 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26163>.

⁷⁹ See A/HRC/48/28.

pretrial detention.⁸⁰ Searches were carried out at the Belarusian Helsinki Committee, the *Imena* journal, Lawtrend, Human Constanta and several other civil society organizations working on human rights in Belarus.⁸¹ According to the latest numbers available, 32 human rights defenders have been arrested or charged with crimes and are currently detained, and seven have already received prison sentences.⁸²

95. In addition, the Belarusian authorities launched a campaign of mass dissolution of civil society organizations, among them some long-standing partners of the United Nations system, including the above-mentioned Office of the Rights of Persons with Disabilities, Lawtrend, Human Constanta, Youth Labour Rights, the Centre for Environmental Solutions and the Belarusian Centre for European Studies.⁸³ In October 2021, the Belarusian Helsinki Committee, Legal Initiative and Zvyano were forcibly dissolved.

96. By the end of 2021, at least 275 civil society organizations had been forcibly dissolved or were in the process of being dissolved.⁸⁴ Reportedly, by 15 March 2022, the number had increased to 382.⁸⁵ The Special Rapporteur notes that the virtual annihilation of Belarusian civil society and the explicit acknowledgement by the Belarusian authorities of the premeditated nature of this crackdown⁸⁶ is in direct breach of international human rights law.

3. Freedom of opinion and expression

97. During the reporting period, the deterioration of freedom of expression in Belarus reached a critical level, with massive repressions against non-government-controlled media, and an unprecedented wave of persecution of journalists, bloggers and media workers.

98. In 2021, police and State Security Committee officers carried out 146 raids during which media offices and the private homes of employees were searched and documents and equipment were seized. On 18 May 2021, the Belarusian authorities closed Tut.by, one of the largest media outlets in Belarus, and interrogated and detained its staff members.⁸⁷

99. On 8 July 2021, the editorial offices of *Nasha Niva*, *Brestskaya Gazeta*, *Intex-Press* and other independent media were raided. On 16 July 2021, the authorities conducted further arrests of journalists, following searches at a number of media outlets, such as Radio Liberty's Belarus service and Belsat.⁸⁸ On 15 March 2022, the editor-in-chief of *Nasha Niva*, Yahor Martsinovich, and the head of its marketing department, Andrei Skurko, were sentenced to two and a half years in prison for the outlet's independent reporting.⁸⁹

100. The amended law on combating extremism was applied, sometimes retroactively, to label the publications of independent media as "extremist materials" and block access to their online resources. Several leading media outlets in Belarus, including BelaPAN, Belsat and Radio Liberty, have been called "extremist groups", which entails criminal liability of up to 10 years in prison.⁹⁰ Belarusians who subscribe to these online resources face up to six years in prison.

⁸⁰ See <https://www.omct.org/en/resources/statements/belarus-release-marfa-rabkova-free-all-detained-viasna-members>.

⁸¹ See BLR 8/2021, sent on 7 September 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26612>.

⁸² See <https://belarus.fidh.org/Defend>.

⁸³ See <https://spring96.org/be/news/104416>.

⁸⁴ See <https://tinyurl.com/yc7a9nbw>.

⁸⁵ See <https://www.lawtrend.org/freedom-of-association/timeline-of-freedom-of-association-violations-and-civil-society-organisations-persecution-belarus-august-2020-february-2022>.

⁸⁶ See <https://www.bbc.com/news/world-europe-59343815>.

⁸⁷ See BLR 6/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26465>.

⁸⁸ See BLR 8/2021, sent on 7 September 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26612>.

⁸⁹ See <https://cpj.org/2022/03/belarus-court-sentences-journalist-yahor-martsinovich-to-2-5-years-in-prison/>.

⁹⁰ Criminal Code, art. 361-1.

101. The Belarusian PEN Centre was dissolved on 22 July 2021 by a decision of the Supreme Court of Belarus, together with other organizations,⁹¹ including the Belarusian Association of Journalists, Ecohome and the Belarus Press Club. Reportedly, no reason was provided for the dissolution proceedings.

102. The year 2021 has been marked by criminal prosecutions on an unprecedented scale targeted at journalists. More than 60 media representatives faced criminal prosecution, and by the cut-off date for the present report, 33 remained in pretrial detention or were serving long jail sentences on politically motivated criminal charges.⁹² Among them is Hennadz Mazheika. This journalist, detained on 1 October 2021 for an article that he had written, faces up to 12 years in prison.⁹³ In an environment where lawyers are forced to sign non-disclosure agreements or face repressive measures for speaking out, the Special Rapporteur had no access to information about his detention conditions.⁹⁴ With trials in Belarus increasingly being closed to the public, the Special Rapporteur is concerned that Mr. Mazheika's rights to a fair trial and domestic remedies might be violated.

103. Authorities continued to restrict access to printed media. In 2021, seven newspapers and one magazine ceased to be published in print. Civic activists who attempted to compensate for the lack of independent print media by self-publishing reprints of materials from independent news sites faced administrative and criminal liability.

104. The Government continued to tighten the already restricted and overregulated virtual space, declaring several Telegram channels and chats as "extremist" and blocking access to more than 100 information sites. In 2021, Belarus appeared among the countries with the worst deterioration in Internet freedom.⁹⁵

105. As a result of the harsh policy of repression, editorial offices were forced to shut down or otherwise relocate to continue their activities from abroad, and many journalists and media workers were forced to leave the country for security reasons. The Special Rapporteur commends the courage and resilience of independent media workers who continue to try to ensure people's right to information in spite of adverse conditions.

4. Right to participate in public life

106. During the reporting period, the Belarusian authorities continued to systematically deny citizens' rights to participate in public life. In December 2021, Siarhiej Tsikhanouski, who intended to run in the 9 August 2020 presidential election, was sentenced to 18 years in prison.⁹⁶ Other participants in the case – including blogger Ihar Losik, and Mikalai Statkevich – received prison sentences of 14 to 16 years.⁹⁷

107. The Special Rapporteur demands their immediate release, pursuant to the obligations of Belarus under article 25 of the International Covenant on Civil and Political Rights which stipulates the right of every citizen to take part in the conduct of public affairs.

C. Economic, social and cultural rights

108. During the consideration by the Committee on Economic, Social and Cultural Rights of the seventh periodic report of Belarus, the Government refused to respond to some of the Committee's questions and discredited the work of non-governmental organizations promoting economic, social and cultural rights.⁹⁸ The Committee enquired about the arbitrary revocation of lawyers' licences to practise law,⁹⁹ failures to provide medical care in detention, and unfair dismissals. The Committee regretted the lack of an independent national human

⁹¹ See <https://belsat.eu/en/news/10-08-2021-authorities-close-down-belarusian-pen-centre>.

⁹² See <https://www.ecpmf.eu/33-journalists-imprisoned-in-belarus/>.

⁹³ See <https://meduza.io/en/feature/2021/10/12/it-s-just-madness>.

⁹⁴ See <https://belarus.fidh.org/Henadz-Mazheika>.

⁹⁵ See <https://freedomhouse.org/country/belarus/freedom-net/2021>.

⁹⁶ See <https://www.rferl.org/a/belarus-losik-verdict-sentence/31607492.html>.

⁹⁷ Ibid.

⁹⁸ E/C.12/2022/SR.3, paras. 38 and 43; and E/C.12/2022/SR.7, para. 3.

⁹⁹ E/C.12/2022/SR.3, para. 57.

rights institution with a comprehensive mandate,¹⁰⁰ the establishment of which has been repeatedly recommended by United Nations human rights mechanisms and the Special Rapporteur.

109. The amendments to the Labour Code of Belarus, which came into force on 30 June 2021, establish new grounds for dismissal of employees at the employer's initiative. Such grounds include participation in an "illegal strike", refusal to perform work duties without a good reason, and absence from work in connection with an administrative arrest.¹⁰¹ The Special Rapporteur considers that these amendments to the Labour Code are in breach of the rights to freedom of association, assembly and expression. This is supported by the detailed observations of the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, published at the 110th session of the International Labour Conference.¹⁰²

110. The worsening corruption in Belarus negatively affects multiple spheres of life,¹⁰³ hindering enjoyment of human rights. The country's decline in the Corruption Perception Index was attributed to the "appalling clampdown on free speech and peaceful assembly" in the country.¹⁰⁴

111. In 2021, Belarus fell to 135th place in the Index of Economic Freedom due to a substantial decline in the rule of law, labour freedom and business freedom.¹⁰⁵ The Special Rapporteur notes that institutional corruption, coupled with extremely limited civic space, systemic restrictions on freedoms of assembly and expression, and heavy-handed State control over trade unions and other professional associations, may have a devastating effect on people's enjoyment of economic and social rights.

1. Minority rights

112. The Special Rapporteur remains concerned regarding the treatment of community organizations for the Polish minority, presumably in retaliation for the stance of Poland as regards the situation of human rights in Belarus. In 2021, members of the democratically elected authorities of the Union of Poles in Belarus were either imprisoned or forced to leave the country. The authorities took steps to transform one of the two schools with Polish as the language of instruction, in Hrodna, into a Belarusian language school.

113. The Special Rapporteur reiterates her concern regarding the arbitrary deprivation of liberty of the Head of the Union of Poles in Belarus, Andželika Borys, and the independent journalist of Polish background, Andrzej Poczobut, on charges of "dissemination of hatred". After more than one year in detention, on 25 March 2022, Ms. Borys was placed under house arrest. The Special Rapporteur notes this positive step, given Ms. Borys's serious health condition, and appeals to the Government to take all measures necessary to guarantee her right not to be arbitrarily deprived of liberty.

2. Children's rights

114. The Special Rapporteur remains concerned about the absence of a human rights-based juvenile justice system and about the deplorable conditions of detention of children in correctional institutions in Belarus. While cracking down on political dissent, the Belarusian authorities have also targeted children, hundreds of whom have allegedly been arbitrarily detained, tortured, and had their due process rights violated, often on politically motivated charges.¹⁰⁶

¹⁰⁰ E/C.12/BLR/CO/7, paras. 7–8.

¹⁰¹ See <https://www.solidaritycenter.org/wp-content/uploads/2021/04/Belarus.Letter-from-BKDP-to-ILO-on-changes-to-law-on-public-protests.4.12.21.pdf>.

¹⁰² See http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4122634.

¹⁰³ See <https://news.zerkalo.io/economics/10155.html?tg>.

¹⁰⁴ See <https://www.transparency.org/en/news/cpi-2021-eastern-europe-central-asia-democratic-hopes-growing-authoritarianism>.

¹⁰⁵ See <https://www.heritage.org/index/ranking>.

¹⁰⁶ See <https://www.amnesty.org/en/latest/press-release/2021/02/belarus-to-clamp-down-on-dissent-the-authorities-are-targeting-children/>.

115. Whereas detention should be a measure of last resort for children, dozens of teenagers have reportedly been held in pretrial detention for several months. On 1 June 2021, 11 member States of the European Union called for the immediate release of seven minors imprisoned on politically motivated charges, whose sentences spanned from one month to five years. One child had received a five-year sentence despite a serious illness.¹⁰⁷

116. In another case, a 16-year-old was denied vital medication while in pretrial detention, and claimed to have been tortured while in custody.¹⁰⁸ He was interrogated without a lawyer or guardian present¹⁰⁹ and was placed in solitary confinement, in breach of his right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.¹¹⁰ The authorities refused to open an investigation into the case.¹¹¹ Amnesty International has recorded other cases in which authorities have refused to investigate police ill-treatment of children.¹¹²

117. Also of concern is the practice of public arrest of children and forced public repentance videos. The Special Rapporteur was informed about three cases in the Homyel region in the past five months where authorities had purposefully gathered teenagers to witness the arrest of their peers, in breach of children's rights in juvenile justice and the right to privacy.¹¹³

118. As regards penitential videos, these are published on official channels of law enforcement agencies and are distributed by State-controlled media. The Special Rapporteur calls for an immediate end to this harmful practice, which may constitute a violation of the right to freedom from degrading treatment, guaranteed by article 7 of the International Covenant on Civil and Political Rights.

119. The Government's crackdown on civil society organizations prevents them from providing services and support to children in vulnerable situations. In July 2021, police raided the office and homes of employees of Imena, a non-governmental organization that provides housing for children and victims of domestic violence. Imena's bank accounts were frozen, forcing them to halt their operations.¹¹⁴

120. The Special Rapporteur further notes that children in Belarus experience various forms of discrimination, often based on gender, ethnicity, and health status. Gender-based discrimination remains common,¹¹⁵ including entrenched gender stereotypes in the Education Code¹¹⁶ that affect girls in particular.¹¹⁷

121. Roma children are more likely than children of other ethnic groups to live in poverty and experience discrimination in school. In some instances, Roma children have been victims of ethnic profiling and arbitrary detention, often without the authorities notifying their parents.¹¹⁸

¹⁰⁷ See <https://www.euractiv.com/wp-content/uploads/sites/2/2021/06/Belarus-political-prisoners-minors-11-MSs-ministers-1.pdf>.

¹⁰⁸ See <https://prisoners.spring96.org/en/person/mikita-zalatarou>.

¹⁰⁹ See <https://www.amnesty.org/en/petition/belarus-free-mikita/> and <https://belsat.eu/en/news/04-10-2021-son-is-in-disciplinary-cell-mother-of-minor-political-prisoner-mikita-zalatarou-barred-from-visiting-him/>.

¹¹⁰ See <https://www.amnesty.org/en/latest/news/2021/04/belarus-release-minor-pending-appeal-of-fiveyear-prison-sentence-2/>.

¹¹¹ See <https://prisoners.spring96.org/en/person/mikita-zalatarou>.

¹¹² See https://www.amnesty.org/en/wp-content/uploads/2021/01/belarus-crackdown-on-children_web.pdf, pp. 3 and 6.

¹¹³ Committee on the Rights of the Child, general comment No. 24 (2019), paras. 66–71.

¹¹⁴ See <https://www.theguardian.com/world/2021/jul/23/belarus-ngos-condemn-government-crackdown-after-black-week-of-raids>.

¹¹⁵ See <https://www.humanium.org/en/belarus/>.

¹¹⁶ See <https://cis-legislation.com/document.fwx?rgn=32756>, art. 18 (5.7).

¹¹⁷ See <https://borgenproject.org/girls-education-in-belarus-equal-education-is-not-equal-opportunity/>

¹¹⁸ Information from the Belarusian Helsinki Committee, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fNGO%2fBLR%2f41965&Lang=en, para. 2.4.

122. Children with HIV face discrimination and stigmatization in various areas of life, including a ban on participating in most sports activities and denial of treatment in sanatoriums or children's camps. Children's exposure to HIV remains on their permanent public record, causing lifelong stigmatization.¹¹⁹

V. Conclusions and recommendations

123. The Special Rapporteur concludes that in the period under consideration, the overall situation of human rights in Belarus continued to deteriorate, due to further tightening of already overregulating legislation on human rights, dismantling the country's civic space, and increasing the number of people sentenced on politically motivated charges. This atmosphere of impunity and fear led to a mass exodus of the political opposition, civic activists, intellectuals, and many ordinary people.

124. The Special Rapporteur takes note of the findings of the OHCHR examination of human rights in Belarus reflected in the report presented on 17 March 2022 to the Human Rights Council at its forty-ninth session by the United Nations High Commissioner for Human Rights,¹²⁰ in fulfilment of Council resolution 46/20, and concurs with the recommendations of that report. She stands ready to cooperate with OHCHR in the fulfilment of its mandate provided in Human Rights Council resolution 49/26.

125. The Special Rapporteur encourages the international community to continue supporting the work of the United Nations human rights mechanisms, and engage in public and private advocacy with the Belarusian authorities to promote human rights-based solutions to the most pressing issues identified in the present report. Acknowledging the critical role of human rights defenders and civil society organizations, especially in an environment hostile to human rights, the Special Rapporteur calls upon the international community to support their vital work in consultation with and based on the needs identified by civil society itself. She encourages the engagement of the international community with all civil society organizations, including those stripped of legal recognition in Belarus and those in forced exile.

126. She further recommends to the Government of Belarus to:

(a) Put an end to the policy of systematic repression against civil society organizations and human rights defenders and implement fully the Declaration on Human Rights Defenders and the provisions of General Assembly resolution 68/181 on protecting women human rights defenders;

(b) Ensure in law and in practice the rights to freedom of opinion and expression, peaceful assembly and association; and ensure that any limitation on these rights is in accordance with international law;

(c) Revoke the decisions on the forced dissolution of independent media and civil society organizations, including those working on gender equality and in the area of economic, social and cultural rights, and bring the legislation regulating the registration of civil society organizations and media into line with international human rights law;

(d) Release all prisoners sentenced on politically motivated grounds, starting immediately with the release of persons whose health and life are endangered, and provide information about the conditions of detention and unrestricted access for independent monitors to all places of detention;

¹¹⁹ Information from the Belarusian Helsinki Committee, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fNGO%2fBLR%2f41965&Lang=en.

¹²⁰ A/HRC/49/71.

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- (e) **Ensure that international fair trial standards are met, notably by ensuring that all defendants are given access to legal counsel of their choosing, and are presumed innocent until proven otherwise by an independent court decision;**
- (f) **Put an immediate end to acts of pressure, intimidation and persecution and other forms of reprisal against lawyers, and take effective measures to protect them from human rights violations, in accordance with international standards, including the Basic Principles on the Role of Lawyers;**
- (g) **Ensure a prompt, transparent and effective investigation by an independent and impartial body into all cases of death in custody and all reports of torture and other ill-treatment; and prosecute and hold accountable public officials, including law enforcement officials, found responsible for issuing or carrying out such illegal orders;**
- (h) **Take effective measures to fight the institutional corruption in the Government and to ensure self-rule for trade unions and other professional associations;**
- (i) **Take comprehensive measures to reverse the trend of mass exile of Belarusians from their homeland, and end the atmosphere of repression and fear;**
- (j) **Review the articles and clauses in the Constitution that may have adverse effects on the enjoyment of human rights and fundamental freedoms, thus ensuring that changes in the fundamental law of Belarus do not lead to regression from the perspective of human rights, but instead guarantee the rights of citizens not to be submitted to State arbitrariness;**
- (k) **Work towards abolishing the death penalty in law and introduce an immediate moratorium on its use;**
- (l) **Readmit in public employment and education all staff and students arbitrarily dismissed for political reasons;**
- (m) **Establish full and non-selective engagement with all United Nations human rights mechanisms, including constructive communication with the mandate of the Special Rapporteur and grant the mandate holder access to Belarus.**
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