

## General Allegation

134<sup>th</sup> session (16-25 September 2024)

### Belarus

The Working Group on Enforced or Involuntary Disappearances (hereafter, ‘the Working Group’) received information from sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) by the Republic of Belarus.

1. This general allegation focuses on the obstacles encountered in the application of the Declaration, in particular with respect to legislative and law enforcement practices, leading to a practice of enforced disappearances in Belarusian detention facilities. We would also like to refer several join letters sent to your Excellency’s Government over the previous years, in which this practice has been already addressed, as well as the responses received thereto, notably [BLR 5/2024](#)<sup>1</sup>, [BLR 4/2024](#)<sup>2</sup>, [BLR 13/2023](#), [BLR 4/2023](#), [BLR 7/2020](#)<sup>3</sup>, [BLR 6/2020](#)<sup>4</sup>, [BLR 3/2020](#)<sup>5</sup> and [BLR 1/2020](#).<sup>6</sup>
2. This general allegation echoes the findings published in March 2024 in the report of the UN High Commissioner for Human Rights on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath.<sup>7</sup> The Working Group was informed about two practices, which the report mentions as practices that may amount to enforced disappearances, namely:
  - i. keeping persons at a police station without a lawyer, and without informing families about the whereabouts ([par 34](#)); and
  - ii. the incommunicado detention of prisoners for prolonged periods, during which neither their family members, nor lawyers are able to meet them or to receive any information about their whereabouts and condition ([par. 35](#)).
3. Many of the disappearances reported to the Working Group are connected to the 2020 presidential election, covering both so called short-term enforced disappearances of demonstrators in 2020, as well as disappearances of high-profile political prisoners in the detention facilities since.
4. Legislative and law enforcement practices leading to enforced disappearances have been reported to the Working Group both concerning proceedings in cases of administrative offences and criminal proceedings. In this context, it is worth pointing out that enforced disappearances may also commence with an initially legal arrest or detention.<sup>8</sup>

#### *Proceedings in cases of administrative offences*

5. According to the information submitted to the Working Group, in proceedings concerning administrative offences, the detaining authorities are not obliged to notify of the detention of an adult. The individuals subjected to an administrative arrest are not entitled to a phone call to their loved ones or to a lawyer. While according to the Procedural-Executive Code of Administrative Offenses (Article 8.2, part 3) there is a right to notify upon the detainee’s

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<sup>1</sup> See the [reply](#) to BLR 5/2024 received on 8 August 2024.

<sup>2</sup> See the [reply](#) to BLR 4/2024 received on 30 July 2024.

<sup>3</sup> See the [reply](#) to BLR 7/2020 received on 2 October 2020.

<sup>4</sup> See the [reply](#) to BLR 6/2020 received on 31 August 2020.

<sup>5</sup> See the [reply](#) to BLR 3/2020 received on 23 April 2020.

<sup>6</sup> See the [reply](#) to BLR 1/2020 received on 23 March 2020.

<sup>7</sup> See [A/HRC/55/61](#).

<sup>8</sup> A/HRC/16/48/Add.3, para. 22.

request their relatives or a lawyer, the Working Group has been informed that such requests are often ignored. As a result of this practice, reportedly the authorities' onus to notify the families of the detainees effectively converts into the families' struggle to actively search for the detainee. In doing so, the relatives engage in the lengthy and cumbersome process of appealing to a variety of authorities, most of which have no information about the person in question.

6. Pursuant to the information received, persons subjected to administrative arrest are also often deprived of their right to access to legal services, even though it is provided for by the Procedural-Executive Code of Administrative Offenses (Article 2.8; Article 20.5, part 1, para. 6) and Internal Rules of Places of Serving Administrative Arrest [Internal Rules] (paragraph 114 and 115). As the Working Group has been informed, the administration of places of administrative detention would invoke the epidemiological situation restrictions or the lack of free rooms for visits.
7. Similarly, the right to telephone calls and correspondence of persons deprived of their liberty (Article 20.7, parts 6 and 10 of the Procedural-Executive Code of Administrative Offenses, and paras. 54, 65, 66, 68 of the Internal Rules) is often allegedly not observed in practice, leading to the isolation of detained persons from the outside world. Some cases, where the families are not aware of whether the detainees are alive, have no information concerning their state of health or their place of detention as a result of concealment of such information by the detaining authorities, may amount to their enforced disappearances.

#### *Criminal proceedings*

8. As concerns criminal proceedings, while the Constitution of the Republic of Belarus (art 62) and the Criminal-Executive Code (Art 10, part 8; Art 83, part 6; Art 13, part 1), guarantee the right of everyone to legal assistance, the Working Group has been informed that prisoners are regularly denied this right.
9. The Criminal-Executive Code (Article 112) foresees several forms of punishments for prisoners violating the rules of serving their sentence, including solitary confinement up to 6 months. However, prisoners may receive identical penalties subsequently, thus *de facto* prolonging the time of solitary confinement indefinitely. Such prisoners cannot receive any visits, telephone conversations, and they are prevented from purchasing food, receiving parcels, sending and receiving letters. Importantly, the Working Group has been informed that neither the prisoner's lawyer nor his relatives are notified of the application of disciplinary measures.
10. While the law requires those penalties to be applied in an individualized manner and prisoners have a right to appeal, the Working Group was informed that in practice those safeguards cannot be realized. Prisoners are required to submit appeals to the administration in written form. However, prisoners in solitary confinement are reportedly not provided with pens and papers, thus making it practically impossible for them to issue such request. The Working Group was for example informed of a prisoner who was not allowed a phone call after his father died, even though prisoners have the right to a phone call after the death of a close relative. The authorities informed the wife of the prisoner that he did not apply for a phone call. The person was in a solitary confinement cell, with no writing utensils, and thus could not submit a written application for a phone call.
11. The right of prisoners serving their sentence to access to the lawyers, can be discretionarily limited by the administration of penitentiary facilities. According to the law (article 83, part 6 of the Criminal-Executive Code), prisoners should be granted access to a lawyer upon their request, which can be either verbal or written (article 13, part 1 of the Criminal-Executive Code,

and para. 148 of the Internal Rules). However, according to the information submitted to the Working Group, in practice administrations of penitentiary facilities have rejected lawyers' attempts to visit their clients, arguing that the prisoners have not requested such visits.

12. As a result, several high-profile political prisoners have been kept in incommunicado detention for prolonged periods of times, without informing their families about their fate. This concerns among others Viktor Babaryka [as of 9 September 2024, no contact for 581 days], Maria Kalesnikava [as of 9 September 2024, no contact for 572 days], Ihar Losik [as of 9 September 2024, no contact for 567 days], Mikalai Statkevich [as of 9 September 2024, no contact for 578 days], Siarhei Tsikhanouski [as of 9 September 2024, no contact for 550 days] and Maksim Znak [as of 9 September 2024, no contact for 578 days]. When the fate and whereabouts of the person are concealed, this becomes an enforced disappearance.
13. Additionally, several lawyers representing the interest of high-profile political prisoners have been reportedly arrested and persecuted (see also communications [BLR 1/2022](#) and [BLR 4/2023](#)). This makes it impossible for families of political prisoners to find and hire a lawyer, thus aggravating the situation of both the families and the detained persons. Without a lawyer, the contact with the outside world becomes more difficult and - when in practice leading to a concealment of the fate and whereabouts of the disappeared person, - becomes an enforced disappearance.
14. As the Working Group has been informed, the instances of prolonged incommunicado detention take place in various regions of Belarus, which indicates a systemic nature at the State level.
15. Not informing families about the fate of their loved ones in detention causes them psychological suffering, and may amount to torture or ill-treatment. According to international law, any individual who has suffered harm as the direct result of an enforced disappearance is a victim of enforced disappearance: this includes families of forcibly disappeared persons.
16. The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

#### *Article 1*

*1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.*

*2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.*

#### *Article 2*

*1. No State shall practise, permit or tolerate enforced disappearances.*

*2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

#### *Article 3*

*Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.*

*Article 7*

*No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.*

*Article 9*

*1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.*

*2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.*

*3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.*

*Article 10*

*1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.*

*2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.*

*3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

17. The Working Group would also like to invoke its report on [enforced disappearances and elections](#), as well its [General Comment on Article 10 of the Declaration](#).
18. The Working Group would be grateful for the cooperation and any information that your Excellency's Government can provide on the following questions:
  - a. What are the measures put in place to prevent enforced disappearances occurring in the detention facilities, including during the first days of detention and for persons placed in solitary confinement?
  - b. How do the authorities safeguard that families and lawyers of detained persons are always aware of their fate (including their state of health) and whereabouts?
  - c. How are the rights to correspondence and to make telephone call for prisoners being guaranteed?

19. The Working Group requests the Government of the Republic of Belarus to provide a response to the above questions within 60 days.
20. The text of the general allegation will be published along with the Working Group's post-session report and on its website, where also any response received by your Excellency's Government will be uploaded.