



Human Rights Council**Forty-ninth session**

28 February–1 April 2022

Agenda item 4

Human rights situations that require the Council's attention**Note verbale dated 9 March 2022 from the Permanent Mission of Belarus to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council**

The Permanent Mission of the Republic of Belarus to the United Nations Office and other international organizations in Geneva encloses herewith a legal analysis by the Government of the Republic of Belarus of the report of the United Nations High Commissioner for Human Rights submitted to the Human Rights Council pursuant its resolution 46/20 (A/HRC/49/71) (see annex).

The Permanent Mission requests that the present note verbale and the annex thereto* be published as a document of the Human Rights Council under agenda item 4 in all official languages of the United Nations.

* Reproduced without formal editing.



Annex to the note verbale dated 9 March 2022 from the Permanent Mission of Belarus to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council

[Original: Russian]

Legal analysis of the report of the panel of experts of the Office of the United Nations High Commissioner for Human Rights on Belarus (A/HRC/49/71)

1. The draft report on Belarus prepared by a group of “experts” pursuant to Human Rights Council resolution 46/20, entitled “Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath”, is yet another step by a group of Western countries and their allies to promote at the universal level a one-sided interpretation of the situation in Belarus after the 2020 presidential election campaign that does not accurately reflect the true nature of the events.

The report proposes mechanisms contrary to the generally accepted international rules and standards of international law for officials and other citizens of the Republic of Belarus who support the constitutional order and legitimate authorities in our country to face prejudged prosecution in absentia. It also contains direct appeals to violate the sovereign rights of the Belarusian State and interfere in its internal affairs, in violation of the Charter of the United Nations and the Council’s mandate.

The resolution and draft report are patently politicized and biased in nature. The structure of the resolution itself clearly attests to this fact: the *preamble* deliberately offers a negative assessment of the events in Belarus and the actions of the authorities are attributed without regard for legal procedures to the commission of crimes against human rights; moreover, the operative section of the resolution speaks of the need for an investigation and expert work to establish the truth. **How can there be any talk of a fair investigation when its outcome (and the guilty parties) have already been determined by the authors of the report?**

This fact – the discrepancy between the declared objectives of the resolution and its content and conclusions – confirms the “artificiality” and tendentiousness of the accusations against Belarus.

The resolution did not garner wide support when put to the vote, with 20 States voting in favour, 7 against and 20 abstaining. The countries that consistently follow in the wake of the United States of America voted in favour of the resolution, which confirms that the initiative is absolutely in keeping with the approaches of Western countries and their main allies.

The draft report fits perfectly into the distinct genre of empty political posturing. It was prepared solely on the basis of information from 145 persons, 170 individual submissions and 400 items of information and “evidence”. The credibility and authenticity of the information and reliability of sources cannot be objectively verified, including for reasons of established confidentiality.

The methods of providing proof described have nothing to do with objective fact-finding and investigating situations of alleged wrongdoing. The criteria used to evaluate actions are opaque and arbitrary and the conclusions are reached without a systematic approach and selectively adjusted to give international legal grounds for levelling accusations. The authors’ own assessment of the events and information received are seen in absolute terms and presented as established immutable truths that have legal meaning. The biased nature of the experts’ analysis is also evidenced by the recently widespread use of the *standard of quasi-proof*: “reasonable grounds to believe”. **In other words, the authors no longer need to prove anything, and the role of evidence for them is negligible in view of a certain degree of probability and plausibility of something.**

The selective nature of the assessments made in the document is evidence that it is clearly flawed. The recommendations are aimed not at establishing an objective picture of events,

but at introducing exclusively targeted punitive measures against the Belarusian authorities (*creating conditions for an added negative impact on the activities of the Government*), which is beyond the scope of the given mandate.

2. Despite the questionable factual and evidentiary basis, the report contains harsh assessments and allegations of violations of all existing rights and freedoms of citizens by Belarusian authorities throughout the entire pre-election and post-election period.

Such conclusions are based on a complete dichotomy of the authors' perception of the system of mutual rights and obligations of citizens and the State.

In examining violations by the authorities, the authors of the report deliberately exclude from the subject of analysis such important details for qualifying the legitimacy of the activities of citizens and authorities as the methods and manifestations of protests, their organized nature, and the flagrant violation of the law.

The following attests to actions carefully prepared in advance that not only have nothing to do with the right to peaceful protest but also give no indication that they were peaceful in nature: the preparation of organizers for mass riots using social networks and messaging platforms (coordination, working out routes) and calls for civil disobedience and the violent overthrow of the Government; intentionally creating dangerous situations and filming them; propaganda and violence against law enforcement officers, "de-anonymization", the dissemination of their personal data and threats of purges of anyone who does not share the protest ideology; sabotage of Belarusian enterprises in order to undermine the economic security of the country; hacking of websites of State institutions; and inciting discontent by means of fake news and biased information. Moreover, such actions are punishable criminal offences in all countries of the world.

These facts did not receive any legal assessment or even a mention (including the possibility of prosecution) by the authors of the report.

The duty of the State to maintain law and order and to respond to mass disturbances (including to protect the interests of both the State and ordinary citizens) has been ignored. Also disregarded is the possibility for security services to respond to disturbances in accordance with national law and the rules of international law, which allow for the restriction of the rights and freedoms of citizens in order to protect public order and State security.¹

The authors of the report did not take into account the facts of organizing and coordinating mass protests from abroad as a way of discrediting the State authorities, aggressively influencing national politics and attempting to seize power by unlawful and undemocratic means. In such cases, the State not only can but is obliged to suppress disturbances in order to preserve its sovereignty, the integrity of the country and the life and health of its citizens.

¹ For instance, pursuant to article 19 (3) (b) of the International Covenant on Civil and Political Rights of 1966, the exercise of rights may be subject to certain restrictions, such as are provided by law and are necessary for the protection of national security and public order, health or morals. Article 29 (2) of the Universal Declaration of Human Rights of 1948 provides that, in the exercise of his rights and freedoms, everyone may be subject only to such limitations as are determined by law for the purpose of meeting the just requirements of morality, public order and the general welfare in a democratic society. Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 permits interference by a public authority in the exercise of certain individual rights if such interference is provided for by law and is necessary in the interests of national security, public order or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others. Article 9 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data states that derogations from and restrictions on the guarantees established for data subjects are to be allowed when such derogation is provided for by the law of States parties to the Convention and constitutes a necessary measure to protect State security, public safety and the monetary interests of the State or to suppress criminal offences, as well as to protect the data subject or the rights and freedoms of others. Terrorism, as well as violent acts and incitement to them, certainly fall into this category of instances of restrictions.

It is clear that the authors of the report totally disregarded international standards and guarantees of justice, such as the right to a fair trial (article 14 of the International Covenant on Civil and Political Rights of 16 December 1966 and article 10 of the Universal Declaration of Human Rights). Categorical assertions about the guilt of State officials and the need to prosecute them deprive these persons of procedural guarantees and the presumption of innocence (article 14 (2) of the Covenant).

This conclusion is based on the fact that the authors' statements do not meet the required professional criteria: comprehensiveness (*investigation of the circumstances from all sides, from the perspective of both parties*); objectivity (*accurate reflection of reality*); and completeness (*sufficiency of evidence collected and facts established and their admissibility*). The information and case file are not corroborated by facts and their sources cannot be verified.

Consequently, the nature of the assertions and conclusions made about violations of international standards and a crackdown on civil society and the democratic opposition are unsubstantiated and biased.

The accusatory nature of the report, calling for the prosecution or trial by national and international courts of Belarusian officials suspected of human rights violations, in violation of generally recognized procedural and legal guarantees normally enjoyed by individuals in a State governed by the rule of law, demonstrates an attempt to appropriate the functions of supranational judicial mechanisms in relation to the law enforcement system of Belarus.

This violates the fundamental principles of the sovereign equality of all States and respect for the rights inherent in sovereignty, non-intervention in internal affairs and cooperation between States, as enshrined in the Charter of the United Nations, the Declaration on the Strengthening of International Security, adopted by General Assembly resolution 2734 (XXV) of 16 December 1970, the Declaration concerning Principles of Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, and the Declaration on Principles Guiding Relations between Participating States contained in the Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975.

All of the above principles, according to General Assembly resolution 60/251 of 15 March 2006, are the fundamental legal framework for the establishment and operation of the Human Rights Council. In keeping with its mandate (set out in paragraphs 2, 4–5 and 12 of the resolution), the Council is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a **fair and equal manner**.

The work of the Council is to be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of **all human rights** – civil, political, economic, social and cultural rights, including the right to development. The **methods of work** of the Council are to be transparent, fair and impartial and are to enable genuine dialogue, be results-oriented and allow for subsequent follow-up discussions to recommendations and their implementation.

Thus, in the view of Belarus, the results of the experts' work, the distortion of the objectives of their activities and their appropriation of supranational and "punitive" functions demonstrate that they went beyond their own mandate and the competence of the Council and manipulated and abused the authority granted to them.
