



# GROUP OF INDEPENDENT EXPERTS ON THE HUMAN RIGHTS SITUATION IN BELARUS

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## TERMS OF REFERENCE

The Group of Independent Experts on the situation of human rights in Belarus (GIE Belarus) was established on 26 March 2024, for a renewable period of one year, by the Human Rights Council through its Resolution [A/HRC/RES/55/27](#). The [three experts](#) appointed by the Human Rights Council's President to lead the Group, Karinna Moskalkenko (chair), Susan Bazilli and Monika Platek, carry out their mandate independently, impartially and objectively.

The GIE Belarus will pursue its investigations and the collection and analysis of information and evidence placed before it guided by the cardinal principle of "do no harm", including in relation to guarantees of confidentiality and the protection of victims and witnesses, and other individuals affected by its work.

### 1. Mandate of the Group of Independent Experts on Belarus

The Human Rights Council has provided the GIE Belarus with a comprehensive multifaceted mandate that combines investigation and fact-finding, evidence preservation and sharing, stakeholder engagement and the development of recommendations on accountability processes.

#### (i) Investigation and fact-finding mandate:

The GIE Belarus will "*investigate and establish the facts, circumstances and root causes of all alleged human rights violations and abuses committed in Belarus since 1 May 2020, including their gender and age dimensions and their impact on victims and survivors*" [A/HRC/RES/55/27, para. 9 (a)].

The GIE Belarus has a mandate to investigate conduct by Belarusian authorities, third states, and any other human rights duty holders that may amount to or contribute to human rights violations in Belarus. It interprets its mandate to also investigate abuses of human rights related to companies, including private military and security companies, non-state armed actors and other non-state entities.

#### *Geographic scope*

The GIE Belarus will investigate violations and abuses that are fully or partially committed on any part of the territory or other jurisdiction of the Republic of Belarus. It may investigate circumstances and root causes of an extraterritorial nature, including extraterritorial violations that either directly impact on, are inherently linked to or directly stem from human rights violations and abuses in Belarus.

### *Temporal scope*

The GIE Belarus will focus on human rights violations and abuses committed since 1 May 2020, in particular any violations and abuses committed since the establishment of its mandate, and take into consideration any longstanding political, structural, historical, legal, social or economic root causes of human rights violations and abuses, including preexisting patterns of human rights violations and related impunity to the extent that they may have continued to shape violations and abuses since 1 May 2020.

### *Material scope*

The GIE Belarus will consider civil and political as well as economic, social and cultural human rights as one indivisible set of rights and take into account their interdependence. In line with its mandate, it will give special consideration to the gender dimensions of human rights violations and abuses, including in relation to gender identity. It will also give due considerations to age dimensions, in particular to the extent that violations and abuses target, disproportionately impact, or differently affect children, young adults or older persons. The GIE Belarus is adopting a victim and survivor-centred investigative approach and will seek to take special investigative measures to document the range of physical, psychological, social, economic, legal and other impacts on victims and survivors, in particular especially vulnerable groups among them.

The GIE Belarus will pursue credible allegations of human rights violations and abuses by any relevant perpetrators and will proactively reach out to credible sources in pursuing allegations. The scope, scale and seriousness of allegations received, due consideration of gender and age dimensions, as well as the need to consider a range of victim groups and human rights issues representative of the overall human rights situation in Belarus will inform the GIE Belarus' investigative priorities.

#### (ii) Evidence preservation mandate

The GIE Belarus is mandated to "*collect, consolidate, preserve and analyse evidence of such [human rights] violations and abuses and, where possible, to identify those responsible, in view of relevant judicial and other proceedings, including criminal proceedings in courts and tribunals that have competent jurisdiction*" [A/HRC/RES/55/27, para. 9 (b)].

While acknowledging the GIE as a human rights investigation, and the distinct and complementary role of judicial processes, it will also develop methodologies and standard operating procedures aimed at ensuring that information and evidence collected and preserved will be done so in a manner which maximises the possibility of its admissibility in legal proceedings. It will collect information and documentation relevant to its inquiries from all states, relevant bodies and agencies of the United Nations system, civil society, the media, and other relevant stakeholders.

Information and evidence collected will be reviewed and analysed, and all information and evidence will be stored, protected and maintained safely and securely, in accordance with international practice standards in this area. The GIE Belarus will consolidate and preserve all information it collects using professional and secure data storage facilities, principles and protocols. The GIE Belarus will analyse information with a particular focus on identifying specific

security force units, government agencies or other institutions and organized actors responsible for violations and abuses, while also seeking to identify individuals responsible for violations, abuses and related crimes, in particular those most responsible.

(iii) Engagement mandate

The GIE Belarus is mandated to "*engage with all relevant stakeholders, in particular Belarusian stakeholders, and with regional and international civil society, international human rights organizations, United Nations agencies, the Organization for Security and Cooperation in Europe and relevant companies and States, with a view to exchanging information, as appropriate, and providing support for national, regional and international efforts to promote accountability for human rights violations in Belarus, and also to engage, where appropriate, with the Belarusian authorities to assist them in fulfilling their international human rights obligations*" [A/HRC/RES/55/27, para. 9 (d)].

The GIE Belarus expects to receive the full cooperation of all United Nations Member States, departments and bodies, and of all other relevant national and international institutions and actors in the delivery of its mandate. In particular the GIE Belarus will make continuous efforts to reach out to the Belarusian authorities to seek their perspectives and inputs.

With regard to its mandate to support national, regional and international accountability efforts, the GIE Belarus may develop protocols for the sharing of information with domestic, regional, or international accountability mechanisms subject to baseline requirements of fairness, due process, non-applicability of the death penalty and compliance with other applicable human rights standards.

With the handling of any information received, the informed consent of information providers to further external use(s) or sharing pursuant to the mandate will be of critical importance. The GIE Belarus will be sensitive and alert to any protection concerns that victims and survivors may have as a result of its engagement with them, further to the principle of 'do no harm'. Specific concerns will be considered and addressed as they arise.

The GIE Belarus adopts a broad understanding of accountability that extends beyond criminal justice, and includes, for example, civil and financial accountability for gross human rights violations and abuses. Drawing on best practices at international, regional and national levels, relevant strategies for future accountability processes may include elements of judicial and nonjudicial approaches, or combinations thereof, in line with international norms and standards, and will prioritise efforts aimed at advancing the rights of victims to truth, justice, reparations and guarantees of non-recurrence.

(iv) Recommendations mandate

GIE Belarus has been mandated to "*make recommendations, in particular on accountability measures, with a view to ending impunity and addressing its root causes, ensuring accountability and access to justice and effective remedy, including reparation for victims*" [A/HRC/RES/55/27, para. 9 (c)].

GIE Belarus has a comprehensive mandate to make recommendations to the Belarusian government, third states, international organisations, civil society organisations, the private sector and any other relevant actors that may have an impact on the human rights situation in Belarus.

In line with its mandate, a particular focus will be on recommendations on accountability, including legal, financial and civil accountability, access to justice and effective remedies, including reparation for victims.

The GIE Belarus will engage with relevant stakeholders, including with competent investigative, prosecutorial and/or judicial authorities, nongovernmental and civil society organizations, victims and their legal representatives to develop possible strategies for future accountability processes for gross violations of human rights violations in Belarus.

## **2. Synergy with and independence from other Human Rights Council mandates**

As an independent body, the GIE Belarus will conduct its own investigations independently and separately from the Office of the High Commissioner for Human Rights and other Human Rights Council mandated bodies.

However, as emphasized by the wording and spirit of its mandate, the GIE Belarus will seek synergies with pre-existing Human Rights Council mandates to address the human rights situation in Belarus and will:

- “build on the work and follow up on the findings in the reports of the Special Rapporteur [on the human rights situation in Belarus] and the [Examination on the human rights situation in Belarus] reports of the United Nations High Commissioner for Human Rights,”
- cooperate with the Special Rapporteur “with a view to promoting synergy between both mandates” and,
- make the most of OHCHR’s extensive efforts to collect information and evidence on the human rights situation in Belarus by ensuring that such information and evidence is made accessible to and usable by the GIE, as appropriate [see A/HRC/RES/55/27, paras. 9-11].

While it will make its own independent factual and legal findings and recommendations, the GIE Belarus will:

- build on pre-existing mandates by pursuing additional lines of investigation and angles of analysis regarding the violations, abuses and concerns already considered by the other mandates;
- follow up on violations found, in particular by seeking information on efforts undertaken by the Belarusian authorities to address and provide effective remedies for past violations;
- investigate allegations of additional violations and abuses, including but not limited to those that may have been committed since the establishment of the GIE Belarus mandate;
- further build on pre-existing analysis to identify those responsible for violations and abuses; and
- give special consideration to elements of the GIE Belarus mandate not yet covered by other mandates, including also in developing recommendations.

## **3. Applicable law and standard of proof**

The GIE Belarus will conduct its investigation and make legal findings of violations and abuses on the basis of international human rights law, including customary human rights law and the human rights treaty obligations assumed by the Republic of Belarus or any other states who may be involved in human rights violations in Belarus.

Considering its mandate to identify those responsible, including in view of possible international and national criminal proceedings, the GIE Belarus will apply customary international law when assessing the extent to which violations and abuses may amount to international crimes. It may also consider responsibility for domestic crimes to the extent that they criminalize conduct that must be pursued as a matter of international human rights law.

In the course of its work, the GIE Belarus will use the "reasonable grounds" standard of proof generally adopted by international independent human rights investigative bodies. Factual findings will be included in its reporting where, based on the body of credible information from reliable sources, an impartial and ordinary prudent observer would have reasonable grounds to conclude that the facts took place as described. It will make legal findings to the extent that the facts ascertained on the basis of the "reasonable grounds" standard fully meet the legal definition of the relevant violations, abuse or related crime.

In applying the standard of proof adopted, the GIE Belarus will pay particular attention to corroborating relevant information it receives or has collected. It will do so by verifying every piece of information by obtaining consistent information from at least two other independent and reliable sources.

#### **4. Cooperation of Belarusian authorities and access to the Republic of Belarus**

The Human Rights Council has *"urged the Belarusian authorities to establish full and non-selective engagement with all United Nations human rights mechanisms, in particular with the Special Rapporteur and the group of experts, including by granting them all free, full and unhindered access to the country, providing them with the information necessary for the fulfilment of their mandates and implementing their recommendations"* [A/HRC/RES/55/27, para. 13].

The GIE Belarus will continue to seek engagement with the Belarusian authorities and will request information necessary for the fulfilment of its mandate, including exculpatory information. In seeking free, full and unhindered access to the country and the necessary information, the GIE Belarus expects to benefit from:

- Physical access to and freedom of movement throughout the territory of the Republic of Belarus;
- Unhindered access for individuals and organisations wishing to engage with GIE Belarus, without intimidation or reprisals;
- Free access to all sources of information, including documentary material, physical evidence and reports on any criminal and other investigations undertaken by the Belarusian authorities;
- Appropriate security arrangements for the GIE Belarus experts, staff and documents;
- Protection of victims, witnesses and other persons who come into contact with the GIE Belarus.

## **5. Reporting obligations of the GIE Belarus**

The GIE Belarus will *“present an oral update to the Human Rights Council at its fifty-seventh session [in September 2024] and present a comprehensive report at its 58<sup>th</sup> session [in March 2025]”*.

As requested, it will seek to implement measures, to the extent that its provided resources and capacity allow, to provide its report in an *“easy-to-read version and in an accessible format”* [A/HRC/RES/55/27, para. 12].