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Report of the Special Rapporteur on the situation of human rights in Belarus* **

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus to the Human Rights Council in accordance with its resolution 20/13. In the report, the Special Rapporteur presents the developments in human rights since the report of the United Nations High Commissioner for Human Rights presented to the Council at its twentieth session (A/HRC/20/8).

In the report, the Special Rapporteur outlines his methodology of engagement with the Government of Belarus in pursuance of his mandate. He describes positive developments where they were discernible. In his assessment, human rights remain systemically and systematically restricted, especially in the case of the freedoms of association, of assembly, and of expression and opinion, as well as the guarantees of due process and fair trial.

Of particular concern is the continuing imprisonment of political opponents, human rights defenders and activists based on spurious criminal charges and unfair procedures, aggravated by allegations of torture and ill-treatment while in custody, as part of physical and psychological pressure aimed at "breaking" them into admission of guilt.

The Special Rapporteur accounts for enduring and emerging human rights concerns to be read in the light of the international commitments of Belarus. Lastly, the Special Rapporteur makes his recommendations.

* The annex to the present report is circulated as received, in the language of submission only.
** Late submission.

Contents

		Paragraphs	*Page*
I.	Introduction	1–22	3
	A. Background	1–6	3
	B. Methodology	7–16	4
	C. Cooperation with United Nations human rights mechanisms and the Office of the High Commissioner	17–22	5
II.	Positive developments	24–32	6
	A. National human rights institution	23	6
	B. Prisoners: access and release	24–25	6
	C. Human trafficking	26	7
	D. Issue of the death penalty	27	7
	E. Millennium Development Goals	28–32	7
III.	Legal framework	33–41	8
	A. Rule of law	33–35	8
	B. Presidential decrees	36–38	9
	C. National legislation	39–41	9
IV.	Human rights concerns	42–112	10
	A. The right to life and the death penalty	42–45	10
	B. Enforced disappearances	46–49	11
	C. Prison conditions, torture and other cruel, inhuman or degrading treatment	50–55	11
	D. Treatment of political opponents, human rights defenders and activists	56–60	12
	E. Independence of judges and lawyers	61–67	13
	F. Fair trial	68–69	14
	G. Arbitrary arrest and detention	70–73	15
	H. Freedom of expression and opinion	74–81	15
	I. Freedom of peaceful assembly	82–85	16
	J. Freedom of association and human rights defenders	86–94	17
	K. Discrimination	95–99	18
	L. Treatment of lesbian, gay, bisexual and transgender persons	100–102	19
	M. Labour rights and trade unions	103–107	20
	N. Elections	108–112	21
V.	Conclusions and recommendations	113–119	22
Annex			
	Human rights concerns in relation to the recommendations made by the United Nations High Commissioner for Human Rights in her report (A/HRC/20/8)		25

I. Introduction

A. Background

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Human Rights Council in its resolution 20/13. In the present report, the Special Rapporteur, Miklós Haraszti, who officially assumed his functions on 1 November 2012, describes the prevailing situation of human rights in Belarus since the establishment of the mandate on 5 July 2012 and includes information received until 31 March 2013.

2. The aftermath of the presidential elections held on 19 December 2010 and the ensuing deterioration in the situation of human rights still mark the human rights context of Belarus. A broad range of human rights concerns were laid out in the report of the United Nations High Commissioner for Human Rights.[1]

3. During the period under review, there were reports of limitations on the rights to the freedoms of peaceful assembly, of association, and expression and opinion; the lack of independence of the judiciary, due process and fair trial procedures; torture and ill-treatment by law enforcement officials; arbitrary detention; harassment of human rights defenders; and growing concerns for the protection of labour rights and discriminatory practices towards minority groups.

4. On a more positive note, a recent report of the United Nations Development Programme (UNDP) showed Belarus moving from 65th to 50th position in the Human Development Index rating among 187 States.[2] This would reflect how the State has prioritized the Millennium Development Goals into its policies and programmes.

5. The parliamentary elections of 23 September 2012 saw 110 parliamentarians elected for a four-year term. No seats went to any opposition candidates. Prior to the elections and during the campaign, opposition parties and candidates decided to boycott the elections, citing procedural violations, media discrimination and the imprisonment of opposition activists. The observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) found that the elections had not met the State's commitments, including to citizens' rights to associate, to stand as candidates and to express themselves freely,[3] while the election observation mission dispatched by the Commonwealth of Independent States (CIS) found them to be in compliance with democratic norms and national legislation.[4]

6. The impact of geopolitics on the situation of human rights in Belarus should not be underestimated. Relations between Belarus and the European Union are at this time quite defined by the sanctions imposed in the wake of the human rights violations reported since

[1] A/HRC/20/8, para.75.

[2] Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World, UNDP, 14 March 2013. Available from http://hdr.undp.org/hdr4press/press/report/hdr/english/HDR2013_EN_Complete.pdf, p. 143.

[3] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission final report, 14 December 2012, available from www.osce.org/odihr/elections/98146.

[4] "CIS observers: Parliamentary elections in Belarus held according to democratic norms", *KyivPost*, 1 October 2012. Available from www.kyivpost.com/content/russia-and-former-soviet-union/cis-observers-parliamentary-elections-in-belarus-held-according-to-democratic-norms-313745.html.

2010. In 2013, Belarus has the CIS Chairmanship and is deepening its economic and policy integration with the Russian Federation.

B. Methodology

7. According to Human Rights Council resolution 20/13, the Special Rapporteur has a mandate:

(a) To monitor the human rights situation in Belarus and provide recommendations for its improvement;

(b) To help to implement the recommendations contained in the report of the High Commissioner;

(c) To assist the Government of Belarus in fulfilling its human rights obligations;

(d) To offer support and advice to civil society;

(e) To seek, receive, examine and act on information from all relevant stakeholders pertaining to the situation of human rights in Belarus.

8. Since taking up his mandate, the Special Rapporteur has stressed his commitment to independence, impartiality and objectivity, and to cooperation with all stakeholders, as the guiding principles for his work. In particular, he has sought to enlist the cooperation of the Government of Belarus in order to engage in a constructive dialogue and to assess fully the situation of human rights. The Special Rapporteur addressed four letters to the Permanent Representative of the Republic of Belarus to the United Nations Office at Geneva or, through him, to the Minister for Foreign Affairs, to request meetings and to seek to arrange an initial visit.[5] No reply has been received to date.

9. The Special Rapporteur has pursued wherever possible the collection of information from primary sources, convinced that this is a key factor to an accurate, time-bound and measured report on the situation of human rights in Belarus.

10. The Special Rapporteur is grateful for the extensive cooperation he enjoyed with many stakeholders living in Belarus. Since assuming his mandate, he has undertaken three trips to Lithuania and Ukraine to meet with a broad range of civil society representatives and victims of human rights violations. In both States, he met with representatives of the respective Ministries of Foreign Affairs.

11. From 11 to 15 November 2012, in Vilnius, the Special Rapporteur participated in his first consultation with civil society, organized by the Belarusian Human Rights House.[6] From 12 to 16 January 2013, also in Vilnius, the Special Rapporteur held consultations, also organized by the Belarusian Human Rights House, with legal professionals on matters concerning the justice system and lawyers, and met with individuals from Belarus with particular human rights concerns. From 18 to 21 February 2013, during the joint event on "Media space and human rights" organized by the Belarusian Human Rights House, the Human Rights House Kyiv and the Human Rights House Foundation, he met with media experts, human rights defenders and civil society representatives in Kyiv. From these first-hand consultations, information was collected, documented and recorded on the prevailing human rights concerns in Belarus.

[5] On 6 November and19 December 2012, and on 2 and 18 January 2013.

[6] See http://humanrightshouse.org/Articles/18851.html.

12. On 18 February 2013, the Special Rapporteur had the opportunity to meet with the First Secretary of the Embassy of the Republic of Belarus to Ukraine on the sidelines of an event entitled "Media and human rights", organized by the Human Rights House Foundation, in Kyiv.

13. The Special Rapporteur collaborated with several other special procedures mandate holders to transmit two allegation letters to the authorities of Belarus.

14. In the present report, the Special Rapporteur links the human rights concerns discerned with the recommendations made by the High Commissioner in her report[1] (see annex).

15. The Special Rapporteur regrets that first-hand information from sources designated by the Government was not forthcoming.

16. The present report contains a number of cases that are emblematic of the nature of the human rights violation under discussion. They do not, however, represent the full list of allegations submitted to the Special Rapporteur.

C. Cooperation with United Nations human rights mechanisms and the Office of the High Commissioner

17. On 3 August 2012, Belarus submitted its eighteenth and nineteenth periodic reports to the Committee on the Elimination of Racial Discrimination (due in 2008);[7] on 27 November 2012, it submitted a timely response to the Committee against Torture.[8]

18. Belarus continued to reject a number of newly registered cases under the Optional Protocol to the International Covenant on Civil and Political Rights, mainly invoking procedural grounds. With regard to follow-up to recommendations in its views, the Human Right Committee has to date not been satisfied by the measures taken by the State party. One reply was received in July 2012 regarding a case decided under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the follow-up dialogue is ongoing.

19. The visit in 2009 of the Special Rapporteur on trafficking in persons, especially women and children[9] was the last visit to be undertaken by a special procedures mandate holder. Since 2009, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the rights to freedom of peaceful assembly and association and the Working Group on Arbitrary Detention have sought to make a visit and have yet to receive a response.

20. A number of joint communications were sent by special procedures mandate holders. Belarus has at times substantially responded to the issues raised. It has also alleged that special procedures mandates holders have violated the principle of non-accumulation of functions by sending joint communications, and that communications were politically motivated and unduly interfered in domestic affairs.

[7] CERD/C/BLR/18-19.
[8] CAT/C/BLR/CO/4/Add.2.
[9] See A/HRC/14/32/Add.2.

21. In 2012, the Government submitted its mid-term progress report on the implementation of universal periodic review recommendations.[10] The submission of mid-term reports is not an obligation, but is a good practice encouraged by the High Commissioner.

22. The Office of the United Nations High Commissioner for Human Rights continued to provide Belarus with technical assistance. On the request of the Government, assistance has focused on the issues of human trafficking and discrimination. This has included the development of a project on the theme "Combating trafficking in human beings: new challenges and threats" with UNDP in Belarus and the Minsk International Training Centre on Migration and Combating Trafficking. The project is currently being registered in accordance with national requirements. Planning is under way for a two-day anti-discrimination workshop, to be held in Minsk in June 2013.

II. Positive developments

A. National human rights institution

23. In 2012, Belarus indicated its intention to establish an institution of a human rights commissioner, in accordance with a recommendation from its universal periodic review in 2010.[11] It announced it would hold consultations with non-governmental organizations to launch the said initiative, but subsequently failed to directly inform all intended participants.[12]

B. Prisoners: access and release

24. In September 2012, Archbishop Claudio Gugerotti, the Apostolic Nuncio in Minsk, was allowed to visit the imprisoned political opponents and human rights defenders Ales Bialiatski, Mikalai Statkevich, Dzmitry Dashkevich, Pavel Seviarynets, Siarhei Kavalenka, Pavel Syramalotau and Eduard Lobau.[13] As the inmates had been enduring deprivations in their prison conditions, health supplies and in the visits of their lawyers and relatives, the visit was, according to individual consultations with relatives and diplomats of the Holy See, a welcome relief and resulted in the temporary cessation of the use of solitary cells for some of the inmates. The prisoners' relatives expressed their gratitude to Pope Emeritus Benedict XVI and the Apostolic Nuncio, and asked that they facilitate the prompt release of all political opponents and activists.

25. In September 2012, Mr. Kavalenka and Mr. Syramalotau, who had been sentenced on criminal charges during the demonstrations of December 2010, were released. In June 2012, they had signed a request for a pardon that acknowledged their guilt, after being exposed to increasingly harsh detention conditions.

[10] See www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.

[11] A/HRC/15/16, para. 97.4.

[12] Final document of the Belarusian human rights defenders´ working meeting, 16 October 2012. Available from www.civicsolidarity.org/sites/default/files/belarus_humanrights_defenders_position_nhri.pdf.

[13] See http://spring96.org/en/news/58867.

C. Human trafficking

26. Belarus is addressing concerns that it is both a source and transit country for women, men and children subjected to human trafficking for both sexual exploitation and forced labour. Belarus was one of the first CIS member States to devise activities and legal tools, both nationally and in cooperation with international bodies, on this issue.[14] The Special Rapporteur recalls the request made by Belarus on 30 December 2009 to accede to the Council of Europe Convention on Action against Trafficking in Human Beings, and within that agreed to the terms of the Group of Experts on Action against Trafficking in Human Beings, its monitoring mechanism.

D. Issue of the death penalty

27. Despite the regrettable fact that Belarus enforced the death penalty in two cases in 2012, some developments may be seen as signs of openness towards a possible reform. It abstained in the vote held by the Third Committee on a draft resolution on a moratorium on the use of the death penalty.[15] It was announced on 20 December 2012 that a parliamentary working group had been re-established to consider the issue of the death penalty. In the first months of 2013, the Chairman of the Constitutional Court stressed several times that "the question of a moratorium on the death penalty remains open", although it would not be on the agenda in the foreseeable future.[16]

E. Millennium Development Goals

28. The Special Rapporteur recognizes the efforts being made by Belarus to achieve several of the Millennium Development Goals.

29. Belarus has fully implemented the target to reduce by more than three times the share of the population living below the national poverty line. Data available only until 2009 show that the share of individuals below the minimum subsistence levels dropped from 41.9 per cent to 5.4 per cent.

30. As at 2009, Belarus had succeeded in halving the mortality rate of children under 5 years of age. It has a low maternal mortality rate (1 per 100,000 births in 2009), approaching the average for industrialized nations. Further action is needed to strengthen the national response to HIV/AIDS, and tuberculosis, which is highly prevalent, and constitutes a major threat to public health. The national strategy for sustainable socioeconomic development to 2020 calls for the development of policies to secure environmental health and to improve the quality of life.[17]

31. At its universal periodic review in 2010, Belarus accepted a number of recommendations to increase its efforts in certain areas relating to the Millennium Development Goals.[18]

[14] See www.mfa.gov.by/en/organizations/issue/trafficking/.

[15] General Assembly resolution 67/176, adopted by a recorded vote of 111 in favour to 41 against, with 34 abstentions.

[16] See www.belta.by/ru/all_news/society/Vopros-o-vvedenii-moratorija-na-smertnuju-kazn-v-Belarusi-ostaetsjaotkrytym---Miklashevich_i_621887.html.

[17] See UNDP Belarus at http://undp.by/en/undp/milleniumgoalsbelarus/.

[18] A/HRC/15/16, paras. 97.44 – 97.46.

32. The Special Rapporteur regrets the fact that, owing to his lack of access to the country, he is not able to witness first-hand the above-mentioned reported positive developments and the impact that they have on the daily lives of Belarusians.

III. Legal framework

A. Rule of law

33. The Special Rapporteur is concerned at the lack of rule of law in Belarus, in particular with regard to procedural guarantees, as envisaged by article 14 of the International Covenant on Civil and Political Rights. Multiple meetings with human rights defenders and victims of human rights violations reflected a lack of trust in the judiciary, as well as a lack in the belief that rights would be protected by the judiciary over the interests of the authorities.

34. The Special Rapporteur wishes to address specifically the concern that human rights violations in the country have a systemic and systematic character. Their nature remains structural and endemic, as characterized in the report of the High Commissioner, in which she stressed that "deficiencies pertaining to human rights in Belarus are of a systemic nature. They need to be addressed by the authorities through a comprehensive approach, which would include a review of the legislation, policies, strategies and practice pertaining to human rights."[19] In its judgement on *Jerzy Broniowski v. Poland*, the European Court of Human Rights defined systemic human rights violations as deriving from structural causes not addressed by the responsible authorities. In the case of Belarus, many United Nations bodies have observed in several cases similar violations not addressed by the State: violations of the rights to freedom of expression and opinion;[20] right to a fair trial;[21] or to freedom of association.[22]

35. The Special Rapporteur is concerned that Belarus de facto denies alleged victims of human rights violations the right to appeal decisions of the Supreme Court to the Human Rights Committee, even though Belarus has ratified the Optional Protocol to the International Covenant on Civil and Political Rights.

[19] A/HRC/20/8, para. 74.

[20] *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), *Katsora v. Belarus* (CCPR/C/99/D/1377/2005), *Korneenko v. Belarus* (CCPR/C/95/D/1553/2007), *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), *Sudalenko v. Belarus* (CCPR/C/104/D/1750/2008), *Govsha et al. v. Belarus* (CCPR/C/105/D/1790/2008), *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010)

[21] *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), *Marinich v. Belarus* (CCPR/C/99/D/1502/2006), *Sudalenko v. Belarus* (CCPR/C/104/D/1750/2008), *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011).

[22] *Zvozskov et al. v. Belarus* (CCPR/C/88/D/1039/2001), *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), *Katsora et al. v. Belarus* (CCPR/C/100/D/1383/2005), *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003)

B. Presidential decrees

36. The structural character of the fact that widespread human rights violations remain unaddressed is underlined by the centralization of the legislative and executive powers in the office of the President.

37. Presidential decrees are used as the main, and in fact, supreme legislative mechanism in the country. Article 85 of the Constitution provides for presidential decrees to have force of law in instances outlined by the Constitution. Article 101 defines such instances in two ways. Parliament may permanently delegate powers to the President, limited only to the subject and the term of the power in question.[23] Additionally, article 101 (3) empowers the President to issue decrees defined as temporary. These decrees retain force unless they are abolished by a majority of two-thirds of each House of Parliament (the House of Representatives and the Council of the Republic).

38. Even temporary decrees de facto become permanent given that a two-thirds majority is needed to overturn them. Moreover, not even laws adopted by Parliament will provide the necessary guarantees for the rule of law as long as the political parties represented in Parliament are seen to support the head of the executive exclusively. This concern is amplified by the fact that draft laws in Belarus are in general prepared by the Presidential Administration.

C. National legislation

39. Belarus has a civil law system based on the Constitution, the supreme law of the State. Article 21, paragraph 3 of the Constitution provides for the States "to guarantee the rights and freedoms of citizens of Belarus … enshrined in the Constitution and laws, and specified by the State's international obligations".[24] Article 8 recognizes the supremacy of the universally acknowledged principles of international law and ensures that the laws of Belarus comply with them.

40. During the period under review, various legislative developments may influence the full enjoyment of human rights:

- The adoption of amendments to law No. 390-З on State security bodies of Belarus, providing for, inter alia, broad powers for State security bodies and creating conditions for the restriction to the rights of the individual to liberty, security and dignity
- The adoption of an amnesty law that excludes articles 342 (the organization of actions grossly violating public order, or participation in such actions) and 367 (defamation of the President) of the Criminal Code
- The promulgation of law 435-З on the introduction of amendments and additions to certain laws of Belarus "on the issues of combating terrorism and countering extremism", which further broadened the definition of extremism

[23] Article 101 (2) further states that there is to be no delegation of powers to the President to issue decrees providing for changes and additions to the Constitution and its interpretation; changes and additions to programme laws; approval of the republican budget and the report on its implementation; changing the procedure of elections of the President and the Parliament; or restrictions of constitutional rights and freedoms of the citizens. The law on delegating legislative powers to the President does not permit him to change the said law, nor does it empower him to adopt retroactive norms.

[24] See http://president.gov.by/en/press19330.html#doc.

- Decree No. 9 on additional measures for the development of the wood processing industry, restricting the right of employees to terminating their employment
- Decree No.2, introducing restrictive amendments to decree No.1 of 16 January 2009 on State registration and liquidation (termination of activities) of economic entities
- Draft legislation introduced to amend the laws on national and local assemblies, and on the activities of political parties and other public associations.

41. In early 2013, plans were announced to prepare 30 draft laws that year, including bills to amend the Election Code, the Criminal Code, the Criminal Procedure Code, the Administrative Violations Code, the code of Execution Procedure for Administrative Violations, and a draft law on the State border of Belarus.[25]

IV. Human rights concerns

A. The right to life and the death penalty

42. Belarus retains the death penalty for certain crimes during times of peace and war. Executions are carried out by a gunshot to the back of the head. There is a lack of transparency about persons held on death row, and an inadequate procedure for appeals. Annual statistics on the use of the death penalty are not available, nor are the names of most of those who have been already executed. Those facing the death penalty, and their relatives, are not informed of the scheduled date of execution; following the execution, the relatives are not informed of where the body is buried.

43. At the time of reporting, Uladzlau Kavalyou and Dzmitry Kanavalau were the last two known individuals to have been executed, in March 2012. In 2011, both were sentenced to death for the terrorist attack of 11 April 2011 in the Minsk metro. During the trial, Mr. Kavalyou (Kovalev) withdrew his confession, which he claimed had been obtained under duress.[26]

44. The above-mentioned executions were held despite the issuance by the Human Rights Committee of interim protection measures requesting that the executions be suspended while it considered the appeals of the two individuals. The bodies of the two were not released to their relatives, nor was information provided on the burial site. A death certificate received and a letter dated 16 March 2012 from the Supreme Court of Belarus informed Mrs. Kavalyou (Kovaleva) that her son had been executed. In October 2012, the Human Rights Committee found that there had been violations of the right to life, the presumption of innocence, the right to a fair trial and access to an effective judicial review, as well as inhuman treatment with regard to his family.[27] The Committee highlighted the fact that Belarus was under an obligation to prevent similar violations in the future, including by amending article 175, paragraph 5 of the Criminal Executive Code in accordance with article 7 of the Covenant. Nevertheless, the Special Rapporteur is concerned that Belarus systematically dismisses the Committee's views, which is particularly worrying in cases of appeals from individuals on death row. In the period 2010 – 2012, five executions were held, even though the Committee had requested, in accordance with rule 92 of its rules of procedure, interim measures of protection. In all five

[25] Belarusian Telegraph Agency, "Unarmed service bill in Belarus in 2013", 3 January 2013, available from http://news.belta.by/en/news/president?id=703258.

[26] A/HRC/20/8, para. 71.

[27] CCPR/C/106/D/2120/2011.

cases, allegations of violations of the right to a fair trial were reported, and three of the individuals claimed that they had confessed under duress.[28]

45. The Special Rapporteur shares the view that the way the death penalty is carried out in Belarus amounts to inhuman treatment, as outlined by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in his recent report to the General Assembly.[29]

B. Enforced disappearances

46. During the period under review, the Special Rapporteur received no new reports of enforced disappearances. Concerns were, however, raised that there had been no progress in solving the outstanding cases, three of which have been referred to the Working Group on Enforced or Involuntary Disappearances.[30] These cases, which date from 1999 and 2000, concern Viktar Hanchar, a member of the dissolved Parliament and his close associate, Anatol Krasouski, as well as Yury Zakharenko, former Minister of the Interior, and Dimitry Zavadsky, an investigative journalist. Every three months, the authorities report that there have been "no results" in any of the cases.

47. In the first three of the above-mentioned cases, the Working Group on Enforced or Involuntary Disappearances has received three communications from the Government, dated from January to October 2012. It found that the information provided was not sufficient to lead to the clarification of the cases. While in the case of Mr. Krasouski the Human Rights Committee found Belarus in violation of the International Covenant on Civil and Political Rights by failing to provide an effective remedy and to include a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators, with adequate information about the inquiries and adequate compensation.[31]

48. In individual consultations, relatives and lawyers expressed their concern that the cases would be closed officially 15 years after the disappearances owing to the statute of limitations.[32]

49. The lack of response by the Government to cases of the enforced disappearance of political opponents continues to gravely affect the general trust in rule of the law and the safe exercise of the right to civic activities.

C. Prison conditions, torture and other cruel, inhuman or degrading treatment

50. Allegations of torture and ill treatment continue to be received from detainees and inmates who have been deprived of their liberty by law enforcement bodies, at the moment of apprehension by police, or during pretrial or post-trial detention.

51. In its concluding observations on Belarus, the Committee against Torture, while noting that article 25 of the Constitution of Belarus prohibited torture, expressed its concern

[28] Andrei Zhuk, Vasily Yuzepchuk, Aleh Gryshkautstou, Andrei Burdyka and Uladzlau Kavalyou. See the report submitted to OHCHR by the Belarusian Human Rights House, the Human Rights House Foundation, Penal Reform International and the human rights centre Viasna, April 2012. Available from http://humanrightshouse.org/Articles/17981.html.

[29] A/67/279, para. 52.

[30] E/CN.4/2001/68, paras. 107 and 108.

[31] CCPR/C/104/D/1820/2008.

[32] See also http://spring96.org/en/news/61860.

at the gap between the legislative framework and its practical implementation.[33] It also noted that articles 128 and 394 of the Criminal Code do not criminalize torture in accordance with article 4, paragraph 2 of the Convention against Torture (arts. 1, 2 and 4).[34] Belarus has nonetheless indicated that the definition of torture contained in article 1 of the Convention was used for the purpose of criminal prosecution of perpetrators of acts of torture.

52. Reports continue to be received of the use of torture and other ill-treatment by police and investigators in order to extort confessions that are then used as evidence in trial proceedings. In such cases, there is evidence of a failure by officials to conduct prompt, impartial and full investigations into allegations of torture and ill-treatment and to prosecute alleged perpetrators. This was of particular concern to the Human Rights Committee in the Kavalyou (Kovalev) death penalty case.[35]

53. The Special Rapporteur received information about ongoing serious concerns regarding the treatment of inmates and their conditions of confinement. Many find themselves in cold detention conditions, with no hot water. Some reported having been deprived of sleep, placed in stress positions, denied medical care, placed in disciplinary isolation cells for petty violations or prevented from observing their religious beliefs or studying.

54. Some inmates, especially political and civic activists, consistently complained about accumulated ill-treatment to coerce them into seeking a pardon.

55. In the view of the Special Rapporteur, there is an urgent need to publicly prohibit torture; for measures to be taken to effectively prevent acts of torture and ill-treatment by State officials; and for the conduct of prompt, impartial and full investigations, and the prosecution of alleged perpetrators.[36]

D. Treatment of political opponents, human rights defenders and activists

56. A number of political opponents and activists, whose sentences appear to have been politically motivated, have reportedly faced increasing psychological and physical pressure while deprived of their liberty.[37] These individuals are routinely handed out disciplinary punishments for allegedly violating the rules of detention. The result is limitations placed on meetings with relatives and/or counsel, on receipt of packages (food and medicine), and correspondence.

57. In November 2011, Ales Bialiatski, head of the human rights centre Viasna, was found guilty of tax evasion and sentenced under article 243 (2) (tax evasion) of the Criminal Code to four and a half years and confiscation of all assets. In June 2012, the prison authorities labelled him a repeat violator of the regulations of his detention. Reportedly, he has since continued to face arbitrary reprimands in the form of restrictions on his mealtimes and on permission to receive parcels for having violated the rules in the penal colony No. 2 in Babruisk.[38] Other inmates are not allowed to communicate,

[33] CAT/C/BLR/CO4, para. 10.
[34] Ibid., para. 16.
[35] CCPR/C/106/D/212/2011, para. 11.2.
[36] See also CAT/C/BLR/CO/4, para. 11.
[37] See Viasna, "Critical situation for political prisoners in Belarus and freedom for 40 activists considerably restricted", 5 March 2013, available from http://spring96.org/en/news/61661.
[38] Human Rights Watch, "Belarus: stop intimidation of political prisoners", 2 October 2012, available from www.hrw.org/news/2012/10/02/belarus-stop-intimidation-political-prisoners.

threatened with disciplinary action. On 13 February 2013, the administration of penal colony No. 2 announced that Mr. Bialiatski would not be allowed any visits with family members for a further six months.[39] He last met with his wife on 20 December 2012.

58. On 28 August 2012, Zmitser Dashkevich, leader of the youth movement Malady Front, was sentenced to a further year in prison for allegedly violating prison rules under article 411 of the Criminal Code (deliberate disobedience to the correctional institution administration). He had originally been sentenced on 24 March 2011 to two years in a labour colony for alleged assault under article 339 (hooliganism) of the Criminal Code. On 21 September, he went on hunger strike to protest against the "inhuman" treatment of the colony's administration. The hunger strike lasted two weeks; he was subsequently put in solitary confinement for 15 days. On 30 October, his sentence conditions were harshened on the allegation that he had committed gross and systematic violations of the regulations, whereafter he was transferred to prison No. 1 in Hrodna. While he was able to marry in December 2012, this was initially blocked. His deprivation of liberty has been marked by provocation by the authorities, incitement from other inmates, pressure owing to his political and religious views, and restrictions on correspondence and meetings. He now has the status of repeat violator of regulations.

59. On 3 February 2013, Nikolai Statkevich, a 2010 presidential candidate, is serving a six-year prison term after having been sentenced on 26 May 2011 under article 293 (1) of the Criminal Code (organizing mass unrest accompanied by violence against individuals, programmes, arson, destruction of property and armed resistance to government representatives). He is currently in prison No. 4 in Mahiliou. Already classified as a flagrant violator in December 20111, the administration in the penal colony in Shklou, where Mr. Statkevich first served his sentence, went on to classify him as "prone to escape and assault". He faced three rounds of disciplinary punishment in 2012 while in prison No. 4. On 27 June 2012, he was put in solitary confinement for 10 days. He has constantly faced different forms of provocation, with demands on him to sign a petition to request a pardon. On 11 February 2013, he reported another series of provocations against him.

60. The above instances are emblematic of a broader pattern of continuous, cumulative and cruel pressure applied to individuals while isolated from the outside world (for example, by limiting access to relatives, lawyers, correspondence and communication).The overall aim (often voiced even by wardens) is to "break" these individuals and force them to seek a pardon. Such practices could be viewed as amounting to ill-treatment or even torture.[40]

E. Independence of judges and lawyers

61. Despite the Code on the Judicial System and the Status of Judges of 2007, which according to the Government sets forth all the fundamental principles necessary for safeguarding judicial independence, concerns remain that, while article 110 of the Constitution and article 22 of the Criminal Procedure Code provide for an independent

[39] See http://spring96.org/en/news/61860.

[40] See Inter-American Court of Human Rights, *Loayza-Tamayo v. Peru*, 17 September 1997, para. 58; *Godínez-Cruz v. Honduras*. 20 January 1989, paras.164 and 197; *Fairén-Garbi and Solís Corrales v. Honduras*,15 March 1989, para. 149; and *Velásquez Rodríguez v. Honduras*, 29 July 1988, paras. 156 and 187. See also African Commission on Human Rights, *Law Office of Ghazi Suleiman v. Sudan*, communications 222/98 and 229/99 (2003); and *Amnesty International and Others v. Sudan*, Communications 48/90, 50/91, 52/91, 89/93 (1999), para 43.

judiciary, other provisions in the law, specifically those on disciplining and the removal of judges, their appointment and tenure, undermine these provisions.[41]

62. The dependence of the judiciary on the executive branch is conditioned by the imbalance of the branches of power vested in the amendments to the Constitution of 1996. The President continues to appoint, dismiss and determine the tenure of judges.

63. The lack of independence of lawyers is particularly worrying and has not been addressed by the authorities. The reports received by the Special Rapporteur echo the findings by the Special Rapporteur on the independence of judges and lawyers following her visit to Belarus in 2001, when she spoke of "a pattern of intimidation and interference in the discharge of the professional functions of lawyers".[42]

64. Reports indicate that lawyers face interference, harassment, intimidation or other consequences for proper defence of the interests of their clients, and overall interference with lawyer-client confidentiality. There are reports of impediments in access to the legal profession and practicing as a lawyer. Lawyers are prevented from forming independent bar associations.

65. Hanna Bakhtina, Daria Lipkina, Aleh Ahejeu, Tatstsiana Ahejeu, Uladzimir Toustsik, Tamara Harajeva and Paval Sapelka are the best-known cases of disbarred lawyers. They have been the subject of retaliation for representing candidates in the presidential elections of December 2010, who were detained afterwards for advocating for the respect of human rights through their work.

66. The Ministry of Justice regulates entry to the legal profession. It controls the operation and governance of bar associations, and considers complaints leading to disciplinary measures.[43]

67. The Special Rapporteur suggest reforming the Bar to protect the independence of legal professionals, including by guaranteeing in practice the independence of bar associations and their right to decide on their own membership. This would guarantee legal protection for all persons residing in Belarus.

F. Fair trial

68. The Human Rights Committee continues to indicate that the right to the presumption of innocence and fair trial standards are violated.[44] The most recent findings of the Committee, in its decision on Mr. Kavalyou (Kovalev), illustrate the systemic concerns in the application of due process and procedural guarantees in Belarus. It found, inter alia, that Mr. Kavalyou had been denied adequate access to his lawyer prior to and during the trial, therefore a breach of fair trial, and that, before the final judgement, he had been branded a terrorist by the State media, thus a denial of the presumption of innocence.[45]

69. In the light of the ongoing deficiencies in and violations of the right to a competent, independent and impartial tribunal, a fair trial and the presumption of innocence, the Belarusian authorities should fully implement the recommendations made in the report of

[41] CAT/C/BLR/CO/4, para. 12 (a).
[42] A/HRC/17/30/Add.1, para. 101.
[43] Law on Advocacy and Legal Practice in the Republic of Belarus, 6 April 2012.
[44] See CCPR/C/86/D/1100/2002, CCPR/C/103/D/1316/2004, CCPR/C/99/D/1502/2006, CCPR/C/104/D/1750/2008, CCPR/C/105/D/1226/2003 and CCPR/C/106/D/2120/2011.
[45] CCPR/C/106/D/2120/2011.

the OSCE Office for Democratic Institutions and Human Rights on trial monitoring in Belarus.[46]

G. Arbitrary arrest and detention

70. Reports indicate that arbitrary detention is used as a means to intimidate, harass and punish individuals through arbitrary administrative and criminal detention, especially when they are engaged in undesired activities. The Special Rapporteur received reports from journalists, lawyers, human rights defenders and members of political organizations who claimed that they had been detained, beaten in the process and charged with speculative administrative and criminal offences.

71. The testimonies received highlighted the consequences of the lack of provision for judicial review of a decision to detain a person, which continues to be sanctioned by the prosecutor. While a detainee may appeal to the court against the detention, the court may only check the legality of the procedure, not the decision itself to detain a person.

72. The Working Group on Arbitrary Detention found the detention of Ales Bialiatski, Head of the human rights centre Viasna, to be arbitrary, in contravention of article 20, paragraph 1 of the Universal Declaration on Human Rights and article 22 of the International Covenant on Civil and Political Rights. The Working Group emphasized that "the adequate remedy is to release Mr. Bialiatski and accord him an enforceable right to compensation pursuant to article 9, paragraph 5" of the International Covenant on Civil and Political Rights.[47]

73. The authorities of Belarus should ensure that detention may be ordered only by a judge, and that pretrial detention is applied only in exceptional circumstances.

H. Freedom of expression and opinion

74. In July 2012, a lawsuit to suspend the newspapers *Nasha Niva* and *Narodnaya Volya* was withdrawn. Since then, no attempts have been made to shut down independent media outlets. Freedom of expression and opinion continues, however, to be severely restricted through centralized media governance, arbitrary regulations, State ownership of all major media, and the threat of law enforcement against unwanted journalism.

75. The Ministry of Information continued to exert its overwhelming powers to authorize, warn and shut down media outlets. In the period 2010–2012, the Ministry issued more than 180 warnings to media outlets and 105 refusals to register mass media.[48]

76. In 2012, 60 journalists were reported to have endured short-term detention, including journalists from Estonia and Sweden.[49] Office searches and equipment seizures were found to be routinely performed during detention of journalists, despite the fact that international standards regard such measures as restrictions on freedom of expression.

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[46] OSCE Office for Democratic Institutions and Human Rights, Trial Monitoring in Belarus (March – July 2011), 10 November 2011.

[47] A/HRC/WGAD/2012/39, paras. 46 and 53.

[48] See www.belta.by/ru/all_news/society/Mininform-Belarusi-za-2010-2012-gody-napravil-105-otkazov-v-registratsii-SMI_i_623567.html.

[49] Belarusian Association of Journalists, Mass media in Belarus – 2012: A Brief Review and Analysis, newsletter for 2012, available from www.baj.by/sites/default/files/monitoring_pdf/brief_2012_mass_media_in_belarus_en.pdf.

77. A worrying new trend has emerged with the Government's increased harassment of Internet-based expression. In September 2012, social media activists were detained and pressured for passwords of their social media accounts. Law enforcement by the authorities repeatedly led to the persecution of persons posting photographs of themselves holding a portrait of Ales Bialiatski, taken on empty streets in Hrodna and Novopolotsk,[50] on the charge of "conducting an unauthorized mass event". On 13 February 2013, the Special Rapporteur communicated these cases to the authorities jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders (see also section I below).

78. Photographs posted on the Internet were also criminalized in the still ongoing investigation of the videoblogger Anton Suryapin over the globally reported case of parachuted teddy bears with captions on free speech.[51] The charge brought against Mr. Suryapin, who is currently banned from travelling, of "helping illegal border-crossing" could lead to a seven-year prison sentence.

79. The above actions by the Government not only tightened control over the Internet, despite the explicit recommendation of the High Commissioner, but also arbitrarily applied already oppressive extra-journalistic regulations to the online media.

80. Andrei Poczobut, correspondent of the Polish newspaper *Gazeta Wyborcza*, was charged with defamation of the President after articles that he authored were posted on several websites. Mr. Poczobut was forced to remain in Hrodna from June 2012 to March 2013, when the case was dropped.[52]

81. Cultural rights were found to have been jeopardized in the harassment of *ARCHE*, a well-respected intellectual journal and forum, which resulted in the closure of the publication and the forced emigration of its editor, Valeriy Bulhakau.[53] On 14 September 2012, Mr. Bulhakau was detained at the launch of his book on the "Sovetization of Western Belarus" in Hrodna. He was accused of engagement in an illegal business for selling copies of his book.

I. Freedom of peaceful assembly

82. Although article 26 of the Constitution guarantees the right to peaceful assembly, the legislative amendments to peaceful assembly adopted in 2011 broadened the definition of mass events and criminalized their organization, in violation of the law. Authorities regularly prohibit peaceful gatherings and use "hooliganism" or similar charges of misdemeanour to detain, intimidate and silence citizens.

83. One emerging concern is that individuals are sentenced to an administrative offence for participating in an unsanctioned event only after information has become available on the Internet, and after the event. An example of this was when three human rights defenders were charged under article 23.34 of the Administrative Code (organizing or conducting a

[50] See www.omct.org/human-rights-defenders/urgent-interventions/belarus/2013/01/d22115/ and http://spring96.org/ru/news/60850.

[51] Alyssa Creamer, "Anton Suryapin, student photojournalist, could face 7 years in Belarus prison for his teddy bear pictures, Huffington Post, 14 August 2012, available from www.huffingtonpost.com/2012/08/14/anton-suryapin-student-ph_n_1775593.html.

[52] See www.svaboda.org/content/article/24784491.html.

[53] http://www.svaboda.org/content/article/24768828.html.

mass event or demonstration) after they had posted photographs of themselves portraits of political prisoner Ales Bialiatski on the Internet, on 10 December 2012. They were charged nine days after the event and sentenced to an administrative fine (see also paragraph 77 above).[54]

84. The systemic and ongoing nature of the denial of peaceful assembly can be seen in the nine cases brought by Pavel Levinov of the Belarusian Helsinki Committee,[55] which were joined owing to their "factual and legal similarity", given that, in each case, Mr. Levinov had applied to the executive authorities of the town of Vitebsk for permission to picket.[56]

85. The actions of the authorities are more directed at stopping such above-mentioned events and holding participants liable, when they should be aimed more at facilitating them legally and in practice, as recalled by the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Administrative detention should only be used in an exceptional manner and only for imperative reasons of security.

J. Freedom of association and human rights defenders

86. On 31 July 2012, a bill on the introduction of alterations and addenda to certain laws "on the issues of functioning of political parties and other public associations" was submitted to the House of Representatives of the National Assembly, without any prior consultation with non-governmental organizations. The bill is still pending. Despite a number of positive norms in comparison with the current legislation, the bill would, even if adopted and implemented, not improve the overall situation of freedom of association in Belarus.

87. On 24 January 2013, decree No. 2 was adopted, introducing amendments to decree No. of January 1999 on the registration and liquidation procedures of non-profit organizations, such as institutions and associations. The decree stipulates that the application for State registration should confirm that the owner of the property or the head of the legal entity is not on the preventive register, in accordance with Law No. 453-3 on the prevention of offences. The grounds for "preventive registration" (a method for the prevention of offences), as indeed those for non-registration, are subjective and unclear.

88. In 2012, 111 new associations, four unions of public associations and 29 new organizational structures of political parties were registered. According to information given at a press conference of the Ministry of Justice, on 7 February 2013, registration was denied to 19 public organizations, including two political parties: Belarusian Christian Democracy and the Belarusian Communist Workers' Party.

89. Human rights organizations appear to be particularly subjected to scrutiny. On 9 October 2012, the Minsk economic court ordered the closure of the association Platforma for allegedly missing the deadline for its tax declaration and failing to notify the tax inspector of its relocation, even though papers were reportedly submitted on time and no move had taken place. It was fined 3,000,000 roubles at the first instance, a ruling that was upheld on 13 November 2012 by the Minsk City Economic Court. Moreover, since Platforma representatives participated in the forty-seventh session of Committee against

[54] See www.omct.org/human-rights-defenders/urgent-interventions/belarus/2013/01/d22115/.

[55] CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010.

[56] Centre for Civil and Political Rights, Levinov vs. Belarus case summary, 19 July 2012, available fromwww.ccprcentre.org/wp-content/uploads/2013/01/1867-2009-Levinov-v-Belarus.pdf.

Torture in November 2011, they have faced continued harassment.[57] In reply to a joint allegation letter by special procedures mandate holders, Belarus provided a procedural overview.

90. Throughout the year, the human rights centre Viasna continued to come under pressure. On 26 November 2012, the office was sealed by the police. The property, officially registered under the name of Mr. Bialiatski, was subject to confiscation by the court decision in 2011 brought against him for alleged tax evasion. In the Bialiatski case, the Working Group on Arbitrary Detention found that the fund raising undertaken by Mr. Bialiatski for the purposes of allowing the very existence of Viasna and continuation of its activities was in conformity with articles 20, paragraph 1 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights.[58]

91. Moreover, the Working Group found Belarus in breach of its international obligations in interfering in the funding of human rights activities of non-governmental organizations. It stressed that the criminal law applied to Mr. Bialiatski's case did not list human rights-related activities among the purposes that allow tax exemption, and that States parties to the Covenant were not only under a negative obligation not to interfere with the founding of associations or their activities, but also under a positive obligation to ensure and provide measures such as facilitating associations' tasks by public funding or allowing tax exemptions for funding received from outside the country.[59] In its reply, Belarus considered the opinion of the Working Group to be non-authoritative, politically motivated and outside the bounds of its mandate.

92. Reports were received of persistent acts of intimidation and the judicial harassment of human rights defenders, at times resulting in prison sentences and heavy fines amid reports of due process irregularities in trials.

93. Joint communications highlighted concerns about the arrest and detention of human rights defenders, as well as allegations of judicial and administrative harassment of non-governmental human rights organizations. Responses from the Government of Belarus to these communications have at times substantially responded to the issues raised.

94. The Special Rapporteur is concerned that opportunities for the exercise of freedom of association have not broadened, and that legislation is complex. In addition, human rights organizations and defenders appear to be under particular scrutiny, which raises concerns for their protection, safety and ability to undertake their work in a safe and secure environment.

K. Discrimination

95. While the general principles of equality and non-discrimination are guaranteed in article 22 of the Constitution and contained in various domestic laws, there is no definition of discrimination in national legislation. Only article 14 of the Labour Code lists possible grounds for discrimination.

96. There is no court practice for hearing cases of discrimination, given that courts do not accept discrimination as a basis for lawsuits.

97. The Committee on the Elimination of All Forms of Discrimination against Women noted an absence of a specific prohibition of discrimination against women in all areas of

[57] A/HRC/21/49, case no BLR 2/2012, p. 47.
[58] A/HRC/WGAD/2012/39, para. 50.
[59] Ibid., para. 48.

life in national legislation, as well as an absence of a law on gender equality or of comprehensive anti-discrimination legislation covering sex- and gender-based discrimination.[60]

98. Similarly, there is no anti-discrimination legislation covering persons with disabilities.

99. As discrimination is a cross-cutting issue that affects the enjoyment of civil, cultural, economic, social and political rights, the definition of discrimination is an essential first step in the eradication of anti-discriminatory practices.

L. Treatment of lesbian, gay, bisexual and transgender persons

100. Although "homosexual activity" was decriminalized in Belarus in 1994, social prejudice against sexual minorities and human rights defenders working on this issue appears to be encouraged by an openly derisive discourse from the official media and the authorities. In March 2013, in response to international criticism over human rights violations, President Lukashenko stated "it is better to be a dictator than gay".[61] Reports persist of instances of hate-motivated violence against lesbian, gay, bisexual and transgender (LGBT) persons,[62] but rarely meet with any law enforcement action.

101. The situation of the rights to freedom of assembly and of association is particularly critical for LGBT persons. Reportedly, no LGBT public events or associations were authorized during the period under review.[63] Recently, LGBT persons reported a significant deterioration in their situation. The organization GayBelarus sought registration with the Ministry of Justice as the human rights centre "Lambda", producing more than the required 70 signatures of founding members. On 8 February 2013, Lambda was denied registration on the grounds that its charter did not provide appropriately for youth socialization and all-round development.[64] Subsequently, 67 of the 71 founding members, living in 12 different cities in Belarus, were reportedly summoned by drug or traffic police for a "conversation". Those who refused were visited by the police, at home or at work, while "notifications" were sent to their workplace.

102. The police also repeatedly raided LGBT clubs in Minsk and Vitebsk,[65] of which eight were registered in January and February 2013.[66] The raids were reportedly intimidating and degrading, with people lined up, body searched and interrogated about their sexual habits.[67]

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[60] CEDAW/C/BLR/CO/7.

[61] Reuters, "Belarus's Lukashenko: 'Better a dictator than gay'", 4 March 2012, available from www.reuters.com/article/2012/03/04/us-belarus-dicator-idUSTRE8230T320120304.

[62] See http://gaybelarus.by/english/minsk-gay-pride/17-year-old-guy-from-brest-was-beaten-by-a-classmate-of-the-expected-sympathies.html.

[63] See http://belarusdigest.com/2010/05/11/minsk-authorities-ban-slavic-gay-pride-on-may-15.

[64] See http://spring96.org/en/news/61307.

[65] Yuras Karmanau, "Gays in Belarus face raids and arrests for trying to form a rights group", *Vancouver Sun*, 15 February 2013, available from www.vancouversun.com/life/Gays+Belarus+face+raids+arrests+trying+form+rights+group/7969238/story.html.

[66] Civil Rights Defenders, "Campaign against LGBR organisation", 18 January 2013, available from www.civilrightsdefenders.org/news/campaign-against-lgbt-organisation/.

[67] BelarusDigest, "Attempt to register an LGBT organisation in Belarus provokes police raids", 6 February 2013, available from http://belarusdigest.com/story/attempt-register-lgbt-organisation-belarus-provokes-police-raids-12972.

M. Labour rights and trade unions

103. Discriminative disadvantaging and intimidation of independent trade unions have continued, especially in the large State-owned sector. Belarus remains excluded from the trade preferences system of the European Union because of systematic violations, registered by the International Labour Organization (ILO), of workers' freedom of association and the right to collective bargaining. In November 2012, ILO found that the Government of Belarus still failed to respond to its recommendations.[68] No improvement has been witnessed in the laws and practices impeding the registration of labour organizations outside the structures of the Federation of Trade Unions of Belarus.

104. The ILO Committee on the Freedom of Association noted several allegations of administrative and physical harassments of unionists. Complaints of continuing interference and anti-union pressure by the authorities were submitted by three unions.[69] The Committee registered allegations of arrest and detention, as well as beatings of trade union leaders and members, the search of the regional office of the Radio and Electronic Workers Union in Brest, and seizure of its computers, documents and seal. In the Gomel and Mogilev regions, more than 50 people reportedly lost their jobs owing to their independent trade union activism.

105. ILO regards the prohibition of forced and child labour as the cornerstone of international labour law. Officials in Belarus continue, however, to organize *subbotniks*, or unpaid weekend work (a traditional Soviet-era method of workforce mobilization) and unpaid agricultural work mostly required of students. Despite the fact that regulations relating to *subbotniks* specify that the work should be voluntary, employees have to perform either their regular work duties or tasks set by local executive authorities, such as cleaning the streets. Their salaries are calculated, but all earnings are transferred to funds for various public projects, such as the construction of a library in Minsk, a new museum dedicated to the Second World War or a nuclear power plant.[70]

106. On 7 December 2012, President Lukashenka signed decree No. 9 on additional measures for the development of the wood processing industry. The new decree effectively takes away the right of workers in the wood processing industry to freely leave their jobs. The companies participating in the State-funded modernization project are obliged to pay benefits to their workers above and beyond their salaries. According to the new decree, employees wishing to leave the company against the will of their employers can be forced to either pay back the benefits or required to stay until the required amount has been withdrawn from their salaries. Currently, the decree affects fewer than 20,000 employees in Belarus.

107. When visiting the woodworking company OAO Mogilevdrev on 13 December 2012, the President commented that the essence of decree No. 9 was "forced labour", stating that "they cannot quit without your authorization; those who do quit will have to do forced labour here."[71] In this way, decree No. 9 can be considered in violation of the core standards for employees' rights, especially the ILO Conventions concerning Forced or

[68] International Labour Office, 366th report of the Committee on Freedom of Association (GB.316/INS/9/2) (available fromhttp://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193261.pdf), paras. 1-28.

[69] Ibid., 352nd report, para. 68.

[70] BelarusDigest, "Belarusians forced to work on weekends", 11 October 2011, available from http://belarusdigest.com/story/forced-labour-belarus-6117.

[71] Belarusian Telegraph Agency, "Lukashenko: Woodworking enterprises must fulfill decree No. 9", 13 December 2012, available from http://news.belta.by/en/news/president?id=701681#.

Compulsory Labour, 1930 (No. 29), the Abolition of Forced Labour, 1957 (No. 105) and Employment Policy, 1964 (No. 122). It also contradicts article 8.3 (a) of the International Covenant on Civil and Political Rights and article 41 (4) of the Constitution, both of which prohibit forced labour other than for punishment decided by a court or in a state of emergency.

N. Elections

108. Parliamentary elections were held on 23 September 2012. Most international observers regarded the polling as inconsistent with basic standards for competitive, free and fair elections. The OSCE Office for Democratic Institutions and Human Rights stated that Belarus had not respected its "OSCE commitments, including citizens' rights to associate, to stand as candidates and to express themselves freely".[72] The CIS election observation mission, however, deemed the elections "to be in compliance with universally accepted democratic norms and national legislation".[73]

109. Two political parties boycotted the elections, while two others withdrew their candidates, citing the continued imprisonment of individuals on political grounds, the limited role of parliament and the low level of confidence in the electoral process. A total of 293 candidates contested 110 seats. Sixteen were elected unopposed. None of the elected candidates represented the opposition. The new House of Representatives, just like the previous one, comprised representatives of the three parties supporting the President.

110. In a welcome improvement over the parliamentary elections held in 2008, the number of party political candidates and civil election commission members increased significantly. For the first time, political parties were able to nominate candidates in all constituencies. At the counting of votes, however, representatives of opposition political parties accounted for less than 1 per cent of the electoral commissions, the selection of which remained the prerogative of the local executive branch.[74]

111. The amendments made in 2011 to the laws on political parties, mass events and the Criminal Code restricted public calls to conduct meetings, rallies and demonstrations during the electoral campaign. Some prominent political figures that may have played a role in the contest were not eligible to register owing either to the fact that they were currently imprisoned or had been so in the past. The field of contestants was further restricted by arbitrary administrative actions. The central election commission disqualified candidates on the basis of minor inaccuracies. In total, one in four nominees was not registered.

112. An honest count, in compliance with the requirements described in paragraph 7.4 of the OSCE Copenhagen Document, could not be guaranteed, either because observers were not given a meaningful opportunity to observe the count or because of the lack of properly delineated counting procedures. Transparency of the results was denied by the fact that the

[72] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission final report, 14 December 2012, available from www.osce.org/odihr/elections/98146.

[73] "CIS observers: Parliamentary elections in Belarus held according to democratic norms", *KyivPost* (Kyiv), 1 October 2012. Available from www.kyivpost.com/content/russia-and-former-soviet-union/cis-observers-parliamentary-elections-in-belarus-held-according-to-democratic-norms-313745.html.

[74] Viasna, Election to the Chamber of Represenatives of the National Assembly of Belarus of the Fifth Convocation,-Final Report, 24 September 2012, available from http://elections2012.spring96.org/en/news/57895.

central election commission did not publish the final results broken down by polling station.[75]

V. Conclusions and recommendations

113. **The Special Rapporteur concludes that there has only been scant progress in the implementation of recommendations made by the High Commissioner in her report to the Human Rights Council in 2012.[76] He welcomes the initiatives to establish a parliamentary working group on the death penalty and a national human rights institution in line with the Paris Principles, which he hopes will result in the prompt fulfilment of recommendations in both these areas. He urges the Government to increase its efforts to implement comprehensively all the recommendations made by the United Nations human rights mechanisms.**

114. **Through the consultations held during the period under review, the Special Rapporteur views the system of governance – decrees, legislation, policy and practice – as impeding the realization of the constitutional guarantees for the protection of human rights for all those who live in Belarus. The situation of human rights – precarious in general, grave in certain areas – is clearly affected by the domination of the executive branch over the legislative and the judiciary.**

115. **The information gathered from primary sources suggests the existence of systemic and systematic violations of human rights, especially in the areas of due process, fair trial, and torture. The effective denial reported of the full enjoyment of the freedoms of expression and opinion, of peaceful assembly and of association is in itself indicative of the state of human rights in Belarus, as these rights are so often the pathway along which other civil, cultural, economic, political and social rights are exercised.**

116. **The situation for those deprived of their liberty, particularly well-known political prisoners, is of deep concern. Their conditions of detention, combined with the allegations of physical and psychological pressure that they facie, can be seen as amounting to ill-treatment or even torture.**

117. **The Special Rapporteur is grateful to all those who provided detailed first-hand information for his assessment. He regrets the fact that the Government did not avail itself of this opportunity. He again reiterates his readiness to develop an incremental approach to engagement with the Government, starting with issues that both acknowledge as human rights concerns.**

118. **The Special Rapporteur stands ready to continue to offer his support to civil society, in accordance with his mandate, and acknowledges their spirit and commitment to the protection of human rights for all.**

119. **The Special Rapporteur recommends that the Government of Belarus review and fully implement the recommendations made by the High Commissioner in her report. In addition, the Special Rapporteur recommends that the Government:**

(a) Release unconditionally all political opponents, human rights defenders and activists, and immediately ease their detention conditions;

[75] OSCE Office for Democratic Institutions and Human Rights, Election Observation Mission final report (see footnote 72).

[76] A/HRC/20/8.

(b) Take measures leading to meaningful political accountability, including the strengthening of checks and balances in the political system, the removal of impediments to the active engagement of non-governmental organizations and opposition parties in political life and the even-handed application of the rule of law;

(c) Advance the work of the parliamentary working group on the death penalty, release comprehensive information on those executed to date, and establish an immediate moratorium on the use of the death penalty with a view to its permanent abolition;

(d) Expedite its initiative to establish a national human rights institution in accordance with the Paris Principles;

(e) Reform the justice sector, including by removing legal and institutional obstacles, to guarantee the independence of the judiciary in accordance with the Basic Principles on the Independence of the Judiciary;

(f) Reform the bar association, investigate the cases of lawyers who represented individuals detained in connection with the events of 19 December 2010 and reinstate their licenses, as appropriate;

(g) Investigate the fate of disappeared persons;

(h) Ensure that all detainees are informed promptly of the reasons for their detention and any charges against them, and allow them regular access to a lawyer of their choice and to their families;

(i) Ensure the absolute prohibition of torture and other ill-treatment, and take measures to bring conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners and other relevant international and national law standards;

(j) Adopt promptly comprehensive anti-discrimination legislation in accordance with the international obligations of Belarus;

(k) Investigate promptly allegations of violent incidents perpetrated because of actual or perceived sexual orientation, and establish a system to record such incidents;

(l) Review and adopt clear and explicit legislation that is in favour of holding peaceful assemblies, ensure in practice the facilitation and protection of peaceful assemblies, and recognize spontaneous assemblies in law and in practice;

(m) Amend legislation and practice to ensure that associations may be established through a process that is simple, easily accessible, non-discriminatory and non-onerous, or free of charge;

(n) Protect human rights defenders and journalists from harassment, intimidation and violence as a result of their activities, and conduct prompt, impartial and thorough investigations, prosecution and punishment of any such acts;

(o) Increase efforts to ensure the full implementation of the recommendations laid out in the reports of the International Labour Organization;

(p) Enhance the progress made towards reaching the Millennium Development Goals by reviewing how the application of human rights standards and practices can assist in their sustained achievement;

(q) Recognize free mass use of Internet-based media, including in publicly accessible spaces, and repeal regulations that grant the Government powers to sanction content in the press;

(r) Recognize and extend full cooperation to the mandate holder by engaging in a substantive and constructive dialogue and facilitating a visit to the country.

Annex

[English only]

Human rights concerns in relation to the recommendations made by the United Nations High Commissioner for Human Rights in her report (A/HRC/20/8)

Cooperation with United Nations human rights mechanisms and OHCHR

Cooperate fully with all United Nations human rights mechanisms, and fully implement all recommendations made at the universal periodic review and by treaty bodies and special procedures - Human Rights Council resolution 20/13, para. 75 (*j*)

Cooperate fully with OHCHR, including by providing access to an OHCHR technical team to visit Belarus and to engage directly with the relevant authorities and civil society - Human Rights Council resolution 20/13, para. 75 (*k*)

National human rights institution

Establish a national human rights institution in compliance with the Paris Principles - Human Rights Council resolution 20/13, para. 75 (*l*)

Legal framework: the rule of law

Initiate a comprehensive review of the overall legal framework, including the Criminal Code, as well as the laws amended in 2011, bringing them into line with the State's international human rights obligations, and, in doing so, seek international expertise available from the United Nations, OSCE and the Council of Europe - Human Rights Council resolution 20/13, para. 75 (*n*)

The right to life and the death penalty

Establish a moratorium on all executions with a view to abolishing the death penalty, and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights - Human Rights Council resolution 20/13, para. 75 (*m*)

Prison conditions, torture and other cruel, inhuman or degrading treatment

Conduct a comprehensive, transparent and credible investigation into all reported cases of torture and ill-treatment and bring those responsible to justice; ensure in all circumstances the physical and psychological integrity of detained and imprisoned persons; and establish an independent national preventive mechanism for the prevention of torture at the domestic level - Human Rights Council resolution 20/13, para.75 (*c*)

Treatment of political opponents, human rights defenders and activists

Immediately and unconditionally release remaining political opponents, activists and journalists who were not involved in any violence in the events of 19 December 2010 and its aftermath - Human Rights Council resolution 20/13, para. 75 (*a*)

Conduct an impartial, credible and objective investigation of the circumstances in which the above persons were arrested and detained, and take steps to promptly rehabilitate them - Human Rights Council resolution 20/13, para.75 (*b*)

Independence of judges and lawyers

Ensure full compliance with international standards for due process and fair trial; put an immediate end to all forms of pressure on judges, lawyers and members of the bar; and ensure that the bar is free and independent of all forms of administrative control by the Government - Human Rights Council resolution 20/13, para. 75 (*i*)

Fair trial

Ensure full compliance with international standards for due process and fair trial; put an immediate end to all forms of pressure on judges, lawyers and members of the bar; and ensure that the bar is free and independent of all forms of administrative control by the Government - Human Rights Council resolution 20/13, para. 27 (*i*)

Study the findings and observations reflected in […] report of the OSCE Office for Democratic Institutions and Human Rights on trial monitoring in Belarus and implement fully the recommendations made therein - Human Rights Council resolution 20/13, para. 75 (*o*)

Freedom of expression and opinion

Put an immediate end to all forms of pressure on journalists and media workers; withdraw all charges against journalists prosecuted for their professional activities, and take measures to rehabilitate them; and recall official warnings issued against newspapers and cease such practice - Human Rights Council resolution 20/13, para. 75 (*g*)

Ensure freedom of expression and create a legal environment and practices conducive to the effective freedom of the media; eliminate the practice of censorship and self-censorship; and ensure that Internet control measures are minimal and that regulations do not lead to censorship of electronic media and freedom of speech - Human Rights Council resolution 20/13, para. 75 (*h*)

Freedom of peaceful assembly

Ensure the full implementation of the rights to freedom of association and assembly, in accordance with international law, and put an end to all forms of political and administrative pressure on and harassment of political opponents - Human Rights Council resolution 20/13, para. 75 (*d*)

Freedom of association and human rights defenders

Put an end to all forms of pressure on and harassment of civil society organisations, as well as individual human rights defenders; release immediately and unconditionally Ales Bialiatski, and withdraw charges brought against him and other human rights defenders - Human Rights Council resolution 20/13, para. 75 (*e*)

Take measure to ensure that civil society organisations have the freedom to perform their tasks; revoke the official warnings issued against civil society organisations, and cease the practice of issuing such warnings - Human Rights Council resolution 20/13, para. 75 (*f*)

Elections

Study the findings and observations reflected in the report of the OSCE election observation mission in Belarus, the report of the OSCE Moscow Mechanism Rapporteur - Human Rights Council resolution 20/3, para. 75 (*o*)