

## **Committee against Torture**

**Forty-seventh session**

31 October–25 November 2011

### **Consideration of reports submitted by States parties under article 19 of the Convention**

#### **ADVANCE UNEDITED VERSION**

#### **Concluding observations of the Committee against Torture**

#### **Belarus**

1. The Committee against Torture considered the fourth periodic report of Belarus (CAT/C/BLR/4) at its 1036<sup>th</sup> and 1039<sup>th</sup> meetings, held on 11 and 14 November 2011 (CAT/C/SR.1036 and 1039), and adopted the following concluding observations at its 1053<sup>rd</sup> meeting (CAT/C/SR.1053).

#### **A. Introduction**

2. While welcoming the submission of the fourth report of Belarus, the Committee regrets that it was submitted nine years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party following its last review in 2000.

3. The Committee regrets that no representatives of the State party could come from the capital to meet with the members of the Committee during the current session; however, it notes with appreciation the opportunity to engage in a constructive dialogue covering many areas under the Convention.

#### **B. Positive aspects**

4. The Committee welcomes the fact that the State party has ratified or acceded to the following international instruments:

a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (3 February 2004); and

b) Two Optional Protocols to the Convention on the Rights of the Child (23 January 2002 and 25 January 2006).

5. The Committee notes the ongoing efforts by the State party to reform its legislation, policies and procedures in areas of relevance to the Convention, including:

a) Revision of the Criminal Code, Penal Enforcement Code and Code of Criminal Procedure, which entered into force on 1 January 2001;

b) Adoption of the Detention Procedures and Conditions Act in 2003; and

c) Adoption of the new Law on Provision of Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons, in 2008.

## C. Principal subjects of concern and recommendations

### Fundamental legal safeguards

6. The Committee is seriously concerned about numerous, consistent reports that detainees are frequently denied basic fundamental legal safeguards, including prompt access to a lawyer and medical doctor and the right to contact family members, and this pertains especially to those detainees charged under article 293 of the Criminal Code.<sup>1</sup> Such reports include cases raised jointly by several Special procedures' mandate-holders, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and pertaining to, *inter alia*, Mr. Andrei Sannikov who made his allegation during trial in May 2011 about the denial of his rights to prompt access to lawyer, to contact family and to medical treatment despite injuries caused by the authorities during arrest,<sup>2</sup> and Mr. Vladimir Neklyayev (A/HRC/17/27/Add.1, para.249). While noting the Act No.215-Z of 16 June 2003 on detention procedure and conditions, the Committee expresses its serious concern at the State party's failure in practice to afford all persons deprived of their liberty, including detainees held in pre-trial detention facilities of the State Security Committee (KGB) and under administrative detention, with all fundamental legal safeguards, as referred to in paragraphs 13 and 14 of the Committee's General Comment No. 2 (CAT/C/GC/2), from the very outset of detention. (arts. 2, 11 and 12)

#### The Committee recommends the State party to:

a) **Ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their detention, including the rights to prompt access to a lawyer and a medical examination by an independent doctor, to contact family members, to be informed of their rights at the time of detention, including about the charges laid against them, and to appear before a judge promptly;**

b) **Guarantee the availability to detained persons, including those under administrative detention, to challenge the legality of their detention or treatment; and**

c) **Take measures to ensure audiotaping or videotaping all interrogations in police stations and detention facilities as a further means to prevent torture and ill-treatment.**

7. The Committee is concerned at the limited access to the central registry of detainees by family members and lawyers of detainees. It further regrets the lack of proper registration of detainees. (arts. 2, 11 and 12)

#### The Committee recommends the State party to ensure prompt registration of all persons deprived of their liberty following apprehension and access to the register by lawyers and relatives of those detained.<sup>3</sup>

8. The Committee is concerned by numerous allegations that officers in plain clothes carry out arrests, making identification impossible when complaints of torture or ill-treatment were presented. The Committee notes with concern reports that a number of presidential candidates were arrested and detained by men in plain clothing (A/HRC/17/27/Add.1, para.250) and allegations made by several detainees, including Mr.

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<sup>1</sup> CAT/C/BLR/Q/4, para.4; CCPR/C/86/D/1100/2002 (28 March 2006).

<sup>2</sup> A/HRC/17/27/Add.1, paras. 246–278 (27 May 2011); A/HRC/17/27/Add.1, paras. 327-340 (27 May 2011); Organization for Security and Cooperation in Europe (OSCE), Office of Democratic Institutions and Human Rights (ODIHR), "Report: Trial Monitoring in Belarus (March – July 2011)," 10 November 2011, p. 86; European Parliament resolution on Belarus of 12 May 2011.

<sup>3</sup> CAT/C/BLR/Q/4, para.5; CAT/C/BLR/Q/4/Add.1, para.26.

Andrei Sannikov and Mr. Vladimir Neklyayev, that they were subjected to torture while in pre-trial detention by masked men.<sup>4</sup> (arts. 2, 12 and 13)

**The State party should monitor compliance with legislation that requires all law enforcement officers on duty, including riot police (the OMON), the KGB personnel, to wear identification, provide all law enforcement officers with uniforms that include appropriate visible identification to ensure individual accountability and protection against acts of torture and ill-treatment, and subject law enforcement officers who violate the Convention to investigation and punishment with appropriate penalties.**

### **Enforced disappearances**

9. The Committee notes the information from the representatives of the State party that a database on disappearances is maintained. Nevertheless, the Committee regrets that the State party failed to provide sufficient information about disappearances, in particular the following unresolved cases of disappearances: the former Minister of the Interior, Yury Zakharenko, the former first secretary chairman of the dissolved Belarusian parliament, Viktor Gonchar and his companion Anatoly Krasovsky, and investigative television journalist Dmitry Zavadsky, raised by the Committee in 2000 (CAT/C/SR.442, para.29)<sup>5</sup> or submitted by the Working Group on Enforced or Involuntary Disappearances in 1999 (A/HRC/16/48).<sup>6</sup> (arts. 2, 11, 12 and 16)

**The State party should ensure investigation into the cases of disappeared persons with the aim of obtaining reliable information of their whereabouts and should clarify what happened to them. In particular, the State party should update the information about the four cases above, *inter alia*, the outcome of the investigation, any punishments or sanctions imposed on those responsible, any remedies provided for their relatives and the degree of access to the database on disappearances permitted for their lawyers and relatives.**

### **Torture**

10. The Committee is deeply concerned over the numerous and consistent allegations of widespread torture and ill-treatment of detainees in the State party. According to the reliable information presented to the Committee, many persons deprived of their liberty are tortured, ill-treated and threatened by law enforcement officials, especially at the moment of apprehension and during pre-trial detention. These confirm the concerns expressed by a number of international bodies, *inter alia*, the Special Rapporteur on torture,<sup>7</sup> the UN Human Rights Council (A/HRC/RES/17/24), the UN High Commissioner for Human Rights,<sup>8</sup> and the Organization for Security and Cooperation in Europe.<sup>9</sup> While noting article 25 of the Constitution which prohibits torture, the Committee is concerned about the substantial gap between the legislative framework and its practical implementation. (arts. 2, 4, 12 and 16)

**As a matter of urgency, the State party should take immediate and effective measures to prevent acts of torture and ill-treatment throughout the country, including by**

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<sup>4</sup> A/HRC/17/27/Add.1, paras. 249-250, 256.

<sup>5</sup> CAT/C/SR.442, paras. 29-30; CAT/C/SR.445, paras.8,17 and 23.

<sup>6</sup> E/CN.4/2000/64, para.27; E/CN.4/2001/68, paras.107-108; Council of Europe, Parliamentary Assembly, Resolution 1371 (2004) on Disappeared persons in Belarus.

<sup>7</sup> A/HRC/16/52/Add.1, paras. 11-12; A/HRC/13/39/Add.1, paras.13-17.

<sup>8</sup> UN High Commissioner for Human Rights' oral report to the Human Rights Council.

<sup>9</sup> Organization for Security and Cooperation in Europe (OSCE), Office of Democratic Institutions and Human Rights (ODIHR), "Report: Trial Monitoring in Belarus (March – July 2011)," 10 November 2011.

**implementing policies that would produce measurable results in the eradication of torture and ill-treatment by State officials.**

**Impunity and lack of independent investigation**

11. The Committee continues to be deeply concerned about the persistent and prevailing pattern of failure of officials to conduct prompt, impartial and full investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, the lack of independent investigation and complaint mechanisms, the intimidation of the judiciary, the low level of cooperation with international monitoring bodies, which have led to serious underreporting and impunity.<sup>10</sup> (arts. 2, 11, 12, 13 and 16). In particular, the Committee is concerned about:

a) The lack of an independent and effective mechanism for receiving complaints and conducting prompt, impartial and effective investigations into allegations of torture, in particular of pre-trial detainees;

b) Information suggesting that serious conflicts of interest prevent the existing complaints mechanisms from undertaking effective, impartial investigations into complaints received;

c) The lack of congruence in information before the Committee regarding complaints presented by persons in detention. The Committee notes with serious concern the information about reprisals against those who file complaints and the cases of denial of the complaints made by detainees, including the cases of Mr. Ales Mikhalevich and Mr. Andrei Sannikov; and

d) Reports indicating that no officials have been prosecuted for having committed acts of torture. According to information before the Committee, over the last ten years, only four law enforcement officers have been charged with the less serious offence, “abuse of power or official authority” and “transgression of power or official authority” under articles 424 and 426 of the Criminal Code.

**The Committee urges the State party to take all necessary measures to ensure that all allegations of torture and ill-treatment by public officers are promptly investigated in the course of transparent and independent inquiries, and that the perpetrators are punished according to the gravity of their acts. To that end, the State party should:**

**a) Establish an independent and effective mechanism to facilitate submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any ill-treatment or intimidation as a consequence of their complaint or any evidence given. In particular, as previously recommended (A/56/44, para.46(c)), the State party should consider establishing an independent and impartial governmental and non-governmental national human rights commission with effective powers to, inter alia, promote human rights and investigate all complaints of human rights violations, in particular those pertaining to the implementation of the Convention;**

**b) Publicly and unambiguously condemn the use of all forms of torture, addressing in particular law enforcement officers, the armed forces and prison staff, and including in its statements clear warnings that any person committing or participating in such acts or acting as an accomplice shall be held personally responsible before the law and shall be liable to criminal penalties;**

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<sup>10</sup> A/56/44, para.46 (b); A/HRC/15/16, paras. 52 and 98.22; A/HRC/15/16/Add.1, paras. 60-63; A/HRC/WG.6/8/BLR/3, para.23; A/HRC/RES/17/24, para.2 (d); OSCE report, paras.249 et al.

c) **Ensure that, in cases of alleged torture, suspects are suspended from duty immediately for the duration of the investigation, particularly if there is a risk that they might otherwise be in a position to obstruct the investigation; and**

d) **Provide the outcome of the investigation into the allegations raised by the Committee, including cases of Messrs. Ales Mikhalevich, Andrei Sannikov, Alexander Otroschenkov, Vladimir Neklyayev, Ms. Natalia Radina and Ms. Maya Abromchick, and the broader allegations of indiscriminate and disproportionate force used by riot police against approximately 300 people in Independence Square on December 19, 2010.**

#### **Independence of the judiciary**

12. While noting that article 110 of the Constitution and article 22 of the Code of Criminal Procedure provide for an independent judiciary,<sup>11</sup> the Committee is deeply concerned that other provisions in Belarusian law, specifically those on discipline and removal of judges, their appointment and tenure, undermine these provisions and do not guarantee judges' independence towards the executive branch of Government.<sup>12</sup> (arts. 2, 12 and 13) In particular, the Committee is concerned about:

a) The intimidation and interference in the discharge of the professional functions of lawyers, as noted with concern by the Special rapporteur on independence of judges and lawyers (A/HRC/17/30/Add.1, para.101). The Committee remains concerned that bar associations, though independent by law, are in practice subordinate to the Ministry of Justice and that several lawyers defending individuals detained in connection with the event on 19 December 2010 were disbarred by the Ministry of Justice;<sup>13</sup> and

b) Cases in which judicial bias in favor of the prosecution was alleged, including the case of Mr. Vladimir Russkin, who claimed he was forbidden to call his own witnesses and to question those presenting evidence against him<sup>14</sup> as well as the courts' performance in several trials related to the event of 19 December 2010.<sup>15</sup>

**In light of its previous recommendation (A/56/44, para. 46(d), the Committee urges the State party to:**

a) **Guarantee the full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of December 1985);**

b) **Ensure that judicial selection, appointment, compensation and tenure are made according to objective criteria concerning qualification, integrity, ability and efficiency; and**

c) **Investigate into the cases of lawyers who represented individuals detained in connection with the events of December 19, 2010 and were subsequently disbarred, including Pavel Spelka, Tatsiana Aheyeva, Uladsimir Toustsik, Aleh**

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<sup>11</sup> CAT/C/BLR/4, paras. 69-70.

<sup>12</sup> E/CN.4/2001/65/Add.1, para.108; A/56/44, paras. 45 (f), (g) and 46 (d); CAT/C/BLR/Q/4, paras. 6-8; A/HRC/17/30/Add.1 (19 May 2011), paras. 77-101; E/CN.4/2005/6/Add.3, para.79; OSCE report, paras. 82-105.

<sup>13</sup> CAT/C/BLR/Q/4, paras. 6-7; A/HRC/17/30/Add.1 (19 May 2011), paras. 77-101; European Parliament, resolution of 10 March 2011 on Belarus, para.7.

<sup>14</sup> CAT/C/BLR/Q/4, para.8(a); A/HRC/10/44/Add.4, para.19.

<sup>15</sup> UN High Commissioner for Human Rights, oral report to the 18<sup>th</sup> session of the HRC.

**Aleyeu, Tamara Harayeva, and Tamara Sidarenka, and reinstate their licenses, as appropriate.<sup>16</sup>**

#### **Monitoring and inspection of places of deprivation of liberty**

13. While noting the information on the detention monitoring activities by the Office of the Procurator-General, the national public watchdog commission of the Ministry of Justice and local watchdog commissions,<sup>17</sup> the Committee is deeply concerned about the reported lack of independence of the national monitoring system, as well as lack of information on effective procedures and reporting practices.<sup>18</sup> The Committee also regrets reports on the alleged misuse of psychiatric hospitalisation for other reasons than medical ones, and the lack of inspection of psychiatric hospitals.<sup>19</sup> (arts. 2, 11 and 16)

**The Committee urges the State party to establish fully independent bodies with the capacity to perform independent and effective unannounced visit to places detention and ensure that its members include diverse and qualified legal and medical professionals familiar with the relevant international standards, as well as independent experts and other representatives of civil society. The State party should also ensure that the members are afforded an opportunity to inspect all places of detention without prior notice and speak privately with detainees, and their findings and recommendations are made public in a timely and transparent manner.**

**Furthermore, the State party should make public detailed information on the place, time and periodicity of visits to places of deprivation of liberty, including psychiatric hospitals, and on the findings and the follow-up on the outcome of such visits. Such information should be submitted to the Committee as well.**

14. The Committee is concerned at the lack of access for international monitoring mechanisms, both governmental and non-governmental, to detention facilities in Belarus. The Committee also expresses regret at the outstanding request for a country visit by the five mandate-holders of the Special procedures, particularly the Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances,<sup>20</sup> as well as the State party's failure to response to requests for a visit by the Office of the High Commissioner for Human Rights.<sup>21</sup> (arts. 2, 11 and 16)

**The Committee urges the State party to:**

**a) Grant access to independent governmental and non-government organisations to all detention facilities in the country, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons;**

**b) Strengthen further the cooperation with UN human rights mechanisms, particularly by permitting visits by the Special Rapporteurs on torture, on the right to freedom of expression, and on human rights defenders, as accepted by the State party in the context of the universal periodic review (A/HRC/15/16, para.97.17), as soon as possible; and**

**c) Consider accepting the request by the High Commissioner for Human Rights for a visit by an OHCHR team.**

<sup>16</sup> A/HRC/17/27/Add.1, paras. 279-326.

<sup>17</sup> CAT/C/BLR/4, paras. 67, 80-89; CAT/C/BLR/Q/4/Add.1, paras.68-70.

<sup>18</sup> A/56/44, para.46 (e); CAT/C/BLR/Q/4, paras. 21-22; OSCE report, paras. 249-266.

<sup>19</sup> CAT/C/BLR/Q/4, paras. 37-38; CAT/C/BLR/Q/4/Add.1, para.34; E/CN.4/2005/6/Add.3, paras. 32,33,73 and 88.

<sup>20</sup> A/HRC/WG.6/8/BLR/2, p.5.

<sup>21</sup> UN High Commissioner for Human Rights' oral report to the 18<sup>th</sup> session of the HRC.

### **National human rights institution**

15. In light of recommendations made by several human rights mechanisms<sup>22</sup> as well as the State party's commitment made in the context of the universal periodic review to consider establishing a national human rights institution (A/HRC/15/16, para.97.4), the Committee regrets the lack of progress made to that end. (art. 2)

**The Committee recommends the State party to work towards establishing a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134).**

### **Definition, absolute prohibition and criminalisation of torture**

16. While noting the information provided by the State party that the definition of torture contained in article 1 of the Convention is used for the purpose of criminal prosecution of perpetrators of acts of tortures and the Office of the Procurator-General is preparing a bill on amendments to the criminal legislation,<sup>23</sup> the Committee is concerned that such definition of torture has never been applied by domestic courts.<sup>24</sup> The Committee remains concerned that the national legislation does not contain provisions defining torture and ensuring absolute prohibition of the torture.<sup>25</sup> It is also concerned that articles 128 and 394 of the Criminal Code does not criminalise torture in accordance with article 4, paragraph 2 of the Convention. (arts. 1, 2 and 4)

**In light of the Committee's previous recommendation (A/56/44, para.46.a) and the State party's acceptance of the recommendations made in the course of the universal periodic review (A/HRC/15/16, paras.97.28 and 98.21),<sup>26</sup> the State party should, without delay, define and criminalize torture in its Criminal Code in full conformity with article 1 and 4 of the Convention.<sup>27</sup> Furthermore, the Committee recommends the State party to ensure that the absolute prohibition against torture is non-derogable and that acts amounting to torture are not subject to any statute of limitations.**

### **Applicability of the Convention in the domestic legal order**

17. While welcoming that the international treaties to which Belarus is a party are directly applicable under article 20 of Act on the Laws and Regulations,<sup>28</sup> the Committee notes with concern the lack of information on court decisions in which the Convention has been directly invoked. The Committee regrets the reports that the Convention, although possible in theory, has never been applied in domestic courts. (arts. 2 and 10)

**The Committee recommends that the State party take necessary measures to ensure de facto applicability of the provisions of the Convention in its domestic legal order and the practical implementation of article 20 of Act on the Laws and Regulations, inter alia, by providing extensive training to the judiciary and law enforcement personnel in order to make them fully aware of the provisions of the Convention and**

<sup>22</sup> CRC/C/BLR/CO/3-4, para.15; CEDAW/C/BLR/CO/7, para.16 (c); CERD/C/65/CO/2, para.13; A/HRC/4/16, para 10; A/HRC/WG.6/8/BLR/2, paras.9 and 66.

<sup>23</sup> CAT/C/BLR/Q/4/Add.1, para.5.

<sup>24</sup> CAT/C/BLR/4, paras. 61-62; CAT/C/BLR/Q/4/Add.1,p.1.

<sup>25</sup> CAT/C/BLR/Q/4/Add.1, paras.1-5; A/56/44, paras. 45(b) and 46 (a); CAT/C/SR.442, para.18 and CAT/C/SR.445, para.3; A/HRC/WG.6/8/BLR/3, para.23; A/HRC/WG.6/8/BLR/2, para.26; UPR, A/HRC/WG.6/8/BLR/1, paras.140-146.

<sup>26</sup> A/HRC/15/16, para.97.28; A/HRC/15/16/Add.1, para.59.

<sup>27</sup> CAT/C/BLR/Q/4/Add.1, para.5.

<sup>28</sup> CAT/C/BLR/4, paras. 61-62; CAT/C/BLR/Q/4/Add.1, para.3.

**its direct applicability. Furthermore, the State party should report back on decisions of national courts or administrative authorities giving effect to the rights enshrined in the Convention.**

#### **Evidence obtained through torture**

18. While noting that article 27 of the Constitution prohibits the admissibility of evidence obtained through torture and that the State party accepted the recommendation made in the course of the universal periodic review to that end (A/HRC/15/16, para.97.28), the Committee is concerned at reports of several cases of confessions obtained under torture and ill-treatment and at the lack of information on any officials who may have been prosecuted and punished for extracting such confessions.<sup>29</sup> Information before the Committee states that in some cases, judges relied on pre-trial statements of the defendants which were conflicting with their testimony made during the trial, despite allegations of duress and intimidation.<sup>30</sup> The Committee regrets the lack of information about the cases of Mr. Nikolay Avtukhovich and Mr. Vladimir Asipenka, who were convicted on the basis of witness statements that were later retracted and were alleged to have been obtained through torture.<sup>31</sup> (art. 15)

**The State party should take the steps necessary to ensure that, in practice, confessions obtained under torture or duress are not admitted in court proceedings in line with relevant domestic legislation and article 15 of the Convention. The State party should ensure that judges ask all detainees whether or not they were tortured or ill-treated in custody and that judges order independent medical examinations whenever a suspect requires one in court. The judge should exclude such statements, in particular if the suspect so requests in court and the medical examination sustains the claim. Prompt and impartial investigations should be conducted whenever there is a reason to believe that an act of torture occurred, especially in cases where the sole evidence presented is a confession. In that regard, the State party should guarantee the access of international governmental or non-governmental organisations to court proceedings.**

**Furthermore, the Committee requests the State party to submit information on whether any officials have been prosecuted and punished for extracting confessions under torture, and if so, to provide details of the cases and any punishments or sanctions imposed on those responsible.**

#### **Conditions of detention**

19. While welcoming efforts made by the State party to improve the living condition of detained persons (CAT/C/BLR/4, paras.21 et seq.) and the State party's acceptance of the recommendation made in the course of the universal periodic review to that end (A/HRC/15/16, para.97.30), the Committee remains deeply concerned about continuous reports on poor conditions in places of deprivation of liberty, including an appeal by the Special Rapporteur on torture concerning the conditions in several places of detention such as SIZO in Minsk (A/HRC/4/33/Add.1, para.16). This includes the problem of the overcrowding, poor diet and lack of access to facilities for basic hygiene and inadequate medical care.<sup>32</sup> (arts. 11 and 16)

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<sup>29</sup> CAT/C/BLR/Q/4, para.32; CAT/C/BLR/Q/4/Add.1, para.6; A/HRC/WG.6/8/BLR/3, paras. 23 and 31; A/HRC/15/16, para.97.28; OSCE report, paras. 239 and 244; European Parliament resolution on Belarus, 10 March 2011.

<sup>30</sup> UN High Commissioner for Human Rights' oral report to the 18<sup>th</sup> session of the HRC; OSCE report, para.251.

<sup>31</sup> CAT/C/BLR/Q/4, para.32; CAT/C/BLR/Q/4/Add.1 to CAT/C/BLR/Q/4, para.30.

<sup>32</sup> A/HRC/WG.6/8/BLR/1, para.146; A/HRC/WG.6/8/BLR/2, paras. 29-30.



The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII)) and other relevant international and national law standards, in particular by:

- a) Reducing prison overcrowding and considering the establishment of non-custodial forms of detention in accordance with the UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);
- b) Ensuring all detainees' access to and receipt of the necessary food and healthcare; and
- c) Ensuring that all minors are detained separately from adults through their whole period of detention or confinement and offering them educational and recreational activities.

20. While noting the information by the delegation that the General Prosecutor's office had received no complaints from women detainees on threats of violence against them, the Committee is concerned about reported acts or threats of violence, including sexual violence, by inmates and public officers, in places of detention.<sup>33</sup> (arts. 2, 11 and 16)

**The Committee recommends the State party to take prompt and effective measures to combat prison violence more effectively in accordance with the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok rules). The State party should also establish and promote an effective mechanism for receiving complaints of sexual violence and ensure that law enforcement personnel are trained on the absolute prohibition of sexual violence, as a form of torture, as well as on receiving such type of complaints.**

#### **Training**

21. The Committee regrets the lack of information on targeted training for medical and law enforcement personnel, security and prison officials, judicial officials and other persons involved with custody, interrogation or treatment of persons under State or official control on matters related to the prohibition of torture and cruel, inhuman or degrading treatment or punishment.<sup>34</sup> The Committee further regrets lack of information evaluation and assessment of the training provided. (art. 10)

**The Committee recommends the State party to:**

- a) Provide all persons charged with the various functions enumerated in article 10 of the Convention with regular training concerning the provisions of the Convention and the absolute prohibition of torture as well as rules, instructions and methods of interrogation, especially in cooperation with civil society organizations;
- b) Provide all relevant personnel, especially medical personnel, with specific training on how to identify signs of torture and ill-treatment and to use the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);
- c) Implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of women subjected to any form of arrest, detention or imprisonment; and

<sup>33</sup> CAT/C/BLR/Q/4, para.11.

<sup>34</sup> CAT/C/BLR/4, paras. 31, 36, 39-42; CAT/C/BLR/Q/4, paras. 19-20.

d) Regularly assess the effectiveness and impact of such training and educational programmes on the reduction of cases of torture and ill-treatment.

#### **Violence against women and children, including domestic violence**

22. While welcoming measures taken by the State party to combat violence against women and children,<sup>35</sup> the Committee is concerned about the persistence of such violence and the lack of information about (a) prosecutions of persons in connection with cases of violence against women and children, including domestic violence, and (b) practical assistance and reparations provided to victims of such violence. The Committee notes with regret the high number of women killed as a result of domestic violence and the absence of separate criminal law provisions on domestic violence and marital rape, as raised by the Committee on the Elimination of Discrimination against Women (CEDAW/C/BLR/CO/7, para.19).<sup>36</sup> (arts. 2, 14 and 16)

**The State party should strengthen its efforts to prevent, combat and punish violence against women and children, in particular domestic violence, *inter alia*, by amending its criminal legislation and providing victims of violence with the immediate protection and long term rehabilitation of victims. Furthermore, the State party should conduct broader awareness-raising campaigns and training on domestic violence for judges, lawyers, law enforcement agencies, and social workers who are in direct contact with the victims as well as for the public at large.**

#### **Trafficking in persons**

23. While welcoming efforts by the State party to addressing trafficking in persons and bringing perpetrators to justice,<sup>37</sup> the Committee is concerned at reports that trafficking in persons, particularly women, remain a considerable problem and that Belarus remains a country of origin, transit and destination for victims of trafficking.<sup>38</sup> (arts. 2, 10 and 16)

**In light of the recommendations made by the Special Rapporteur on trafficking in persons following her visit to Belarus in May 2009 (A/HRC/14/32/Add.2, paras.95 et seq.), the State party should undertake effective measures, including through regional and international cooperation, to address the root causes of trafficking in persons, in particular its close link to sexual exploitation, continue to prosecute and punish perpetrators, provide redress and reintegration services to victims, and conduct training for law enforcement officials, particularly border and customs officials.**

#### **Redress, including compensation and rehabilitation**

24. The Committee regrets the lack of information on (a) on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture, or their dependent, and (b) treatment and social rehabilitation services and other forms of assistance, including medical and psychosocial rehabilitation, provided to victims. The Committee regrets reports that Minsk City court dismisses claims seeking compensation for moral damage caused while in detention. (art. 14)

**The State party should provide redress and compensation, including rehabilitation to victims in practice, and provide information on such cases to the Committee.**

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<sup>35</sup> CAT/C/BLR/Q/4/Add.1, paras.44 et seq.

<sup>36</sup> CAT/C/BLR/Q/4, para.12; A/HRC/15/16, para.97.5; A/HRC/WG.6/8/BLR/2, para.27; CRC/C/BLR/CO/3-4, paras. 39-40; CEDAW/C/BLR/CO/7, paras. 19-20; A/HRC/14/32/Add.2, para.96(a).

<sup>37</sup> CAT/C/BLR/Q/4/Add.1, paras. 38, 45, 52-56; A/HRC/14/32/Add.2, para.92.

<sup>38</sup> A/HRC/14/32/Add.2; CRC/C/BLR/CO/3-4, paras. 69-70; CEDAW/C/BLR/CO/7, paras.21-22; A/HRC/WG.6/8/BLR/2, para.31.

Furthermore, the State party should provide information on redress and compensation measures ordered by the courts and provided to victims of torture, or their families. This information should include the number of requests made and of those granted and the amounts ordered and actually provided in each case. In addition, the State party should provide the Committee with relevant statistical data and examples of cases in which individuals have received such compensation in its next periodic report.

### **Human Rights Defenders**

25. The Committee is deeply concerned about numerous and consistent allegations of serious acts of intimidation, reprisals and threats against human rights defenders and journalists, as well as the lack of information provided on any investigations into such allegations.<sup>39</sup> The Committee notes with concern several reports on refusal to register independent non-governmental organizations, threats and acts of criminal prosecution, arrests, raids on offices and acts of intimidation, as indicated in the oral report by the UN High Commissioner for Human Rights presented to the Human Rights Council in September 2011 and urgent appeals made by the Special Rapporteur on human rights defenders and the Special Rapporteur on freedom of expression.<sup>40</sup> The Committee regrets that, despite the views of by the Human Rights Committee (Communication No. 1296/2004)<sup>41</sup> and several appeals by the Special Rapporteurs (A/HRC/17/27/Add.1, para.331), the Supreme Court maintained the previous decision by the Ministry of Justice not to register Human Rights Center “Viasna”. (arts. 2, 12 and 16)

**The State party should take all necessary steps to ensure the protection of human rights defenders and journalists from intimidation or violence as a result of their activities as well as the prompt, impartial and thorough investigation, prosecution and punishment of such acts. In particular, the Committee recommends the State party to:**

- a) **Acknowledge the crucial role of non-governmental organisations in assisting the State party in fulfilling its obligations under the Convention, and enable them to seek and receive adequate funding to carry out their peaceful human rights activities;**
- b) **Inform the Committee of the outcome of investigations of alleged threats against and harassment by the authorities of human rights defenders and journalists, including cases of two journalists, Mrs. Irina Khalip and Mr. Andrzej Poczobut; the Chair of the Belarusian Helsinki Committee, Mr. Aleh Gulak; and the President of Viasna, Mr. Ales Byalyatski;<sup>42</sup> and**
- c) **Update the status of implementation of the aforementioned decision of the Human Rights Committee that the complainants, eleven members of Viasna, are entitled to an appropriate remedy, including the re-registration of Viasna.**

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<sup>39</sup> CAT/C/BLR/Q/4, para.9; CAT/C/BLR/Q/4/Add.1, pp 5-7; A/HRC/17/27/Add.1, paras. 246, 342; A/HRC/WG.6/8/BLR/2, paras.40-41; European Parliament resolutions of 12 May 2011 and 15 September 2011 on Belarus.

<sup>40</sup> A/HRC/17/27/Add.1, para.342.

<sup>41</sup> CCPR/C/90/D/1296/2004 (7 August 2007).

<sup>42</sup> A/HRC/17/27/Add.1, paras. 246–278; A/HRC/17/27/Add.1, paras. 327-340; European Parliament resolution of 15 September 2011 on Belarus: the arrest of human rights defender Ales Bialatski; European Parliament resolution on Belarus of 12 May 2011; Office of the High Commissioner for Human Rights, Briefing notes on Belarus dated 5 August 2011.

## Refugees and asylum-seekers

26. While welcoming the adoption, in 2008, of the new Law on Provision of Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in Belarus, the Committee notes that the legislation and practice of its implementation need to be further revised in order to be fully in line with international human rights and refugee law.<sup>43</sup> (art. 3)

**The Committee recommends the State party to revise its current procedures and practices in the area of expulsion, refoulement and extradition in order to fulfil its obligations under article 3 of the Convention. The State party should guarantee better protection for asylum seekers, refugees and other persons in need of international protection, improve the quality of the State's Refugee Status Determination (RSD) procedure, and consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

## Death penalty

27. The Committee is concerned at reports of the poor conditions of persons sentenced to death, and at reports regarding the secrecy and arbitrariness surrounding the execution of persons sentenced to death, including reports that the families of persons sentenced to the death penalty are only informed days or weeks after the execution has taken place, that they are not given the opportunity for a last visit to the prisoner, that the body of the executed prisoner is not handed over to the family and the place of burial is not disclosed to them. Furthermore, the Committee is deeply concerned at reports that some death row prisoners are not provided with fundamental legal safeguards and at the discrepancy between reports of the authorities and other various sources on this matter.<sup>44</sup> Although the Committee notes that a parliamentary working group continues to consider the possibility of establishing a moratorium of the death penalty, it regrets the execution of two death row inmates whose cases were being reviewed by the Human Rights Committee, despite its request for interim measures (Communication Nos. 1910/2009 and 1906/2009). (art. 16)

**The State should take all necessary measures to improve the conditions of detention of persons on death row, and to ensure they are afforded all the protections provided by the Convention. Furthermore, it should remedy the secrecy and arbitrariness surrounding executions so that family members do not have added uncertainty and suffering. The Committee also recommends the State party to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

## Data collection

28. The Committee regrets the lack of comprehensive and disaggregated data on numerous areas covered by the Convention, *inter alia*, statistics on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security and prison personnel, as well as on enforced disappearances, trafficking and domestic and sexual violence. (arts. 12 and 13)

**The State party should compile and provide to the Committee statistical data relevant to the monitoring of the implementation of the Convention at the national level, including information on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, domestic and sexual violence, and**

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<sup>43</sup> CAT/C/BLR/4, paras.19-20; CAT/C/BLR/Q/4/Add.1, paras. 14-15, 58-64; CRC 2011, paras. 67-68; A/HRC/WG.6/8/BLR/1, paras. 140-146; CAT/C/SR.442, para.22 and CAT/C/SR.445, para.5.

<sup>44</sup> A/HRC/13/39/Add.1, para.14; CAT/C/BLR/Q/4, para.39; A/HRC/WG.6/8/BLR/3, para.31.

**outcomes of all such complaints and cases, including compensation and rehabilitation provided to victims.**

#### **Cooperation with United Nations human rights mechanisms**

29. The Committee recommends that the State party strengthen its cooperation with United Nations human rights mechanisms, including by permitting visits of the Special Procedures' mandate-holders who have made a request, *inter alia*, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Enforced or Involuntary Disappearances.

30. The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.<sup>45</sup>

31. The Committee recommends that the State party consider making the declarations under articles 21 and 22 of the Convention.

32. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, *inter alia*, the Convention for the Protection of All Persons from Enforced Disappearance and the Second Optional Protocol to the International Convention on Civil and Political Rights. Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/15/16, paras. 97.1 and 98.3), the Committee recommends that the State party work towards ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

33. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

34. The State party is invited to update its common core document (HRI/CORE/1/Add.70, 10 June 1996), in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6).

35. The Committee requests the State party to provide, by 25 November 2012, follow-up information in response to the Committee's recommendations related to (1) ensuring or strengthening legal safeguards for persons detained, (2) conducting, prompt, impartial and effective investigations, and (3) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 6, 11 and 14 of the present document, as well as redress and remedies provided to victims as relevant.

36. The State party is invited to submit its next report, which will be the fifth periodic report, by 25 November 2015. To that purpose, the Committee invites the State party to accept, by 25 November 2012, to report under its optional reporting procedure, consisting in the transmittal, by the Committee to the State party, of a list of issues prior to the submission of the periodic. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

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<sup>45</sup> A/HRC/15/16, para.98.4; A/HRC/15/16/Add.1, para.7.