



**NON-COOPERATION WITH THE UNITED NATIONS:  
BELARUS IS PUTTING ITSELF ASIDE OF THE  
INTERNATIONAL COMMUNITY**



Uladzislau Kavalyou's mother looks at her son's portrait. Uladzislau Kavalyou was sentenced to death for participation in plotting the terrorist act in Minsk metro on 11 April 2011, which caused the death of 15 people.

The sentence was carried out in March 2012.

© Alyaksandr Vasjukovich, Vitebsk, August 2011

### **Non-cooperation with the United Nations: Belarus is putting itself aside of the international community**

This report is jointly published by the Belarusian Human Rights House and the Human Rights House Foundation (HRHF), based on research and writing by Iryna Dzeshavitsyna, fellow at HRHF's Geneva Office.



Creative Commons licence, Belarusian Human Rights House, Vilnius (Lithuania), & Human Rights House Foundation, Oslo (Norway) and Geneva (Switzerland), June 2012

This work is licensed under a Creative Commons Attribution-Non Commercial-No Derivs 3.0 Unported License.

One is free to quote, copy, distribute and display this work and to make derivate works, provided:

1. One gives credit to the Belarusian Human Rights House, Vilnius (Lithuania), & the Human Rights House Foundation, Oslo (Norway) and Geneva (Switzerland);
2. One does not use this work for commercial purposes.

The Human Rights House Network is a forum of cooperation between established and emerging Human Rights Houses (HRHN), uniting 90 NGOs in 15 countries in Western Balkans, Eastern Europe and South Caucasus, East and Horn of Africa, and Western Europe. HRHN's aim is to protect, empower and support human rights defenders and their organizations.

The Belarusian Human Rights House is based in exile in Vilnius (Lithuania) and is one of HRHN members. It addresses the main challenges faced by human rights activists in Belarus – the right to assembly and freedom of expression. This is achieved through the provision of a safe training and meeting space and facilities for human rights defenders, NGOs, journalists, students and teachers, as well as for international meetings and cultural events.

The Human Rights House Foundation, based in Oslo (Norway) and Geneva (Switzerland), is the secretariat of the Human Rights House Network.

# CONTENTS

|   |           |
|---|-----------|
| <b>Introduction</b>   | <b>4</b>  |
| <b>Non-cooperation with the Office of the High Commissioner for Human Rights</b>      | <b>6</b>  |
| <b>Non-cooperation with Human Rights Council special procedures</b>                   | <b>7</b>  |
| Country visits  | 7         |
| Communications with special procedures  | 8         |
| Reprisals for communicating to special procedures                                     | 9         |
| Imprisonment of former presidential candidate Mikalai Statkevich                      | 9         |
| Detention of Ales Bialiatski  | 10        |
| <b>Non-cooperation with treaty bodies</b>   | <b>11</b> |
| Reporting to treaty bodies  | 11        |
| Refusal to implement views of the Human Rights Committee                              | 13        |
| Death penalty cases submitted to the Human Rights Committee                           | 15        |
| Freedom of association: Non-registration of the Belarusian Human Rights Centre Viasna | 16        |
| Reprisals against those cooperating with the treaty body system                       | 17        |
| <b>Conclusion</b>   | <b>18</b> |

## INTRODUCTION

The Republic of Belarus has love-hate relations with the United Nations (UN). On one hand, it is a founding member state, which few former Soviet republics are, and is proud to be so, and was a candidate to the the Security Council in 2001. On the other hand, the Belarusian Government denounces the institution and its human rights mechanisms as being politicised and dismisses United Nations' conclusions in regard to the human rights situation in Belarus.

Since the election of Alyaksandr Lukashenka as the President of the Republic of Belarus on 20 July 1994, the United Nations has increasingly focused on the human rights situation in the country:

- The General Assembly expressed its concern in its resolution 61/175 on the situation of human rights in Belarus;
- The Commission on Human Rights adopted numerous resolutions on the human rights situation in Belarus;<sup>1</sup>
- The Human Rights Council also expressed its concern about the situation in Belarus;<sup>2</sup>
- Various special procedures had numerous communications with the Belarusian authorities and requested invitations to hold official visits to the country. Most communications and requests for visits remained unanswered. In November 2011, three United Nations independent experts stated that the new legislative amendments recently adopted by the National Assembly of Belarus may severely and arbitrarily restrict the rights to freedom of peaceful assembly, association and expression, and may be in breach of international law.<sup>3</sup>
- The treaty bodies, of treaties to which the Republic of Belarus is a party to, expressed their concerns about the human rights situation in Belarus, including the Committee on the Rights of the Child on civil and political rights issues<sup>4</sup> and the Human Rights Committee. The latter recently issued a press release on the inobservance of its interim measures by the Belarusian authorities following an individual communication submitted to the Committee on death penalty.<sup>5</sup>

The importance of the United Nations mechanisms for Belarusian citizens is not only linked to the United Nations' positive image in the country and the trust it enjoys among the Belarusian population. The significance of the United Nations human rights protection mechanisms is mainly based on the fact that Belarus is not a member state of the Council of Europe and therefore one does not enjoy the protection under the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 when living in Belarus. Hence, cases of human rights violations in Belarus cannot be brought before the European Court of Human Rights.

The United Nations human rights protection mechanisms are therefore the primary and the only international tool for promotion and protection of human rights in Belarus.

---

<sup>1</sup> *Inter alia* resolutions 2003/14 of 17 April 2003, 2004/14 of 15 April 2004, and 2005/13 of 14 April 2005.

<sup>2</sup> Resolution 17/24 of 17 June 2011.

<sup>3</sup> Press release of 24 November 2011 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>).

<sup>4</sup> Concluding observations of the review of the Republic of Belarus at the Committee's 56<sup>th</sup> session of February 2011 (UN Doc: CRC/C/BLR/CO/3-4).

<sup>5</sup> See: <http://humanrightshouse.org/Articles/16761.html>.

What we see however is that when international organisations are not welcome anymore within the country, once they turn critical towards the country's policies. This does not only apply to the United Nations; after criticism of its elections in December 2010, the Organisation for Security and Cooperation in Europe (OSCE) saw its office in Minsk closed down.<sup>6</sup>

The present report gives an in-depth look into the qualitative side of the cooperation of Belarus with the United Nations human rights mechanisms. Cooperation is assessed from the perspective of the results achieved in the country, the recommendations implemented by the member state, the reaction to critics in the country by the government of the member state, and the general attitude of government officials towards the United Nations and international human rights law.

---

<sup>6</sup> See information from the British Broadcasting Compagny, 31 December 2010: <http://www.bbc.co.uk/news/world-europe-12100765>.

## NON-COOPERATION WITH THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the United Nations High Commissioner for Human Rights (OHCHR) was requested by the Human Rights Council<sup>7</sup> to monitor the overall human rights situation in Belarus and its deterioration since the presidential elections on 19 December 2010, and to present a respective report.

In her April 2012 report to the Human Rights Council, the United Nations High Commissioner for Human Rights raises the issue of cooperation of OHCHR with the Belarusian Government.<sup>8</sup> The report clearly illustrates that the communication with the Belarusian authorities is challenging and the authorities are reluctant and ignorant to cooperate with the Office on similar terms as the ones used by the Office with other United Nations member states.

In order to monitor the human rights situation in Belarus, for example, as requested by the Human Rights Council resolution 17/24 of 17 June 2011, OHCHR addressed three notes verbales (on 18 July 2011, on 15 December 2011, and on 17 February 2012) to the Belarusian Government, requesting access for OHCHR's team to the country. As the Belarusian authorities do not recognise the resolution, they refused to cooperate with OHCHR on this issue.<sup>9</sup>

In a letter to the High Commissioner dated 19 August 2011, the Minister of Foreign Affairs of the Republic of Belarus invited her to visit the country. The letter was received on 30 August, just 12 days before the 18<sup>th</sup> session of the Human Rights Council during which Belarus presented this invitation to the High Commissioner as an alternative to the visit of the OHCHR team.<sup>10</sup> The High Commissioner, however, "informed the government that the possibility of such a visit might be considered only after the completion of the mandate of the Council. She pointed out that the invitation could not be regarded as a substitute for a technical mission by OHCHR to Belarus for the purpose of fulfilling the mandate of the Council under resolution 17/24."<sup>11</sup>

The position of the Belarusian authorities in regard to OHCHR's work to fulfil the mandate given to it by the Human Rights Council clearly illustrates the manner in which Belarus interacts with international organisations.

---

<sup>7</sup> Human Rights Council resolution 17/24 of 17 June 2011.

<sup>8</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus, 10 April 2012 (UN Doc: A/HRC/20/8).

<sup>9</sup> *Idem*, paragraph 3.

<sup>10</sup> *Idem*, paragraph 4.

<sup>11</sup> *Ibidem*.

## **NON-COOPERATION WITH HUMAN RIGHTS COUNCIL SPECIAL PROCEDURES**

Non-cooperation with the High Commissioner herself and her office is further aggravated by the refusal to cooperate with the Human Rights Council special procedures is the other side.

Non-cooperation with special procedures cannot be regarded as either prompted by more intense criticism towards the situation in Belarus by the Human Rights Council or a consequence of the adoption of the resolution 17/24 in June 2011. It is a long-term practice of the Belarusian authorities.

Back in 2006, the Commission on Human Rights reminded Belarus of the need for United Nations member states to cooperate with United Nations mechanisms. In its December 2006 resolution, the United Nations General Assembly expressed deep concern “about the failure of the Government of Belarus to cooperate fully with all the mechanisms of the Human Rights Council, in particular with the special rapporteurs on the situation of human rights in Belarus, while noting the serious concern relating to the deterioration of the human rights situation in Belarus expressed by seven independent human rights experts of the United Nations in a statement issued on 29 March 2006”<sup>12</sup>. The Human Rights Council reiterated the call for cooperation with all mechanisms of the Human Rights Council in its resolution 17/24.

The resolution 17/24 also contains a clear mandate for special procedures to pay particular attention to the human rights situation in Belarus to the special procedures: 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 the independence of judges and lawyers, 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 of association, the Working Group on Enforced or Involuntary Disappearances, as well as the Working Group on Arbitrary Detention.

### **COUNTRY VISITS**

One of the working methods of the special procedures is a field visit to relevant countries, as specified in article 11 of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council, adopted as annex of the Human Rights Council resolution 5/2 of 18 June 2007. This working method is used by all the special procedures for all countries they consider as relevant to their mandate and is not a tool specifically targeting Belarus.

To that end, 5 out of the 7 special procedures named in the Human Rights Council resolution 17/24 sent requests to Belarus to visit the country<sup>13</sup>, thereby seeking to fulfil this specific mandate received by the Council. Nevertheless, the authorities did not allow any of the requested visits.

Once again, such practice of ignoring the requests is nothing new for Belarus. Only 3 out these 7 above-mentioned special procedures have ever been on a visit to the country, with the latest visit to Belarus by a mandate paid in 2006.

Since 1997, the Republic of Belarus has only invited four thematic mandates to visit the country:

---

<sup>12</sup> General Assembly resolution 61/175 of 19 December 2006 on the situation of human rights in Belarus.

<sup>13</sup> To date, the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers have not sent an invitation request.

- Visit in 1997: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;
- Visit in 2000: Special Rapporteur on the independence of judges and lawyers;
- Visit in 2004: Working Group on Arbitrary Detention;
- Visit in 2009: Special Rapporteur on trafficking in persons, especially women and children.

## COMMUNICATIONS WITH SPECIAL PROCEDURES

Under the working methods specified in article 9 and article 10 of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council, special procedures may send letters of allegation or urgent appeals to countries. Widely used by mandate holders, communications sent to countries are a universal tool.

Special procedures have sent 12 joint communications to the Belarusian authorities since the presidential elections of 19 December 2010. “Only six substantive responses had been received from the government, while procedural responses were received for six of them (requests for communications to be in Russian, allegations of breach of the code of conduct).”<sup>14</sup>

It should be stressed that the “substantive responses” to which the High Commissioner refers in her report are responses dismissing the cases.

The Special Rapporteur on the situation of human rights defenders reports on seven communications she sent jointly with other mandate holders or individually to the Belarusian authorities.<sup>15</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reports that all his four communications to Belarus received answers.<sup>16</sup>

The opinions of the Working Group on arbitrary detention are a strong tool for communication with the governments. Although they are not legally binding, opinions give a legal analysis of a particular situation. They are stronger and more public than communications with special procedures in general, and the refusal to answer to the Working Group is particularly worrying, as underlined by the Human Rights Council in its latest resolution on arbitrary detention.<sup>17</sup>

The scope of cooperation cannot, however, only be judged by the replies to communications and must also be checked against the facts on the ground.

---

<sup>14</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus, 10 April 2012, paragraph 9.

<sup>15</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum, paragraphs 35 and following (A/HRC/19/55/Add.2).

<sup>16</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, pages 13 and following (A/HRC/19/61/Add.4).

<sup>17</sup> Human Rights Council resolution 15/18 on arbitrary detention of 30 September 2010.



## REPRISALS FOR COMMUNICATING TO SPECIAL PROCEDURES

For years, the Belarusian authorities have pursued a policy of pressuring its citizens for raising their voices about human rights internationally, leading to retaliation against by the Belarusian government.

On 28 January 2011, mandate holders of several special procedures sent an urgent appeal to the Belarusian authorities following allegations that a human rights organization Belarusian Helsinki Committee (BHC) had been requested by the Ministry of Justice to submit a copy of its letter of 12 January 2012 to the Special Rapporteur on the independence of judges and lawyers.<sup>18</sup> In its statement, the Ministry of Justice accused BHC of distorting information regarding the demonstrations, as well as the current state of affairs in the country, it also alleged that “such conduct was tantamount to a violation of domestic legislation governing non-governmental organizations.”<sup>19</sup>

The warning issued by the Ministry of Justice against BHC is a direct threat for the operation of the organisation, since under the national legislation, the registration of an NGO can be revoked after the receipt of two such warnings. Being engaged in activities of an unregistered organisation in the country constitutes a criminal offence punishable by up to two years in prison.

Such kind of retaliation against human rights defenders and their NGOs for their communications with UN mechanisms clearly demonstrate the reluctance of the Belarusian authorities to cooperate with the United Nations, despite their formal replies to communications.

## IMPRISONMENT OF FORMER PRESIDENTIAL CANDIDATE MIKALAI STATKEVICH

On 4 May 2011, the Working Group on arbitrary detention issued an opinion concerning the case of Mikalai Statkevich.<sup>20</sup> Mikalai Statkevich was one of the presidential candidates detained following mass riots after the elections on 19 December 2010.

The Working Group forwarded a communication to the Belarusian Government on 1 February 2011; the Government, however, did not provide any requested information within 90 days, as provided in paragraph 15 of the Working Group’s methods of work, nor was this information provided at a later date.

The Working Group states that “the deprivation of liberty of Mikalai Statkevich is arbitrary, and constitutes a breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights [and] requests the government of Belarus to take the necessary steps to remedy the situation, which include the immediate release of Mikalai Statkevich and adequate reparation to him”. However, despite this opinion of the special procedure and numerous calls of other United Nations bodies, Mikalai Statkevich was sentenced to 6 years in prison for organising a mass riot and is to date the only former presidential candidate who still remains behind bars in Belarus.<sup>21</sup>

---

<sup>18</sup> Communication BLR 1/2011.

<sup>19</sup> Report of the Secretary General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, 21 July 2011, paragraphs 28 and following (UN Doc: A/HRC/18/19).

<sup>20</sup> Opinion adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2-6 May 2011. No. 13/2011 (Belarus) (UN Doc: A/HRC/WGAD/2011/13).

<sup>21</sup> On 12 August 2012, partners and members of the Human Rights House Network have called upon the authorities of the Republic Belarus to immediately and unconditionally release all political prisoners (see: <http://humanrightshouse.org/Articles/17926.html>).

## DETENTION OF ALES BIALIATSKI

In April 2012, the Working Group on Arbitrary Detention has received a complaint on the arbitrary detention of Ales Bialiatski, Head of the Belarusian Human Rights Centre Viasna, Vice-president of the International Federation for Human Rights (FIDH) and one of the founders of the Belarusian Human Rights House, who was arrested in August 2011<sup>22</sup> and sentenced in November 2011<sup>23</sup> to 4.5 years in prison on false charges of tax evasion. The purpose of his foreign bank account was to receive donations for Viasna's human rights activities, as donors confirmed to the court.

Viasna is unable to have its own bank account because it was stripped of its registration in October 2003 and authorities have denied re-registration to the organisation since. The case of Ales Bialiatski and the denial of Viasna's registration have been subject to a strong View by the Human Rights Committee enjoining the Republic of Belarus to re-register Viasna (see below).

Although the court verdict is considered to be illegal and is seen as a consequence of Ales Bialiatski's human rights activities, the entire amount of 757'526'717 Belarusian rubbles (approximately 70'000 euros) of the tax, fine for the damages to the state budget, and to cover court expenditures was collected by Belarusian NGOs and paid in January 2012 in accordance with the court sentence. Nevertheless, Ales Bialiatski remained imprisoned.

Furthermore, on 29 March 2012 a new judicial decision was issued against Ales Bialiatski ordering him to pay an additional amount of 140'366'151 rubbles (nearly 12'700 euros) in surcharge penalty for failure to pay taxes in time. The latest decision has no legal grounds and is seen as a continued judicial harassment and retaliation against Ales Bialiatski for his work.

On 31 October 2011, the authorities of the Republic of Belarus provided an answer to the joint special procedures' 15 August 2011 communication to the government, explaining on which grounds Ales Bialiatski had been arrested. These were later the grounds on which Ales Bialiatski was tried and convicted by Belarusian courts.

During the interactive dialogue with the Special Rapporteur on the situation of human rights defenders at the Human Rights Council's 19<sup>th</sup> session, Belarus underlined that the mandate holder could not understand Ales Bialiatski's case by having considered only the stereotypical opinion promoted by certain European bodies and human rights organisations. Belarus's representative also recommended the Special Rapporteur to analyse thoroughly the information submitted by the Government.<sup>24</sup>

At the 17<sup>th</sup> session of the Human Rights Council, Belarus criticised the Special Rapporteur on the promotion and protection of freedom of opinion and expression for non-objectivity and biased assessment of facts. It also accused the mandate holder of breaking the Code of Conduct for Special Procedures by including into his report communications that go beyond his mandate. Belarus also recommended the Special Rapporteur to pay closer attention to the quality of reports and to reconsider its approaches to the relations with United Nations Member States.<sup>25</sup> At the 16<sup>th</sup> session of the Human Rights Council, the Special Rapporteur on torture was criticised on the same grounds.<sup>26</sup>

Ales Bialiatski's case is a showcase of Belarus's methods: no charges or evidence held against him is internationally recognised. However, representatives of Belarus at the United Nations dismiss independent experts who question the methods and the accusations held against Ales Bialiatski. Cooperation with special procedures is based on the independent judgement of a specific situation by mandate holders. Therefore, one cannot consider it does not wish to cooperate with mandate holders due to their independent and critical assessment, since this is exactly the job description of special procedure mandate holders.

<sup>22</sup> See: <http://humanrightshouse.org/Articles/16796.html>.

<sup>23</sup> See: <http://humanrightshouse.org/Articles/17227.html>.

<sup>24</sup> Belarus's oral statement on 5 March 2012 at the Human Rights Council.

<sup>25</sup> Belarus's oral statement on 3 June 2011 at the Human Rights Council.

<sup>26</sup> Belarus's oral statement on 7 March 2011 at the Human Rights Council.

## NON-COOPERATION WITH TREATY BODIES

As stated by the United Nations Secretary General in April 2012, “human rights are at the heart of the United Nations system, and treaty bodies are at the heart of the United Nations human rights machinery. We cannot afford to undermine these critical engines of the human rights protection system.”<sup>27</sup> It is the duty of all states to make the system strong and effective, first by respecting the system for their own human rights implementation.

By ratifying human rights treaties, states recognise the treaty bodies as monitoring bodies for the human rights obligations states have committed themselves to.

Following the ratification of the international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the ICCPR of 16 December 1966, the Supreme Court of the Republic of Belarus recognised the supremacy of the Covenant over its domestic law, as indicated to the Human Rights Committee at Belarus’s review in October–November 1997<sup>28</sup>, and in accordance to article 8 of the constitution of the Republic of Belarus<sup>29</sup>.

### REPORTING TO TREATY BODIES

Belarus does not respect its obligation of timely submission of reports to the treaty bodies. Its report to the Human Rights Committee on the implementation of ICCPR is overdue since 2001; the report to the Committee on the Elimination of Racial Discrimination is due since 2008; the report to the Committee against torture was submitted in 2009 with a 9-year delay.

The late submission is not the only problem of the review of Belarus by the treaty bodies.

Most recently, the Republic of Belarus was reviewed on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984. Belarus’s delegation reacted to the publication of the Committee against Torture concluding observations by dismissing them. “A major portion thereof lacks objectivity and is politicized in nature, and does not correspond with the provisions of the Convention.”<sup>30</sup> Therefore, “Belarus cannot accept paragraphs 6, 8, 9, 10, 11, 12, 18, 25, 27 and 35 of the concluding observations.”<sup>31</sup> Specifically, Belarus rejects the competence of the Committee on the following issues:

- Fundamental legal safeguards (paragraph 6 of the Committee’s concluding observations);
- Law enforcement officers’ behaviour (paragraph 8);
- Enforced disappearances (paragraph 9);
- Torture (paragraph 10);
- Impunity and lack of independent investigation (paragraph 11);

---

<sup>27</sup> United Nations Secretary General, press release, 2 April 2012 (UN Doc: SG/SM/14206).

<sup>28</sup> Concluding Observations of the Human Rights Committee, 19 November 1997, paragraph 6 (UN Doc: CCPR/C/79/Add.86).

<sup>29</sup> Article 8, paragraph 1, of the constitution of the Republic of Belarus of 1 March 1994 reads as following: The Republic of Belarus shall recognize the supremacy of the universally acknowledged principles of international law and ensure that its laws comply with such principles.

<sup>30</sup> Comments by the Republic of Belarus on the concluding observations of the Committee against Torture, 28 December 2011, paragraph 3 (UN Doc: CA T/C/BLR/CO/4/Add.1).

<sup>31</sup> *Idem*, paragraph 5.

- Independence of the judiciary (paragraph 12);
- Evidence obtained through torture (paragraph 18);<sup>32</sup>
- Human rights defenders (paragraph 25);
- Death penalty (paragraph 27)<sup>33</sup>;
- Guidelines on reporting under the international human rights treaties (paragraph 35).

At its review of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, the Republic of Belarus followed the same approach. Belarus rejected a number of recommendations of the Committee on the Elimination of Discrimination against Women “due to their false and non-impartial nature and inconsistency with the information provided [by Belarus] in its periodic report as well as [in its] answers given during the interactive dialogue with the Committee.” Belarus rejected recommendations on following topics made by the Committee:

- Complaints submitted by women about arbitrary arrests and detention, as well as cruel, inhuman or degrading treatment, in connection with the Presidential elections on 19 December 2010 (paragraph 26a of the Committee’s concluding observations<sup>34</sup>);
- Detention conditions of the three women, Irina Khalip, Natalia Radzina and Anastasia Polazhanko (paragraph 26b);
- Right to privacy and family of Irina Khalip (paragraph 26c);
- Ban on the activities of unregistered public associations, in regard to hampering the work and reducing the number of independent women’s NGOs (paragraph 27);
- Refusal to provide information on the implementation of the recommendations under paragraph 26 (as requested in paragraph 50 of the Committee’s concluding observations under the Committee’s follow-up procedure).

Due to the fact that communications with the State party are not made public by the Committee on the Rights of the Child, it is impossible to know if the Republic of Belarus made similar comments after its review on the implementation of the Convention on the Rights of the Child of 20 November 1989. In this case it is relevant to note that the Committee has reiterated recommendations from its previous concluding observations and made the following comment: “The Committee notes with concern that various concerns and recommendations made upon consideration of the State party’s second periodic report under the Convention have been insufficiently

---

<sup>32</sup> We should remember that three of the five people sentenced to death who complained to the Human Rights Committee (see more information below), said that they admitted guilt under torture. That evidence was held against them in courts and they thereafter executed. For more information, see the report published by the Belarusian Human Rights House, the Human Rights Centre Viasna, Penal Reform International, and Human Rights House Foundation in April 2012 (see: <http://humanrightshouse.org/Articles/17981.html>).

<sup>33</sup> It should be underlined that the Committee recommends to Belarus “to 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”, because the Committee “is concerned by reports of the poor conditions of persons sentenced to death, and regarding the secrecy and arbitrariness surrounding the execution of persons sentenced to death.” The Committee’s conclusions are the same then what the Belarusian Human Rights House, the Human Rights Centre Viasna, Penal Reform International, and Human Rights House Foundation reported to the United Nations Secretary General in their report on death penalty in April 2012 (see: <http://humanrightshouse.org/Articles/17981.html>).

<sup>34</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women, 6 April 2011 (UN Doc: CEDAW/C/BLR/CO/7).

addressed.”<sup>35</sup> In addition, the Committee underlined that it reiterated the need for Belarus to “undertake a comprehensive review of all domestic legislation and related administrative guidance to ensure full conformity with the provisions and principles of the Convention” (paragraph 9). On such an important issue as children health, the Committee stressed that it reiterated its recommendation “to improve the specialized health care provided to children affected by the Chernobyl disaster” (paragraph 58).

This is also true in other treaty bodies; the Committee on the Elimination of Discrimination against Women reiterates *inter alia* its previous recommendations made in 1992 and 1999.<sup>36</sup> The Committee against Torture also refers to its recommendations made in 2000 again in the concluding observations made in November 2011.<sup>37</sup>

Although Belarus participates in treaty body reviews and submits its reports to some treaties (however, significantly not to the Human Rights Committee to date) it does not effectively implement the rights contained in the treaties.

At the same time, the Belarusian officials arbitrarily accept or reject treaty body recommendations. The rule allowing States under review at the Universal Periodic Review to accept or refuse recommendations would be detrimental to the independent analysis of the implementation of international human rights law. Therefore it cannot simply be replicated for the treaty body recommendations as Belarus does.

Arguing that the treaty bodies do not take into account information provided by the government, Belarus rejects the conclusions made by independent experts of these bodies.

Belarus also rejects the conclusions of the committees when those are not in line with the Belarusian government’s interpretation of the treaty and rights guaranteed therein. How can one believe though that the health and right to privacy of a woman in detention is not of the competence of the Committee on the Elimination of Discrimination against Women? How can one argue that the Committee against Torture is not competent to look into relevant legislation and practice *inter alia* regarding acts of torture or related to evidence obtained through torture?

Cooperation with treaty bodies does not only imply the submission of reports, it also calls for the state’s genuine willingness to put all possible efforts into implementation of the committees’ recommendations. Belarus regularly dismisses the conclusions of the committees with completely ungrounded argumentation.

## REFUSAL TO IMPLEMENT VIEWS OF THE HUMAN RIGHTS COMMITTEE

The treaty-based petitioning system is the only international complaint mechanism on human rights violations available for individuals – it is part of the recognition of individual claims on human rights violations. Jakob Th. Möller and Alfred de Zayas write that “while the Human Rights Committee is not a court, it must by now be recognised that it performs at least quasi-judicial functions when dealing with communications under the Optional Protocol.”<sup>38</sup>

As of 23 April 2012, 129 individual complaints have been submitted to the Human Rights Committee under the Optional Protocol. Among them, 81 are pending, eight have been declared inadmissible, and nine have been discontinued. In 29 cases, the Committee judged on a violation of

<sup>35</sup> Concluding observations of the Committee on the Rights of the Child, 8 April 2011, paragraphs 6 and 7 (UN Doc: CRC/C/BLR/CO/3-4).

<sup>36</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women, 6 April 2011 (UN Doc: CEDAW/C/BLR/CO/7).

<sup>37</sup> Concluding observations of the Committee against Torture, 7 December 2011 (UN Doc: CAT/C/BLR/CO/4).

<sup>38</sup> Jakob Th. Möller and Alfred de Zayas, *United Nations Human Rights Committee Case Law 1977-2008*, Kehl am Rhein, N.P. Engel Verlag, 2009, page 7.

the Covenant. In two cases, it concluded that there was no violation of the Covenant. To date, 26 views of the Human Rights Committee remain not implemented.

The Human Rights House Foundation is running an educational programme with Belarusian lawyers to inform them about the proceedings of the Committee on individual communications and the ways to appeal to the Human Rights Committee as an international appeal body for victims of human rights violations in Belarus. All rights set forth in the Covenant (article 1 of the Optional Protocol) are subject to the jurisdiction of the Committee and all domestic remedies must be exhausted before referring to the Committee (article 2 of the Optional Protocol). The importance of this procedure is reinforced by the fact that Belarus is not a member of the Council of Europe and therefore individuals cannot bring their cases before the European Court of Human Rights.

Despite this high number of appeals to the Committee and, therefore, high level of trust of Belarusians in its potential protection of the rights covered by the Covenant with this mechanism, the Belarusian authorities have increasingly shown contempt for the Committee's work under the Optional Protocol.

The Belarusian authorities have a strict interpretation of the Committee's competence under the Optional Protocol. In their eyes, Belarus has never recognised the Committee's rules of procedure, its methods of work or its case law, as the Human Rights House Foundation has seen through the correspondence among lawyers of those who complained to the Committee and the Belarusian authorities. The Belarusian authorities have recently stated that they would reject the admissibility on any merits without any comments. In addition, the Government further argues that any decision taken by the Committee without Belarus's approval will be seen as invalid.

Article 39, paragraph 2, of ICCPR explicitly mentions that the Committee shall establish its own rules of procedure. The methods of work and the case law are part of the annual report submitted to the United Nations General Assembly by the Committee (article 45 of the Covenant and article 6 of the Optional Protocol).

The objections of the Republic of Belarus are therefore in contradiction to article 39 and 45 of the Covenant and the Optional Protocol.

The interpretation of the Committee's competences by the Belarusian authorities is yet another confirmation of the lack of willingness to integrate an independent legal opinion into the Belarusian legal system. The unfounded argumentation in reality tries to hide major violations of human rights, including for people on the death row and for core fundamental rights such as the right to association.

Belarus's interpretation of the weight of the Committee's views is quite surprising indeed; "It is hardly conceivable that a sovereign State, acting at its own free will, would first recognise the competence of the Committee to determine whether a breach of the Covenant has occurred and thereafter feel entirely free to ignore its findings and conclusions. Thus, in spite of the fact that the Views of the Committee are not formally binding in law, the opinion is gaining in strength that a State party is under an obligation, in accordance with article 2, paragraph 3(a), of the Covenant, to provide the victim of a violation established by the Committee with an effective remedy."<sup>39</sup>

---

<sup>39</sup> Jakob Th. Möller and Alfred de Zayas, *op. cit.*, page 8.

## DEATH PENALTY CASES SUBMITTED TO THE HUMAN RIGHTS COMMITTEE

To date, five persons sentenced to death penalty have been executed in Belarus despite the call for interim protection measures by the Human Rights Committee.

Andrei Zhuk (case 1910/2009) and Vasily Yuzepchuk (1906/2009) were executed in March 2010 whilst their cases were pending before the Committee. Upon the receipt of their cases, the Committee requested interim measures of protection (rule 92 of the Rules of Procedure of the Human Rights Committee of 22 September 2005).<sup>40</sup> In this regard, the Human Rights Committee expressed its concern about “the State party’s failure to cooperate in a good faith with the Committee, in its work on individual communications submitted under the Optional Protocol to the Covenant.”<sup>41</sup>

In July 2011, Aleh Gryshkautstou (case 2013/2010) and Andrei Burdyka (case 2017/2010), were executed when their cases were under consideration in the Human Rights Committee, which had again requested for interim protection measures. After the executions, in a press communication, the Committee’s chairperson Zonke Zanele Majodina expressed that “[the Committee’s] requests for interim measures of protection are aimed at averting irreparable harm to alleged victims of human rights violations. The Committee deplores the fact that, by proceeding to execute these two individuals, Belarus has committed a grave breach of its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights.”<sup>42</sup>

Uladzislau Kavalyou was executed in March 2012 whereas his complaint was under consideration by the Committee that once again demanded interim protection measures.

On 3 March 2011, the special rapporteurs on extrajudicial, summary or arbitrary executions and on torture addressed a communication to Belarus on the lack of transparency in relation to executions of Aleh Gryshkautstou and Andrei Burdyka.<sup>43</sup> In its reply to this communication, the Republic of Belarus stated that the procedure for carrying out a death penalty is specified in the Penal Enforcement Code.<sup>44</sup> The Belarusian authorities claimed that “not informing the family members of the person sentenced to death about the circumstances of the execution or the place of burial and not handling over the corpse do not constitute torture,” neither under article 7 of the International Covenant on Civil and Political Rights, nor under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>45</sup> In regard to the procedure for carrying out executions, the Special Rapporteur on torture however noted that “the practice of informing prisoners of their impending execution only moments before they die, and families only later, is inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life.”<sup>46</sup>

In its General Comment 33 of 5 November 2008, the Human Rights Committee clearly considers that the “failure to implement [...] interim or provisional measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the

---

<sup>40</sup> For further information on this case: <http://humanrightshouse.org/Articles/14003.html>.

<sup>41</sup> Human Rights Committee press release, 30 March 2010.

<sup>42</sup> Human Rights Committee’s press release of 27 July 2011: <http://humanrightshouse.org/Articles/16761.html>.

<sup>43</sup> Communication BLR 3/2011.

<sup>44</sup> Chapter 22 of the Penal Enforcement Code stipulates that “the corpse of an executed person is not handed over or the place of burial communicated.”

<sup>45</sup> Communication to the special rapporteurs of 12 April 2011, available on Internet: [http://spcomms.ohchr.org/Docs/01ComRepSep2011/Rep/2011\\_03coms/PR\\_Belarus\\_12.04.11\\_\(3.2011\).pdf](http://spcomms.ohchr.org/Docs/01ComRepSep2011/Rep/2011_03coms/PR_Belarus_12.04.11_(3.2011).pdf).

<sup>46</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *op. cit.*, page 14.

Optional Protocol.” By proceeding with the execution of Andrei Zhuk and Vasily Yuzepchuk as well as Aleh Gryshkautstou and Andrei Burdyka, the Republic of Belarus not only showed disregard of the Committee in cases related to the highest of all human rights, right to life, it also violated its obligations under the Covenant and its Optional Protocol.

In all five cases, a violation of the right to fair trial was reported by the alleged victims, and three of the individuals claimed that they were forced to confess guilt after being tortured.<sup>47</sup> Given the way the death penalty is being executed in Belarus and the lack of independence of the judiciary throughout the country,<sup>48</sup> the proceedings at the Committee are extremely important especially in these cases. Doubts on the legal procedures, the treatment of those sentenced to death and the way the death penalty is executed underline the need of a legal appeal for those individuals who are sentenced to death. Non-cooperation that amounts to a violation of the Covenant in cases related to life or death is therefore extremely worrisome.

## **FREEDOM OF ASSOCIATION: NON-REGISTRATION OF THE BELARUSIAN HUMAN RIGHTS CENTRE VIASNA**

Another main issue relates to the repression of the right to freedom of association in Belarus and the Human Rights Centre Viasna registration. Founders of Viasna have brought the dissolution and the refusal to register the organisation to the Human Rights Committee.

The case of Ales Bialiatski *et al.* discusses the dissolution of the non-governmental public association Human Rights Centre Viasna ordered by the Supreme Court of the Republic of Belarus on 28 October 2003.<sup>49</sup> In its view of 7 August 2007 the Human Rights Committee considers the dissolution of Viasna to be a violation by Belarus of article 22, paragraph 1, of the Covenant. Therefore, the Committee states that “the author and the co-authors are entitled to an appropriate remedy, including the re-registration [of] Viasna and compensation” (paragraph 9).

Despite this view, re-registration of Viasna was refused by the Ministry of Justice of the Republic of Belarus, as reported to the Committee by the Belarusian Human Rights House and the Human Rights House Foundation.<sup>50</sup> On 3 April 2009, Ihar Petryshenka, First Deputy Minister of Foreign Affairs of the Republic of Belarus, answered as follows: “What concerns implementation of the undertakings of the Republic of Belarus under the Optional protocol to the International Covenant on Civil and Political Rights of 16 December 1966, we take into consideration that the views of the Human Rights Committee are recommendative.”<sup>51</sup>

To date, Viasna remains unregistered and its members are forced to carry out activities underground – their legitimate activities are not considered legal in the country, although under international human rights law the dissolution of Viasna amounts to the violation of the right to freedom of association. The non-cooperation by Belarus with an established and nationally recognised human rights mechanism in this particular case led to the detention and imprisonment of Ales Bialiatski, Head of the Human Rights Centre Viasna in August 2011 as described above.

---

<sup>47</sup> See the report published by the Belarusian Human Rights House, the Human Rights Centre Viasna, Penal Reform International, and Human Rights House Foundation in April 2012 (see: <http://humanrightshouse.org/Articles/17981.html>).

<sup>48</sup> *Ibidem*.

<sup>49</sup> Case 1296/2004.

<sup>50</sup> See the follow-up note submitted to the Human Rights Committee on 22 June 2009: <http://humanrightshouse.org/noop/page.php?p=Articles/11201.html>.

<sup>51</sup> *Ibidem*.



## REPRISALS AGAINST THOSE COOPERATING WITH THE TREATY BODY SYSTEM

Cooperation with the United Nations human rights treaty system includes the right for civil society to communicate and cooperate with relevant treaty bodies.

Andrei Bondarenko was among the three human rights defenders who participated in the briefing of NGOs of the Committee against Torture in Geneva on 9-12 November 2011 and assisted to the review of his country at the Committee's 47<sup>th</sup> session.<sup>52</sup> He also participated in the Committee's briefing on Belarus by NGOs.

On 15 March 2012, when Andrei Bondarenko was taken off the train from Minsk to Warsaw at the border control point Brest-Centralnyj, he learned that he is banned from leaving the country.

Although there is no clear indication that the restriction on the right to leave Belarus imposed on Andrei Bondarenko is directly linked to his work at the Committee, the fact that this restriction comes after a publicised visit to Geneva indicates a connection between his work as a human rights defender, including his participation in the 47<sup>th</sup> session of the Committee, and the restriction itself.

It is relevant to underline that March 2012 was the first time he tried to leave Belarus for work related travels abroad after his trip to Geneva in November 2011.

The Human Rights House Foundation submitted his case to the Committee against Torture, the reprisal desk of the Office of the United Nations High Commissioner on Human Rights, and the Special Rapporteur on the situation of human rights defenders.<sup>53</sup>

---

<sup>52</sup> To see the joint NGO report and more information about the review of Belarus: <http://humanrightshouse.org/Articles/17263.html>.

<sup>53</sup> For further information: <http://humanrightshouse.org/Articles/18164.html>.

## CONCLUSION

Cooperation with the United Nations human rights system must be based on the genuine willingness and good faith to use international mechanism to advance human rights in a certain country, in the spirit of the Charter of the United Nations. Willingness and good faith is what is today lacking in Belarus's engagement with the United Nations.

The United Nations human rights system is ever more important for the Belarusian population than for any other European state, since Belarus is the only European state that is not a member of the Council of Europe. Human rights violations can therefore not be brought before the European Court of Human Rights.

Belarus does not cooperate with the United Nations human rights mechanisms using selective approach, deliberately choosing certain areas of cooperation and dismissing critical opinions raised by the United Nations human rights bodies. Its reporting to treaty bodies is obstructed by its refusal to recognise the recommendations and the reprisal against human rights defenders cooperating with the system; the Human Rights Committee is dismissed as an appeal body in regard to human rights violations in the country; special procedures are seen as an obstructive and politicized mechanism.

One would believe that Belarus would at least take the Universal Periodic Review (UPR) into consideration. Belarus accepted the majority of recommendations it received at its UPR in 2010. However, the recommendations related on civil and political rights have mostly been rejected. The responses of the Belarusian Government on the implementation of some recommendations do not correspond to the reality in the country.

The Belarusian authorities' non-respect towards the organization has already been reflected in the statements of officials at the national level, in addition to the statements of Belarusian mission at the Human Rights Council and in notes verbales addressed to other United Nations human rights bodies. On 2 April 2010, the Ministry of Internal Affairs of the Republic of Belarus Anatoly Kuliashou commenting on the execution of two persons regardless of the interim measures requested by the Human Rights Committee, declared "I do not live by the United Nations laws. I live by the laws of my country. Our legislation is of priority. Once we discuss, consider these requests, then we will fulfil them. Today, we live in accordance with our legislation and not with norms brought from outside the country"<sup>54</sup>.

In cases of lack of cooperation with the United Nations human rights mechanisms, the Human Rights Council needs to act. Unfortunately, in such cases, the Council only has a very limited mandate for action, mainly the establishment of a mandate of a special rapporteur reporting on the particular country situation.

The Special Rapporteur on the situation of human rights in Belarus will be able to report on human rights violations, assist victims, build capacity within Belarusian civil society and media, and cooperate with government officials if they are willing to do so. It will increase the attention given by the United Nations to the situation in Belarus and act as a focal point on human rights in Belarus. This need is indeed increased by Belarus's lack of cooperation.

---

<sup>54</sup> See: <http://news.tut.by/society/165912.html>.



**Non-cooperation with the United Nations:  
Belarus is putting itself aside of the international community**

[www.humanrightshouse.org](http://www.humanrightshouse.org)

**This report is published thanks to the support of the following donors:**

