

Position paper on Belarus, May 2016

# A SYSTEM THAT ALLOWS HUMAN RIGHTS VIOLATIONS AT ANY GIVEN TIME

Lack of true human rights improvements in Belarus. We call for continued international scrutiny.

Belarus has been in the spotlight of the international community since December 2010, when Alexander Lukashenko was re-elected for his fourth consecutive term as President. The election process was deeply flawed and marked by widespread violence and the arbitrary detention of protesters, opposition candidates, media, and civil society representatives. These episodes marked the end of a so-called period of liberalisation in the country (2008–2010), and triggered the EU and other States to adopt restrictive measures against those responsible for election violations, massive repressions against political opponents, and the crackdown on protesters. The following years have not seen any systemic changes in the country, and both parliamentary and presidential elections have been characterised by widespread violations.

In the months following the 2010 election, no progress was made and the authorities continued to imprison their opponents on political grounds. The EU responded by leading the establishment of a UN mandate to monitor the human rights situation. **We call upon the EU and other States to take the lead in renewing this mandate at the 32<sup>nd</sup> session of the UN Human Rights Council in June 2016.**

In August 2015, President Lukashenko pardoned the six remaining political prisoners in Belarus. The EU praised this move, and shortly afterwards suspended for a period of four months its sanctions – levied against 170 persons and three entities in Belarus. The EU lifted the sanctions in February 2016, despite Belarus not heeding the EU's calls for the civil and political rights of former political prisoners to be restored.

Relations between the EU and Belarus have sensibly improved in a number of fields, notably because of the role of Belarus in hosting negotiations to solve the crisis in Ukraine. Nevertheless, it is important that the EU does not turn a blind eye to the human rights situation in the country.

## Quick facts about Belarus



- Founding member of the UN and party to all of its main human rights treaties
- Borders with 3 EU member States: Latvia, Lithuania and Poland
- Only European State not a member of the Council of Europe and not party to the European human rights system
- Only European State still using the death penalty within its ordinary criminal law
- State governed by presidential decrees, which can overwrite any constitutional or legislative principle
- Although all political prisoners were released, including human rights defender Ales Bialiatski, they were not rehabilitated
- Legislation criminalising activities on behalf of unregistered organisations, including activities directed at promoting human rights, remains in place. This renders NGO activists at the mercy of the arbitrariness of the authorities, including arrest at any given time
- President Alexander Lukashenko has governed the country for almost a generation, having been first elected on 23 June 1994
- The 1994 presidential election is considered the country's only free and fair national election. Every election since has been marred by irregularities, human rights violations, and repressions in the lead-up and aftermath
- The 11 October 2015 presidential election is the first of President Lukashenko's re-elections not marked by violence. However, the election was not conducted in accordance with international standards.

## Lack of progress: The perception may have improved, but the human rights situation has not

Despite certain positive tendencies over the past six months, Belarusian human rights organisations report that there have been no systemic changes aimed at improving the human rights situation in Belarus.<sup>1</sup>

August 2015's long-awaited release of the remaining political prisoners, including former presidential candidate Mikalai Statkevich, was not followed by the restoration of their civil and political rights. The refusal to register non-profit organisations – including the Human Rights Center Viasna – and the continued persecution of journalists show that in practice little has changed in the country.

In June 2011, in the aftermath of the December 2010 presidential election, the Human Rights Council requested that the UN High Commissioner for Human Rights report on the human rights situation in Belarus.<sup>2</sup> The High Commissioner presented a number of recommendations to the Council in June 2012.<sup>3</sup> Years later, the Belarusian authorities have still not implemented these recommendations, just as they have systematically ignored the recommendations made by the Special Rapporteur appointed in June 2012.

The human rights situation in the country has not improved. Highly restrictive legislation remains in place, allowing the authorities to, at any given time, arrest dissenting voices, human rights defenders, journalists, activists, or anybody else. Furthermore, the arbitrariness of the system has not been modified. The release of political prisoners and current absence of massive repressive actions is only a way of maintaining a good dialogue with the international community, in particular Europe, rather than a willingness for real progress by the authorities.

The sad truth is that the situation only “looks better” now – to an outsider – because the situation in other countries in the region has so drastically deteriorated since 2012, when the Special Rapporteur mandate on Belarus was created. Azerbaijan has more than 80 political prisoners, even after the release of many leading human rights defenders and activists – who were imprisoned based on legislation inspired from Belarusian legislation.<sup>4</sup> Russia has been transformed since President Vladimir Putin's re-election in 2012, with its legislative effort to criminalise civil society also inspired by Belarusian legislation. Furthermore, the annexation of Crimea by Russia, and the ongoing conflict in Eastern Ukraine, makes systematic and systemic human rights violations in Belarus look less urgent.

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<sup>1</sup> Joint position adopted by 8 Belarusian human rights NGOs in February 2016, available at <http://humanrightshouse.org/Articles/21436.html>.

Joint position adopted by 10 Belarusian human rights NGOs in May 2016, available at <http://humanrightshouse.org/Articles/21630.html>

<sup>2</sup> United Nations Human Rights Council resolution 17/24 of 17 June 2011 (UN Doc.: A/HRC/RES/17/24), available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/17/24](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/24).

<sup>3</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), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/128/59/PDF/G1212859.pdf>.

<sup>4</sup> The last release in date was the one of human rights lawyer Intigam Aliyev, on 29 March 2016. More information available at <http://humanrightshouse.org/Articles/21553.html>.

## Continuing violations: No changes to restrictive legislation and repressive practices

While it is highly welcome that no violence occurred before, during, or in the direct aftermath of the presidential election in 2015,<sup>5</sup> this fact alone does not signal an end to human rights violations.

In February 2016, the Special Rapporteur on Belarus noted that “[since the presidential election], no changes have been initiated in Belarus to alter the oppressive laws and practices, while numerous cases of new violations of basic rights have emerged.”<sup>6</sup>

“The authorities have not ceased the systematic harassment of those who attempted to practice their individual, civil, political, and other rights, despite the partial suspension of EU and US sanctions, decided in anticipation of further advancement of human rights. Neither have they shown any willingness to reform the entrenched, highly oppressive legal system.”

“The ban on entry into the country has been upheld against Belarusian human rights activist Alena Tankachova, and no safe re-entry has been granted for those forced to leave the country due to political persecution.”

The Special Rapporteur documented systematic harassment, administrative procedures, and fines against opposition leaders, human rights activists, journalists, and many other citizens in the months following the 2015 presidential election.

In its April 2016 overview of the human rights situation in the country, the Human Rights Centre Viasna noted the absence of any “systemic changes demonstrating the authorities’ commitment to improving the country’s human rights situation.”<sup>7</sup> Instead, the authorities continued to arbitrarily deny the registration of NGOs<sup>8</sup> and to pursue politically motivated criminal prosecutions.

Law enforcement have not intervened to block unauthorised peaceful assemblies, but 43 participants have been fined for taking part in or organising such unsanctioned mass events.

On March 29, the judicial board for criminal cases of the Supreme Court of Belarus considered the appeal of convict Ivan Kulesh, who was sentenced to death. Viasna reported that the appeal was dismissed and the death sentence handed down by the Hrodna Regional Court left in place. So far in 2016, the Belarusian courts have handed down three death sentences. Three persons sentenced to death await their sentences to be enforced, while one person was executed in May 2016 despite numerous appeals to the Belarusian authorities to stop this cruel and inhumane practice.

Viasna, which coordinates the campaign “Human Rights Defenders Against Death Penalty,” was denied participation in a March 2016 international conference on the death penalty, organised in Minsk by the UNDP Office in Belarus, the British Embassy, and the Belarusian Ministry of Foreign Affairs. Participants included: Stavros Lambrinidis, EU Special Representative for Human Rights; Andrea Rigoni, PACE rapporteur on Belarus; and Karel Schwarzenberg, former Minister of Foreign

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<sup>5</sup> Despite lack of violence, no independent mechanism has considered the presidential election free or fair, as underlined by the Special Rapporteur on the situation of human rights in Belarus in his press release of 13 October 2015, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16602&LangID=E>.

<sup>6</sup> Press release of the Special Rapporteur on the situation of human rights in Belarus, 9 February 2016, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17027&LangID=E#sthash.w3OL5TON.dpuf>.

<sup>7</sup> Viasna's report on the human rights situation in Belarus in April 2016: <https://spring96.org/en/news/82973>

<sup>8</sup> This trend is also confirmed by the quarterly monitoring of the freedom of associations and legal conditions for non-profit organizations in Belarus prepared by the Legal Transformation Center and the Assembly of Pro-Democratic NGOs of Belarus, available at <http://www.lawtrend.org/wp-content/uploads/2016/05/SA-2016-kvartal-1-eng.pdf>

Affairs of the Czech Republic. Viasna was denied participation solely because of its unregistered status.

No steps have been taken to ensure minimal guarantees with regard to the rule of law. This is illustrated by the pressure put on lawyers by the Belarusian authorities, as documented by HRHN.<sup>9</sup> Lawyers face systematic repression and are dependent on the Ministry of Justice's will. The Ministry exercises total control over entry to the legal profession, and – through the Bar Association – can at any given time punish lawyers. The authorities employ arbitrary, politicised claims of violations of rules, such as cooperation with UN human rights mechanisms, to take disciplinary action and remove lawyers without recourse to appeal.

Pavel Sapelka's 2011 expulsion from the Minsk City Bar Association is symbolic of this practice in the country. Sapelka was a member of the Presidium of the Bar Association and was defending Andrei Sannikov, the former presidential candidate, and the two political activists, Dmitry Dashkevich and Pavel Severynets. After several requests by the Ministry of Justice to discipline Sapelka, the Minsk City Bar Association expelled him, solely due to his work on political cases.<sup>10</sup> The authorities still employ these methods in Belarus.

The situation has not substantially changed on any front. The worries expressed by Human Rights Council mechanisms since 2011 remain the same, or have worsened – with the exception of the release of political prisoners.

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<sup>9</sup> Human Rights House Network, *Human Rights Lawyers at Risk. Making the Case for Protection of Legal Professionals in Azerbaijan, Belarus, Moldova, Russia, and Ukraine*, Oslo & Geneva, September 2015, available at [humanrightshouse.org/Articles/21175.html](http://humanrightshouse.org/Articles/21175.html).

<sup>10</sup> *Human Rights Lawyers at Risk*, op. cit., page 35.

## A human rights situation that deserves international monitoring

Since its establishment in 2012, the mandate of the Special Rapporteur on Belarus has repeatedly proved its worth. It has been key not only in providing constant independent monitoring of the situation, but also in highlighting some worrying trends that had not previously received sufficient attention.

For example, in his first report in 2013<sup>11</sup>, the Special Rapporteur was among the first to analyse the nature of presidential decrees in Belarus, describing them “as the main, and in fact, supreme legislative mechanism in the country.” The Special Rapporteur has a unique perspective in understanding and documenting the systemic nature of human rights violations in Belarus, and this is reflected in his astute description of the Belarusian system as “permission-based.”

This “permission-based” system is the basis for the prevailing climate of fear that deters any attempt by persons within Belarus to express views or to organise in a way that the Government deems undesirable. This system consists of the *de jure* criminalisation of any public activity not previously authorised by the administration. The authorities themselves are able to decide under this *de jure* criminalisation whether an action should be *de facto* a criminal one, as well as what the form of punishment should be. This is on a wide scale of punishment ranging from administrative to penal, from fines to incarceration, and to the loss of unrelated civil rights. In other words, at any given time, anybody can be punished, arrested, and criminalised solely due to expressing their political views.

Human rights will be at risk in Belarus for as long as the country has this system of governance by presidential decree and state permission to exercise human rights. The international community must monitor the country. The system is today indeed unable to guarantee minimal respect for the rule of law.

Forced labour remains a problem in Belarus. The Special Rapporteur is among the few international voices<sup>12</sup> to make visible the systematic policy of forced labour. He has done so from the start of his mandate, beginning with his first report to the Human Rights Council. In June 2014, the Special Rapporteur reported the following to the Human Rights Council: “National, regional and local authorities regularly impose unpaid work on the working population through ‘subbotniks.’”<sup>13</sup> He also documented practices of forced labour in relation to the Ice Hockey World Championship, as documented by Belarusian civil society.<sup>14</sup>

The mandate has also been key in giving a voice to Belarusian civil society. The authorities in Belarus widely ignore civil society, but through the UNSR, Belarusian civil society enjoys a reserved channel of communication with the UN. This has raised international attention to the human rights situation in Belarus.

When looking at the future of the mandate, it is also key to consider its indirect achievements. For example, the diplomatic opening by the Belarusian authorities is partly a result of the constant pressure and monitoring of the Special Rapporteur. Another indirect achievement – although more progress is still needed in this area – is the release of political prisoners and the absence of violence

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<sup>11</sup> Report of the Special Rapporteur on the situation of human rights in Belarus, 18 April 2013 (UN Doc.: A/HRC/23/52), para. 9, available at

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52_en.pdf).

<sup>12</sup> See also report by FIDH and HRC Viasna « Forced Labor and the Pervasive Violation of Workers’ Rights in Belarus », available at

<https://www.fidh.org/en/region/europe-central-asia/belarus/14364-forced-labor-and-the-pervasive-violation-of-workers-rights-in-belarus>.

<sup>13</sup> Report of the Special Rapporteur on the situation of human rights in Belarus, 22 April 2014 (UN Doc.: A/HRC/26/44), para. 112, available at

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-44\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-44_en.doc).

<sup>14</sup> See interview with Valiantsin Stefanovich, Deputy Chairman of the Human Rights Centre “Viasna”, 26 May 2014, available at <http://spring96.org/en/news/71258> available at <http://spring96.org/en/news/71258>.

during the last Presidential election. This is a direct consequence of international monitoring and pressure, of which the work of the Special Rapporteur is an integral part. In view of this year's parliamentary election, it is all the more vital to maintain the only international voice able to independently scrutinise the situation – to prevent a potential new crackdown from taking place.

In recent months, the Belarusian authorities have started showing signs of interest in improving their relations with the EU, including on human rights. The resumption of the EU-Belarus human rights dialogue is one such sign. However, to demonstrate that these commitments are genuine and not only a facade, the Belarussian authorities need to take further concrete steps.

As an important move in this direction, the authorities should recognise the mandate of the UN Special Rapporteur and invite him to assess the situation on the ground. Only by allowing independent scrutiny of the country's situation, and by accepting and following subsequent recommendations, can Belarus aspire to improve its human rights record and receive the then deserved recognition by the international community. Once this cooperation with the authorities is initiated, the next steps would be to establish concrete benchmarks for the mandate, showing what the Belarussian authorities need to achieve for the mandate to be extinguished.

UN mandates are the only international mechanisms able to monitor the human rights situation in Belarus. This makes it even more worrying that the Belarusian authorities are unwilling to cooperate with these mechanisms.

The Human Rights Council must renew the mandate to ensure that the only tool to scrutinise Belarus remains available. This is essential in view of the system of violations still in place Belarus, which could lead to the situation rapidly degenerating into an emergency, depending on the authorities' intentions.

## Belarus is unwilling to address systemic human rights violations

In June 2012, the High Commissioner published recommendations calling on the authorities to address the structural and endemic nature of the human rights violations in Belarus, but the authorities have been unwilling to do so. In June 2013, the Special Rapporteur – in reference to the judgement *Jerzy Broniowski v. Poland* of the European Court of Human Rights – stated that systemic human rights violations derive from structural causes not addressed by the responsible authorities. “In the case of Belarus, many United Nations bodies have observed in several cases similar violations not addressed by the State: violations of the rights to freedom of expression and opinion; right to a fair trial; or to freedom of association,” wrote the Special Rapporteur.<sup>15</sup>

In February 2016, the Special Rapporteur observed:<sup>16</sup>

“Unfortunately, the dismal state of human rights has remained unchanged in the country. Despite the partial suspension of EU and US sanctions, decided in anticipation of further advancement of human rights, the authorities have not ceased the systematic harassment of those who attempted to practice their individual, civil, political, and other rights. Neither have they shown any willingness to reform the entrenched, highly oppressive legal system.”

The UN enjoys a positive image and trust among the Belarusian population, but this is not the only reason UN human rights mechanisms are significant. Belarus is not a member state of the Council of Europe, and therefore the population does not enjoy protection under the European Convention for Human Rights. Hence, cases of human rights violations in Belarus cannot be brought before the European Court of Human Rights. There is no sign whatsoever of the Belarusian authorities seeking to ratify the European Convention on Human Rights or join the Council of Europe. At this stage, this would in any case be impossible given the existence of the death penalty in the country.

On the one hand, Belarus is a proud founding member of the UN, while on the other hand the Belarusian Government denounces the institution. It dismisses UN human rights mechanisms – such as the Special Rapporteur on Belarus – as being politicised, and rejects UN conclusions on the human rights situation in Belarus.<sup>17</sup>

The review of Belarus at the Committee against Torture illustrates the country’s lack of willingness to achieve real progress. Following the review, Belarus dismissed the Committee for being biased and politically motivated.<sup>18</sup> Belarus specifically rejected the competence of the Committee to make observations on issues such as fundamental legal safeguards, the behaviour of law enforcement officers, enforced disappearances, torture, independence of the judiciary, evidence obtained through torture, the death penalty, and impunity and lack of independent investigation. In a report provided to the Committee in March 2014, HRHN further highlighted the absolute lack of implementation of the recommendations made by the Committee.<sup>19</sup>

As HRHN stressed at the 31<sup>st</sup> session of the Human Rights Council, “Belarus has not sent any information on the implementation of the Covenant on Civil and Political Rights to the Human Rights Committee in 14 years. Even more worrying, in violation of its obligations under the Optional Protocol, Belarus has carried out death sentences despite the call for interim protection measures

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<sup>15</sup> Report of the Special Rapporteur on the situation of human rights in Belarus, 18 April 2013 (UN Doc.: A/HRC/23/52), para. 34, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-52_en.pdf).

<sup>16</sup> Statement by the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszi : <http://humanrightshouse.org/Articles/21447.html>.

<sup>17</sup> Belarusian Human Rights House and HRHF, *Non-cooperation with the United Nations: Belarus is putting itself aside of the international community*, June 2012, available at <http://humanrightshouse.org/Articles/18195.html>.

<sup>18</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>19</sup> Follow-up to the concluding observations of the United Nations Committee against Torture adopted at the 47<sup>th</sup> Session for the Republic of Belarus, March 2014, available at [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BLR/INT\\_CAT\\_NGS\\_BLR\\_17122\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BLR/INT_CAT_NGS_BLR_17122_E.pdf).

issued by the Human Rights Committee. In some of the cases, when the Committee issued its view on the specific case, it found due process violations. But the concerned person was already executed.”<sup>20</sup>

## Key recommendations to the international community

The international community needs to take sustained resolute action to address the human rights situation in Belarus, as underlined by the lack of progress, ongoing human rights violations, and unwillingness by the authorities to truly address human rights violations.

We call upon the international community to:

- Ensure continued international scrutiny of the human rights situation in Belarus, including by renewing the mandate of the UN Special Rapporteur on the Situation of Human Rights in Belarus.
- Regard the Belarusian human rights community as an actor in the human rights dialogue between the EU and Belarus, and between the US and Belarus; the Belarusian human rights community should be an equal partner in these processes.
- Request that Belarus develops a roadmap to implement minimal measures to ensure progress on human rights, including through full cooperation with mechanisms of the UN and the Organisation for Security and Cooperation in Europe. These minimal measures include the following:
  - Close (instead of current suspension) the politically motivated criminal cases against journalist Aliaksandr Alesin and politician Ales Mikhalevich, and review in a *public* trial the criminal case of Mikhail Zhamchuzhny (founder of the human rights organisation *Platform Innovation*).
  - Recognise the mandate of the UN Special Rapporteur, start cooperation and ultimately invite him to carry out a country visit to assess the human rights situation.
  - Repeal convictions of former political prisoners to restore their civil and political rights.
  - Lift the ban on entry into the country imposed on Belarusian human rights activist Alena Tankachova, and ensure safe conditions for the return of persons forced to leave the country due to political persecution.
  - Register the Human Rights Center Viasna and other non-governmental organisations that apply for registration.
  - End the persecution of journalists of the Belsat TV channel and Radio Racyja, as well as of other journalists working for foreign media, and refrain from interfering with their professional activity in the country.
  - Introduce a moratorium on executions.
  - Repeal Article 193.1 of the Criminal Code, as well as the ban on the activity of unregistered organisations.
  - Work systematically to bring Belarusian legislation in the sphere of human rights in line with international standards.

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<sup>20</sup> Human Rights House Foundation intervention at the 31st session of the United Nations Human Rights Council, 1 March 2016, available at <http://humanrightshouse.org/Articles/21481.html>.