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The human rights situation in Belarus: Written statement to the 18th session of the United Nations Human Rights Council

The UN Human Rights Council is scheduled to hold a debate on Belarus at its upcoming 18th session (Geneva, 12-30 September 2011). Amnesty International has submitted the following written statement that gives an overview of Amnesty International's concerns in the country.

Since Amnesty International last addressed the human rights situation in Belarus in the Human Rights Council, the situation there has significantly worsened after the elections in December 2010. Freedoms of assembly and expression have been increasingly restricted. Attempts have been made to silence all forms of peaceful protest, and human rights defenders have come under increasing attack. Belarus continues to carry out executions, and the trials following the events in December 2010 have highlighted serious fair trial concerns, including failure to guarantee the independence of the judiciary and to protect lawyers and respect the presumption of innocence.

Freedom of Assembly
The "Law on Mass Actions" imposes unreasonable limits on freedom of assembly and expression. It requires demonstrators to apply for permission to the local authorities and stipulates that public events cannot take place within 200 metres of underground stations and pedestrian crossings. As a result of these provisions, almost all applications to demonstrate in the centre of Minsk are turned down. Those who protest despite being refused permission are then liable for prosecution for taking part in an unsanctioned meeting.

On 29 July 2011, the authorities responded to a wave of "silent protests" that had been taking place throughout the country with a draconian new law that requires government permission for any gatherings carrying out "action or inaction intended as a form of public expression of socio-political attitude or as a protest."

A mainly peaceful demonstration after the presidential elections on 19 December 2010 was violently dispersed by riot police and over 700 people were charged with administrative offences and detained for 10 to 15 days. To date Amnesty International has recognized 13 of those sentenced in connection with the demonstration as prisoners of conscience.

Freedom of Association
In 2005, Article 193-1 was introduced to the Criminal Code to make it a criminal offence to act in the name of an unregistered organization. Many human rights organizations face great difficulties in registering with the Ministry of Justice and are thus exposed to prosecution for carrying out their legitimate activities.

On 4 August 2011, the chair of the NGO Human Rights Centre Viasna, Ales Bialatsky, was arrested and charged with tax evasion. Ales Bialatsky, who is also Vice-President of the International Federation for Human Rights, was arrested as a result of bank information given to the Belarusian authorities by the Lithuanian and Polish authorities. Viasna was deregistered in 2003 and as an unregistered organization was prevented from functioning openly. Its members had no choice, but to use bank accounts in neighbouring countries to fund their

human rights work. Amnesty International is asking for Ales Bialatsky to be immediately and unconditionally released.

Torture and other ill-treatment
Despite the requirement under Article 4, paragraph 2 of the UN Convention against Torture, to which Belarus is a party, the Criminal Code has no provision for the crime of torture. Cases of torture and other ill-treatment are instead tried under alternative articles of the Criminal Code, such as Article 426 which refers to actions "exceeding official authority". In addition, there are no procedural guidelines on how to deal with such complaints. Lawyers are reluctant to alert judges to allegations of ill-treatment, and judges are reluctant to consider them. Moreover, there is no independent monitoring system of places of detention. Belarus has not signed the Optional Protocol to the UN Convention against Torture.

In August 2010, Belarus submitted its fourth periodic report to the UN Committee against Torture. The report rejected the recommendation made by the Committee in 2000 to introduce a definition of torture into the Criminal Code in conformity with the definition in the UN Convention against Torture, and it claimed that all allegations of torture and other ill-treatment were examined by prosecutors. However, complaints to the Prosecutor's Office rarely lead to criminal investigations for torture and are usually subject to a superficial investigation that does not extend beyond interviewing the police officers alleged to be the perpetrators.

Amnesty International has received credible reports that torture and other ill-treatment is routinely used to extract confessions, and that those who complain about torture and other ill-treatment are at risk of reprisals from police officers.

Fair Trials

Lack of Judicial control over detentions
Amnesty International is concerned about the apparent lack of a provision for judicial control of a decision to detain a person. According to the Criminal Procedural Code it is the prosecutor who sanctions arrest. Judges routinely do not exercise their authority to independently and impartially decide on the legality of an arrest or detention, or the need for continued detention in the event of an appeal. In any case, the court is only empowered to check only the legality of the procedure, not the decision itself to detain a person.

Presumption of innocence
In high profile trials it is common for the government controlled media to be used to demonstrate the guilt of suspects in violation of the presumption of innocence.

Following the demonstration on 19 December 2010, a documentary shown on the First Channel of State Television "The Square – Metal against Glass" presented the government's contention that leading members of the opposition were plotting a violent coup with help from abroad. The narrator stated: "The former opposition candidates decided to take by force what they had not been able to gain through the elections."

Barriers to the right to legal defence
The right to unimpeded communication with a lawyer is laid down in Article 49 of the Belarusian Criminal Procedural Code; however, this right is often restricted in practice.

Those who were charged following the demonstration on 19 December had extremely limited access to their lawyers. All those detained instructed their own lawyers, but none of the detainees were able to see their lawyers in private. Some lawyers reported that they were being obstructed from seeing their clients. Tamara Sidorenko, the lawyer of Uladzimir Naklyayau, saw her client twice only while he was in detention. She reported that lawyers were required to wait in line outside the KGB (Committee for State Security) detention centre where all the detainees are held and they were often told that no meetings rooms are available.

Many of the lawyers who defended opposition leaders who were accused of organizing mass disorder in connection with the events in December 2010 have since been disbarred. In March 2011, Pavel Sapelko who had had defended Andrei Sannikov, was disbarred. On 7 August 2011, the Qualification Committee of the Ministry of Justice decided to revoke Tamara Sidorenko's licence to practice.

Death Penalty
Belarus continues to carry out executions in conditions of utmost secrecy. Neither the prisoners, nor the relatives of prisoners condemned to death, are informed of the execution before it is carried out. The body is not returned to relatives and they are not informed of the burial site. They are often kept waiting weeks or even months before they receive the official death notice.

Vasily Yuzepchuk and Andrei Zhuk were executed in March 2010, and it appears that Andrei Burdyko and one other man[1] were executed between 14 and 19 July 2011. There has been no official confirmation of the executions, but Andrei Burdyko's mother was handed her son's personal effects on 25 July. The executions were carried out despite the fact that on 17 December 2010 the UN Human Rights Committee sent a formal request to the government of Belarus not to execute the two men until the case had been considered by the committee.

Recommendations

Amnesty International urges the government of Belarus to:

Freedom of Assembly
- review the Law on Mass Events and bring it into line with the requirements of the International Covenant on Civil and Political Rights;
- immediately and unconditionally release all those sentenced for their peaceful participation in the demonstration on 19 December 2010, and to ensure that all those detained for their peaceful participation in that event under the provisions of the administrative code are offered appropriate redress;

Freedom of Association
- ensure that civil society organizations are able to register and carry out their legitimate activities without fear or threat of reprisal or obstruction;
- abolish Article 193-1 of the Criminal Code, which criminalizes activities by non registered organizations;
- drop all charges against Ales Bialatsky, the Chair of the Human Rights centre Viasna, and release him immediately and unconditionally;

Torture and other Ill-treatment
- introduce an article criminalizing torture to the criminal code in line with the definition in the Convention against Torture;
- ensure that all allegations of torture and other ill-treatment are promptly and effectively investigated and that complainants are protected from reprisals

Fair Trials
- review detention procedures to ensure that judges are involved in the initial decision to detain a person before trial;
- ensure that the presumption of innocence is protected at all stages and that any violation of this principle by media outlets is subject to sanctions;
- ensure that lawyers are free to practice their professions free from governmental interference.

Death penalty

[1] His identity is concealed at the request of his family.

- promptly establish a moratorium on all executions with a view to abolishing the death penalty,
- commute without delay the death sentences of all prisoners currently on death row to terms of imprisonment;
- pending steps towards total abolition of the death penalty, to ensure rigorous compliance in all death penalty cases with international standards on the death penalty including by ensuring that relatives of prisoners on death row are informed of the execution date and permitted to have the prisoner's body for burial.

End/