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Situation of human rights in Belarus

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

Summary

In her report, prepared pursuant to Council resolution 38/14, the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, describes the systemic and systematic human rights violations present in law and in practice. The findings of the Special Rapporteur indicate the absence of significant improvements and the necessity for the Government of Belarus to clearly demonstrate its commitment to addressing long-standing criticism by introducing concrete durable changes. Based on her conclusions, the Special Rapporteur addresses recommendations to the Government of Belarus and the international community.



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I. Introduction

A. Executive summary

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established in 2012 by the Human Rights Council in its resolution 20/13, on the basis of a report by the United Nations High Commissioner for Human Rights (A/HRC/20/8). The Council requested the mandate holder to report annually to it and to the General Assembly. The Council has since renewed the mandate six times, for one year each time, in resolutions 23/15, 26/25, 29/17, 32/26, 35/27 and 38/14.
2. The present report, submitted to the Council pursuant to its resolution 38/14, covers the period from 1 May 2018 to 31 March 2019 and is based on information received up to the latter date. It is the first report submitted by the current Special Rapporteur, Anaïs Marin, who officially assumed her functions on 1 November 2018.
3. As in previous years, the Government of Belarus has not recognized the mandate of the Special Rapporteur, thereby limiting her capacity to engage constructively. The Special Rapporteur can only regret this and encourages the Government to review its position on the mandate.
4. Based on the information collected, the Special Rapporteur cannot attest to important improvements in terms of respect for human rights in Belarus. For example, the death penalty continues to be used and no progress has been recorded on the prevention of torture and ill-treatment although both areas have been the subject of many recommendations over the years.
5. Some welcome changes can be mentioned, such as the repeal of article 193.1 of the Criminal Code criminalizing the activities of non-registered organizations and the introduction of amendments to the law on mass events, establishing a notification procedure for certain assemblies. Those developments, however, only partly address the recommendations of human rights actors. Non-registered organizations are still subject to administrative liability and the notification procedure for assemblies is valid only for those taking place in areas designated by authorities, and is often denied in practice. These small steps, although going in the right direction, have yet to testify to a real change in Government policies.
6. The reporting period was also marked by the entry into force of legislative amendments introducing further restrictions on online media, while formerly documented practices of arrests of human rights defenders and activists, the prevention of peaceful assemblies and interference with the work of journalists and civil society organizations continue to be regularly reported. Although the number of such cases seems to have reduced in comparison to the previous year, the same policies are in place, showing that there has been no fundamental change in approach. With a restrictive legal framework and practices still in place, a relapse into widespread repression can easily occur.
7. The information collected also shows a heavy-handed and punitive approach towards marginalized groups, such as people suffering from addiction or the unemployed. Individuals, including children, arrested for drug-related offences are sentenced to disproportionately long terms in prison. Parents who are unemployed, suffer from addiction or have committed minor administrative offences can see their children taken away by social services. Unemployed individuals have to pay higher prices for utilities and are forced to accept any employment offered to them or risk being sent to labour treatment centres. This severe approach has a negative impact on already vulnerable and socially or economically disadvantaged individuals. However, anyone can potentially be impacted by such measures. The Special Rapporteur also notes that several groups, such as Roma, members of the lesbian, gay, bisexual, transgender and intersex community or people living with HIV, continue to be discriminated against.
8. The dynamism and dedication of civil society actors in promoting and protecting human rights, despite the adverse conditions in which they have to work, should be

highlighted. The Special Rapporteur believes civil society would be an asset in bringing about positive change should the Government approach civil society actors in the spirit of cooperation and treat them as partners. The Special Rapporteur encourages the Government to systematically involve civil society in policymaking, thereby promoting inclusiveness and increasing ownership.

9. Given the observations detailed in the present report, the Special Rapporteur is of the opinion that continued attention should be paid to the human rights situation in Belarus.

B. Methodology

10. The work of the Special Rapporteur is based on the principles of independence, impartiality and objectivity. The Special Rapporteur seeks to cooperate with all stakeholders in order to give them the opportunity to provide information deemed relevant to them.

11. On that basis, the Special Rapporteur reached out to the Government on 22 November 2018 to request a visit to Belarus. Unfortunately, her request remained unanswered, thereby continuing the policy of non-engagement implemented by the Government during the six-year term of her predecessor. The Special Rapporteur regrets that the Government did not take advantage of the opportunity to cooperate and engage in a constructive dialogue.

12. Unable to conduct a visit to Belarus, the Special Rapporteur based her report on a variety of sources, including open-source information such as government statements, publicly available official documents and news articles, and information provided by civil society organizations, victims of violations and their relatives, representatives of international and regional organizations and the diplomatic community.

13. The Special Rapporteur does not aim to provide an exhaustive account of the human rights situation in Belarus, but to report on patterns of human rights violations based on the information and individual cases brought to her attention.

II. Engagement with the international human rights system

14. Over the years, various international human rights mechanisms have made recommendations to the Government of Belarus to bring legislation, policies and practices into line with its commitments under international human rights law. Recent reviews by human rights treaty bodies show that the implementation of those recommendations remains extremely limited. Systemic issues still remain to be addressed and in-depth reforms still need to be undertaken.

15. Belarus was reviewed by the Committee against Torture in April 2018 (see CAT/C/BLR/CO/5). As a priority, the Committee asked Belarus to follow up on its recommendations pertaining to the implementation of fundamental legal safeguards for detainees; to the effective investigation of allegations of torture and ill-treatment; and to the cessation of the criminalization, detention and harassment of human rights defenders and journalists. The Special Rapporteur encourages Belarus to take advantage of those recommendations to review its practices.

16. Twenty-one years after its previous review in 1997, Belarus was reviewed by the Human Rights Committee in October 2018 (see CCPR/C/BLR/CO/5). Despite the significant delay, the Special Rapporteur welcomes the engagement of Belarus with the Committee and hopes this marks a renewed commitment of Belarus to respect its international obligations in regard to civil and political rights and to comprehensively implement the recommendations made by the Committee. That is particularly important in view of the forthcoming presidential and parliamentary elections.

17. The Committee on the Rights of the Child plans to review the compliance of Belarus with the Convention on the Rights of the Child at its eighty-third session in 2020. The

Special Rapporteur hopes that related issues of concern and recommendations mentioned in the present report will contribute to the work of the Committee.

18. The Special Rapporteur's predecessor welcomed the adoption of the national human rights action plan for the period 2016–2019, which was approved by the Council of Ministers of Belarus on 24 October 2016.¹ The period of the plan will soon come to an end and the Special Rapporteur is looking forward to the final implementation report. Positive steps are noticeable, however many activities set out in the plan still remain to be implemented.² The Special Rapporteur regrets that the plan did not set specific measurable indicators to evaluate the progress of implementation and that many activities were aimed at exploring options, thereby focusing more on the process than on achieving results-oriented change. Belarus will go through its third cycle of the universal periodic review in the spring of 2020 and the Special Rapporteur hopes that this will be the occasion to draft a follow-up plan, designing clear measures to address pending human rights issues.

III. Human rights concerns

A. Right to life and physical integrity

1. Death penalty

19. All European countries have abolished the death penalty *de facto* or *de jure*, except for Belarus, which has executed an estimated 400 people over the past two and a half decades.³ Owing to the continued secrecy surrounding the death penalty, statistics on the number of people executed are not openly accessible. According to the information available, four individuals sentenced to death for murder in 2017 were executed in the period covered by the present report. In mid-May 2018, Viktor Liotaŭ and Aliaksej Michalania were reportedly executed, while Siamion Beražny and Ihar Hershankoŭ were executed on 19 November 2018.⁴

20. Aliaksej Michalania, Siamion Beražny and Ihar Hershankoŭ were executed while their complaints were still pending before the Human Rights Committee.⁵ Since 2010, in 13 cases Belarus has repeatedly failed to respect the request of the Human Rights Committee to stay executions by executing individuals before the Committee had concluded its consideration of their cases.

21. Death penalty sentences continued to be handed down during the reporting period. On 30 May 2018, the Supreme Court dismissed Aliaksandr Žylnikaŭ's appeal and upheld the death sentence pronounced in 2015.⁶ The most recent decision known to the public dates from 9 January 2019, when Aliaksandr Asipovič was sentenced to death on a charge of murder.⁷ A third detainee, Viačaslaŭ Sucharko, sentenced in March 2017, is awaiting execution.

22. The Special Rapporteur notes that relatives are kept ignorant of the time and circumstances of the death of their close ones, bodies are not returned and no details of places of burial are given. That constitutes unnecessary additional pain and suffering unfairly inflicted on relatives, which has been recognized by the Human Rights Committee as constituting inhuman treatment in violation of article 7 of the International Covenant on Civil and Political Rights protecting individuals from torture and cruel, inhuman or

¹ Available from geneva.mfa.gov.by/docs/interagency_plan_of_belarus_on_human_rights_eng.docx.

² See http://mfa.gov.by/upload/18.06.26_HR_report_2017.pdf (in Russian).

³ See International Federation for Human Rights and Human Rights Center Viasna, "Death penalty in Belarus: murder on (un)lawful grounds" (October 2016).

⁴ See International Federation for Human Rights and Human Rights Center Viasna, "Human rights situation in Belarus: 2018. Analytical review".

⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24009&LangID=E.

⁶ See <http://dp.spring96.org/en/news/91677>.

⁷ See www.svaboda.org/a/29699064.html (in Belarusian) and <http://spring96.org/ru/news/91768> (in Russian).

degrading treatment or punishment.⁸ Moreover, relatives have to suffer from the social stigma linked to the death penalty long after the execution of their close ones, for example by being subject to insults and degrading comments.

23. The Special Rapporteur welcomes the work of the parliamentary working group on the question of the death penalty established in early 2017, but hoped it would be followed by concrete steps to eliminate the handing down and execution of death sentences. The official line that the death penalty should be maintained until a majority of the population supports its abolition should be reconsidered.⁹ Even if public opinion might still support the retentionist stance, it is up to the Government to lead the debate, provide balanced information on the issue and actively work to change mentalities in favour of abolition. The Special Rapporteur encourages Belarus to study the best practices of abolitionist countries and notes that no referendum is needed where a moratorium can be decided either by the President or the parliament.

2. Torture and other cruel, inhuman or degrading treatment or punishment

24. According to information received, torture and ill-treatment continue to be widespread during interrogations and in places of detention. The Special Rapporteur regrets that torture is still not defined as a separate offence in the Criminal Code. Having a specific definition and article pertaining to torture would ensure that all the elements contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are covered (CAT/C/BLR/CO/5, para. 50).

25. The use of torture has been reported as commonly used by law enforcement and investigation officials to intimidate or extract incriminating statements.¹⁰ Information allegedly obtained under duress is still often considered by judges during court hearings and investigations into allegations of torture are not automatically launched. Moreover, acts of torture and ill-treatment are not systematically recorded by medical personnel (*Ibid.*, paras. 7–8).

26. In detention, the lack of oversight of disciplinary punishment and its proportionality in regard to the disciplinary breach raises concerns. Solitary confinement seems to be used often, even for minor breaches.¹¹ In that regard, civil society organizations have continually raised the issue of the repeated and prolonged detention in punishment cells of Michail Žamčužny, founder of a human rights organization sentenced in June 2015 to six years' imprisonment.¹² According to information received, appealing disciplinary measures is very difficult and almost never successful. Examples of the use of article 411 of the Criminal Code against detainees disobeying penitentiary personnel also raises concerns.¹³ In one case, a detainee sentenced in 2003 to eight years in prison spent almost double that in detention after being sentenced eight times under article 411.¹⁴

27. The Special Rapporteur has been informed that individuals, including children, detained for drug-related offences are held in particularly harsh conditions.¹⁵ Individuals sentenced under article 328 of the Criminal Code are thought to represent up to 40 per cent of the total prison population and are reportedly forced to wear specific identifying badges

⁸ See Committee on Human Rights, general comment No. 36 (2018) on the right to life and CCPR/C/BLR/CO/5, para. 27 (b).

⁹ See <https://naviny.by/new/20190228/1551381481-vlasti-belarusi-ne-planiruyut-otmenyat-smertnuyu-kazn> (in Russian).

¹⁰ See www.the-village.me/village/city/yak-pracuye/269693-pytki (in Belarusian) and <https://torture.spring96.org/> (in Belarusian and Russian).

¹¹ See https://torture.spring96.org/pytki_zakluchennyh (in Russian).

¹² See <http://spring96.org/ru/news/92180> (in Russian).

¹³ Article 411 deals with a systematic failure to obey the legal demands of the administration at a correctional facility.

¹⁴ See <http://news.21.by/other-news/2018/05/23/1498361.html> (in Russian).

¹⁵ Ordinance No. 6 of 28 December 2014 toughened criminal responsibility for offences related to drugs, originally spelled out in article 328 of the Criminal Code, notably by lowering the age of criminal responsibility from 16 to 14 years.

distinguishing them from other detainees.¹⁶ The intention to toughen conditions of detention for drug-related offenders was explicitly formulated in 2014 by President Lukašenka who stated that “unbearable conditions need to be created” for such prisoners so that they would rather “ask for death”.¹⁷ On 8 March 2019, a detainee from penal colony No. 22, known to host mostly individuals sentenced under article 328, committed suicide.¹⁸ Prior to that, in November 2018, detainees in the same penal colony reportedly protested against the prison administration regarding their conditions of detention, notably about insufficient health care, the rude attitude of the penitentiary personnel and the lack of contacts with relatives.¹⁹ The authorities denied that the protest had taken place.²⁰

28. The lack of external independent oversight of detention facilities remains a concern. The powers of the public monitoring commissions under the Ministry of Justice are seriously limited. For example, the commissions cannot visit places of detention unannounced and cannot hold individual confidential discussions with detainees. Moreover, the authorities rarely make public information about conditions of detention, notably on issues related to deaths and epidemics in places of detention.²¹

29. The Special Rapporteur deplores the fact that the Government decided in late October 2018 to abandon the development of the draft law against domestic violence in the face of criticism from conservative groups. Earlier that month, the President had publicly expressed his opposition to the concept by defining the notion of domestic violence as a “stupid thing borrowed from the West” adding that sometimes a good whipping was good for a child.²²

3. Arbitrary arrest and detention and enforced disappearances

30. Compared to the mass arrests that occurred in the past, the present reporting period was relatively calm. That could be explained by the lack of major political or social events. However, the systemic issues documented in the past remain present in law and in practice. Human rights defenders, activists, journalists and ordinary citizens continue to be arrested or detained on a regular basis for enjoying their legitimate right to freedom of assembly and expression. Any unauthorized meeting or gathering usually leads to arrests, potential detention ranging from a few hours to several days and very often to an administrative sentence to pay a fine.

31. An emblematic example of this is the peaceful gatherings that have taken place every Sunday since 25 February 2018 in the centre of Brest to protest against the construction of a battery plant. At the time of writing, 27 individuals had been fined for taking part in the protests or calling for people to join them.²³ Many of them have spent a day or two in detention. The work of journalists and bloggers covering the events has also been regularly interfered with: on 3 March 2019, two *Belsat* journalists, Alies Liaučuk and Milana Charytonava, were arrested on the street on their way to one of the protests and sentenced to a fine for their coverage of previous protests.²⁴ Two bloggers frequently covering the events, Siarhiej Piatruchin and Aliaksandr Kabanaŭ, have faced systematic interference with their work, having been repeatedly arrested and fined.²⁵

32. Any sign of protest that could be interpreted as challenging the Government is acted upon immediately by law enforcement forces. On 4 January 2019, three activists and a

¹⁶ See www.bbc.com/russian/features-43247680 and <https://belaruspartisan.by/politic/378753/> (both in Russian).

¹⁷ See www.interfax.by/news/belarus/1173223 (in Russian).

¹⁸ See <https://belsat.eu/ru/in-focus/v-volkovysskoj-kolonii-povesilsya-zaklyuchennyj/> (in Russian).

¹⁹ See <https://platformabelarus.com/ik-22/> (in Russian).

²⁰ See www.facebook.com/mvdgovby/posts/2286442274918083 (in Russian).

²¹ See <http://spring96.org/en/news/89617>.

²² See <https://news.tut.by/society/610593.html> (in Russian).

²³ See <https://spring96.org/en/news/92168>.

²⁴ See <https://belsat.eu/ru/news/alesya-levchuka-i-milanu-haritonovu-otputili-posle-sostavleniya-protokolov/> (in Russian).

²⁵ See <https://news.tut.by/society/615301.html> (in Russian).

journalist were arrested near the statue of a policeman located in front of the Ministry of Interior and detained for a few hours for displaying a sign requesting freedom for political prisoners and filming the scene.²⁶ In November 2018, an adolescent was arrested for having slapped the same statue and was then forced to apologize publicly in a video posted on the website of the Ministry of Interior.²⁷ More recently, on 22 January 2019, two activists were arrested for organizing a gathering, at which a dozen individuals laid flowers and lit candles to pay tribute to a young Belarusian man killed in clashes on Maidan Square in Kyiv in 2014.²⁸ The Special Rapporteur expresses serious concern that the pattern previously documented of arrests and administrative detention against human rights defenders, journalists and ordinary citizens for taking part in protests, or to prevent them from joining or reporting on these protests continues to be a widespread practice.

33. On 31 January 2019, the media announced the suspension of investigations into the disappearances of Juri Zacharanka, former Minister of the Interior who disappeared on 7 May 1999; Viktor Hančar, former Vice-President of the parliament and Anatol Krasoŭski, a businessman, who both disappeared on 16 September 1999.²⁹ Officially, the investigations ceased because of the failure to identify a person who could be charged for the crimes committed. Given the numerous credible reports implicating senior officials, the suspension of the investigations signifies not only a failure to investigate but also a clear obstruction of justice. Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance states that an investigation should be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

34. The three cases have been under review by the Working Group on Enforced or Involuntary Disappearances for almost 20 years (E/CN.4/2001/68, paras. 107–108 and E/CN.4/2000/64, para. 27). So far, information provided by the Government of Belarus has been considered insufficient (A/HRC/39/46, p. 12). The cases therefore remain outstanding.

B. Fundamental freedoms

35. Systemic restrictions on freedom of expression, assembly and association described in previous reports of the Special Rapporteur remain in place. Moreover, the reporting period was marked by additional evidence of the continuous curtailing of fundamental freedoms, especially for independent media. The restrictions have a negative effect on civil society as a whole and are particularly worrisome in view of the presidential and parliamentary elections, due to take place in or before 2020. Without respect for fundamental freedoms, any electoral process will lack legitimacy.

1. Freedom of opinion and expression

36. The notorious amendments to the law on mass media, adopted on 14 June 2018, entered into force on 1 December 2018. The amendments enshrine the possibility of identifying any individual commenting on any type of publication online and require that information about such individuals be made available to the Ministry of Information within five working days. Only duly registered media, journalists and bloggers will be allowed to operate online and the owners of registered online media may be held criminally liable for content posted by others on their website. Lack of registration exposes them to administrative fines. Amendments also include the possibility for the authorities to block websites without a court decision.³⁰ Those developments prompted a general outcry of the human rights community and the previous Special Rapporteur reported extensively on their detrimental effects on freedom of opinion and expression (see A/73/380). By targeting the

²⁶ See <https://news.tut.by/economics/621541.html> (in Russian).

²⁷ See www.svoboda.org/a/29602625.html (in Russian).

²⁸ See <https://naviny.by/new/20190122/1548181726-v-minske-posle-akcii-pamyati-mihaila-zhiznevskogo-zaderzhany-olga> (in Russian).

²⁹ See <https://naviny.by/new/20190131/1548960516-dela-ob-ischeznovenii-zaharenko-gonchara-i-krasovskogo-priostanovleny> (in Russian).

³⁰ See <https://baj.by/en/analytics/mass-media-belarus-no-2-55-january-june-2018>.

Internet, the amendments mark an additional curtailment of an already fragile landscape for freedom of speech.

37. The reporting period was marked by renewed pressure on independent journalists and media. In June 2018, authorities began investigating Alies Lipaj, head of the independent *BelaPAN* news agency, on criminal tax evasion charges.³¹ Investigative authorities searched his apartment and banned him from leaving Belarus pending trial. This was seen by human rights defenders as a way to pressure him for his professional activities.³² Following the death of Mr. Lipaj in August 2018, the authorities closed the case.

38. At the beginning of August 2018, the authorities launched a criminal investigation under article 349.2 of the Criminal Code for “unauthorized access to computer information leading to significant harm” against several editors and journalists from independent media outlets for allegedly sharing passwords to access a paid subscription to the State news agency *BelTA*. Police raided the offices of several independent media outlets, including popular news platforms *BelaPAN* and *Tut.by*. Investigators also searched the homes of several journalists, seizing computers, documents and mobile phones, including those of their children. The sudden and coordinated action caused serious disruption in the work of the targeted journalists, while also compromising the confidentiality of their sources. At least 18 journalists were arrested for questioning among whom 8 spent 72 hours in custody, which was seen as excessive given the charges.³³ All editors and journalists were banned from leaving the country during the investigation and one of them was reportedly blackmailed. By November 2018, criminal charges had been replaced with administrative fines for 14 of those arrested. Maryna Zolatava, Chief Editor of *Tut.by*, was the only person remaining under criminal charges for “administrative negligence” after admitting that she was aware that her staff were sharing login data for *BelTA*’s paid subscription.³⁴ On 25 February 2019, she was ordered to pay a fine of approximately US\$ 3,620 in addition to about US\$ 2,840 corresponding to *BelTA*’s legal fees. Suspects and witnesses in the case claimed that they had been pressured during the investigation to give incriminating statements.³⁵ The heavy-handed response of law enforcement officials in the case was seen as disproportionate, causing the indignation and mobilization of the international community in solidarity with the journalists. The Special Rapporteur considers that the action of the authorities is a means of intimidating independent media and inciting self-censorship ahead of the next electoral campaign.

39. Throughout the reporting period, journalists continued to be fined for cooperating with foreign media under article 22.9 of the Code of Administrative Offences for “unlawful production and distribution of mass media products”. The article mostly targets freelancers working for foreign media. In 2018, 118 fines were imposed on journalists for collaborating with foreign media without accreditation, amounting to a total of approximately US\$ 48,000.³⁶ That is double the amount imposed in 2017. In 2019, at the time of writing, 12 journalists had already been fined a total of approximately US\$ 5,700.³⁷

40. On 6 December 2018, a draft law “on strengthening the fight against the propaganda of Nazism and extremism”, amending existing legislation, was passed at its first reading.³⁸ Among other modifications, it foresees the development of a list of extremist and terrorist

³¹ See <https://belsat.eu/en/news/belarus-state-control-committee-belapan-director-suspected-of-tax-evasion/>.

³² See <http://spring96.org/en/news/90352>.

³³ See www.dw.com/russian/задержания-журналистов-в-минске-информационные-чистки-под-видом-уголовки/a-44988816 (in Russian).

³⁴ See <https://baj.by/en/analytics/belta-case-facts-lists-related-links>.

³⁵ See <https://baj.by/en/analytics/tutby-editor-maryna-zolatava-trial-witnesses-claim-coercion-part-investigation>.

³⁶ See <https://baj.by/en/analytics/belarus-quantitative-media-results-year-2018>.

³⁷ See <https://baj.by/en/analytics/fines-journalists-violating-article-229-administrative-code-chart-updated>.

³⁸ See <http://pravo.by/document/?guid=3941&p0=2018058001> (in Russian).

organizations and extremist symbols.³⁹ Human rights organizations have expressed concern that the law contains unclear definitions and imprecise procedures determining what is considered “extremist”, which leaves room for selective interpretation and implementation of the law, with a potentially restrictive impact on freedom of opinion and expression.⁴⁰ The Special Rapporteur would like to point out that legislation should provide clear definitions in order to avoid unnecessary and disproportionate interference with freedom of expression and freedom of the media.⁴¹

41. Recent examples of the application of the existing anti-extremism legislation already give cause for concern. On 1 November 2018, Maryna and Viačaslaŭ Kasinieravy, two anarchist activists, were fined the equivalent of about US\$ 850 under article 17.11 of the Code of Administrative Offences for “distribution of extremist material” for a picture posted on Facebook in which they were wearing clothes with the inscription “class war”.⁴² On 25 January 2019, the couple were again arrested and sentenced under the same article because the picture had not been removed from the Internet.⁴³ During the reporting period, several cases of individuals fined for reposting online material considered extremist were reported, raising the question of the way the notions of extremism and distribution of extremist material are defined.⁴⁴ The anti-extremism legislation has also been applied to journalists. On 17 March 2019, two Russian journalists were arrested in Minsk ahead of a lecture at the Press Club Belarus and charged with “distributing extremist content”.⁴⁵ The two journalists are members of a group working on the issue of violence and had published books on topics such as terrorism, drugs and revolution.

2. Freedom of association

42. On 19 December 2018, the draft law repealing article 193.1 of the Criminal Code which foresaw criminal liability for participation in an unregistered organization was approved by Parliament at its second reading. Article 193.1 had been continuously criticized for its blatant violation of basic human rights standards and its removal is a positive step. However, the Special Rapporteur would like to stress that this development can only be considered a partial success, since it is tarnished by the adoption of article 23.88 of the Code of Administrative Offences, introducing administrative liability instead.

43. In the first half of 2018, the number of new registrations of non-commercial organizations decreased compared to previous years.⁴⁶ Ninety-two new public associations were registered in 2018, which is lower than the average annual index for the previous decade.⁴⁷ Procedures to register organizations remain cumbersome and provide broad discretionary powers to the registration authorities. That is especially the case for human rights organizations, independent groups or political parties. In May 2018, the Supreme Court dismissed the appeal of the Belarusian Christian Democracy party after the Ministry of Justice rejected its registration application for the seventh time owing to minor errors in the application, such as an omission to include home numbers for several founders of the

³⁹ Belarus already had a list of material considered as extremist. See <http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov/> (in Russian).

⁴⁰ See <https://naviny.by/article/20181206/1544112777-v-borbe-s-ekstremizmom-belarus-mozhet-vybrat-put-rossii> (in Russian).

⁴¹ See Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 46.

⁴² See <https://news.tut.by/society/614034.html> (in Russian).

⁴³ See <http://spring96.org/ru/news/91909> (in Russian).

⁴⁴ See <https://news.tut.by/society/614047.html> (in Russian) and <https://news.tut.by/society/615689.html> (in Russian).

⁴⁵ See <https://news.tut.by/economics/630142.html> (in Russian).

⁴⁶ See https://minjust.gov.by/directions/compare_coverage/ (in Russian).

⁴⁷ See Legal Transformation Center (Lawtrend) and Assembly of Pro-Democratic NGOs, “Freedom of association and legal conditions for non-commercial organizations in Belarus: review period 2018”, p. 7, available from <http://belngo.info/2019.review-of-freedom-of-associations-in-belarus-2018.html>.

party.⁴⁸ The near impossibility for public associations wishing to register a private address as their legal address further restricts freedom of association.

44. As formerly reported, members of independent trade unions continue to be regularly put under pressure. On 13 March 2019, around 400 factory workers employed by the Bielaruskalij company in Salihorsk were pressured to quit the trade union chapter. The employer is reported to have said openly that no promotion or career development would be possible for members of independent trade unions.⁴⁹

45. On 24 August 2018, independent trade union leaders Hienadz Fyadyniĭ and Ihar Komlik were both sentenced to four years of restriction of liberty on parole for tax evasion. The court also barred them from holding managerial positions for five years.⁵⁰ The tax evasion charge was brought against them for having received funding in a foreign bank account in the period 2011–2012 and bringing it back to Belarus without declaring it. The criminal case was initiated after their mobilization against presidential decree No. 3 in the spring of 2017 and is seen by many as retribution for their activism.⁵¹ It is not the first time that activists have been sentenced for tax evasion, the most famous case being that of Alies Bialiacki. At the time of his detention from August 2011 to June 2014, the Working Group on Arbitrary Detention expressed the view that article 22 of the International Covenant on Civil and Political Rights not only required States not to interfere with the creation of associations but also to ensure a conducive legal framework for their existence and activities (A/HRC/WGAD/2012/39, para. 48). The Special Rapporteur believes that the restrictive legal framework preventing organizations from registering and forbidding them from receiving funding from abroad clearly goes against the country's obligations.

3. Freedom of peaceful assembly

46. In comparison to previous years, the events organized on the occasion of Freedom Day on 25 March 2019 were marked by fewer cases of arrests than previously, although at least 15 people were detained in Minsk, including opposition members, human rights activists and artists.⁵² Certain individuals were pre-emptively arrested before joining the march and others for spontaneous peaceful actions. Most of them were released without charge. The relatively low number of arrests at this symbolic event is a welcome development, although the general trend in regard to freedom of peaceful assembly throughout the reporting period remains negative.

47. The amendment to the law on mass events, originally introduced in July 2018, entered into force on 26 January 2019. It introduced a notification procedure for assemblies that take place in areas designated for that purpose by the authorities. The designated places are, however, reported to be located far from city centres. Moreover, gatherings organized in other places still require specific authorization, which in practice is rarely granted, often on grounds that another organization has already applied to hold an event in the same location. Since weekly protests against the construction of a battery plant began in February 2018 in Brest, authorization to hold protests has been sought by the organizers 89 times but has been consistently refused, except once on 29 April 2018.

48. Article 23.34 of the Code of Administrative Offences continues to be widely used and human rights defenders, activists and simple protesters are repeatedly fined for "breaching the order of organizing or conducting mass events". In the reporting period, article 23.34 was used in 141 cases against 98 individuals. It is even applied to one-person pickets or other forms of individual protest, including artistic performances. On 16 July 2018, lesbian, gay, bisexual, transgender and intersex activist Viktorija Biran was fined for posing for a picture while holding a poster with the words "You are fake" in front of three different governmental buildings. Her action was planned in protest at a statement put out

⁴⁸ See <http://spring96.org/ru/news/89889> (in Russian).

⁴⁹ See <https://belaruspartisan.by/politic/457312/> (in Russian).

⁵⁰ See www.rferl.org/a/belarusian-union-leaders-fyadynich-komlik-sentenced-four-years-of-restricted-freedom-/29451501.html.

⁵¹ See <https://spring96.org/en/news/90746>.

⁵² See <https://spring96.org/en/news/92438>.

by the Ministry of the Interior condemning the British Embassy for having hoisted a rainbow flag above the Embassy on the International Day Against Homophobia, Transphobia and Biphobia.⁵³

4. Freedom of religion or belief

49. The Special Rapporteur has not noted any progress in regard to the right to freedom of religion or belief during the reporting period. The law on religion requires religious communities to register before they can meet for worship, and certain religious communities face recurrent difficulties when attempting to register. Several religious communities, notably Protestant communities and Jehovah's Witnesses, complain that their applications have been rejected based on minor grounds such as an inadmissible legal address. As a consequence of repeated rejections, some have given up any hope of getting registered and decided not to meet for fear of repression, or to meet in homes or outdoors for lack of a designated place of worship.⁵⁴

50. All public exercise of freedom of religion or belief remains tightly controlled. Meeting without registration exposes worshippers to police raids and fines under article 23.34 of the Code of Administrative Offences for violating the law on mass events. Believers can be fined and their communities dissolved for distributing religious literature and singing outside buildings of worship. For example, on 27 October 2018 two Baptists were detained and fined for singing Christian songs and distributing religious literature at the entrance to a market.⁵⁵

51. Foreign citizens must also request State permission to conduct religious work in Belarus, notably those who are replacing priests who are on leave. In 2018, at least two Orthodox priests from Russia and two Catholic priests from Poland were denied such permission.⁵⁶

C. Rule of law

1. Independence of judges and lawyers

52. Information received indicates that little has been done to address the shortcomings previously identified attesting to the lack of independence of judges and lawyers. The President is still involved in the examination of candidates and the appointment and dismissal of judges based on criteria unknown to the public. The possibility to appoint a judge for an indefinite time exists but in practice, most judges are appointed for limited terms and in any case have to undergo recertification every five years.

53. The Special Rapporteur is also concerned by the fact that bar associations in Belarus are considered independent but are de facto controlled by the Ministry of Justice.⁵⁷ The Ministry of Justice appoints the president of bar associations, delivers lawyers their licences to officiate and has the power to revoke them. In the same pattern as judges, lawyers undergo planned recertification every five years, but they can also be unexpectedly subjected to additional recertification requests. In that context, the lawyers of human rights defenders and activists have been particularly vulnerable to arbitrary and humiliating questioning of their professionalism. The Special Rapporteur believes that this situation clearly undermines the independence and credibility of the judicial system.

⁵³ See <https://naviny.by/new/20180524/1527165697-lgbt-aktivistka-u-ofisov-mvd-i-kgb-sami-vy-poddelka> (in Russian).

⁵⁴ See www.forum18.org/archive.php?article_id=2436.

⁵⁵ See www.forum18.org/archive.php?article_id=2437.

⁵⁶ See www.forum18.org/archive.php?article_id=2387.

⁵⁷ See International Federation for Human Rights, World Organisation Against Torture and others, "Belarus: Control over lawyers threatens human rights" (June 2018).

2. Juvenile justice

54. Until now, Belarus has lacked a comprehensive juvenile justice system. That concern has recently been raised by the Committee against Torture in its review of Belarus on 30 April 2018 and is of particular importance in view of the upcoming review of Belarus by the Committee on the Rights of the Child. In the past, Government officials did not see the need to develop a fully-fledged juvenile justice system⁵⁸ but have expressed their readiness to explore options.⁵⁹ The Special Rapporteur believes that this is a positive step, taking into account that the Convention on the Rights of the Child requires States parties to promote the establishment of a specific judicial system applicable to children (art. 40.3). However, the Special Rapporteur encourages the Government to adopt a broad approach to the issue, since the development of a fully-fledged juvenile justice system requires reform processes related to prevention, investigation, prosecution, the judiciary and the penitentiary system.⁶⁰

55. The strong stand taken towards children sentenced in relation to drug-related offences under article 328 of the Criminal Code illustrates the necessity to revise the current system. The Special Rapporteur has been informed of several cases of minors caught in possession of small amounts of drugs who have been sentenced to lengthy prison terms of 8 to 11 years. In 29 cases, children have reportedly been recruited for small courier jobs through social media networks without knowing what they were actually transporting. Despite common allegations against minors that they were involved in organized criminal groups, the Special Rapporteur is only aware of one case in which an adult was charged under article 172 of the Criminal Code for “involvement of a minor in the commission of a crime”.⁶¹ Conditions of detention of such juveniles have also been reported as poor, with insufficient food, clothing and medication.⁶² Forced labour, lack of access to education and restriction on contacts with relatives have also been reported.

56. The Special Rapporteur is concerned that disproportionate sentences have been handed down to children without due consideration of their specific status and needs and without the best interests of the child in mind. She would like to point out that the arrest, detention or imprisonment of a child must be the last resort and for the shortest appropriate time while taking into account his or her specific needs.⁶³

3. Deportation of foreign nationals

57. Foreign nationals living in Belarus for many years risk being deported to their country of origin for minor administrative offences, such as public drunkenness, minor theft or violation of traffic rules, even if they have a resident’s permit, employment or family in Belarus.

58. This harsh application of the law can lead to dramatic consequences. The Special Rapporteur is aware of three Russian nationals who committed suicide after being faced with expulsion owing to minor offences. One of these cases happened on 15 January 2019 when Vitalii Kuzmenkov, who had lived in Belarus for 14 years and had six children, committed suicide after he was threatened with expulsion for intoxication in a public place and a traffic offence.⁶⁴ Such cases raise serious concerns as to the proportionality of the sentences in comparison to the acts committed. The Special Rapporteur understands that the law on deportations in Belarus currently does not take into account a person’s family and private life, which are protected under the International Covenant on Civil and Political

⁵⁸ See <https://eng.belta.by/society/view/belarus-sees-no-need-in-setting-up-specialized-juvenile-courts-108442-2018>.

⁵⁹ See <https://eng.belta.by/society/view/opinion-belarus-ready-to-make-new-steps-towards-restorative-juvenile-justice-110133-2018/>.

⁶⁰ See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

⁶¹ See <https://news.house/lib/browse/persistent-violations-of-the-rights-of-the-minors>.

⁶² See www.amnesty.org/download/Documents/EUR4901002019ENGLISH.pdf.

⁶³ Convention on the Rights of the Child, art. 37 (b) and (c).

⁶⁴ See <https://news.tut.by/society/625102.html> (in Russian).

Rights (arts. 17 and 23 (1)) or the best interest of any child affected, upon ordering the deportation of an individual.⁶⁵

59. On a positive note, on 7 February 2019, the Homiel regional court overturned the expulsion order on Ukrainian national Serhii Protsenko, who had been arrested at the end of 2018 for being intoxicated in a public place. He had been living in Belarus for 10 years, has a family with three children and stable employment.⁶⁶ Before that, on 19 December 2018, the Maskoŭcki district court confirmed that Anna Krasulina, a Russian citizen and spokesperson for the United Civil Party, would not be deported from the country for one year on account of two administrative fines for participating in unauthorized mass events in 2016 and 2017 and one for an unpaid ride on public transport.⁶⁷ The Special Rapporteur hopes this shows that the authorities have started to reconsider their approach to this issue.

D. Economic, social and cultural rights

1. Non-discrimination

60. Although equality before the law and non-discrimination are enshrined in the Constitution and other legislative acts, Belarus does not possess comprehensive anti-discrimination legislation. The Human Rights Committee stressed this issue and the consequent lack of comprehensive protection in its most recent review (CCPR/C/BLR/CO/5, para. 15). Following the national human rights action plan for the period 2016–2019, the National Centre for Legislation and Legal Research has been tasked to evaluate the need for specific legislation prohibiting discrimination and is due to finalize its conclusions by the end of 2019. The Special Rapporteur believes that Belarus would benefit concretely from tackling the root causes of existing forms of discrimination and encourages the Government to increase its efforts. Current laws do not encourage plaintiffs to bring cases of discrimination to the courts, in practice placing the burden of proof on the plaintiff and making it almost impossible to prove an act of discrimination. The Special Rapporteur is not aware of any cases of complaints of discrimination which have been successful in court in 2018 or 2019.

Persons with disabilities

61. The Special Rapporteur has been informed about the development of a new law on the rights of persons with disabilities. Civil society organizations have stressed positive developments, such as the introduction of job quotas for persons with disabilities, but also pointed out shortcomings, such as the lack of a clear definition of discrimination against persons with disabilities and the absence of specific remedies.⁶⁸ The draft law also fails to address the issue of deprivation of legal capacity of people with mental disabilities.

62. Currently, people with mental disabilities in psychiatric hospitals and care homes are declared “mentally incapacitated” and the director of the institution is appointed as their legal guardian.⁶⁹ In some cases, that means that the director of an institution is the legal guardian for hundreds of people, which puts in question his capacity to guarantee the interests of every single patient. Furthermore, once a person is declared “mentally incapacitated” and placed in an institution, directors of those institutions become the trustees of the patients’ properties.

63. The Special Rapporteur believes that the current situation contravenes the Convention on the Rights of Persons with Disabilities, which foresees equal recognition before the law for persons with disabilities. The Convention requires that measures

⁶⁵ See *Zeyad Khalaf Hamadie Al-Gertani v. Bosnia and Herzegovina* (CCPR/C/109/D/1955/2010).

⁶⁶ See <https://belsat.eu/ru/in-focus/mne-nekuda-ehat-esli-menya-vyshlyut-ya-poedu-voevat-v-donbass-sergej-protsenko-ostaetsya-v-belarusi/> (in Russian).

⁶⁷ <https://naviny.by/article/20181218/1545147189-anna-krasulina-belarus-eto-moya-strana> (in Russian).

⁶⁸ See www.disright.org/ru/news/kommentarii-o-proekte-zakona-o-pravah-invalidov-i-ih-socialnoy-integracii (in Russian).

⁶⁹ See www.disright.org/sites/default/files/source/14.07.2017/final-feasibility-report.pdf (in Russian).

implemented to support persons with disability to exercise their legal capacity be safeguarded from abuse, conflict of interest and undue influence (art. 12). The Special Rapporteur encourages the Government to take advantage of the development of the new bill to address this issue.

Gender

64. In Belarus, women enjoy a high rate of education and are an important part of the labour market. However, gender stereotypes remain very entrenched in society and women continue to be paid 25 per cent less than men.⁷⁰ Furthermore, Belarus legislation still has a list of professions that women are prohibited from entering, allegedly for health-related reasons. Although the number of professions was reduced from 252 to 182 in 2014, the list still contains a significant number of professions.⁷¹ In its review in 2016, the Committee on the Elimination of Discrimination against Women recommended that Belarus restrict the list of professions to those absolutely necessary for the protection of maternity in the strict sense (CEDAW/C/BLR/CO/8, para. 33 (a)). That recommendation has still not been implemented and denotes a persistent bias against women.

Sexual orientation

65. The systematic restrictions on freedom of expression, assembly and association mentioned above also lead to discrimination against the lesbian, gay, bisexual, transgender and intersex community. Public display of symbols or public statements in support of the community are usually repressed and followed by homophobic reactions and statements by the population and by State officials. For example, on 20 May 2018 the Ministry of Internal Affairs published an article entitled “We are for true things” containing homophobic content and calling same-sex relationships “fake”.⁷² The article was published in reaction to the rainbow flag hoisted above the British Embassy building in Minsk on 17 May 2018. In an interview on national television, the Minister of the Interior then reiterated homophobic statements.⁷³ Human rights activists urged that the Minister be held accountable for inciting discrimination against the lesbian, gay, bisexual, transgender and intersex community but all appeals were rejected.⁷⁴

66. That event resulted in a chain reaction of activists protesting and further repression by the police. On 28 June 2018, activists placed rainbow-coloured flower pots near the statue of a policeman before being interrupted and detained by the police.⁷⁵ On 21 July, the police raided a night club in which members of the lesbian, gay, bisexual, transgender and intersex community were gathered, requested people’s documents, took note of their passport details and asked about their employers.⁷⁶ One of the visitors to the club asked why his details were being taken but received no answer. Police officers subsequently twisted his arm almost breaking it and took him to the police station.⁷⁷ The police justified this as a regular inspection of places of mass gathering in order to identify any possible offences.⁷⁸ Later in 2018, three members of the Belarus Free Theatre were arrested and fined for dancing dressed as police officers with rainbow-coloured epaulettes in a public performance.⁷⁹

⁷⁰ See www.kp.by/daily/26897.5/3942577/ (in Russian).

⁷¹ See <https://mshp.gov.by/ohrana/ff7555d0abe25acf.html> (in Russian).

⁷² See <https://news.tut.by/society/593442.html> (in Russian).

⁷³ See <https://belsat.eu/ru/news/shunevich-utochnil-kogo-on-schitaet-i-nazyvaet-dyryavymi/> (in Russian).

⁷⁴ See <https://belsat.eu/en/news/human-rights-defenders-set-to-bring-belarus-interior-minister-to-book-for-homophobia/>.

⁷⁵ See www.svaboda.org/a/29325607.html (in Belarusian).

⁷⁶ See <http://spring96.org/en/news/90400>.

⁷⁷ See www.svaboda.org/a/29385334.html (in Belarusian).

⁷⁸ See <https://euroradio.fm/ru/v-populyarnyy-v-minske-gey-klub-prihodila-miliciya-s-sobakami> (in Russian).

⁷⁹ See <https://freemuse.org/news/belarus-theatre-students-arrested-fined-for-lgbt-artistic-stunt/>.

67. Belarus legislation does not have any laws specifically protecting sexual minorities from discrimination. Article 64.9 of the Criminal Code foresees aggravating circumstances for crimes motivated by “hatred or hostility towards any social group”. However, the term “social group” is very vague and prosecutions taking into account the article in regard to members of the lesbian, gay, bisexual, transgender and intersex community are reported as rare.⁸⁰

68. More generally, members of the lesbian, gay, bisexual, transgender and intersex community can find it hard to access services without discrimination. Information received indicates that such youth can face domestic violence from their parents and are afraid to access services for legal or psychological support, fearing further abuse or discrimination from the authorities.

69. The Special Rapporteur notes the resilience of the lesbian, gay, bisexual, transgender and intersex community in the face of discrimination. After many failed attempts, the non-governmental organization “Make Out” was finally registered in 2018.⁸¹ Despite this positive step, a lot remains to be done at the societal level and within governmental structures to prevent and address discrimination and harassment of members of sexual minorities.

Racial discrimination

70. The Special Rapporteur received information indicating that a number of issues of discrimination against Roma, raised by the Committee on the Elimination of Racial Discrimination and the Human Rights Committee in their concluding observations in 2017 and 2018 respectively, remained of concern (CERD/C/BLR/CO/20-23, paras. 23–24 and CCPR/C/BLR/CO/5, paras. 17–18). In particular, racial profiling by law enforcement officers, leading to police harassment of Roma children, men and women, including repeated compulsory fingerprinting and arbitrary detention, continues to be a widespread practice across the country.

71. Information received also indicated that Roma continued to face discrimination in employment, with employers apparently rejecting qualified Roma candidates for advertised positions. Discriminatory attitudes against Roma have also been seen in public statements and social media postings. Policies that have generally worked well to ensure high rates of school attendance and literacy in the country have not appeared to be successful for the Roma community.

72. The Special Rapporteur has also been informed that some Roma do not possess identity documents, which results in a range of practical issues in their daily lives, including in their search for employment. In order to obtain citizenship, the applicant has to show a clean police record and no administrative charges for a period of one year prior to the application. That condition is difficult to fulfil in practice for members of the Roma community because they are often faced with administrative charges, including for living without identity documents.⁸²

People living with HIV

73. The Special Rapporteur welcomes the amendment to article 157 of the Criminal Code, adopted on 19 December 2018, which removes, in the case of HIV transmission, the criminal responsibility of an HIV-positive person who had warned its partner about the risk of infection. Previously, medical staff could report such cases to the police, who would automatically initiate a criminal case. As a consequence, people living with HIV would

⁸⁰ See Article 19, *Challenging hate: Monitoring anti-LGBT “hate speech” and responses to it in Belarus, Kyrgyzstan, Moldova, Russia and Ukraine* (February 2018).

⁸¹ See <https://citydog.by/post/zaden-makeout-uchrezhdenie/> (in Russian).

⁸² See <https://euroradio.fm/ru/cygane-v-belarusi-oni-ne-nuzhny-gosudarstvu-ili-ono-im-govorim-v-1505> (in Russian).

avoid registering at State medical facilities out of fear of criminal responsibility and would therefore not receive the necessary treatment.⁸³

74. Registration in a State medical facility is compulsory to receive treatment free of charge. According to official data, as of 1 January 2019, 6,979 cases of HIV infection were registered in Belarus, while a total of 20,953 individuals are living with HIV.⁸⁴ However, people living with HIV often prefer not to register for fear of stigmatization. Incidental disclosure of personal medical data can lead to situations of discrimination. As an example, the Special Rapporteur was informed about the expulsion of a girl from school based on her HIV-positive status, which was disclosed by the school medical staff. Her classmates' parents cleaned the classroom with chlorine and insisted that the girl be expelled.

75. Discrimination in the workplace for people living with HIV is also common. An emblematic example brought to the attention of the Special Rapporteur is the case of a man who used to work in a plantation until one of his co-workers found out about his HIV-positive status. The following day, his team issued an ultimatum, refusing to work unless he left. The same person then found a job as a cleaner in a kindergarten and was laid off due to pressure from parents and staff.

76. According to information received, derogatory language is commonly used in relation to people living with HIV and they are often associated with people who use drugs, prostitution or with male-to-male sex, which leads to further social stigma and isolation. The Special Rapporteur wishes to stress that it is up to the Government to fight discrimination against people living with HIV, including by designing information campaigns to combat stereotypes and prejudices.

2. Right to social security and right to work

77. In January 2018, presidential decree No. 1 "on promotion of employment of the population"⁸⁵ replaced the notorious decree No. 3, introduced in 2015, which led to mass protests in February and March 2017.⁸⁶ Decree No. 1, originally developed to stimulate employment and self-employment, still contains controversial aspects such as the creation of a database of able-bodied unemployed citizens.⁸⁷ Although the decree underwent modifications throughout 2018, refining the criteria for inclusion in the list, the Minister of Labour and Social Protection announced in December that 500,000 people were registered on the list.⁸⁸

78. The decision to include a person in the list is taken by local and administrative bodies, raising concerns about their independence and impartiality. People included in this list have to pay for State-subsidized services (gas, heating, hot water) at their full cost and will have to accept any work offered to them even if it does not correspond to their qualifications or wishes. These measures seem to put individuals, who are already unemployed, in a yet more vulnerable financial situation instead of providing positive incentives for them to find work. The Special Rapporteur is also concerned by the use of the decree against human rights defenders working for unregistered organizations. She would like to point out that everyone has the right to earn a living by work which he or she freely chooses or accepts.⁸⁹ On 18 March 2019, a lawsuit requesting compensation for moral damage filed by a housewife who was included in the list was rejected by a local court. She decided to appeal the decision.⁹⁰

⁸³ See <https://pereboi.by/2018/07/30/kriminalizatsiya-vich-v-belarusi-kritika-uchenyh-i-dannye-patsientskogo-monitoringa/> (in Russian).

⁸⁴ See www.belaid.net/v-belarusi-muzhchiny-ostayutsya-naibolee-uyazvimoj-gruppoj-v-otnoshenii-inficirovaniya-vich/ (in Russian).

⁸⁵ See <http://pravo.by/document/?guid=12551&p0=Pd1800001&p1=1&p5=0> (in Russian).

⁸⁶ See www.mintrud.gov.by/system/extensions/spaw/uploads/files/Dekret-3.pdf (in Russian).

⁸⁷ See <https://belsat.eu/en/news/every-10th-employable-belarusian-on-social-parasites-list/> (in Russian).

⁸⁸ See www.kp.by/online/news/3315047/ (in Russian).

⁸⁹ See International Covenant on Economic, Social and Cultural Rights, art. 6.

⁹⁰ See <https://belsat.eu/ru/news/sud-otklonil-isk-bezrabotnoj-domochozyajki-k-tuneyadskoj-komissii/> (in Russian).

79. Human rights organizations and trade unionists have already expressed their opposition to this decree.⁹¹ In particular, they have brought attention to the fact that the decree provides for the possibility of sending able-bodied individuals who have an “asocial lifestyle” to labour treatment centres. Labour treatment centres were originally conceived to isolate people with substance-abuse issues and provide them with “medico-social rehabilitation through compulsory work”. Placement in labour treatment centres is associated with deprivation of liberty and the conditions have been reported as equating to those of detention centres. The terminology “asocial life style” being extremely vague, the Special Rapporteur is concerned that this could lead to cases of arbitrary detention or other abuses.

3. Rights of the family and its members

80. Presidential decree No. 18, initially adopted in 2006, defines measures to be taken to protect children in dysfunctional families. It regulates the procedure for removing children from families and payment by parents for the State care provided to their children. Based on the decree, children could be threatened with removal from their families for outstanding payments of electricity bills or if a parent was unemployed.⁹² On 15 January 2019, the Council of Ministers issued a new regulation, further specifying criteria for determining who should be put on the list of children in socially dangerous situations.⁹³ The Special Rapporteur welcomes these clarifications, but considers that the new regulation still contains vague criteria that could lead to an arbitrary decision to place a child on the list.

81. The decision to remove a child from his or her family is taken by commissions composed of representatives of local authorities. That raises the question of a possible conflict of interest, since local authorities have a clear interest in ensuring that residents comply with local rules and procedures. The decision can be appealed but the process is reported as lengthy and with little chance of success.

82. The economic consequences of decree No. 18 should not be underestimated. Parents are obliged to pay for the maintenance of a child during the period when the child is in State care. That can be problematic for families who are often in an already difficult economic situation. If parents do not pay the costs, children can be permanently taken away from them and if they are unemployed, they are obliged to take up any job offered by the Ministry of Labour and Social Protection. Failure to attend the job offered exposes parents to being sent to labour treatment centres.

83. According to information received, threats to add children to the list or threats to remove children from the family put enormous psychological pressure on already vulnerable families and can lead to dramatic situations. In February alone, two mothers committed suicide after having their children either removed or threatened with removal.⁹⁴ It was also brought to the Special Rapporteur’s attention that some political dissidents and civil society activists have also been threatened with being added to the list, in an apparent move to deter them from conducting their activities.

84. Based on the above information, the Special Rapporteur is of the opinion that the current application of the decree can constitute arbitrary interference with the right to privacy, family and home.⁹⁵ Moreover, the Special Rapporteur is concerned that the best interests of the child are not the legal basis and are not always the basis in practice for determining whether a child should be taken away from his or her family. As a result, under the provisions of the decree parents are often punished, to the detriment of the best interests of the child and puts vulnerable families in even more difficult situations.

⁹¹ See <http://spring96.org/ru/news/91615> (in Russian).

⁹² See <https://people.onliner.by/2017/02/20/bumajka> and <https://www.kp.by/daily/26851/3893963/> (both in Russian).

⁹³ See www.government.by/upload/docs/filec51b6f7bb17cedc6.PDF (in Russian).

⁹⁴ See <https://belsat.eu/ru/in-focus/novoe-samoubijstvo-30-letnyaya-mat-pokonchila-s-zhiznyu-kogda-sotsialnaya-opeka-otobrala-detej/> and <https://belsat.eu/ru/programs/samoubijstvo-na-gomelshhine-moloduyu-mat-s-osobennostyami-razvitiya-sotsiopeka-zastavlyala-rabotat/> (both in Russian).

⁹⁵ See International Covenant on Civil and Political Rights, art. 17.

4. Cultural rights

85. According to the latest sociological studies, 48 per cent of the population consider Belarusian their native language.⁹⁶ Information received, however, indicates that access to education in Belarusian remains limited, especially for higher education.⁹⁷ Education in other languages is also an issue for the Polish minority which only has two full-time Polish schools.⁹⁸ The Special Rapporteur would like to point out the right of everyone to take part in cultural life, including through language, and the requirement for States to guarantee that minorities are provided with specific educational programmes.⁹⁹ She encourages the Government to step up its efforts to support the Belarusian language and ensure that minorities are given the opportunity to study in their language.

E. Situation of human rights defenders and civil society organizations

86. As exemplified throughout the present report, the situation of human rights defenders and civil society organizations remains very difficult. That is particularly the case if their activities are perceived as challenging governmental policies or covering sensitive topics. For many, their organizations are not registered owing to restrictions on freedom of association, which expose them to a range of potential administrative and criminal violations.

87. Despite being faced with persistent difficulties, civil society actors have continued to show resilience, perseverance and innovation. New ways to mobilize funding, such as crowd funding, has increasingly been used to implement small projects or pay administrative fines issued to activists and human rights defenders. The emergence of social entrepreneurship is a positive trend but it does not replace a legal framework clearly protecting civil society activists and their legitimate activities.

88. The Special Rapporteur welcomes the gradual inclusion of civil society actors in a number of consultative forums. Civil society organizations have long been providing high-quality comments on draft laws and regulations but it is regrettable that their inputs are not taken sufficiently into consideration. Their participation in the development of the next national human rights action plan would also give the plan more credibility.

IV. Conclusions and recommendations

89. In comparison to previous years, the period covered by the present report was not marked by major political or social events, which traditionally lead to an increase in human rights violations. Given the cyclical character of periods of serious human rights deterioration, interpreting this as a sign of improvement would however be misguided. The Special Rapporteur has found that systemic and systematic violations documented previously remain present in law and practice. With presidential and parliamentary elections due to take place in or before 2020, the risk of a further deterioration in the situation, especially regarding fundamental freedoms, is far from excluded.

90. In the past few years, Belarus has displayed more willingness to engage and cooperate with the international human rights system. That is a welcome development but clear improvements on the ground and in the legislation are needed to attest to the Government's commitment to address persistent human rights issues. The fact that no progress has been recorded on the issue of the death penalty, which has been

⁹⁶ See www.kp.by/online/news/3381149/ (in Russian).

⁹⁷ See <https://belsat.eu/en/news/belsat-launches-campaign-to-improve-de-facto-status-of-belarusian-language/>.

⁹⁸ See <https://polandin.com/38279782/belarus-says-yes-to-polish-pupils-for-now>.

⁹⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 12.

discussed for many years and could be addressed relatively easily, shows that achieving significant change requires political will and leadership.

91. The Special Rapporteur observes with concern that numerous issues raised in her report have already been raised previously and notes that many recommendations made by United Nations human rights mechanisms and other international actors have neither been fully implemented nor followed up on. The lack of improvement on issues of torture, ill-treatment or arbitrary detention and the deterioration documented in relation to fundamental freedoms confirm the lack of substantial progress and the lack of willingness to engage in structural reforms. Many groups remain discriminated against and socially and economically vulnerable groups find more challenges than solutions to their problems in the current system.

92. So far, changes introduced by the Government to address certain human rights concerns tend to follow a pattern of decriminalization replaced by administrative liability, instead of resulting in full legalization. As long as major criticisms remain unaddressed, such changes cannot be interpreted as a shift of paradigm. In this context, the risk of window-dressing is real and continued monitoring is therefore needed.

93. With that in mind, the Special Rapporteur urges the Government to change its approach by finally awarding human rights the space and importance it deserves and showing clear leadership on the issue. Despite the absence of cooperation with the mandate, the Special Rapporteur reiterates her readiness to engage constructively with the Government in that regard.

94. In the light of the findings set out above, the recommendations made by the previous Special Rapporteur in his reports to the Human Rights Council and to the General Assembly remain valid. Building on them, the Special Rapporteur makes the following recommendations.

95. The Special Rapporteur recommends that the Government of Belarus:

(a) Consider establishing a moratorium on executions as an initial step towards legal abolition of the death penalty, commute all pending death sentences to imprisonment and launch an open debate on this issue aimed at changing public perception to support the abolition of the death penalty. In the meantime, lift all secrecy surrounding the use of the death penalty;

(b) Include a specific definition of torture in the Criminal Code, reinforce the competences and independence of the existing public monitoring commissions and ensure that all allegations of torture and ill-treatment are promptly recorded and investigated, perpetrators prosecuted and reparations provided to victims;

(c) Resume the development of a draft law against domestic violence or prepare amendments to the current laws;

(d) Ensure a legislative landscape favourable to fundamental freedoms, notably by reviewing laws covering mass media, anti-extremism, registration of organizations, and the organization of public events,

(e) Protect human rights defenders, activists, journalists and civil society members from undue pressure, intimidation and harassment and conduct prompt and thorough investigations into such cases;

(f) Ensure the independence of bar associations and lawyers and prevent political control of the judiciary by reviewing the current practice and regulations;

(g) Review the application of article 328 of the Criminal Code, in particular in regard to children, and develop alternative approaches to deal with the issue of drug abuse and drug trafficking;

(h) Take initiatives to develop a fully-fledged juvenile justice system, notably but not exclusively by developing non-custodial measures and alternatives to detention;

(i) Review the application of the law in regard to the deportation of foreign nationals by taking into account a person's family and private life and the best interests of the child;

(j) Develop a comprehensive anti-discrimination law;

(k) Take advantage of the development of the new bill on the rights of persons with disabilities to ensure that people with mental disabilities are granted the right to exercise their legal capacity free from abuse, conflict of interest and undue influence;

(l) End racial profiling and harassment of Roma by law enforcement officers;

(m) Take the necessary measures to protect and prevent discrimination against members of the lesbian, gay, bisexual, transgender and intersex community and ensure that they can exercise their rights to freedom of expression and peaceful assembly without fear of harassment;

(n) Prevent stigmatization of and discrimination against people living with HIV;

(o) Review presidential decree No. 1 to ensure it is in line with the human rights obligations of Belarus;

(p) Amend presidential decree No. 18 to make the best interests of the child the overarching criteria for removal of a child from his or her family and set up an independent judicial body to review decisions on removing children from their families;

(q) Review the necessity for labour treatment centres in the light of international standards on arbitrary detention and other human rights, including the practice of forced labour in labour treatment centres;

(r) Take advantage of the expertise provided by civil society organizations to broadly and constructively consult and engage, in order to advance the implementation of human rights recommendations and in view of the development of the next national human rights action plan;

(s) Engage meaningfully with the Office of the United Nations High Commissioner for Human Rights, the special procedures and the human rights treaty bodies.

96. The Special Rapporteur recommends that the international community:

(a) Continue using all diplomatic means to remind Belarus of its human rights obligations, especially in the context of the upcoming elections;

(b) Cooperate with the United Nations in providing support to the Government of Belarus in areas pertaining to human rights;

(c) Continue to support civil society actors in their efforts to promote human rights.