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Situation of human rights in Belarus

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, submitted in accordance with Human Rights Council resolution 23/15.

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

Summary

The present report is submitted to the General Assembly at its sixty-ninth session by the Special Rapporteur on the situation of human rights in Belarus in accordance with Human Rights Council resolution 23/15. The report focuses on the state of freedom of association and the impact of the legal framework and legal practices on non-governmental organizations and human rights defenders in Belarus. The Special Rapporteur identifies the main obstacles hampering the activities of civil society organizations and human rights defenders in the country. Findings indicate that such organizations and individuals continue to endure extreme political pressure and a restrictive regulatory setting, and that civil activities outside the official framework are criminalized. In breach of the country's international human rights commitments, these policies have purposefully paralyzed the exercise of citizens' right to full and inclusive participation in public life. The Special Rapporteur also provides recommendations aimed at improving the situation.

I. Introduction

A. Background

1. The present report, mandated by Human Rights Council resolution 23/15, focuses on the impact of legislation and practice with regard to non-governmental organizations (NGOs) on human rights defenders in Belarus.

2. The mandate of the Special Rapporteur on the situation of human rights in Belarus, established by the Human Rights Council in its resolution 20/13 in 2012, has been extended twice.

3. In its latest resolution on Belarus, resolution 26/25 of 27 June 2014, the Council expressed "deep concern at continuing violations of human rights in Belarus, which are of a systemic and systematic nature, as well as at the use of torture and ill-treatment in custody, the lack of response by the Government of Belarus to cases of enforced disappearance of political opponents, the impunity of perpetrators of human rights violations, the violations of labour rights amounting to forced labour, the significant gaps in anti-discrimination legislation, the pressure on defence lawyers, and the lack of participation of opposition political parties in Parliament".

4. In his report to the sixty-eighth session of the General Assembly (A/68/276), the Special Rapporteur focused on human rights in the context of electoral processes in Belarus. In particular, the report explored the patterns of systemic human rights violations in electoral processes, with the incumbent president having been in office for nearly 20 years and the lack of opposition members elected to Parliament. The Special Rapporteur also highlighted the direct correlation between a freely functioning civil society and the enjoyment of the right to genuine periodic elections set out in article 25 (b) of the International Covenant on Civil and Political Rights "guaranteeing the free expression of the will of the electors".[1] It is notable that the freedoms of peaceful assembly and association were among the first rights to be violated in the circumstances of unfree and unfair elections.

5. In the past two decades, there has been a pattern of mass-scale pressure and harassment against civil society actors in Belarus involving recurring violence, specifically during or in the immediate aftermath of presidential and parliamentary elections. The latest example was the 19 December 2010 presidential election, when over 600 persons were detained and dozens of civil society activists, journalists, politicians and their supporters were arrested. Many subsequently faced trial and were sentenced to prison terms.[2] Offices of many civil society organizations and human rights defenders were raided and searched by security and/or police officers, and equipment and documentation was confiscated. Several observers, researchers and human rights experts anticipate repetition of the same trend during the upcoming 2015 presidential elections.

6. In his report to the twenty-sixth session of the Human Rights Council, the Special Rapporteur underlined that the overall situation of human rights in Belarus has not shown improvement.[3] The systematic disrespect for human rights and

[1] Resolution 2200 A (XXI), annex.
[2] A/HRC/20/8, para. 45.
[3] A/HRC/26/44, para. 2.

frequent violations and denial of fundamental freedoms, including freedom of association, have long become structural and endemic. Evident lack of progress or political will in improving national legislation and practices, which remain largely restrictive, demonstrate the systematic and systemic nature of human rights violations in Belarus. This situation has a direct impact on the functioning of civil society.

B. Methodology

7. Although the present report aims to provide an overview of the long-standing overall conditions affecting civil society in Belarus, emphasis is put on the most recent developments.

8. In the preparation of the report, the Special Rapporteur was guided by the principles of independence, objectivity, impartiality and cooperation with all relevant stakeholders, including the Government of Belarus.

9. The Special Rapporteur has repeatedly contacted the Government since his nomination but has not received any reply. The latest communication was sent following the renewal of his mandate, in which he reiterated his request to visit the country and engage in dialogue with the authorities and other stakeholders. [4] Regrettably, the Government repeatedly refused to recognize the Special Rapporteur's mandate and failed to grant access to the country.

10. The Special Rapporteur was nevertheless able to gather information remotely from primary and secondary sources, including public analytical reports by Belarusian and international civil society groups and human rights defenders, research papers, media reports, individual communications and publicly available Government statements and reports.

11. In preparing this report, the Special Rapporteur, for the first time, used a questionnaire designed to collect first-hand information on the experience of members of Belarusian non-governmental organizations and human rights defenders with the laws and conditions under which civil society operates in the country. More specifically, the questionnaire solicited information with regard to registration, obtaining of funding, allegations of harassment, detention, inhuman treatment, trials or limitations of freedom of movement or expression.

12. The information collected as at 1 August 2014 has been thoroughly studied and analysed, and individual cases and accounts have been verified. The information in the report is not intended to present an exhaustive account of situations or circumstances, but rather to highlight major trends and patterns faced by civil society actors in Belarus.

13. In addition, the Special Rapporteur examined the relevant observations and recommendations made by the United Nations human rights mechanisms and used the recommendations of the universal periodic review of Belarus and the treaty bodies' review of Belarus as the thematic framework for his report. In the course of his work, the Special Rapporteur sought inputs from the thematic special procedures

[4] Note verbale sent to the Permanent Mission of Belarus to the United Nations Office at Geneva on 22 July 2014.

and, in particular, the special procedures on human rights defenders and on freedom of association and assembly.

14. On the basis of the collected factual information and analysis, in the last chapter of the report the Special Rapporteur presents recommendations to improve the human rights situation in Belarus in areas pertaining to civil society.

II. International legal framework for human rights defenders

15. International human rights law provides a broad framework to support States in the implementation of their obligations, inter alia, to protect and promote the rights of human rights defenders, to create a safe enabling environment for them to carry out their work and to respect the rights of freedom of association, assembly and expression. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration of Human Rights Defenders), adopted by consensus by the General Assembly in its resolution 53/144, contains a series of principles and rights based on human rights standards enshrined in other international instruments which are legally binding, emanating notably from the Universal Declaration of Human Rights (article 20 (1))[5] and the International Covenant on Civil and Political Rights[1] (articles 21 (right of peaceful assembly), 22 (right to freedom of association) and 19 (the right to freedom of expression and to hold opinions without interference)).

16. The work of the international human rights mechanisms, in particular relevant special procedures — the Special Rapporteur, and previously the Special Representative of the Secretary-General, on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of assembly and association — and the treaty bodies have contributed to further explicating these rights and developing the conceptual framework.[6]

17. In 2011, the Human Rights Council adopted resolution 13/13 on the protection of human rights defenders, in which it urged States to take timely and effective action to prevent and protect against attacks on and threats to human rights defenders. In March 2013, the Council adopted resolution 22/6, focusing on the use of legislation to provide significant guidance on creating a safe and enabling environment for human rights defenders. This landmark text represents the strong stance taken by States against the misuse of legislation and the criminalization of defenders.[7]

18. The Declaration on Human Rights Defenders recognizes, in article 18, the important role in society of those who work for the promotion and protection of human rights, ensuring that it remains open and pluralistic, promotes human rights

[5] Resolution 217 A (III).

[6] See *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (2011) (www.ohchr.org/EN/Issues/SRHRDefenders).

[7] See also Human Rights Council resolutions 24/5 on the rights to freedom of peaceful assembly and of association, 24/24 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights and 25/38 on the promotion and protection of human rights in the context of peaceful protests.

and fundamental freedoms and contributes to the promotion and advancement of democratic societies, institutions and processes. However, human rights defenders can only do this if they are able to work in a safe and enabling environment where they are recognized and empowered by the State, institutions and other stakeholders.

19. The Special Rapporteur on human rights defenders has delineated the elements of a safe and enabling environment for human rights defenders as including: a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; strong and independent national human rights institutions; effective protection policies and mechanisms paying attention to groups at risk; specific attention to women defenders; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong and dynamic community of defenders.[8]

20. The Human Rights Committee, in its general comment No. 25, states that "citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association".[9] The Special Rapporteur on human rights defenders has repeatedly underlined the importance of defenders being able to exercise their rights to freedom of opinion and expression, association and peaceful assembly without undue restrictions in law or practice.[10]

21. National human rights institutions compliant with the Paris Principles also play a key role in ensuring a safe and conducive environment for defenders,[11] as highlighted also in Human Rights Council resolution 22/6.

22. The Special Rapporteur on freedom of assembly and association has pointed out that the International Covenant on Civil and Political Rights does not make a distinction between registered and unregistered associations.[12] Accordingly, those founding an association should be free to decide whether or not to register their non-governmental organization in order to obtain legal status, and defenders should have the right to form groups to carry out legal activities without the obligation to register as legal entities, in accordance with article 22 of the Covenant and article 5 of the Declaration on Human Rights Defenders. In 2002, the Human Rights Committee reiterated that non-governmental organizations should be able to discharge their functions without prior authorization and that failure to obtain prior authorization from the authorities should not lead to criminal prosecution.[13] In her report to the Human Rights Committee in December 2013, the Special Rapporteur on human rights defenders observed a disturbing trend towards the criminalization of activities carried out by unregistered groups.[14]

23. The Special Rapporteur on freedom of assembly and association recalled that the formation of associations should not be subject to a prior authorization procedure, but rather regulated by a system of notification that is simple, easily

[8] A/HRC/25/55, para. 61.
[9] A/51/40, Vol. I, annex V, general comment No. 25 (1996), para. 8.
[10] A/HRC/25/55, para. 66.
[11] A/HRC/22/47, paras. 38-45.
[12] A/HRC/23/39, para. 17; see also A/HRC/20/27, paras. 58 and 59.
[13] See CCPR/CO/76/EGY, para. 21.
[14] A/HRC/25/55, para. 68; see also A/64/226, para. 22.

accessible, non-discriminatory and non-onerous or free of charge.[15] Moreover, permission should not be required for gathering peacefully.[16]

24. The ability to access funds, regardless of the origin of funding, has been widely recognized as integral part of the right of freedom of association, as repeatedly highlighted by the Special Rapporteur on the rights of freedom of assembly and association.[17] The right "to solicit, receive and utilize resources" is recognized in article 13 of the Declaration on Human Rights Defenders. The Human Rights Council, in its resolution 22/6, urges States to ensure that reporting requirements placed upon organizations do not inhibit functional autonomy and that restrictions are not discriminatorily imposed on potential sources of funding.

25. The Special Rapporteur on human rights defenders also warned about restrictions on funding from abroad, which lead to associations risking treason charges, having to declare themselves "foreign agents" or to seek prior approval to fundraise, and expressed concern that justifications for this are often aimed at restricting the activities of defenders.[18]

26. United Nations treaty bodies have repeatedly emphasized the obligation of States to allow civil society to seek, secure and utilize resources, including from foreign sources.[19] In 2011, the Committee against Torture recommended that Belarus "enable [non-governmental organizations] to seek and receive adequate funding to carry out their peaceful human rights activities".[20] In its communication No. 1274/2004, the Human Rights Committee observed that "the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association".[21]

III. National legislation and practice

A. Overview

27. Since the creation of his mandate, the Special Rapporteur has noted that in Belarus the rights to freedom of association, peaceful assembly and opinion and expression are severely restricted in law and in practice through a highly dissuasive, permission-based regime which practically prohibits the exercise of the public freedoms that are essential in any democratic society.

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[15] A/HRC/20/27, paras. 58-59 and 95.

[16] Ibid., para. 28, and A/HRC/23/39, paras. 43-78.

[17] A/HRC/23/39, paras. 8-42; the *Guidelines on the Protection of Human Rights Defenders* of the Organization for Security and Cooperation in Europe (OSCE) also reaffirm that States should not place undue restrictions on non-governmental organizations to seek, receive and use funds in pursuit of their human rights work and must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding (OSCE *Guidelines*, para. 73, June 2014); recommendation CM/Rec(2007)14 of the Council of Europe on the legal status of non-governmental organizations also reaffirmed this right.

[18] A/HRC/25/55, para. 69; see also A/66/203, para. 70, and A/59/401, para. 82 (l).

[19] See CERD/C/IRL/CO/2, para. 12; CRC/C/COD/CO/2, para. 25; CRC/C/MWI/CO/2, para. 25; and CEDAW/C/NLD/CO/5, para. 21.

[20] CAT/C/BLR/CO/4, para. 25.

[21] A/62/40 (Vol. II), annex VII. Q, communication No. 1274/2004, *Korneenko et al.* v. *Belarus*, para. 7.2.

28. The three main stumbling blocks that disable civil society activism are: the restrictive, permission-based rules on registration; the ensuing widespread refusal of registration; and the criminalization of unregistered civil activities and funding.

29. Firstly, all public activities and events require prior authorization by different government levels. In particular, the registration of civil society organizations is a legal prerequisite for any activities performed by them. The registration is permission-based instead of notification-based, which implies that such a decision is at the discretion of the authorities. The system of permission-based registration is therefore restrictive in itself.

30. Secondly, the process of applying for registration is also highly obstructive, involving meeting a number of complicated and cumbersome administrative requirements, lengthy procedures, lack of transparency and the selective application of laws and regulations. A common feature of these time-consuming and costly procedures is that their unnecessarily strict requirements allow for a discriminatory refusal of registration by the authorities. Civil society groups are repeatedly and arbitrarily denied registration on various grounds, many of which are not even mentioned in the legislation or regulations. Certain human rights NGOs, including lesbian, gay, bisexual and transgender (LGBT) organizations, are denied registration on politically motivated or discriminatory grounds, although the authorities formally provide other reasons and justifications for their refusal to register the organization.

31. Lastly, participation in the activities of unregistered associations is criminalized under Belarusian law. Another common consequence of such unauthorized participation is that independent individual human rights activists are prevented from practising their profession as human rights experts or advocates. Authorities rigorously impose this ban, and persons involved in unregistered groups receive warnings or may be sentenced to up to two years imprisonment. In the spring of 2013, four such warnings about unregistered public activities were issued by the authorities.[22]

32. Additionally, without registration, NGOs are forbidden to receive funding. While civil society activists in Belarus do engage in activities through unregistered groups, thus defying the law that expressly punishes such engagement, the underlying funding for such activities may be presented as an unrelated financial crime, such as tax fraud, that is, a crime committed not in defence of civil rights but for personal gain. The described, cumulatively forbidding, set of regulations is often used for the targeted harassment and persecution of human rights activists. The most prominent case presented as tax fraud was that of Ales Bialiatski, a human rights defender and chairperson of the Viasna Human Rights Center, who was sentenced to four and a half years in prison for administering foreign funding for Viasna.

33. Even when registration is eventually obtained, the right of organizations to solicit and obtain funding is yet another overregulated area, and the Government periodically introduces new measures to tighten control. NGOs are denied the right to receive direct funding from foreign sources and all international funds must be first registered and approved by the state authorities, which then determine the amount that may be actually transferred to organizations. The complexity and non-transparency of the funding process discourages many donors from providing

[22] See Legal Transformation Center (Lawtrend), “Freedom of association and legal status of non-commercial organizations in Belarus”, review of the year 2013 (www.lawtrend.org/eng).

funding to Belarusian civil society organizations and forces the latter to breach artificial regulatory constraints.

34. Registered civil society organizations face administrative discrimination and bureaucratic harassment if their agenda does not please the Government. They are often checked by the tax office, anti-fire control services or security offices. These inspections often end in searches and confiscation of equipment, publications and documents. Authorities use any opportunity to charge the members of independent NGOs with minor administrative transgressions (such as "public swearing", "hooliganism" and the like). Some human rights activists find their names on lists banning them from leaving the country or travelling abroad. Currently, members of some international human rights organizations, are banned from entering Belarus, even if their citizenship does not require an entry visa.

35. Unlike the independent civil society organizations, pro-governmental public organizations perceived as loyal to the State do not face any obstacles in carrying out their work. Moreover, the Government often demonstrates noticeable preferential treatment of such pro-governmental organizations, including through support and funding. Some of these organizations are created by the State with the aim of ensuring greater control over civil society activism. However, in 2013, the Government shortened the list of public associations and foundations which receive a preferential rental rate for state properties.

36. Independent NGOs, and particularly human rights defenders, operate in conditions of constant political pressure from the country's authorities and its entirely State-dependent mass media. There is no universal recognition of the right to independent civil society activities, nor is there any recognition of the legitimacy of human rights defenders and their work.

37. The Government portrays as hostile, unpatriotic or even anti-Belarus any criticism made by civil society organizations or human rights defenders. In the State-controlled media, independent human rights experts and organizations are often portrayed as "agents of foreign intelligence services" conspiring against the State. Systematic defamation and accusation of independent NGOs and human rights defenders in "activities discrediting the Republic of Belarus", which are spread by State-owned print and broadcast media, contribute to the stigmatization and marginalization of human rights defenders and significantly curtail civil society activism.[23]

38. In some cases the authorities resort to reprisals against NGOs that criticize aspects of the Government's action, particularly if such criticism is communicated to international organizations. Usually, the Ministry of Justice or another State body in charge of the registration of NGOs issues an official warning to civil society activists. Should an NGO receive two such warnings in the course of one year, the authorities may decide to dissolve it. Since the establishment of the mandate of the Special Rapporteur, several such warnings threatening to dissolve critical civil society organizations have been issued by the Ministry of Justice.

39. The absence of a national human rights institution is one of the reasons why the institutional settings for the promotion and protection of human rights in the

[23] See Netherlands Helsinki Committee (http://www.nhc.nl/en/news/NHC_to_enhance_work_in_support_of_human_rights_defenders_in_post_Soviet_countries.html?id=227).

country remain deficient. In 2010, the Government accepted recommendation 4 of the universal periodic review of the country, that it "consider the establishment of a national human rights institution in accordance with the Paris Principles".[24] Despite some initial preparatory work, which was welcomed by the Special Rapporteur in his previous reports, Belarus is still far from establishing such an institution. Given that four years have passed since the first universal periodic review cycle, the unwillingness of the Belarusian authorities to establish a national human rights institution may be attributed to the lack of political will or genuine desire to implement their commitment. Notably, the Paris Principles envisage the active cooperation of civil society organizations and human rights defenders with the national human rights institution.

40. According to the Ministry of Justice, in 2013 the number of registered public associations and foundations decreased in comparison with 2012, reaching the lowest number of public associations since 2005. As at 1 January 2014, there were 2,521 public associations, 231 of which were international, 694 national and 1,596 locally registered organizations.[22] Many of these organizations are progovernmental, often incorporated into the State and Government funded. More than half of the newly registered public associations in 2013 were related to sports activities.[22]

B. National legislation

41. Despite the legislative changes undertaken by the authorities over time, for decades Belarus has had the most restrictive legislation in Europe for the regulation of freedom of association. The overall philosophy of relevant Belarusian laws, in part inherited from the former totalitarian system, is based on severe State control and a strict permission-based approach to civil society activism. Deficient legislation results in laws that leave space for a broad interpretation of regulations, which in fact are calculated to increase the likelihood of arbitrary decision.

42. Additional problems are caused by the fact that the legal framework pertaining to public association is subjected to frequent amendments, conceived in the same restrictive spirit. For example, the "Law on public associations", which is the fundamental legal act for the civil society organizations, has been amended 11 times since its adoption (that is, once every two years).[22] The general nature of legislative processes in Belarus is not transparent. Laws affecting the work of civil society organizations are amended without proper consultation with NGOs or with independent human rights experts, and proposals from NGOs are only considered nominally, if at all, and in such cases are frequently found to be "unreasonable".

43. The other defining piece of law is the Criminal Code of Belarus, which puts strict limitations on civil society activism. Article 193.1 of the code criminalizes unregistered public associations, foundations and their members.[25] Simple members of such organizations face criminal liability and may be imprisoned for up to two years.

44. The rules on NGO funding alone would inhibit the compliance of Belarus with international obligations to promote a meaningful independence for civil society.

[24] A/HRC/15/16, para. 97.4.

[25] The International Center for Not-for-Profit Law, *NGO Law Monitor: Belarus*, 2 May 2014 (www.icnl.org/research/monitor/belarus.html).

Article 21 of the "Law on public associations" criminalizes any unauthorized foreign funding for NGOs. It also prohibits civil society organizations from opening bank accounts abroad.[22] Article 23.24 of the code on administrative offences specifies that violation of the above-mentioned legal provisions may lead to the confiscation of unauthorized funds and the payment of a fine equal to the amount of the latter.[26] In case an offence is repeated within one year, the NGO member(s) is liable to a two-year prison sentence, as envisaged in article 369.2 of the Criminal Code.

Positive developments

45. Since January 2014, Belarus has introduced a number of amendments to its legislation on public associations. On 20 February 2014, amendments to the law on public associations and on political parties came into force.[27] A number of positive elements were introduced to the law, such as reducing the obligatory number of founders from various regions required to establish a public organization, reducing the number of documents required for registration, clarifying certain regulations for the registration of international public associations and other technical improvements. The law also imposed additional requirements for the dissolution of public associations, which, in principle, should increase the protection of NGOs from administrative harassment and the arbitrary decisions of bureaucrats.[22] Lastly, the law changed the definition of public association. It remains to be seen how these changes may affect NGOs.[26]

46. On 20 February 2014, two resolutions came into force, which established a standard for the transformation of public associations into political parties.[28] The Special Rapporteur welcomes these measures, which, in principle, should facilitate the broadening of space for civic activists, and in the meantime endorses the implementation of these measures in practice.

47. The above-mentioned positive developments did not, however, change the overall restrictive nature of the Belarusian legislation pertaining to the functioning of public organizations. For example, the sources of funding from foreign States or organizations with foreign investments remain restricted.[22] The law still requires at least 50 founders in total from various regions in order to establish a national public association.[22] Moreover, new legal and administrative hurdles were added to the existing laws. One of these is resolution No. 19 of the Ministry of Justice, which amended the application forms for the registration of non-profit organizations and their charters which existing registered NGOs must also fill out and submit, introducing a retroactive requirement and thus creating an additional bureaucratic burden on NGOs.

48. On 1 May 2013, Presidential decree No. 2 on additions and amendments to the decree of the President Belarus of 16 January 2009 (No. 1) came into force,

[26] See RHRPA "Belarusian Helsinki Committee", *Analysis of Amendments Initiated to be Introduced into the Legislation of the Republic of Belarus* (http://www.belhelcom.org/en/node/14434).

[27] These amendments were adopted on 2 October 2013 and signed by the President on 4 November 2013 (A/HRC/26/44, para. 24).

[28] The resolutions are on the regulation of the registration of the organizational structures of political parties and public associations and of the organizational structure of political parties and the shutdown of public associations.

expanding the grounds for the liquidation of non-commercial organizations. One of the grounds for the liquidation of an organization is if one of its members is placed on a "preventative record" (probation, which in Belarus is only formally subjected to judicial control) and the NGO does not replace that member within two months.[22] This provision may be potentially abused by the authorities by bringing minor administrative charges against members of independent NGOs and using this as a pretext to liquidate them.

49. Furthermore, since 1 April 2014, non-profit organizations are required to pay a tax of 150,000 Belarusian roubles (increased from 130,000) for the registration of their organizations, amending their charters or other administrative steps.[22]

C. National practice and its impact on the functioning of civil society

50. In his past reports, the Special Rapporteur has repeatedly noted that the scope of freedom of association is limited by various provisions of the criminal and administrative codes as well as by overtly restrictive registration regulations and their draconian application, and he continues to be concerned about the threefold oppressive framework consisting of an overly restrictive registration regime, the selective denial of registration and the criminalization of organizations functioning without registration.[29] He refers in this context to the conclusions of the Special Rapporteur on human rights defenders, who points out that the application of legal and administrative provisions or the misuse of the judicial system to criminalize defenders and to stigmatize their activities is in breach of international human rights law, principles and standards.[30]

Threats, harassment

51. Threats and warnings are used routinely to intimidate human rights defenders in order to prevent them from carrying out their activities. Although there have not been any sentences based on article 193.1 of the Criminal Code against human rights defenders during the 2012-2013 period, threats of possible charges for "illegal" activities of unregistered organizations are reportedly regularly against activists.[31] The Viasna Human Rights Center has registered an increase in the number of such warnings issued by the prosecutor's office and the State Security Committee (KGB) to activists and human rights defenders.

52. According to a monitoring of violations of human rights and academic freedoms of students carried out by the NGO *Studentskaya Rada* in the framework of the Bologna Process, Belarus has recently intensified pressure on students participating in activities of civil society organizations. In recorded cases, deans or other representatives of the university administration interviewed students, describing their involvement in civil society organizations as undesirable and advising them to refrain from such activities, which, they advised, could have negative consequences.

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[29] See A/68/276; A/HRC/26/44; A/HRC/23/52; and A/HRC/20/8.

[30] See A/HRC/25/55 and A/68/262.

[31] "State versus human rights defenders — unfair play: a briefing paper on human rights defenders in Belarus by Civil Rights Defenders" (www.civilrightsdefenders.org/files/Briefing-paper-Belarus.pdf).

53. Human rights defenders are publicly discredited and their image is regularly tarnished in the State-run media, where they are represented as the opposition or accused of working for Western donors. On 14 January 2011, the website *Sovetskaya Belorussiya* published an article entitled "Behind the Curtains of a Conspiracy", in which it accused the opposition of being controlled and financed by foreign powers to cause harm to the country. The same article referred to alleged quotes from a Skype chat between Ales Bialiatski and a foreign donor. In April 2011, a media campaign was launched against Mr. Bialiatski, and national television aired programmes during prime time about the illegality, harmfulness and moral corruption of his human rights activities. Specifically, it was mentioned that people like him "dance on the bones of the Motherland".[32] After his trial, a media campaign portrayed him as an ordinary criminal who had not paid taxes and had stolen grants from his Western partners.[33] In February 2012 the Belarus 1 television channel aired a documentary discrediting the Belarusian Association of Journalists, accusing it of receiving grants from a foreign embassy without paying taxes on them.

54. In 2013, the organizing committee of the association "Young Christian Democrats" applied 14 times to hold its founding congress; none of the bids were granted by the State authorities. Most of the refusals referred to agreements for other events or failed to specify the reason. The background seems to be political will at the highest level. In an interview with the Washington Post the President had said: "In Belarus, the Christian Democrats will probably never get registered. They participated in the riots … They are not Christian Democrats, they are bandits".[34]

55. On 14 January 2013, Yuliya Stsiapanava, who is helping victims of political persecution, was attacked by two unidentified men as she was returning to her home in Minsk. They held her, cut off her hair and insulted her. Reportedly, she had been receiving anonymous threats by phone in the two weeks preceding the incident.[35]

56. Three members of the feminist protest group FEMEN, Aleksandra Nemchinova, Oksana Shachko and Inna Shevchenko, were abducted and threatened after staging an anti-government protest on 19 December 2011. They were abducted by security forces from a bus station in Minsk and driven to a forest in Yelsk (Gomel region). The abductors poured oil on them, threatened to set them on fire and cut their hair off with the knife. Their documents were seized and their captors attempted to force them to cross the border into Ukraine, but they managed to make their way to a village. The medical examination found that they were covered with bruises.[36]

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[32] See International Federation for Human Rights (FIDH)/World Organization against Torture (OMCT), "Observatory for the protection of human rights defenders", annual report 2011 (www.fidh.org/img/pdf/fidh_annual_report_2011en.PDF).

[33] http://www.tvr.by/rus/society.asp?id=52449.

[34] http://www.washingtonpost.com/opinions/lally-weymouth-interviews-belarus-president-alexander-lukashenko/2011/03/03/AB9iCoN_story.html.

[35] http://nn.by/?c=ar&i=103220.

[36] Radio Free Europe/Radio Liberty, "Ukrainian Activists Allegedly Kidnapped, Terrorized in Belarus Found", 20 December 2011 (http://www.rferl.org/content/femen_activists_detained_by_belarus_kgb/24428304.html).

Rule of law: judicial proceedings, due process and independence of the judiciary

57. Arbitrary denials of registration and criminal and administrative proceedings for unauthorized activities are misused against unwelcome organizations and activists. In particular, laws on taxation in relation to funding are used to bring criminal charges, as was the case with Ales Bialiatski. Following tightened controls against unauthorized foreign funding and the criminalization of the use of such funds,[32] in November 2011, in a trial determined by observers universally as unfair, Mr. Bialiatski was sentenced to four and a half years imprisonment for failing to report foreign funds in his personal bank accounts in Lithuania and Poland. The accounts had been set up solely to finance the activities of the Viasna Human Rights Center in Belarus. The Working Group on Arbitrary Detention of the Human Rights Council qualified the detention of Mr. Bialiatski as arbitrary, arguing that the regulatory provisions on foreign funding for NGOs, the criminalization of unauthorized funding and the fact that almost all NGOs working in the field of human rights were denied registration rendered all foreign funding for NGOs practically impossible. In the view of the Working Group to fund the activities of Viasna, Mr. Bialiatski had no other choice but to open foreign bank accounts and not to report the funds to the Belarusian authorities. The Working Group added that States parties to the International Covenant on Civil and Political Rights "are not only under a negative obligation not to interfere with the founding of associations or their activities" but also under a "positive obligation to facilitate the tasks of associations by public funding or allowing tax exemptions for funding received from outside the country".[37]

58. The case of Ales Bialiatski is not, however, an isolated one. In October 2012, the Minsk Economic Court ordered the closure of the human rights NGO "Platforma", following a complaint by the tax office in the Savestki district of Minsk accusing the NGO of not submitting its tax declaration within the required time and not informing of its change of address. These allegations turned out to be unfounded, as the lack of a tax receipt was allegedly due to the fact that the tax office had lost the document. In the months before the dissolution ruling, Platforma had been the target of repeated judicial harassment by the authorities.[32]

59. The Chair of Platforma, Andrei Bandarenka, has been a subject of the courts' attention since June 2012, when he received a warning for "discrediting Belarus" due to his participation in a campaign to dissuade the International Ice Hockey Federation from holding its 2014 Men's World Ice Hockey Championship in Minsk because of Belarus's dismal human rights record.[38] Mr. Bandarenka was arrested on 1 April 2014 on charges, including three counts of hooliganism and two counts of violence against women. On 12 August 2014 Mr. Bandarenka, who had been held in a detention centre since his arrest, was sentenced to four years in prison, a sentence reduced to three years by a grant of amnesty.[39]

60. As described by the Special Rapporteur in his previous report, in November 2013, presidential decree No. 6 on improving the judicial system brought some positive institutional developments.[40] It is hoped that this will allow the judiciary

[37] A/HRC/WGAD/2012/39, para. 48.

[38] Human Rights Watch, World Report 2013, Belarus (www.hrw.org/world-report/2013/country-chapters/belarus?page=2).

[39] See https://charter97.org/en/news/2014/8/13/110962.

[40] A/HRC/26/44, para. 33.

some independence from the executive branch, and promote a more consistent interpretation and application of the law. The fact remains, however, that the President remains directly responsible for appointing, dismissing and determining the tenure of judges. In cases where the authorities are found to be responsible for a human rights violation, practice shows that courts rarely award non-pecuniary compensation for damages. Although the obligation to prove the legality of the action lies with the authorities against which the claim was filed,[41] court decisions often argue that it is the applicant who must prove that the authorities acted unlawfully. Of particular note is the fact that criminal cases retain an accusatory bias, as recognized by the Supreme Court in its reviews.[42] There also seems to be a failure on the part of the executive to respect the decision of the Constitutional Court and thereby observe the rule of law.[43]

Arbitrary detention, including short-term detentions and long-term imprisonments

61. On 24 June 2014, the Special Rapporteur issued a press statement welcoming the release from prison of Ales Bialatski and calling for the immediate and unconditional release of all political prisoners and their full rehabilitation.[44] The Special Rapporteur recalls that there are still, as of July 2014, seven prisoners whose sentences appear to have been politically motivated still imprisoned: Mikalai Statkevich, Eduard Lobau, Mikalai Dziadok, Ihar Alinevich, Yauhen Vaskovich, Artsiom Prakapenka, and Vasil Parfiankou.[45] The arbitrary detentions of political activists highlight the restrictive space for those who promote civil and political rights in attempting to broaden democratic politics in Belarus.

62. Valery Karankevich, a former candidate who had been arbitrarily detained during the 2012 parliamentary elections and was running for the Khotsimsk District Council in the 2014 local elections, was detained at the entrance of a polling station in Khotsimsk on 23 March 2014 and taken to the police station, where he was held without charges and then released. As a result, he could not be present during the ballot counting.[46]

63. Opposition activist Uladzimir Niapomniashchykh was detained by two police officers in Gomel on 22 July 2014. While walking past the officers, Mr. Niapomniashchykh was asked to show his passport, but refused because he could not clearly see their identification. He was taken to the police station. Mr. Niapomniashchykh believes he will be charged because of the t-shirt he was

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[41] Constitution of Belarus, article 60 (http://www.belarus.net/costitut/constitution_e.htm#Article%2060).

[42] See http://court.by.justice_RB/ik/obzor/2010/e439740565c86a62.html.

[43] CCPR/C/79/Add.86, para. 13; E/CN.4/2001/65/Add.1, paras. 29-30; and A/HRC/4/16, para. 14.

[44] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14763&LangID=E.

[45] Belarusian Foreign Minister Uladzimir Makey, who was participating in a meeting of the Foreign Ministers of the Eastern Partnership initiative, when asked about political prisoners in Belarus, showed surprise: "I do not understand what you mean. None of our European colleagues can show me a list of political prisoners or voice their exact number. Indeed, there are prisoners in Belarus but they were punished for breaking laws, which has nothing in common with politics", (http://belsat.eu/en/wiadomosci/a,21035,political-prisoners-pushed-to-sidelines-eu-to-reassess-dialogue-with-lukashenka.html).

[46] http://spring96.org/en/news/72252.

wearing, which said “For Belarus without Lukashenka” on the front and “That’s it, Tired of You!” on the back.[47]

64. Over the past year, many detained activists, who have limited access to relatives and lawyers, faced administrative punishment for alleged violations of the prison rules. Mikalai Dziadok, Mikalai Statkevich and Yauhen Vaskovich are serving sentences in isolation under strict prison regimes for alleged violations of the prison rules. A former 2010 presidential candidate, Mr. Statkevich is serving six years in prison on charges of organizing mass riots, accompanied by “personal violence” and resistance to public agents.[48] He was transferred to Prison No. 4 in Mahiliou, after allegedly violating prison rules in Penal Colony No. 17 in Shkou. According to information received through Freedom House, an independent watchdog organization (www.freedomhouse.com), he was placed in solitary confinement for 10 days in June, where he was deprived of sleep and warm clothing for refusing to share a cell with a dangerous inmate. Andrei Haidukou, a leader of the Union of Young Intellectuals, was sentenced in November 2012 by the Vitebsk Regional Court to one and a half years’ imprisonment, charged for attempting to establish cooperation with the security or intelligence agencies of a foreign State. He was released in 2014. Mikalai Autukhovich, who has since been released, was punished over the last two years,[49] with new punishments imposed when older ones expired. On 4 September 2013, one month before the end of one set of punishments, he was again punished for allegedly failing to be in bed on time. He was consequently deprived of his right to receive parcels and to meet with relatives. Freedom House reports that political prisoners are harshly punished for alleged violations of prison rules, sometimes with a prolongation of their sentence.

65. The Special Rapporteur is concerned that political opponents, after their release, are not rehabilitated and do not recover their full entitlement to exercise their civil and political rights.[50] Four political prisoners released in 2013, after having served their full sentences, Vasil Parfiankou, Zmitser Dashkevich, Aliaksandr Frantskevich and Pavel Seviarynets, were not rehabilitated upon their release and were placed under restrictive measures. Vasil Parfiankou was subsequently sentenced to another year in prison for failing to adhere to these restrictive measures, which include a ban on involvement in demonstrations and a requirement to inform the authorities about any change in place of residence — all misdemeanour offences. Committing three misdemeanour offences in one year may result in another criminal sentence.[51]

66. Representatives of human rights organizations and the regime’s political opponents are regularly targeted for administrative arrest. According to information provided by the Viasna Human Rights Centre, the first half of 2014 broke all records in terms of the administrative prosecution of protesters and opposition representatives. The majority of cases were associated with preventive arrests before and after conducting peaceful demonstrations or gatherings on civil and political rights. In 2014, most unsubstantiated detentions and arrests of opposition and human rights activists took place in the run-up to the World Ice Hockey

[47] http://spring96.org/en/news/72173.

[48] Sentenced on 26 May 2011 under part 1, article 293, of the Criminal Code of Belarus.

[49] See http://spring96.org/en/news/65915.

[50] A/HRC/26/44, para. 139 (a).

[51] See http://www.hrw.org/world-report/2014/country-chapters/belarus?page=2.

Championship in May 2014. Between the end of April and the end of June, the Special Rapporteur received allegations of 37 cases of administrative detentions on fabricated charges for periods ranging from five to 25 days. The activists, who were mainly detained on the eve and during the Championship, were accused of "disorderly conduct" and "disobedience to law-enforcement officials".

67. In addition, the number of cases of administrative proceedings unrelated to the Championship was also the highest since the first half of 2012.[52] The Special Rapporteur received information that an activist was reportedly detained when giving out free food to poor people and was subsequently sentenced to 15 days for "hooliganism". On 2 July, activists of "Alternativa", Aleh Korban and Uladzimir Serhienka, were detained in Minsk for displaying a poster "For independent Belarus" in the Minsk metro on 30 June.[53]

Torture

68. The Special Rapporteur continues to receive reports of torture and ill-treatment of arrested and detained civil society activists, including cases of violence in detention facilities by both prison staff and inmates under the direction of the prison administration. Other cases include detainees being beaten by special units of the Interior Ministry aimed at maintaining order in correctional institutions; violence towards detainees by KGB agents while in its pretrial facility; physical and psychological abuse by law enforcement agents to induce detainee to perform certain actions or take a certain stand in the criminal case under investigation; and a group of prisoners who attempted to force fellow inmates to write a petition for a pardon or try to make them commit suicide.[54]

69. Reports demonstrate that it is virtually impossible for a person in custody to bring a complaint of torture before the prosecutor. Invariably the complaint is not processed by the relevant authorities and the complainant faces repercussions, such as solitary confinement or other harsh physical and psychological ill-treatment. With no oversight of prison facilities, torture and ill-treatment remain unchecked.

70. A Belarusian Christian Democracy Party activist, Volha Pansevich, was detained on 21 April 2012 by Slonim police. She was badly beaten and then forced into a car and taken to the police station, where she was charged with two administrative violations, disorderly conduct and resisting arrest, and tortured by police officers. For several months, Ms. Pansevich tried unsuccessfully to prove the use of torture against her. The case was investigated by the Slonim district department of the Investigative Committee, which ruled not to institute criminal proceedings. The investigator did not summon witnesses and limited testimony only to the police officers.[55]

71. As Belarus moves toward the next presidential election in 2015, it is worrying that none of the previously alleged cases of torture of political candidates and activists while in detention have been clarified by the authorities. These include the

[52] See http://humanrightshouse.org/Articles/20159.html.

[53] See http://euroradio.fm/ru/v-minske-nachalis-preventivnye-zaderzhaniya-aktivistov.

[54] Human Rights Centre Viasna, "Report on the Results of Monitoring Prison Conditions in Belarus" (Minsk, 2013), pp. 14-15 (https://spring96.org/files/book/en/2013_prison_conditions_en.pdf).

[55] Viasna Human Rights Centre, "Belarusian Christian Party activist faces obstacles in proving torture report", 22 March 2013 (http://spring96.org/en/news/62062).

allegations of torture and ill-treatment by the KGB of the 2010 presidential candidates Andrei Sannikau, after his arrest on 19 December 2010,[56] and Ales Mikhalevich, at the high-security prison in Minsk in January 2011.[57]

Restrictions on movement

72. In February 2012, it was reported that the authorities had introduced "restrictions to leave the country for persons who had directly called for imposition of sanctions on Belarus" and had drawn up a list of persons covered by that ban. In the subsequent months there were numerous incidents of human rights defenders, lawyers and journalists prevented from leaving the country. Among them was Andrei Bandarenka, director of the NGO Platforma, who has just been sentenced to a jail term for aggravated hooliganism. Reportedly, his participation in the Committee against Torture's review of the report of Belarus in November 2011[58] led to the imposition of these restrictions. Garry Paganyaila, a legal expert at the Belarusian Helsinki Committee, was restricted from traveling in April 2012.[59] In January 2013, gay Belarus leader Siarhiej Androsienka's passport was cancelled, leaving him unable to leave the country.

73. However, restrictions of movement are not only intended to prevent Belarusian human rights defenders from leaving the country, but also to keep international NGO contacts from entering Belarus. During the post-2010 election crackdown, several foreign human rights defenders were deported or denied access to the country, including members of the International Observation Mission to Belarus of the Committee on International Control over the Human Rights Situation in Belarus in April 2011.[32] More recently, on the eve of the World Ice Hockey Championship in May 2014, Martin Uggla, chair of the Swedish human rights organization Östgruppen, was prohibited from entering Belarus.[60] In the same month, other human rights defenders from Switzerland and Norway, as well as the Polish Member of the European Parliament Marek Migalski, were barred from entering the country or deported.[61] In May 2014, the International Center for Non-Profit Law noted an increase in the number of rejections of Belarusian visas to foreigners.[62]

Right to freedom of peaceful assembly

74. The law on mass events continued to impose unreasonable limits on the right to assembly, requiring organizers of any pre-planned public gathering to report on the "financial sources" used. Organizers were allowed to publicize events only after official permission was granted, which might not be until five days before the actual event was to be held. According to Amnesty International, applications to hold public events were routinely denied for technical reasons.

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[56] A/HRC/20/8, para. 47.

[57] Ibid., para. 48.

[58] A/HRC/21/18, para. 22.

[59] See http://www.frontlinedefenders.org/node/18404.

[60] See http://freeales.fidh.net/2014/05/ostgruppens-chair-martin-uggla-is-not-allowed-to-enter-belarus-on-the-eve-of-2014-ice-hockey-world-championship.

[61] See https://charter97.org/en/news/2014/5/12/98275.

[62] International Center for Not-for-Profit Law, *NGO Law Monitor*, Belarus, 2 May 2014 (http://www.icnl.org/research/monitor/belarus.html).

75. Over 40 peaceful protests to be held on 27 July 2014 were banned by local authorities in Orsha, Gomel, Byaroza and Baranavichy. In all these regions, the authorities gave administrative excuses as to why the protests could not be held, for example, the organizers did not have service contracts with the police, health-care departments or public utilities, a type of contract regularly denied to pro-democratic and opposition organizations and activists. It has been 10 years in Gomel and three years in Orsha since authorities have authorized a peaceful assembly organized by pro-democratic communities.[63]

76. Throughout 2013, dozens of peaceful protesters were convicted on misdemeanour charges and sentenced, some repeatedly, to short-term detention. In April, police held four environmental activists in "preventive" custody to stop them from attending a march in Minsk to commemorate the Chernobyl nuclear disaster. Police severely beat a protester at the march, which was peaceful, and detained four journalists who covered it. In August, police detained two members of the Viasna Human Rights Centre who were handing out postcards in support of Ales Bialiatski. A court fined each 3 million Belarusian roubles (approximately $350) for violating regulations on organizing public events.[51]

77. The Special Rapporteur has collected information on more than 50 cases of persons subjected to administrative arrests for participating in unauthorized peaceful demonstrations. Similarly, individuals have been arbitrarily arrested and detained for: collecting signatures outdoors; a film screening about the Slutsk anti-Bolshevik uprising in the village of Kazlovicky; and organizing a bike carnival in Minsk. All of these were viewed by the authorities as unauthorized mass events, with participants charged for disobedience to police officers, under article 23.34 (violations of the rules on holding mass events) of the Administrative Code.[64]

Right to freedom of expression

78. Freedom of expression of the media continues to be curtailed by the criminalization of libel and defamation. The authorities continued to use the crimes of "libelling the President" and "insulting the President" against journalists to discourage criticism of government authorities. As reported by Amnesty International, on 21 June 2013, Andrzej Poczobut, correspondent for the Polish daily newspaper *Gazeta Wyborcza* and a prominent activist of the Polish minority in Belarus, was arrested in Grodno and charged with "libelling the President" for articles published in Belarusian independent media. As reported by Amnesty International, he was already serving a three-year suspended prison sentence on the same charge for other newspaper articles. The Belarusian Association of Journalists reported that on 19 June 2014, criminal charges were brought against Ekaterina Sadovskaya under article 368-2 of the Criminal Code for "insult to the President of Belarus". In fact, she criticized the unfounded arrest of activists in connection with the World Ice Hockey Championship.

79. Belarusian law on the media requires mandatory state accreditation for foreign and national journalists and recognizes only those journalists working for State-

[63] Viasna Human Rights Centre (http://spring96.org/en/news/72246; http://spring96.org/en/news/72186; http://spring96.org/en/news/72171; and http://spring96.org/en/news/72089.

[64] A/HRC/26/44, para. 49.

registered media organizations.[65] The Belarusian Association of Journalists noted an increasing number of penalties imposed since the beginning of the year on journalists in Belarus for not being accredited by authorities. At least six independent journalists were officially warned between January and June 2014 for their affiliation with media outlets that were not officially registered. In the same period, Ales Zalevski and Alexander Denisov, journalists with Belsat Television, which is based in Poland, and Andrey Meleshko, a freelance journalist working for Polish-based Radio Raciya, were convicted in court and fined on charges of working without accreditation.

80. The human rights community of Belarus is seriously restricted by article 13 of the law on mass media which provides for the obligatory registration of any printed publication with a circulation of more than 299 copies, while even publications with a circulation of under 300 copies have to rent offices, pay taxes and employ editors.[66] In April 2014, the district court in Smarhon (Grodna region) imposed a fine of the equivalent of €216 on Vladimir Shulnitsikyi for the distribution of the small-circulation human rights bulletin "*Smarhonskyi Grak*", and similar charges were brought the same month by a court in Vitebsk against Georgyi Stankevich for the distribution of his bulletin "*Kryvinnik*", which imposed the maximum penalty, of €500, under article 22.9 (2) of the code of administrative procedures.

81. On 10 January 2013, members of the Viasna Human Rights Centre Uladzimir Khilmanovich and Viktar Sazonau, and Raman Yurhel from the Belarusian Helsinki Committee were fined a total of 4.5 million roubles by the Leninski district court of Grodna for publishing a photo of themselves with a portrait of the political prisoner Ales Bialiatski on the web.[67] Similar cases of misuse of the law on public disturbances for the repression of opinion, and specifically in order to intimidate Internet users from uploading materials concerning human rights, have multiplied since 2012, indicating a coordinated policy. Yauhen Parchynski and Siarhei Malashenka, both Christian Democracy party activists were fined 500,000 roubles and 2.5 million roubles, respectively, for posting pictures of themselves with a photo of Ales Bialiatski on independent websites.[68]

82. There have been a number of cases in which the publications of human rights defenders were termed by the border guards as "discrediting Belarus", and confiscated. Forty copies of Ales Bialiatski's book "Enlightened by Belarusianness" were confiscated from Tatsiana Reviaka, a member of the Viasna Human Rights Centre, at the Lithuanian border. The Customs Department declared that the book "could damage the image of the Republic of Belarus", and it was not returned to her.[69] On 28 July 2014, participants of the camp "For European Integration of Belarus", were stopped on the border when returning from Poland, and searched.

[65] http://law.by/main.aspx?guid=3871&p0=H10800427e.

[66] Such restrictions were found by the Human Rights Committee to be in violation of article 19, para. 2, of the Covenant, CCPR/C/68/D/780/1997 (2000), Communication No. 780/1997, para. 8.3.

[67] See http://spring96.org/en/news/60467.

[68] Viasna Human Rights Centre (http://spring96.org/en/news/60849; and http://spring96.org/en/news/60928).

[69] OMCT, 23 September 2013 (http://www.omct.org/human-rights-defenders/urgent-interventions/belarus/2013/09/d22385).

The border guards seized and confiscated books about political prisoners in Belarus and a weekly covering the Belarusian minority in Poland.[70]

83. On 23 July 2014, the Deputy Chairman of the Social Democratic Party in Mahiliou, Ihar Barysam, was officially charged with an administrative offence for transporting 11,800 copies of the party's flyers and the newsletter "*Nash Mahiliou*". He faces a fine between 3 and 7.5 million roubles.[71]

The situation of lesbian, gay, bisexual and transgender defenders as a group at risk

84. The Special Rapporteur is concerned about the particular challenges facing LGBT defenders, who suffer double discrimination. Even if same-sex relationships are not illegal in Belarus, homophobic discourse is widespread, including in the media and, notably, on the part of the President himself.[72] There is no single law protecting sexual minorities from discrimination, and homophobic violence is not considered a hate-based crime. Harassment, discrimination and hate crimes against LGBT persons are frequent.[73]

85. As the Special Rapporteur on the rights to freedom of peaceful assembly and of association noted in his report on groups at risk, restrictions on and exclusions from the exercise of the rights to freedom of peaceful assembly and of association have the consequence of reinforcing marginalization and can foster a culture of silence among an excluded group, putting them at higher risk of violations and abuses that may go unreported, uninvestigated and unpunished.[74] Reportedly, anti-LGBT rhetoric has been stepping up in the last year.[75]

86. LGBT groups are denied permission to hold public events and their organizations are denied registration. In December 2012, GayBelarus applied for registration under the name "Nationwide Youth NGO Human Rights Center Lambda". The description of their activities explicitly mentioned defending LGBT rights. The reason for the denial of registration provided by the Ministry was that Lambda's activities did not "seek to provide a comprehensive social formation and development of young people", and that the name of the association did not reflect its aims.[75]

87. A series of persecutions of the organization's activists and police raids at LGBT clubs followed this failed attempt at registration.[76] At least eight different police raids of gay nightclubs were recorded in 2013 (seven in Minsk and one in Vitebsk). During these raids, the personal details of participants were recorded and sometimes filmed by a police camera.

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[70] See http://spring96.org/en/news/72255.

[71] Viasna Human Rights Center (http://spring96.org/en/news/72202).

[72] The President himself has openly mocked homosexuals. Besides the known quote of "better to be a dictator than a gay", he once proposed sending homosexuals to collective farms to perform public works (www.rferl.org/content/belarus-pressure-gay-rights/25196260.html).

[73] http://www.ilga-europe.org/home/guide_europe/country_by_country/belarus/review_2013.

[74] A/HRC/26/29, para. 15 and 26.

[75] See http://www.ilga-europe.org/home/guide_europe/country_by_country/belarus/annual_review_2014_belarus.

[76] See http://www.civilrightsdefenders.org/country-reports/human-rights-in-belarus.

88. Activists are frequently called in for "preventive conversations", and are subjected to threats, questions about their private life and homophobic insults. Following the failed attempt of GayBelarus/Lambda to register, the drug police department "invited" its members for "informal conversations".[77] In August 2013, authorities forced the closure of "*Vstrecha*," an organization providing HIV/AIDS education. Twice during the year, authorities summoned the organization's coordinator for interrogation, asking questions about the organization's activities, names and addresses of other LGBT activists, travel details, contacts with foreign colleagues and details of his and other activists' sexual life; he was threatened with "serious problems" if he refused to cooperate.[78]

89. In February 2013, the police arrested Ihar Tsikhanyuk, an activist involved in GayBelarus, at the hospital where he was undergoing treatment for an illness and was taken to a police station where, according to Amnesty International, he was punched, beaten, insulted and taunted for being gay, and threatened with more violence. After they returned him to the hospital, he asked for his injuries to be documented but the hospital staff refused.

IV. Conclusion and recommendations

90. The Special Rapporteur concludes that, despite certain improvements of limited and sporadic character, such as some positive amendments in the relevant legislation and the release of human rights defender Ales Bialiatski, there has been no significant change in the overall human rights situation in Belarus since his last reports to the Human Rights Council and to the General Assembly.

91. The Special Rapporteur reiterates the systematic and systemic nature of human rights violations in Belarus, which has a negative impact on the rights of civil society organizations and human rights defenders to operate freely and without threats, harassment or intimidation. The overall legislative framework and practices of the Belarusian authorities violate, on a regular basis, the relevant provisions of international law, including article 22 of the International Covenant on Civil and Political Rights on the right to freedom of association.

92. The Special Rapporteur notes with particular concern that in addition to the unwillingness to engage in dialogue with the mandate established by the Human Rights Council, the authorities, thus far, have largely ignored the relevant recommendations made by other United Nations human rights mechanisms, including with regard to the rights to freedom of peaceful association, assembly and expression, including those pertaining to civil society organizations and human rights defenders. Belarus has continued to challenge, on procedural grounds, the registration of cases filed under the Optional Protocol to the International Covenant on Civil and Political Rights. Repeated requests by relevant thematic special procedures to visit the country have remained unanswered.[79]

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[77] See http://www.ilga-europe.org/home/guide_europe/country_by_country/belarus/annual_review_2014_belarus.

[78] Bureau of Democracy, Human Rights and Labor, country reports on human rights practices, 2013. (www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper).

[79] See http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx.

Recommendations

93. **The Special Rapporteur reiterates the relevant thematic recommendations emanating from the United Nations human rights mechanisms, including the universal periodic review,[80] the treaty bodies and other special procedures, as well as the recommendations contained in the 2012 report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus (A/HRC/20/8), and submits the following additional recommendations:**

(a) **Release, immediately and unconditionally, the remaining human rights defenders and activists convicted for exercising their civil and political rights and ensure the full rehabilitation of their human rights;**

(b) **Recognize the important role of human rights defenders, whether individuals or members of civil society organizations, and guarantee the independence of civil society organizations and human rights defenders, enabling them to operate without the fear of reprisal;[80]**

(c) **Conduct a comprehensive review of the Belarusian legislation pertaining to freedom of association and bring it in line with relevant international human rights law and with Human Rights Council resolution 22/6 of 21 March 2013;**

(d) **Repeal article 193-1 of the Criminal Code which criminalizes unregistered public activities;[80]**

(e) **Review the law on public association and all regulations and practices pertaining to the activities of civil society organizations;**

(f) **Remove all legal and administrative impediments to the receiving of funding by NGOs and human rights defenders, including funding from abroad, and bring legislation and practice regulating the funding of NGOs in line with international law;[81]**

(g) **Abolish the discretionary power of government authorities to issue warnings about activities of NGOs, based on which the activities of NGOs can be terminated and activists can be punished;**

(h) **Register the Viasna Human Rights Center and all NGOs whose registration has been denied on political grounds;[80,82]**

(i) **Cease the vilification campaigns against NGOs critical of the government and facilitate an objective and pluralistic coverage of the human rights-related work carried out by NGOs in the publicly owned media;**

(j) **Stop harassment by the judicial authorities of privately owned media and journalists covering the work of NGOs and refrain from obstructing the Internet-based communications of NGOs and individual human rights defenders;**

(k) **Put an end to the obstruction, harassment and punishment of NGOs making use of their right to peaceful assembly, including demonstrations,**

[80] See A/HRC/15/16, Chap. II.
[81] See A/HRC/26/44, para. 139 (o).
[82] CRC/C/BLR/CO/3-4, para. 24.

pickets and flash mobs, and review the relevant legislation in line with international norms and standards;

(l) **Cease the practice of giving preferential treatment to some NGOs over others and create a safe and enabling environment for civil society, including human rights defenders, in particular by eliminating obstacles to the functioning of NGOs and civic activists;**[80]

(m) **Engage regularly and in an open manner in substantive and constructive dialogue with independent NGOs and human rights defenders on the broad spectrum of issues concerning civil society, as well as human rights issues at large, including in the context of the universal periodic review of Belarus;**[80]

(n) **Ensure full protection for NGOs and human rights defenders from harassment, intimidation and violence by ensuring prompt, thorough and transparent investigation of such acts and by the prosecution and punishment of perpetrators;**[83] **ensure that LGBT defenders can exercise their rights to freedom of peaceful assembly and association, and that they are not criminalized for exercising these rights nor subjected to threats or use of violence, harassment, persecution, intimidation or discrimination on grounds of sexual orientation;**

(o) **Make genuine efforts to establish a national human rights institution in compliance with the Paris Principles**[80] **in cooperation with all national NGOs willing to defend human rights.**

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[83] CAT/C/BLR/CO/4, para. 25; and A/HRC/26/44, para. 139 (n).