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REPUBLIC OF BELARUS

NGO report to
UN Human Rights Committee
in connection with the adoption
of the List of Issues

Minsk, April 2015

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Introduction

This report was prepared by the Belarusian Helsinki Committee, Viasna Human Rights Centre, Legal Transformation Center (Lawtrend), Assembly of Pro-Democratic NGOs of Belarus, Legal Initiative NGO, Salidarnasc (Solidarity) Committee, FORB Initiative, Barys Zvozskau Belarusian Human Rights House, in connection with the adoption of the list of issues related to the preparation of the periodic report by the Republic of Belarus for the UN Human Rights Committee.

The report provides information about the situation of individual human rights enshrined in the International Covenant on Civil and Political Rights in the Republic of Belarus, as well as a list of questions related to the following articles of the Covenant:

- Right to Life (Article 6)
- Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (Article 7)
- Prohibition of Forced or Compulsory Labour (Article 8)
- Right to Liberty and Security of Person (Article 9)
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- Freedom of Movement and Prohibition of Expulsion of Nationals (Articles 12 and 13)
- Right to Fair Trial (Article 14)
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- Freedom of Association (Article 22)
- Prohibition of Discrimination (Article 26)

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State's obligations to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant (art. 2) and to submit periodic reports (art. 40)

1. The last time when Belarus submitted its periodic report to the UN Human Rights Committee was in 1997, with a four-year delay at that time. The deadline for submitting the next report was in 2001, i.e. it is 14 years overdue.[1] The periodic reports submitted by the Belarusian government to the UN treaty bodies in 2009-2012 were submitted one to nine years late.[2]

Recommended questions:

1) Are there any significant developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have taken place since the previous periodic report?
2) Are there any significant political and administrative measures taken since the previous report to promote and protect human rights under the Covenant? What are the resources allocated thereto, their means, objectives and results?
3) Please provide any other information on measures taken to disseminate and implement the Committee's previous recommendations (CCPR/C/79/Add.86), including any necessary statistical data.
4) How will the Belarusian authorities make sure that the Belarusian civil society organizations will be involved in the process of preparing replies to the List of Issues Prior to Reporting delivered by the UN Human Rights Committee?

Obligations of Belarus under the Optional Protocol to the International Covenant on Civil and Political Rights

1. Belarus ratified the Optional Protocol to the ICCPR in 1992 and recognized the competence of the UN Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the Belarusian authorities of any of the rights set forth in the Covenant.

2. As of March 2015, 180 individual complaints against Belarus were registered by the UN Human Rights Committee. So far, 87 out of 180 were considered on their merits and in 77 communications the Committee found a violation by Belarus of its obligations under the ICCPR.[3] None of the views of the Committee were implemented by the Belarusian authorities. In addition, Belarus disregards requests for interim measures of protection issued by the UN Human Rights Committee in accordance with Rule 92 of the Rules of Procedure of the Human Rights Committee. In regard to Belarus, the UN Human Rights Committee requested interim measures of protection for at least nine persons,

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[1] Initially, the 4th periodic report was due in 1993.
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=BLR&Lang=EN

[2] The 4th periodic report to the CAT Committee was due in 2000, was submitted in 2009; 7th periodic report to the CEDAW Committee was due in 2006, was submitted in 2009; 28th – 29th periodic report to the CERD Committee was due in 2008, was submitted in 2012; 4th – 6th periodic reports to the CESCR Committee were due in 2009, were submitted in 2010; etc.
http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=BLR&Lang=EN

[3] 76 complaints are still to be considered by the UN Human Rights Committee

who submitted their complaints to the Committee while being on a death row in Belarus. Nevertheless, the Belarusian authorities disregarded the Committee's requests and executed those individuals.

Recommended questions:

1) Please provide information on how the Belarusian authorities implemented the Committee's recommendations with regard to the individual communications procedure under the Optional Protocol (CCPR/C/79/Add.86, para. 20):
2) How is the information on the individual communications procedure under the Optional Protocol disseminated among the public at large and in particular among prisoners (including prisoners on death row), other detainees and members of the legal profession?
3) Has a mechanism been designed to ensure the implementation of the views expressed by the Committee established by the Belarusian authorities? If not, are there any plans to design such a mechanism and when?

Right to Life (Article 6)

1. Despite the fact that, since 1999, a tendency has emerged for a significant reduction in the number of the death sentences and executions, Belarus continues to impose the death penalty and enforce the death sentences. From 1997 to April 2015, the death sentences imposed against 155 people were reported. No information from the government is available on how many of the sentences have been enforced.

2. The Supreme Court continued the practice of imposing the death penalty as a court of first instance, in particular against Syarhey Marozaw, Valery Harbaty, Ihar Danchanka, Uladzislaw Kavalyow and Dzmitry Kanavalaw, thus depriving the convicted of the right to an appeal in cassation. In accordance with the current Belarusian legislation, the sentence imposed by the Supreme Court of Belarus takes effect immediately after it is pronounced and cannot be appealed in cassation.

3. The Supreme Court of Belarus sentenced Syarhey Marozaw and Ihar Danchanka to death twice – in December 2006 and in October 2007; Valery Harbaty was sentenced to death in December 2006. Reportedly, by February 2008, the sentences had been enforced. At the same time, in January 2008, the Supreme Court adopted another criminal case against Syarhey Marozaw and his three accomplices. The reason for that rapid enforcement of the sentences, before the commencement of the new court hearings (on 19 February 2008), remains unknown. The death sentence against Uladzislaw Kavalyow and Dzmitry Kanavalaw, imposed by the Supreme Court of Belarus as a court of first instance, was enforced two months after it was pronounced.

4. In six cases (Uladzislaw Kavalyow, Andrei Zhuk, Vasil Yuzepchuk, Andrei Burdyka, Aleh Hryshkavets, Pavel Sialiun, Alyaksandr Hrunow), the death sentences were enforced despite the fact that the persons sentenced to death had submitted individual complaints to the Human Rights Committee, and the interim protection procedures were initiated in accordance with Rule #92 of the Rules of Procedure of the Human Rights Committee. The Government of Belarus was notified in writing about the initiation of the interim protection measures. In two cases, having considered the individual complaints of Andrei Zhuk and Uladzislaw Kavalyow after they were put to death, the Human Rights Committee found a violation of Article 6 of the ICCPR – the

right to life – committed by the Republic of Belarus.

5. Under the law of Belarus, the death penalty is executed non-publicly, by a firing squad; the date and place of execution are not reported, the dead bodies of the executed are not given to the relatives, and the burial place is not disclosed. The Human Rights Committee has repeatedly recognized these procedures as cruel and inhuman treatment against the relatives of the executed.

Recommended questions:

1) Please provide explanations for all the cases of enforcing the death sentences in violation of Rule #92 of the Rules of Procedure of the Human Rights Committee.
2) Please provide information on measures taken to implement the views of the UN Human Rights Committee as regards the violation of Article 6 of the ICCPR by the Republic of Belarus (in the cases of Andrei Zhuk and Uladzislaw Kavalyow).
3) Please provide information on measures taken to implement the views of the Human Rights Committee on the violation of Article 7 of the ICCPR by the Republic of Belarus in terms of the changes to the death sentence enforcement procedure and giving the dead bodies of the executed to their relatives for burial in accordance with their family traditions.

Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (Article 7)

1. Within the reporting period, Belarus failed to include a definition of torture, consistent with Article 1 of the Convention, in the national legislation.

2. The country lacks an effective mechanism for investigation into complaints of torture or ill-treatment. The officials under investigation are not suspended from their office for the investigation period. It is problematic to record injuries inflicted on prisoners in the custodial institutions because structurally the medical units are a part of the prison system.

3. The trial proceedings in the cases of torture have not become more fair and efficient for the reporting period. The courts have not issued a single decision to punish the perpetrators and to recompense the victims for the harm.

Recommended questions:

1) What steps does the Government take to prevent and investigate into the cases of torture and what are the results of the measures taken? Please provide the court statistics for this category of cases.
2) Has the current legislation been brought in compliance with the Convention against Torture? Does the Government ensure the inclusion of the relevant educational materials and information about the prohibition of torture in training programs for law enforcement agencies, officers and officials? Is this prohibition included in the rules or instructions regulating the duties and functions of these agencies and persons? Please provide examples.
3) Does the Criminal Code provide for responsibility for all and any acts of torture committed by officials? Please specify the relevant articles of the Criminal Code.

4) Is the Government planning to accede to the Optional Protocol to the Convention against Torture?
5) What are the measures taken by the Government in connection with the statement recognizing the competence of the UN Committee against Torture to consider communications informing about violations of the obligations under Articles 21 and 22 of the Convention against Torture?
6) Which authority is responsible for the investigation into complaints of torture and cruel treatment committed by law enforcement officers? Is there a special unit in place to investigate this type of crimes? Is an official under investigation into torture allegations suspended from their office for the investigation period?
7) Please provide the statistics on the number of complaints of torture or cruel treatment by law enforcement officers, the number of disciplinary proceedings, the number of criminal cases initiated after raising torture allegations; the number of cases in which the evidence was declared inadmissible on the grounds that it was obtained under torture; the number of officials brought to trial for obtaining that evidence?

Prohibition of Forced or Compulsory Labour (Article 8)

1. Presidential Decree #18 of November 24, 2006 (On Additional Measures for State Protection of Children in Dysfunctional Families) establishes the duty of individuals, whose children are brought up under the state's wing, to pay the costs of maintaining their children in the public institutions. The individuals who do not work, or work but fail to fully reimburse the maintenance of their children, are subject, on the basis of the court judgement about job placement, to forced recruitment in order to ensure the fulfilment of their duty to maintain and educate their children. Article 174 of the Criminal Code of Belarus provides for criminal liability, including imprisonment, for a refusal by parents to refund the state expenses on their children brought up under the state's wing; in particular, parents may be punished for absenteeism from work for ten and more working days within three months, for evasion from employment under a court decision within a year after the imposition of an administrative punishment for the same violation.

2. Presidential Decree #9 of December 7, 2012 (On Additional Measures for Development of Wood Processing Industry) prohibits termination of contracts with workers of the particular group of woodworking plants without the employer's consent, and provides for forced employment at the same plant for a person who has been fired for misconduct, in order to compensate additional amounts to the basic salary paid to them before their dismissal.

3. The law of Belarus regulating the procedure and conditions for sending persons to Medical and Labour Rehabilitation Centres and the living and working conditions in these centres (#104-3 of January 4, 2010) provides for the establishment of Medical and Labour Rehabilitation Centres as part of the system under the Ministry of Internal Affairs of Belarus; these centres are intended for compulsory isolation and medical and social rehabilitation, with compulsory labour therapy, of individuals suffering from chronic alcoholism, drug addiction or substance abuse, as well as for individuals obliged to reimburse the state expenses on their children brought up under the state's wing.

4. Presidential Decree #3 of April 2, 2015 (On Prevention of Social Parasitism) provides for an annual levy to refund the public expenditures for adults who have worked less than 183 days within a year, or who have paid the income tax to the state budget in an amount that is less than the amount specified in the Decree. The non-payment of the annual levy entails detention with compulsory labour. Having endured the administrative punishment in the form of administrative detention, a person is deemed to have fulfilled the obligation to pay the levy.

Recommended questions:

1) Please provide explanations for all the above mechanisms intended to involve individuals in forced or compulsory labour.

Right to Liberty and Security of Person (Article 9)

1. In practice, there are numerous instances there of applying arbitrary detention against individuals. In recent years, arbitrary detention and subsequent administrative arrest have become systematic and are a form of politically motivated repression against the political opposition and civil society activists. Usually, arbitrary detention is applied in the form of preventive arrests of social and political activists shortly before election campaigns (before elections and referendums), and before other important social and political events (visits of the senior officials from the foreign countries, organised opposition rallies, etc.). Opposition activists are detained on typical charges of "disorderly conduct" or "disobeying the lawful demands of the police". After that, the courts issue resolutions on administrative arrest for up to 25 days against the detainees. These courts issue these decisions basing solely on the police officers' testimony. It was in 2006, shortly before the presidential election, when, for the first time in Belarus, representatives of the political opposition were subjected to arbitrary detention in droves on charges of disorderly conduct (foul language in public places). At that time, according to the Viasna Human Rights Centre, a few days before the election that was held on 19 March 2006, 236 opposition activists were subjected to arbitrary arrest for up to 15 days (most of them were activists of the election campaign teams of the opposition politicians A. Milinkevich and A. Kazulin). Subsequently, the authorities began to apply this kind of detention actively as "a preventive measure". The World Ice Hockey Championship that was held in Minsk on 9 – 26 May 2014, was no exception. At that time, according to the data collected by the Viasna Human Rights Centre, 38 social and political activists were subjected to arbitrary detention for up to 25 days.

2. The UN Working Group on Arbitrary Detention visited Belarus in 2004 and published the relevant report, which, in particular, invited the Government of Belarus "to reconsider the legal framework regarding administrative detention to ensure that this form of deprivation of liberty is not being misused". However, the Government of Belarus have taken no measures to comply with these recommendations. Besides, the UN Working Group on Arbitrary Detention issued a decision on the arbitrary detention, having considered the individual applications from A. Bialiatski and A. Sannikaw in 2012, M. Statkevich in 2011 and M. Marynich in 2005. In 2012, the Ministry of Foreign Affairs of Belarus officially announced the termination of the cooperation with the Working Group on Arbitrary Detention in its current composition, having claimed that it

was "politically engaged".

3. In accordance with Article 126 of the Code of Criminal Procedure of Belarus, the right to sanction the detention belongs to the Prosecutor General of Belarus, regional, municipal and district prosecutors and equated prosecutors, and their deputies. Also in the certain categories of cases, detention is used upon the decision of the Chairman of the Investigative Committee of Belarus, the Chairman of the State Security Committee of Belarus (the KGB) and the relevant interims. In accordance with this Article, detention can be applied to individuals suspected of committing a grave or especially grave crime against the peace and security of the humankind, the state, a war crime, a crime infringing human life and health –based solely on the severity of the alleged crime.

4. An individual held in custody may file a complaint with the court through the administration of the pre-trial detention; the administration is obliged to, within 24 hours after receiving the complaint, forward it to the appropriate body carrying out the criminal proceeding. This body, in turn, is obliged to forward it to the court, having attached the criminal case file. A complaint of a person detained should be forwarded within 24 hours, and a complaint of a person in custody should be forwarded within 72 hours after the receipt of the complaint. The legality and validity of the detention should be reviewed by the court not longer than within 24 hours; the legality of the remand in custody or under home arrest, or an extension of remand in custody or home arrest, should be reviewed not longer than within 72 hours after the receipt of the complaint by the court. Thus, in case of detention, the minimum time after which a complaint may be considered, taking into account the time it takes the body conducting the criminal proceedings to deliver the documents to the court, is not less than three days, after which the complaint makes no sense at all. As a rule, the court considers a complaint in the absence of the prisoner, as permitted by the law. The court decisions are also reviewed without the participation of the person concerned.

Recommended questions:

1. What measures have been taken to fulfil the recommendations of the UN Working Group on Arbitrary Detention, formulated in the report on the mission to Belarus in 2004?
2. What measures have the Government of Belarus taken in order to prevent arbitrary detention of individuals and to bring to statutory liability the officials involved in violations of the civil rights?
3. What measures have the Government of Belarus taken to bring the articles in the Code of Criminal Procedure of Belarus, regulating the use of detention as a pre-trial restriction, in compliance with Article 9 of the ICCPR?
4. What measures have the Government of Belarus taken to implement the views of the UN Working Group on Arbitrary Detention and the UN Human Rights Committee on individual applications, in which it found violations of Article 9 of the ICCPR by Belarus?

Humane Treatment of Persons Deprived of their Liberty (Article 10)

1. Belarus still remains among the "leaders" when it comes to the number of "prison population" In order to reduce the number of prisoners, the Government announces amnesty every year and a half or two years; the frequent use of amnesty emasculates the meaning of the punishment. Disciplinary punishments in prisons often involve unacceptable restrictions; the relevant punishment procedures create preconditions for an arbitrary and excessive punishment.

2. The Ministry of Justice have created public commissions for monitoring of prisons, but the composition and the procedure for formation of these commissions resulted in their inefficiency. No human rights defenders were included in the commissions. While human rights organizations systematically receive numerous complaints of grave violations of prisoners' rights, including the complaints of the obstacles created by the prison administration to impede filing of a complaint, the Commissions are not empowered to review prisoners' complaints of detention conditions. Neither can the departmental control or prosecutor's supervision be called effective, as the officials tend to save their face and make emphasis on the accusatory function of the prosecutor.

3. No comprehensive measures have been taken to humanize the penal enforcement system, which is still largely focused on the punishment rather than on the social adaptation of individuals deprived of liberty. The penal enforcement system is tasked with high crime detection rates; as a result, in practice, the investigative challenges dominate over other tasks. This is situation is aggravated by the fact that the penal enforcement system is a part of the system headed by the Ministry of Internal Affairs.

4. The excessive secrecy of the system of pre-trial detention and penal enforcement impedes the establishment of the proper public control necessary for its effective functioning.

5. Courts fail to practice reviewing of disciplinary punishments. The Code of Criminal Procedure (p. 11, Art. 113) provides for the possibility to appeal against a disciplinary action. However, courts refuse to consider this type of complaints, referring to the lack of the specific procedures, regulating the order of consideration of these complaints.

6. As a rule, the pre-trial detention and temporary detention facilities provide much harsher conditions than prisons within the penitentiary system. There are numerous cases of extreme malnutrition, non-provision of the basic sanitary and hygienic conditions and bedding, detention in unheated premises in cold weather, degrading treatment practiced by the staff. As a rule, the detention facilities lack beds, and sleeping in turns is a common practice.

Recommended questions:

1) Please provide the court statistics on appeals against disciplinary penalties in prisons and the analysis of the relevant court practice for the reporting period.

Freedom of Movement and Prohibition of Expulsion of Nationals (Articles

12 and 13)

1. There have been cases in Belarus when the legislation provisions restricting the right of individuals to leave the country were used arbitrarily against a number of political and public figures and journalists. Thus, in 2012, a number of human rights defenders, politicians and journalists were faced with arbitrary restrictions on the right to leave the Republic of Belarus. The references (extracts) from the database on the individuals whose right to leave the Republic of Belarus is temporarily restricted, specified various grounds for the restriction (draft evasion, evading the obligations imposed by the court, the judgement creditor in a bankruptcy case, a lawsuit in court, etc.). In March 2012, the persons listed below were faced with the restrictions on exit from the Republic of Belarus: Aleh Hulak, the Chairman of the Belarusian Helsinki Committee; Valiantin Stefanovich, the Deputy Chairman of the Viasna Human Rights Centre; Stanislaw Shushkevich, an opposition politician and the ex-Chairman of the Supreme Soviet of the 12th Convocation; Aliaksandr Yarashuk, the Chairman of the Belarusian Congress of Democratic Trade Unions, Zhanna Litvina, the Chairman of the Belarusian Association of Journalists; Harry Pahanyaila, the head of the BHC legal service; Andrei Bandarenka, the head of the "Platform" information and educational institution; in June, it was forbidden to leave Belarus to the lawyer Marina Kavalewskaya. In the last case, the reason for the travel ban was formulated as the draft evasion, although Marina Kavalewskaya is not liable for military service. The attempts to appeal the relevant decisions under the administrative procedure have failed. During the trials, it became clear that the above individuals were included in the database incorrectly, due to a technical failure; therefore, a decision was taken to exclude from the above-mentioned database all the individuals who had been mistakenly included in it. By that moment, the travel ban had lasted for about six months. The claims for compensation were rejected. The possibility of imposing this kind of restrictions on the opposition politicians and civil activists was mentioned on 1 March 2012 by the representative of the Prosecutor General, Pavel Radzionaw; it was also publicly stated by the President of Belarus.[4]

2. Mrs Elena Tonkacheva, a prominent Belarusian human rights defender, has been expelled from Belarus on political grounds; a three-year entry ban was imposed. Mrs Elena Tonkacheva is a Belarusian human rights defender and chair of the board of the Legal Transformation Center (Lawtrend), a Minsk-based human rights NGO. She is a Russian national who has been residing in Belarus for the last 30 years. On 30 October 2014, she was notified by the Belarusian authorities that her permanent residence permit would be annulled, and that she would be expelled from Belarus on the grounds of “protection of public order”. This administrative decision includes a 3-year ban on entry to Belarus. After unsuccessful appeals to courts, Mrs Elena Tonkacheva has left Belarus (on February 21, 2015).[5] Elena Tonkacheva has been permanently living in Belarus since 1985; her daughter is a Belarusian national by birth. Elena graduated from a Belarusian university, and her professional career has always been connected with fighting for the protection of fundamental rights and the rule of law in Belarus. The UN special rapporteurs on Belarus and on situation with human rights defenders made a

[4] http://news.tut.by/politics/280239.html

[5] For detailed information please see: http://www.lawtrend.org/expulsion/expulsion-of-elena-tonkacheva-facts-and-legal-analysis

statement regarding the case.[6]

Recommended questions:

1) How is the compliance of the restrictions on the right to leave the country with the provisions of the ICCPR ensured?
2) How were the cases settled relating to the travel ban imposed in 2012 against Aleh Hulak, Valiantin Stefanovich, Stanislaw Shushkevich, Alyaksandr Yarashuk, Zhanna Litvina, Harry Pahanyaila, Andrei Bandarenka, Marina Kavalewskaya? What measures have been taken to prevent the similar violations?
3) How does the expulsion of the human rights activist Elena Tonkacheva in 2015 and a three-year ban on the entry to Belarus correlate with the obligations of the Republic of Belarus under the ICCPR, in particular, those related to the freedom of expression (Art. 19) and to the right of individuals to return to their own country (p. 4, Art. 12)?

Right to Fair Trial (Article 14)

1. In 2011, Presidential Decree #454 was adopted (On Measures to Improve Activities of Courts of Common Law in Republic of Belarus) that outlined a number of positive measures to develop the system of courts of common law, such as the introduction of appealing elements in the criminal proceedings, with the further wider use of these elements in the criminal and civil proceedings; the mediation procedure for the certain categories of cases; considering the possibility of introducing jury trials, etc. Some of the Decree provisions have been implemented (the introduction of the mediation procedure); however, most of the provisions have not been implemented.

2. After the adoption of Presidential Decree #6 on 29 November 2013, the authority to monitor the compliance of the activities of common law courts with the law requirements, as well as the organization, logistics and staffing of common law courts' activities have been devolved from the Ministry of Justice to the Supreme Court. Until 31 December 2013, in Belarus, a number of regulations of the Council of Ministers and the Ministry of Justice were efficient, that regulated in detail the issues of selection and appointment of judges and bringing them to disciplinary action. Since 1 January 2014, due to the adoption of Decree #6, the regulations of the Ministry of Justice, as well as some other regulations governing the above issues, have lost effect. No new regulations have been adopted to regulate the selection and appointment of judges and bringing them to disciplinary action, or they have not been published in the prescribed manner and are not available to the public. Thus, within a long period, there is either a gap in the legal regulation frame (which is unacceptable, given the particular importance of the relations within the judicial system and legal proceedings, as well as the law foreseeability requirement), or the requirement of transparency and accessibility of legislation in this area, in accordance with the international standards, has been violated.

3. Belarus has so far saved extremely broad presidential powers related to all elements of judges' independence: the issues of appointment, disciplining and dismissal of judges, their financial security and pensions. According to paragraph 19 of General Comment #32, adopted by the UN Committee on Human Rights on 23 August 2007, "In

[6] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15650&LangID=E

order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law". In Belarus, the size of judges' salaries is not defined by the law, but by Presidential Decree #625 of 4 December 1997. Besides, Presidential Decree #195 of 3 April 2008 (On Some Social and Legal Guarantees for Military Personnel, Judges and Prosecutors) provides for a number of benefits for judges enabling them to improve their living conditions. This situation undermines the principle of judicial independence.

4. The national legislation (Section 6, Article 370, Code of Criminal Procedure) does not provide for cassation appeals against sentences issued by the Supreme Court upon hearing criminal cases as a court of first instance. These sentences enter into force after they are pronounced and may be appealed (challenged) only under the supervisory procedure, which does not entail a mandatory review of the court decisions. Meanwhile, the Supreme Court often issues the death sentences, and the condemned have no right to have these sentences reviewed.

Recommended questions:

1) Please provide information about the regulations and procedures for appointment of judges, their career development and promotion to other positions, the size of remuneration and the order of payment, bringing them to disciplinary action and providing benefits for them. Can these regulations be found in the public domain?
2) Please provide information about the practice of appointing judges (for a fixed term and for life), bringing judges to disciplinary action.
3) Please provide information about the measures taken to implement the views of the Human Rights Committee on ensuring the right to appeal against the sentences handed down by the Supreme Court as a court of first instance.
4) What practical measures have been taken to implement the presumption of innocence in criminal proceedings in court?

Right to Privacy (Article 17)

1. Presidential Decree #60 of 1 February 2010 (On Measures to Improve the Use of National Segment of Internet) legislated the possibility for the state to use the surveillance system on the Internet – a system of hardware for investigative operations (the so-called SORM). Besides, the Decree obliges the Internet service providers to store the data on their users' activity (IP-addresses, the data on the Internet sessions duration, websites visited, search queries, etc.) within a year.

2. The Operative and Analytical Centre (OAC) under the President of Belarus, as well as the KGB have the constant direct access to the systems for tracking user activity on the Internet; the Internet service providers had to install these systems at their own expense. All customers of Internet cafes and other facilities providing collective access to the Internet are required to show their passports and to be registered if they want to use the services. The administration of the facilities providing collective access to the Internet is also required to store information about the websites visited by each of their clients within a year; they must provide this information to the law enforcement

authorities a required.[7]

3. According to Decree #6 of 18 February 2015 of the Ministry of Communication and Informatization, [8] the Internet service providers are required to store full information about their subscribers' actions on the Internet for a year. These data include the number and date of the service agreement, the subscriber's surname, name and patronymic, home address, the MAC-address of the equipment used by the subscriber to access the Internet, as well as the full list of websites visited.

4. The legislation on the personal data protection fails to comply with the international standards. Belarus is one of the few states that have neither signed nor ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted by the Council of Europe on 28 January 1981.

5. The country lacks the basic law on the protection of personal data, and the measures of control are established along with the growth of the case-base. This results in the lack of a systematic approach and duplication of regulations in various legislative acts.

6. The legislation contains no uniform definition of "personal data", fails to regulate the situation of "data fusion" (profiling) and the issues of cross-border transfer of personal data.

7. The public agencies apply different standards of the personal data collection, storage and processing; the governmental databases lack a uniform approach to the terms of the personal data storage; individuals cannot clarify who, when and for what purpose collects their personal data, who accesses their personal information stored in the public databases.

8. There are no clear regulations as regards the collection, storage, processing and use of personal data by commercial entities.

9. The issues of liability for unauthorized disclosure of personal data remain unsettled. The legislation fails to provide for the specific crimes related to unauthorized dissemination and use of personal data.[9]

Recommended questions:

1) Please provide information on legislation governing electronic surveillance, including phone and internet communications, and on legal safeguards against unwarranted government access to private communications as well as their respect in practice.
2) Please provide information on legislation governing personal data protection. Please indicate what measures have actually been taken to prevent the unauthorized use of personal data.

Freedom of Conscience and Religion (Article 18)

The law prohibits practicing religious activity without the state registration of a religious community. Article 193-1 of the Criminal Code provides for criminal liability for organizing of or participating in the activities of religious organizations that have not

[7] http://www.indexoncensorship.org/wp-content/uploads/2013/01/IDX_Belarus_Rus_WebRes_Final.pdf
[8] http://www.pravo.by/main.aspx?guid=12551&p0=W21529700&p1=1&p5=0
[9] http://www.lawtrend.org/wp-content/uploads/2015/02/Data-protection-2014_1.pdf

been registered.

Recommended questions:

1) What legitimate objectives does the introduction of the compulsory state registration pursue as a condition of the implementation of the right to religious activities in groups?
2) Are these restrictions necessary in a democratic society? At the same time, are guarantees ensured for freedom of religion, taking into account that a group may be unwilling to register their religious community as a legal entity, either because of their convictions based on their faith, or due to other circumstances (the lack of members for the establishment of a religious community that requires at least 20 participants, the lack of material resources, etc.)?

Right to Information (Article 19)

1. Belarus has no separate law on access to public sector information; some rules regulating this sphere are set forth in the Law on Information, Informatization and Information Protection of 10 November 2008.[10]. The current regulation fails to provide for an effective mechanism for individuals' access to this kind of information. The presumption of transparency of information has not been legislated, and the rules restricting the access to information are non-transparent.

2. The Law on Information, Informatization and Information Protection establishes the categories of information that can be classified as "restricted information". The list is not exhaustive and allows for arbitrary restrictions on access to public sector information, including upon the decision of the head of a public agency. The legislation on the state secrets fails to formulate the criteria for classifying information as secret data, and the rules regulating the restricted information regime allow for an excessively broad interpretation of restrictions on access to information and viewing any documents of any government body as "official secrets".11. The common practice is to restrict the access to environmental information by including it into the information for internal use only. This is possible due to the lack of clear and transparent criteria for classifying information into this category, as well as the absence of an appeal procedure enabling to challenge the relevant decisions.[12]

3. On their official websites, the public authorities post on average 30% of all information required in accordance with the Belarusian legislation.[13]

4. The National Register of Legal Acts offers no access to the updated legal texts on the Internet, if the acts have been amended. The free access is only available to the

[10] http://www.pravo.by/main.aspx?guid=3871&p2=2/1552
[11] http://www.lawtrend.org/information-access/svobodnyj-internet/cvobodnyj-internet-politicheskie-printsipy-i-pravovye-normy-respublika-belarus-v-globalnom-kontekste
[12] http://greenbelarus.info/files/downloads/obzor_po_implementacii_ok_v_rb_2014_0.docx
[13] http://www.lawtrend.org/information-access/information-access-information-access/monitoring-predstavlennosti-informatsii-na-ofitsialnyh-sajtah-gosudarstvennyh-organov-skachat-gosudarstvennye-organy-respubliki-belarus-15-let-onlajn; and http://www.lawtrend.org/information-access/mestnye-organy-upravleniya-respubliki-belarus-15-let-onlajn

updated texts of the Constitution, Codes and some other regulations.[14] Besides, Belarus does not practice publication of judicial decisions.

Recommended questions:

1) What steps have been taken to ensure the rights of individuals to access public sector information (PSI), in particular ecological information, legal texts, and court decisions? Is free access provided to all legal regulations? Does the country have the special law on access to information of the public agencies, to judicial information?
2) Please explain whether the list of information, the dissemination of which is restricted by the law, is exhaustive and closed, whether it allows for arbitrary interpretation, and whether, in this regard, the facts of illegal refusal to provide information, in particular environmental information, are recorded and what measures will be taken to avoid these incidents?

Right to Peaceful Assembly (Article 21)

1. The Belarusian legislation provides for excessive restrictions on the right to peaceful assembly. Adopted in 2011, the amendments to the Law on Mass Events seriously worsened the legal framework for the exercise of the freedom of peaceful assembly.
2. In practice, the restrictions of peaceful assembly apply primarily to those, who express disagreement with the Government's policy.
3. The law provides for authorization needed for any public events and pickets. The law and decisions of the local authorities prohibit conducting meetings in crowded public places and near the buildings housing the public authorities and executive bodies.
4. Organizers of mass events are obliged to cover the relevant costs, including the protection of public order by the police. The Law on Mass Events sets forth the same rules applying to meetings and single-person pickets implementing the freedom of expression, as well as to any advertising and commercial promotion events.
5. The Human Rights Committee have repeatedly found violations of Articles 19 and 21 of the International Covenant on Civil and Political Rights by Belarus, and expressed in their views a proposal to revise the existing legislation on the organization of mass events in order to bring it into conformity with the requirements of Article 19 and 21 of the Covenant. None of the recommendations has been fulfilled.
6. On 8 November 2011, the Criminal Code of Belarus was supplemented with Article 369-3 (non-compliance with the procedure for organisation or conduct of mass events), which provides for a penalty, including imprisonment, for public calls for arranging or holding a mass event in violation of the rules of organization or conduct of such events, if the conduct of these events has caused, inter alia, damage on a large scale (two hundred and fifty or more times the size of the "base penalty amount" set on the day of the crime, which is about EUR 3,000).

Recommended questions:

[14] http://www.lawtrend.org/information-access/mezhdunarodnyj-monitoring-gosudarstvennoj-informatsii-onlajn-2014-g

1. Please provide information on measures taken to implement the views of the UN Human Rights Committee as regards the violation of Articles 19 and 21 of the ICCPR by Belarus.
2. Please explain what purposes the Law on Mass Events pursues, establishing the authorisation procedure for the conduct of peaceful assemblies, with the excessive obligations for the organizers and a large number of prohibitions.
3. Why does the Law on Mass Events regulate single-person pickets?
4. What measures does the Republic of Belarus take to promote the right to peaceful assembly?

Freedom of Association (Article 22)

1. The legal environment for non-profit organizations in Belarus remains unfavourable. The main problems and obstacles to the activities of non-profit organizations have remained both at the level of legal regulation, and at the level of regulatory enforcement. The right to freedom of association for human rights defenders' groups is particularly restricted.

2. The procedure of the state registration of public associations, political parties, their organizational structures, as well as funds is complex and burdensome. The wording of the rules on possible grounds for refusal of registration of associations is very vague and enables the authorities to deny the registration arbitrarily because of minor flaws in the document design. As a result, in 2010 – 2014, the public authorities have denied the registration to dozens of associations, including human rights defenders' groups.

3. The Government of Belarus takes no steps to implement the views of the UN Human Rights Committee upon individual applications submitted by the members of the associations and unions that were denied registration and dismissed.

4. The actual conditions for creation of political parties make it impossible to implement the right to establish a new political party. It was in 2000 when a new party was registered for the last time. In 2010 – 2014, the authorities have repeatedly refused to register the Belarusian Christian Democracy party, the Belarusian Communist Party of Workers, as well as the local offices of the BPF Party and the Movement "Za Svabodu (For Freedom)".

5. The legislation bans activities of unregistered public associations, political parties, religious organizations or funds; since 2005, Article 193-1 of the Criminal Code of Belarus provides for criminal liability for a violation of this ban, including imprisonment for up to two years. Since the introduction of this Article, at least 18 people have been reported to be convicted of violating it. Currently, the Prosecutor's Office and the KGB (including their regional offices) regularly issue numerous official warnings about the possible criminal prosecution of the members of unregistered associations (under Article 193-1 of the Criminal Code of Belarus) unless they cease their social activities within a public association or a religious organization that has no state registration. During the preparation of the National Report, within the second round of the UN Universal Periodic Review of the human rights situation in Belarus, the Ministry of Foreign Affairs did not invite the human rights defenders' groups that had no registration or had been de-registered by a court decision, to take part in the

consultations on the UPR, having thus denied them the opportunity to present their views on the National Draft Report for the UPR.

6. Substantial restrictions have been imposed on the non-profit organizations willing to raise funds, both from the domestic and foreign sources. Prior to the use of the foreign aid, it should be registered in the Department for Humanitarian Activities under the Presidential Directorate for Property Management. In practice, the decisions about the registration of the foreign aid are taken selectively. The legislation also determines the exhaustive list of purposes for obtaining this assistance, which, inter alia, fails to include purposes related to the protection of human rights. In the autumn of 2011, Article 369-2 (receipt of foreign donations in violation of the laws of Belarus) was included in the Criminal Code, having criminalised violations of the procedure for receipt of foreign aid, providing for a punishment in the form of imprisonment for up to two years.

7. Donations from the domestic corporate donors may also be used exclusively for the purposes included in the exhaustive list that is determined by the law. These purposes omit human rights activities, as well as other activities of the civil society organizations (promotion of gender equality, environmental protection). Funds may be allocated for other purposes than those included in this list only upon the presidential sanction.

8. The system of public financing of non-profit organizations is not well developed and provides only for direct state budget funding of the public associations supported by the Government (e.g. the Belarusian Republican Youth Union controlled by the Government).

Recommended questions:

1. What measures does the Government take to create conditions for the exercise of the right to form associations, including by the individuals, considering whose complaints the Committee found violation of Article 22 of the Covenant by the Republic of Belarus?
2. What are the legitimate objectives pursued by the ban on the activities of unregistered associations and religious organizations in Belarus and by the criminalisation of these activities?
3. What measures does the Government take to enable non-profit organizations to access and use domestic and foreign funding for social activities, in particular for the protection of human rights?

Non-Discrimination (Article 26)

1. The principles of equality are included in the basic laws; however, they are not further disclosed in the text of the regulatory acts and cannot serve as an effective tool of protection against discrimination in court. A big omission is the lack of a comprehensive anti-discrimination law in the Republic of Belarus, as well as the absence of a special public agency to combat discrimination. As a result, there is no case law on the protection of the rights of victims of discrimination. Discrimination is very rarely referred to during trials, and, when hearing this kind of cases, the courts have shown little interest and the lack of specialized training.

Recommended questions:

1) Is the Government planning to adopt a comprehensive anti-discrimination law and to establish a specialized public body to ensure the observance of this law?
2) Please describe the existing anti-discrimination policy measures for vulnerable groups (Roma, LGBT, gender). What are the protection mechanisms available to victims of discrimination?
3) Has the specific legislation been developed, covering various types of discrimination and including mechanisms to protect the rights of victims of discrimination?
4) Is a court action an effective remedy to protect the rights of victims of discrimination? Please provide the court statistics on the protection from discrimination.