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Report of the Special Rapporteur on the situation of human rights in Belarus, Adrian Severin

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Summary

The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by Commission on Human Rights resolution 2004/14 and extended by resolution 2005/13. In its decision 1/102 of 30 June 2006 the Human Rights Council requested the special procedures to continue with the implementation of their mandates. Among other things the Commission requested the Special Rapporteur to establish direct contacts with the Government and with the people of Belarus, with a view to examining the situation of human rights in Belarus.

The Special Rapporteur regrets that the Government of Belarus, in 2006 as in 2004 and 2005, has not responded favourably to his request to visit the country and has in general not cooperated with him in the fulfilment of his mandate. Therefore, the report is based on the Special Rapporteur's mission to the Russian Federation in early 2006 as well as discussions and consultations held in Geneva, Strasbourg and Brussels with representatives of permanent missions and non-governmental organizations, the United Nations and specialized agencies, the Organization for Security and Cooperation in Europe, and the Council of Europe. It is also based on media reports and various documentary sources. It covers the period from September to December 2006 and makes reference to the Special Rapporteur's oral presentation to the Human Rights Council which covered the period from January to August 2006.

In section IV, the Special Rapporteur describes the situation of civil, political, economic, social and cultural rights in Belarus, which has steadily deteriorated in 2006. In the last section, the Special Rapporteur addresses a number of issues which along the years have been the subject of allegations formulated not only by Belarus but also by several members of the Commission on Human Rights and later by members of the Human Rights Council, in particular the political motivation of the Special Rapporteur's mandate and of his assessments.

The conclusions and recommendations contained in the Special Rapporteur's last report (E/CN.4/2006/36) continue to be valid and should be considered an integral part of the present report. The Special Rapporteur firmly believes that the first responsibility for improving the dramatic situation of human rights in Belarus lies with the country's authorities. Therefore, while bearing in mind that all the recommendations addressed to the Belarusian authorities in his 2006 report were ignored, the Special Rapporteur stresses that they remain valid and must be reiterated even if there is no indication that this time they might be accepted and enhanced.

Among other things, the Special Rapporteur calls once again on the international community to support civil society and democratic forces in Belarus; asks the Human Rights Council to request the Office of the High Commissioner for Human Rights to immediately establish a group of legal experts to investigate the disappearance and murders of several politicians and journalists and to join the efforts of other international organizations to organize an international conference on the situation of human rights in Belarus; and calls for the establishment of an international fund for the promotion of human rights in Belarus.

The Special Rapporteur reiterates his recommendation to the Human Rights Council to extend the Belarus mandate not only in time, but also in scope and means, and calls for enhanced cooperation between regional organizations and the United Nations, and in particular between the Human Rights Council and the Office of the High Commissioner for Human Rights.

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I. INTRODUCTION

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by Commission on Human Rights resolution 2004/14 and extended by resolution 2005/13. In its decision 1/102 of 30 June 2006 the Human Rights Council requested the special procedures to continue with the implementation of their mandates. At its second session, in October 2006, the Human Rights Council, in decision 2/102, recalled its decision 1/102. The Commission requested the Special Rapporteur to establish direct contacts with the Government and with the people of Belarus, with a view to examining the situation of human rights in Belarus and following any progress made towards the elaboration of a programme on human rights education for all sectors of society, in particular law enforcement, the judiciary, prison officials and civil society, and to report to the Commission at its sixty-second session.

2. The Special Rapporteur regrets that the Government of Belarus, in 2006 as in 2004 and 2005, has not responded favourably to his request to visit the country and has in general not cooperated with him in the fulfilment of his mandate. The Special Rapporteur's latest request was sent on 25 October 2006 and has not been answered. Therefore, the present report is based on the Special Rapporteur's mission to the Russian Federation in early 2006 as well as discussions and consultations held in Geneva, Strasbourg, France, and Brussels with representatives of Permanent missions and non-governmental organizations (NGOs), the United Nations and specialized agencies, the Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe. It is also based on media reports and various documentary sources. It covers the period from September to December 2006 and makes reference to the Special Rapporteur's oral presentation to the Human Rights Council which covered the period from January to August 2006.

3. The Special Rapporteur wishes to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the professionalism and dedication of the staff assigned to service his mandate.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. As he said in his oral presentation before the Human Rights Council, the Special Rapporteur was invited to Moscow in January 2006. He took the opportunity to present the main findings of his report, (E/CN.4/2006/36), conduct consultations with Russian officials and NGOs, and reiterate his readiness to take into consideration the views of the Belarus authorities should he be authorized to conduct a visit to Belarus.

5. In April 2006, the Special Rapporteur met with the High Commissioner and held consultations on the human rights situation in Belarus with a number of permanent missions and NGOs in Geneva. He exchanged views on one of the recommendations in his last report: to organize an international conference on the situation of human rights in Belarus, which would provide a forum to discuss possible ways to improve the human rights situation in the country and prepare the ground for an open-ended national round table on the situation of human rights in Belarus. The OSCE and the Council of Europe have agreed in principle, the latter being willing to co-organize the conference.

6. On 27 September 2006, the Special Rapporteur addressed the second session of the Human Rights Council where he gave an update on the situation of basic freedoms and human rights in Belarus, as well as its conclusions and recommendations. His report was criticized by certain countries for a lack of impartiality and objectivity and for being politicized. Others regretted the lack of cooperation of the Government of Belarus with the Special Rapporteur and commended his work.

7. Furthermore, the Special Rapporteur gathered information from diverse sources such as NGOs (the International Helsinki Federation for Human Rights, Amnesty International, Human Rights Watch, the International League for Human Rights, the Human Rights Institute, the East European Democratic Centre and others), regional organizations (OSCE Council of Europe), United Nations bodies (United Nations Development Programme (UNDP) and the United Nations Country Team in Minsk), specialized agencies (International Labour Organization (ILO)) and the media.

8. In addition to the 11 communications sent by various special procedures to the Government of Belarus since January 2006 mentioned by the Special Rapporteur in his presentation before the Human Rights Council, three others have been issued:

- On 16 August 2006, concern was expressed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Belarus that the sentences imposed on four human rights defenders might have been in connection with their activities in defence of human rights, in particular their participation in election-monitoring activities in Belarus;

- On 23 August 2006, concern was expressed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression at the sentencing of Alyaksandr Kazulin, leader of the Belarusian Socialist Democratic Party and former presidential candidate, to 5½ years' imprisonment for "hooliganism" and "organization of group activities that breach public order or active participation in similar activities". A reply from the Government was received on 8 December;

- On 23 November 2006, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Belarus expressed concern at the detention of seven activists who worked to promote the human rights of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus, and at the cancellation of the International LGBT Conference they had organized.

III. THE APPLICABLE HUMAN RIGHTS LEGAL FRAMEWORK

9. Belarus is a Member of the United Nations and has ratified the Charter, which contains provisions relating to human rights, as well as six of the seven major human rights treaties (see E/CN.4/2006/36). The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict entered into force for Belarus on 28 February 2006.

IV. THE SITUATION OF THE BASIC FREEDOMS AND HUMAN RIGHTS

A. Civil and political rights; mechanisms of protection

10. Systematic violations of civil and political rights and the deprivation of Belarusian citizens' right to effectively take part in the conduct of public affairs continue to be observed. Human rights protection mechanisms remain extremely weak, and there is no national human rights institution. The judicial system is still subservient to the executive branch and there is no genuine independent legislative branch.

11. Presidential elections on 19 March 2006, in which incumbent President Lukashenka claimed victory with over 80 per cent of the vote, were said not to comply with standards for democratic elections. OSCE and the European Parliament stated publicly that the election failed to meet international electoral standards because of arbitrary use of State power, widespread detentions, and disregard for the basic rights of freedom of assembly, association and expression. The European Parliament ad hoc delegation for the monitoring of presidential elections in Belarus stated that Alexander Lukashenka could not be recognized as the legitimate President of Belarus, as the elections were not free, fair or democratic, and called for a rerun of the elections, as well as for an extension of European Union sanctions against Belarus. In April 2006, the EU Council extended a visa ban on 31 officials from Belarus, including President Lukashenka. On 18 May, the Council also applied an asset freeze to these individuals. Nevertheless, on 21 November, the European Commissioner for External Relations and European Neighbourhood Policy issued a document setting out what the EU could bring to Belarus, were Belarus to engage in democratization and respect for human rights and the rule of law.

12. The Special Rapporteur issued three press statements in March 2006 condemning the escalation of human rights violations in Belarus and requesting the release of imprisoned political opponents. He strongly condemned the escalation of human rights violations committed by the Government against the independent press, opposition candidates and their supporters and human rights defenders ahead of the presidential election in Belarus, and urged the Government to promptly stop its campaign of aggression against human rights defenders, particularly the Belarusian Helsinki Committee and its members.

Administration of justice and law enforcement, the death penalty, disappearances and summary executions

13. Since his last report, the Special Rapporteur has remained concerned that Belarus is the last country in Europe to apply the death penalty. The situation in the country is still characterized by harsh conditions of pretrial detention, the practice of torture and other inhuman treatment, and excessive use of force by the police.

14. Furthermore, it is alleged that judges virtually never refer to the Constitution or international treaties when they hand down rulings and that the decisions of the Constitutional Court are often ignored. Trials are often held behind closed doors without adequate justification, and representatives of human rights organizations are denied access to courts to monitor hearings. Punishments are often totally disproportionate. The right to appeal is limited as the Supreme Court acts in many cases as the court of first instance, leaving no possibility for appeal.

Before and after the presidential elections, over 150 people were reportedly summarily put on trial without access to a defence lawyer. Concerns were expressed regarding respect for their right to a fair trial.

Freedom of opinion and expression

15. The right to freedom of expression guaranteed by article 33 of the Constitution in practice faces numerous limitations. Several articles of the Belarusian Criminal Code are used by the authorities to suppress the lawful exercise of the right to freedom of expression, including articles 367 (defamation of the President), 368 (insult to the President) and 369 (insult to a government official). In August 2005, Presidential Decree No. 382 imposed a requirement for official registration of "public discussion" events (workshops, seminars) organized with foreign support. In late 2005, the Belarusian parliament adopted amendments to the Belarusian Criminal Code and the Code of Criminal Procedure increasing penalties for "actions aimed against a person and public security", which came into force on 1 January 2006. The vague wording of the amendments paves the way for authorities to use their discretion for a broad, abusive interpretation. A penalty was created for "discrediting Belarus". "Discrediting" in this context means "the fraudulent representation of the political, economic, social, military or international situation of the Republic of Belarus, the legal status of its citizens or its government agencies". This would be likely to prevent Belarusian human rights defenders from communicating with United Nations special procedures.

16. The Special Rapporteur was informed of several cases in which freedom of opinion and expression were allegedly violated:

- On 10 May 2006, Artur Finkevich, a youth activist, was sentenced to 2 years of restricted liberty for writing political graffiti stating "We want a new President" and "Enough is enough!";

- On 16 June 2006, Nikolay Razumov was sentenced to 3 years in prison for releasing the information that President Lukashenka had been involved in the involuntary disappearances and deaths of Yury Zakharenko, Viktor Gonchar, Anatoly Krasovsky, Dmitry Zavadsky and Gennady Karpenko;

- On 23 October 2006, Katsiaryna Sadouskaya, a human rights defender, was sentenced to 2 years in a prison colony for alleged insults and threats (articles 391 and 389 of the Criminal Code). A letter that had never been sent was reportedly found in her home, calling for a psychiatric examination of President Lukashenka and a boycott of the March presidential elections and accusing the Russian secret services of supporting "the Belarusian dictator".

Freedom of the media

17. Freedom of the media is guaranteed by the Law on the Media, but several restrictions are imposed on this fundamental right. In 2006, the index regarding freedom of the media established by Reporters without Borders ranked Belarus 151st out of 168 countries. It is alleged that the Government of Belarus retains control of the broadcast media, printing plants and newspaper distribution networks using its monopoly to limit public access to information.

18. In October 2006, the rector of the Brest State University, Miachyslau Chasnouski, refused to inform the correspondent of the independent newspaper *Brestskiy kurier* about the increase of the education fees. The Baranavichy housing company refused to answer a written inquiry from non-State newspaper *Index-press* on the grounds that the company cooperated only with State publications.

19. Several months before the 2006 presidential election, 14 pro-opposition and independent newspapers including *Narodnaya Volya* and *Nasha Niva*, were denied distribution services by the national postal service (Belposhta*)* and by the State monopoly, Belsayuzdruk, which operates the only chain of news-stands and newspaper kiosks in Belarus. As of November 2006, only three non-State newspapers reportedly had access to the nationwide distribution system. Fearing problems with authorities, printing houses often refuse to print independent newspapers and magazines, or censor them. On 16 November 2006, the Belarusian Ministry of Information issued an official warning to *Nasha Niva* as the newspaper had failed to comply with the provisions of the Belarusian Law on the Press and Other Mass Media to communicate the address of its editorial offices. The only Belarusian-language independent newspaper has been facing enormous difficulties and had to change its legal addresses for the fourth time in 2006; as soon as the newspaper had moved to the new premises and communicated the new address to the Information Ministry and the Justice Department of the Minsk City Executive Committee, the landlords hasted to revoke the lease.

20. Accredited Moscow journalists of the newspapers *Moskovskiy Komsomolets* and *Kommersant* were not allowed by the authorities to cover the work of the Commonwealth of Independent States summit that took place on 28 November in Minsk. It is believed that this was in retaliation for an article critical of relatives of President Lukashenka published in *Moskovskiy Komsomolets*.

Freedom of assembly and association and the right to participate in the conduct of public affairs

21. These rights are protected under article 36 of the Constitution. However, the law "On mass events" restricts the organization of demonstrations and allows the repression of unauthorized private meeting. Several administrative requirements also hamper the exercise of freedom of association. All NGOs and associations, including human rights organizations and trade unions must register, and receive official approval to operate. Organizations can be closed down after receiving two successive "warnings" from the authorities for the breach of even minor administrative rules. Law No. 213-3 of 26 June 2003 allows the courts to close down an organization for one single violation of the legislation on public meetings. For instance, in 2003, courts issued 810 written warnings to NGOs and 51 NGOs were shut down at the initiative of the Ministry of Justice.

22. In this regard, the Belarusian Helsinki Committee (BHC), the only remaining registered human rights NGO, has reportedly been the main target of the authorities. Charges were brought against BHC for financial reasons and on the basis of foreign funding. In 2004, the Minsk Economic Court confirmed that the activities carried out by BHC were lawful and complied with all the regulations and procedures: the BHC projects, supported by the European Commission, were approved by the Government and registered with the Economics Ministry. However,

despite the fact that this matter is *res judicata* and a final decision has not been rendered, the first deputy chair of the Supreme Economic Court has filed a complaint against the court decision. In 2005, the Ministry of Justice issued a warning to BHC: should BHC receive another similar reprimand, it could be ordered to close down by the Ministry of Justice which must first apply to the courts. In response to the warning, and in order to avoid being liquidated, BHC dissolved its regional offices as legal entities but still has representatives who carry out activities in the region. In late December 2005, the Supreme Economic Court reversed the decision of the Minsk Economic Court. On 24 May 2006, the Belarusian Ministry of Justice asked the Supreme Court to order BHC to suspend its activities. The Special Rapporteur was informed that on 5 December 2006 court bailiffs confiscated the Belarusian Helsinki Committee's property, including a computer, a fax machine and other office items. The human rights group is accused of not having paid tax on financial aid received under the European Union TACIS programme, despite the fact that, according to a Belarusian government decision, such aid is tax-exempt.

23. Prior to and after the presidential election held on 19 March 2006, there were several reports that independent organizations and the political opposition had been persecuted by the authorities. On 29 March, seven special procedures mandate holders - the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in Belarus - issued a press release expressing concern at the large number of violations of the rights to freedom of expression, freedom of association, a fair trial, physical and mental integrity and to liberty.

24. In a press release on 2 May 2006, the Special Rapporteur expressed grave concern over the detention of opposition leaders Aleksandr Milinkevich, Vintsuk Vyachorka, Aleksandr Buchvostau, and Sergei Kalyakin, who were arrested in Minsk on 27 April and sentenced to 15 days of imprisonment on charges of organizing and participating in an unauthorized protest rally, following their participation in a march to protest the Government's management of the Chernobyl nuclear accident of 1986. In this regard, he also joined an urgent appeal sent to the Government by the Working Group on Arbitrary Detention and the Special Rapporteur on freedom of opinion and expression. It is worth mentioning that in October the European Parliament awarded the 2006 Sakharov Prize for Freedom of Thought to Mr. Milinkievich in recognition of his personal efforts for greater democratic freedom and human rights in Belarus.

25. On 13 July 2006, Alyaksandr Kazulin, leader of the Belarusian Socialist Democratic party Narodnaya Hramada and former presidential candidate, was sentenced to 5½ years' imprisonment for "hooliganism" and "organization of group activities that breach public order or active participation in similar activities". The OSCE Chairman-in-Office, Belgian Foreign Minister Karel De Gucht, expressed his deep concern that Belarus had tried to make an example of Mr. Kozulin by imposing such a harsh sentence. On 19 September, the Minsk City Court rejected the appeal and ruled that the July decision of the district court was justified. On 20 October, Mr. Kazulin started a hunger strike in order to protest against the lawlessness in

Belarus and to draw the attention of the United Nations Security Council to the situation in Belarus. On 8 December, the Special Rapporteur urged the Belarus authorities to assure Mr. Kazulin's access to proper health care and to grant family members, his legal representatives and independent monitors free access to Mr. Kazulin. The Special Rapporteur was informed that on 12 December Mr. Kazulin interrupted his hunger strike on its fifty-fourth day and that, according to the prison authorities, his wife and lawyer would be granted access to him.

26. In August, four activists of the organization Partnerstva were sentenced to different terms of imprisonment under article 193.1 of the Criminal Code: organization of or participation in the activities of an unregistered association, for their intention to observe the presidential elections in March 2006. Two of them received 6 month sentences and were released very soon thereafter, as they had already spent that time in custody. Mikalay Astreika was sentenced to 2 years, but on 17 November, his sentence was changed to a lighter one, "corrective labour", allowing him to live at home and work at a specified workplace. Part of his salary is remitted to the State. Timofey Dranchuk received a 1 year sentence and was released on parole on 26 December.

27. On 1 November 2006, Dzmitry Dashkevich, leader of the Young Front, was sentenced to 18 months' imprisonment on charges of "organizing the activity of an unregistered public movement". He had been detained since 15 September on suspicion of violation of article 193.1 of the Criminal Code.

28. On 3 November 2006, several Belarusian activists were obstructed or arrested by the authorities on their way to Kyiv where they were to take part in a regional conference of Belarusian opposition leaders in advance of local elections.

Freedom of religion

29. The situation regarding freedom of religion has not improved since the last report of the Special Rapporteur. The Belarusian Orthodox Church still benefits from privileges not enjoyed by other religious organizations. Despite protests from religious communities, it has been alleged that State textbooks continue to make false allegations aimed at discrediting religious minorities.

30. The 2002 law "On religion" contains particular restrictions on religious freedom for foreign citizens. For instance, only religious associations made up of at least 10 registered religious communities and including at least one active on the national territory for at least 20 years have the right to invite foreign citizens to conduct religious activities. The five registered Belarusian Krishna communities complained to the United Nations that they were unable to invite foreign citizens to conduct religious activities. In January 2006, Belarus rejected the finding by the Human Rights Committee that there had been a violation of the Krishna devotees' freedom of religion (see CCPR/C/84/D/1207/2003 of 23 August 2005). In August, the State Committee for Religious Affairs denied the Full Gospel Union permission to invite a Nigerian pastor to preach in three of its churches on the grounds that the visit was "not expedient".

31. In 2006, the work permit of United States citizen Stewart Vinograd, pastor of the Minsk-based Messianic Jewish congregation, was not renewed. Twelve Polish Catholic priests and nuns were also informed that their visas would not be renewed at the end of the year.

32. In October, parishioners of the New Life church rallied to protest its possible closure by authorities who ordered the congregation to vacate the building it had bought and sell it to the Government at a nominal price. The parishioners started a hunger strike.

33. The same month, the Baranovichi Municipal Court sentenced the Pentecostal Church to pay fines for conducting religious activities without State permission.

34. On 1 December 2006, Catholic parishioners of Our Lady of Vostraja Brama started a hunger strike demanding that the Executive Committee of Grodno overturn the decade-long refusal to allow them to build a new church. On 6 December, their demand was agreed to by the City Council.

B. Economic and social rights

35. Owing to the continuing refusal of the Government to allow the Special Rapporteur to visit Belarus, this part of the report is based on documentary sources. The last (fourth) periodic report submitted to the Committee on Economic, Social and Cultural Rights (CCPR/C/84/Add.4) dates back to 1996, the Government of Belarus having failed to submit its fifth periodic report, due in November 2001. The UNDP Human Development Report 2006 ranks Belarus 67th out of 177 countries, with a Human Development Index of 0.794 (2004).

Right to work and workers' rights

36. Trade unions' freedoms are severely restricted in Belarus. At its 297th session, in November 2006, the Governing Body of the International Labour Organization discussed the type of measures that could be taken to implement the recommendations of the 2004 Commission of Inquiry regarding trade union rights in Belarus. The Government of Belarus has recently engaged in discussions with the Governing Body of the ILO. It was also requested to cooperate with the ILO to ensure that the planned legislative changes are in line with the ILO conventions on freedom of association and the right to collective bargaining.

37. In October 2006, the leader of the Belarusian Trade Union of the Radio-electronic Trade was detained by border guards for two hours on his way to a Lithuanian health centre. He was not charged with any wrongdoing, but by the time he was released he had missed the bus.

38. On 21 November, the directorate of bus park No. 1 of Homel did not extend the contract of the head of the independent trade union. The deputy director of the bus depot stated that this person could not work for the company because he was a member of an independent trade union.

39. Trade unions, like some NGOs and independent newspapers, face difficulties in finding premises and therefore cannot secure the legal address required for registration. In October 2006, the administration of the Belnaftakhim company refused to provide an office to the main branch of the Free Trade Union of Belarus. As a result, the trade union could not register.

Right to the highest attainable standard of physical and mental health

40. Since the last report of the Special Rapporteur, the total expenditure on health in Belarus has dropped. According to the World Health Organization (WHO), the total 2006 expenditure on health represented 5.5 per cent of the gross domestic product (GDP), whereas it was 6.4 per cent in 2002.

Right to education

41. Likewise, expenditures on education have decreased. In 2004, public expenditure on education was 5.8 per cent of GDP, whereas they were 6.0 per cent in 2003.

42. Following the issuance of a circular, "On measures of non-admittance of any pupils and students involved in unlawful political activities" by the Ministry of Education in May 2005, several students were expelled from educational institutions. For example, on 30 October 2006, Siarhei Huminski, a Young Front activist, was expelled from Svetlahorsk State Industrial Technical College for violating regulations and missing classes; he had been threatened with expulsion for his political activity in September by the head of the college. On 29 November, Alexander Stranchuk and Dzianis Sarokin, active participants in the election campaign, were expelled from the agro-ecology faculty of Hoerki academy.

Women's rights

43. The Special Rapporteur remains concerned about the lack of equality between men and women in the labour sector, mainly with regard to political life and decision-making.

44. Domestic violence is also an issue of concern, as it reportedly affects 30 per cent of women in Belarus. Reportedly, women usually escape domestic violence by divorcing, thus explaining the high divorce rate in Belarus. It has been acknowledged by some NGOs that domestic violence is a push factor for trafficking, as women seek to escape their home situation and feel that they have nothing to lose by emigrating.

Resources and sustainability of the system

45. Belarus ranks 151 out of 163 countries in Transparency International's 2006 Corruption Perceptions Index, with a corruption perception index of 2.1 out of 10 (0 indicating the highest level of perceived corruption).

46. On the basis of the available data, the Special Rapporteur concludes that the budgetary expenditures of Belarus (especially those related to the internal security forces and to the social safety net policies) cannot possibly be supported by the performance of the country's highly centralized and relatively closed economy. A thorough international investigation into the origin of the financial resources funding these expenditures is therefore necessary. That origin may very well be of an illicit nature.

47. After the issuance of the Special Rapporteur's last report on the situation of human rights in Belarus in January 2006 and its presentation to the Human Rights Council in September 2006,

various sources, such as the Report on Belarus, the Last Dictatorship in Europe, including Arms Sales and Leadership Assets, issued by the United States Government on 16 March 2006, and the international media (*International Herald Tribune*, Mark Douglas, "Choke off Belarus's deadly arms trade", 9 October 2006) made public data concerning the possible involvement of Belarus in international weapons trafficking, thus confirming the Special Rapporteur's fears on that issue.

48. On the other hand, after the presentation of the previous report and very much in line with its recommendations, the Russian Federation announced that it would eliminate the price subsidies for energy exported to Belarus (including natural gas). If market prices for energy are going to be applied in the trade relations between Belarus and Russia, it is very likely that the authorities in Minsk will no longer have the financial means to continue to commit human rights violations and limit civil liberties by means of a discriminatory social protection policy. However, a number of representatives of the Belarus political opposition and civil society have claimed that the new Russian trade policy towards their country has as its aim to reduce, or even put an end to the economic and, eventually, political independence of Belarus.

C. Cultural rights and national minorities

49. Since the last report of the Special Rapporteur, the Union of Poles in Belarus (UPB) still faces difficulties with the authorities. In late October 2006, Belarusian customs officials claimed that they had found drugs in a car carrying Angelica Borys, the ousted leader of the UPB. She and her supporters say that this accusation is politically motivated.

50. The Roma minority (about 70,000 people) also faces discrimination and exclusion. In particular, Roma often are victims of police violence, lack the identity documents they need to access fundamental rights, live in isolated settlements and have limited access to education. Roma children face difficulties in enrolling in school. Reportedly, 50 per cent of the Roma population is illiterate, 85 per cent do not complete secondary education and 98 per cent are unemployed.

V. CONCLUSIONS AND RECOMMENDATIONS

51. **Before drawing any conclusion on the substance of the matter, the Special Rapporteur is obliged to address a number of issues which along the years have been the subject of allegations formulated not only by Belarus but also by several members of the Commission on Human Rights and later by members of the Human Rights Council, namely: (a) that the Special Rapporteur's mandate and his assessments are politically motivated; (b) that the Special Rapporteur's recommendations have an unacceptably political character which aim at regime change; (c) that the Special Rapporteur's approach is subjective and biased; and (d) that the Special Rapporteur has exceeded the limits of the mandate entrusted to him by the Commission/Council. On those issues the Special Rapporteur states the following:**

(a) Individual and collective human rights are about power-sharing between the State and the citizens as well as between the political leadership and the society. That means that everything related to the protection and promotion of human rights is political.

On the other hand, there is a clear and indestructible interrelationship between respect for human rights, the effectiveness of democratic mechanisms and the functioning of the rule of law. The nature of recognized and protected human rights, as well as the instruments for their protection are different in different countries in accordance with the differences between those countries' political regimes. While one should admit that respect for human rights might vary from one country or region to another as a result of variations in local cultural, social and historical backgrounds, one must admit that there is a minimal set of fundamental values having a universal character encompassing basic human rights which must be enhanced, respected and protected everywhere in the world. The violation of these basic universal rights is a matter of legitimate concern for the whole international community and legitimates the intervention of the whole international community. Such an intervention, which should take place in compliance with international law, has not only a moral basis but also a pragmatic and political explanation, since lack of respect for human rights generates social tensions and ultimately national and international insecurity;

(b) Whenever an incompatibility exists between the nature of a certain political regime and respect for universally recognized human rights, a change in the political behaviour of the respective regime must be recommended. The alternative would be the acceptance of the human rights violations and of their consequences in the security field. What must be stressed is that such a change should be foreseen and promoted only in a transparent way, with non-violent means and preferably within a multilateral framework. This is precisely what the Commission on Human Rights was doing by putting in place the country mandates;

(c) Since violations of human rights affect at the same time the real lives of human beings and international security, it is of paramount importance for everyone not only to assess the situation, but to act to change it for the better. To this end the mandate of a special rapporteur has no limits, any rapporteur being obliged to look at every single issue which might directly or indirectly touch upon the capacity to violate or, on the contrary, to restore respect for human rights;

(d) In the accomplishment of his mandate, the Special Rapporteur has encountered, for the third consecutive year, an absolute refusal to cooperate on the part of the Government of Belarus. All efforts made to engage in constructive dialogue were fruitless. The Special Rapporteur has consistently informed the Government of Belarus of all of his findings based on information received from different sources, requested their official assessment, and made it clear that silence would be interpreted as a confirmation of accuracy. The absence of any reaction implies that the Government of Belarus accepts the facts contained in this report.

52. **The decision to establish a special procedure to monitor the situation of human rights in Belarus, taken in accordance with United Nations rules, must be accepted and enforced by all States Members of the United Nations. The systematic obstruction of United Nations special procedures in the fulfilment of their mandates violates the obligations which the Republic of Belarus has accepted as a Member State. The persistent**

violation by Belarus of its obligations has been reiterated in resolution 61/175 of the General Assembly, in which the Assembly expressed deep concern about the failure of the Government of Belarus to cooperate fully with all the mechanisms of the Human Rights Council, and the failure to meet its commitments to hold free and fair elections. The Assembly insisted that the Government of Belarus cooperate fully with all the mechanisms of the Human Rights Council.

53. **The conclusions reached by the Special Rapporteur in his second report (E/CN.4/2006/36) were fully confirmed during the third term of his mandate. The conclusions and recommendations contained in that report continue to be valid and should be considered an integral part of the present report. The Special Rapporteur firmly believes that the first responsibility for improving the dramatic situation of human rights in Belarus lies with the country's authorities. Therefore, while bearing in mind that all the recommendations addressed to the Belarusian authorities in his 2006 report were ignored, the Special Rapporteur stresses that they remain valid and must be reiterated even if there is no indication that this time they might be accepted and enhanced.**

54. **In parallel with the execution of the country mandate regarding Belarus, at least seven other special procedures mandate-holders - the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the torture and other cruel, inhuman and degrading treatment or punishment, the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention - made assessments identical to those of the Special Rapporteur on the situation of human rights in Belarus and, concerned by their findings, addressed several urgent appeals to the Government of Belarus. Most of those appeals received no reply, and the few answers that were given were superficial. Thus, all major information having been thoroughly checked, all the concerned special procedures have converged towards the same opinion on the situation of human rights in Belarus.**

55. **At the same time, the opinions and assessments of the Special Rapporteur on the situation of human rights in Belarus were confirmed and fully shared by the most important European or Euro-Atlantic organizations, namely the OSCE, the OSCE Parliamentary Assembly, the Council of Europe, the Parliamentary Assembly of the Council of Europe, the European Council, the European Parliament, the European Commission and the NATO Parliamentary Assembly. It is impossible to believe that all these people are wrong or biased.**

56. **There are few States that support the current regime in Belarus. Their support could be explained by ideological or geopolitical reasons. Without such support the capacity of the Belarusian regime to continue its human rights violations would be drastically limited. Consequently, one may conclude that, to a large extent, respect for human rights in Belarus is a hostage of geopolitical controversies and that in this context, without the support of the Russian Federation the efforts of the international community to promote respect for human rights in Belarus will enjoy very limited success.**

57. **During 2006, the situation of human rights in Belarus constantly deteriorated. Over the last 1½ years, two negative developments worth mentioning were added to the Special Rapporteur's assessment: (a) an official State ideology essentially based on the former Soviet concepts was imposed to the citizens; (b) the ethnocultural diversity of the society, in fact unproblematic, was used as a means of dividing the people and thus diminished their capacity to resist State oppression. Although resistance against the political regime is steadily increasing (the intensity of protest rallies is developing very fast for the generally very calm character of the Belarusian society), important parts of the population appear politically passive and limit themselves to silent opposition. One could very well say that a large number of citizens patiently accept the current economic, social and political realities. An important explanation is the social safety net which is provided by the State to the obedient citizens. Since the unreformed economy of the country could not possibly produce enough financial resources to fund such a protectionist-paternalist social policy, the appropriate international institutions should investigate to determine if the funds thus used are the result of illicit international activities.**

58. **The Government of Belarus did not consider any of the recommendations made by the Special Rapporteur (E/CN.4/2006/36, para. 95). It continued to ignore the recommendations made by other special procedures, such as the Working Group on Arbitrary Detention (see E/CN.4/2005/6/Add.3), or by treaty bodies such as the Human Rights Committee. In fact, the political system of Belarus seems to be incompatible with the concept of human rights as enshrined in the Charter of the United Nations and in the international human rights instruments to which Belarus remains a party. Consequently, the Human Rights Council should either call for the democratization of the political regime and a change in the political behaviour of the Government or admit that Belarus' human rights record cannot be improved because the human rights violations are consistent with the political nature of the regime.**

59. **The present report demonstrates that Belarus does not respect its obligations under the international human rights instruments to which it has adhered. Therefore, based on Chapter II of the Charter, the Special Rapporteur reiterates his recommendation that the Security Council should adopt appropriate measures to ensure the respect by the Republic of Belarus of its legal obligations. The Republic of Belarus has also not complied with reporting obligations under the treaties it has ratified. Thus, outstanding reports were not forwarded respectively to the Committee on Economic, Social and Cultural Rights (due in 1999 and 2004); to the Human Rights Committee (due in 2001); to the Committee against Torture (due in 2000 and 2004); to the Committee on the Elimination of Discrimination against Women (due in September 2006); and to the Committee on the Rights of the Child under the Optional Protocol on the sale of children, child prostitution and child pornography (due in 2004).**

60. **As mentioned in his previous report, the Belarusian political opposition and civil society cooperated actively with the Special Rapporteur. The recommendations addressed to the Belarusian civil society and democratic forces were largely followed: democratic forces managed to unite themselves, not only with the objective of participating in the elections, but also to develop human rights and a democratic culture in Belarus and**

empower Belarusian society to defend these values. They should be encouraged and supported. However, recent developments show that this beneficial unity might be weakened by internal disputes and rivalries fuelled by, among other things, the frustrations induced by the general lack of progress in the democratization of the country. The international community - and especially the Human Rights Council - should call for the unity of democratic forces in Belarus to be maintained for the sake of the effectiveness of the efforts dedicated to the promotion and defence of human rights. While more political pluralism could be necessary within the democratic contest for political power, more unity is required as long as the actual priority is the defence of basic human rights, civil freedoms and democratic principles.

61. **The Special Rapporteur notes that many of his recommendations addressed to the international community were not implemented, even though some positive steps are to be acknowledged. He would like once again to commend the European Union's efforts to promote human rights in Belarus, especially through the measures set out in the non-paper issued by the European Commissioner for External Relations and European Neighbourhood Policy on 21 November 2006. The Parliamentary Assemblies of the Council of Europe, OSCE, NATO and the European Parliament remained attentive to the situation of human rights in Belarus. The Special Rapporteur also wishes to highlight the support given to his mandate by Poland, the Czech Republic, Latvia, Lithuania and Estonia, and the important contribution of international NGOs to the promotion of human rights in Belarus. He considers nonetheless that these efforts are insufficient, and calls upon the international community to take concrete action towards the fulfilment of all recommendations addressed to it.**

62. **Under the given circumstances, the mobilization and the action of the international community are of paramount importance for the destiny of Belarus and of its people. Therefore, at least the following recommendations addressed to the international community are to be reiterated:**

(a) The Human Rights Council should request the Office of the United Nations High Commissioner for Human Rights to immediately establish a group of legal experts to investigate whether senior officials of the Government of Belarus are responsible for the disappearance and murders of several politicians and journalists and make concrete proposals for their prosecution, in order to bring to an end the impunity enjoyed by those involved in such crimes;

(b) An international fund for the promotion of human rights in Belarus should be established. Such a fund could finance in a coherent way comprehensive programmes for the development of the civil society, for democratic public education and for assistance to the human rights defenders who have been politically harassed, oppressed or prosecuted;

(c) The Human Rights Council should request the Office of the High Commissioner for Human Rights to join the efforts of other international organizations to organize an international conference on the situation of human rights in

Belarus, involving the European Union, the Council of Europe, the OSCE, the Inter-Parliamentary Union and the Commonwealth of Independent States, as well as possibly the Government of Belarus and representatives of the civil society. The conference would provide a forum to discuss possible ways to improve the human rights situation in Belarus and prepare the ground for an open-ended national round table on the situation of human rights in Belarus, with the objective of defining a road map for the implementation of human rights reforms, as requested by the United Nations human rights special procedures and treaty bodies;

(d) The United Nations Secretary-General should adopt appropriate measures to investigate the apparent involvement of senior government officials in international organized crime and illegal arms sales, monitor the international financial cash flows of Belarus and, if necessary, freeze foreign bank accounts of those involved in illicit trafficking, and prosecute criminals;

(e) The Special Rapporteur welcomes the recommendation of the Parliamentary Assembly of the Council of Europe that the European Convention on Human Rights be amended in such a way as to open it for signature by Belarus even before the country meets the standards for becoming a member of the Council. That would allow Belarusian citizens to bring cases of human rights violations committed in their country before the European Court of Human Rights.

63. **The Special Rapporteur would like to reiterate that Member States should be aware and should not ignore that present trading relations with Belarus do not grant a better quality of life to Belarusian citizens, but allow President Lukashenka's regime to remain in power by systematically violating human rights and threatening international security. Trade relations should be conditional upon the immediate adoption of democratic initiatives such as the organization of the proposed round table on the situation of human rights in Belarus. While the European Union and the United States of America should maintain travel restrictions for Belarusian officials, the Special Rapporteur recommends that all Member States, especially the Russian Federation and Ukraine, as neighbouring States, adopt similar measures. On the other hand, international travel for ordinary Belarusian citizens should be facilitated and a reduction of or even an exemption from visa fees would be much welcomed.**

64. **The mandate of the Special Rapporteur on the situation of human rights in Belarus gave a sign of international solidarity to Belarusian victims of human rights violations and to human rights defenders, further raised international awareness of the situation of human rights in Belarus, mobilized international support, and indicated clearly to Belarusian stakeholders what measures they are expected to take in order to ensure the compliance of Belarus with its international human rights and international law obligations as a dignified Member of the United Nations. Therefore, the Special Rapporteur reiterates his recommendation to the Human Rights Council to extend the mandate not only in time, but also in scope and means. This is the least the international democratic and civilized community can do to keep alive the hope that an improvement of the human rights record in Belarus is possible.**

65. **The United Nations bears a particular responsibility in supporting the implementation of the recommendations of special procedures. Member States should ensure that the ongoing reform of the human rights system translates that responsibility into concrete powers and adequate resources for the United Nations High Commissioner for Human Rights to enable her Office to act to provide stronger and more effective support for the special procedures. Cooperation between regional organizations and the United Nations, in particular the Human Rights Council and the Office of the High Commissioner, should be enhanced.**
