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BELARUS

Briefing for the UN Committee against Torture

Introduction

Amnesty International submits this briefing to the Committee against Torture in advance of the Committee's examination, in November 2000, of Belarus' third periodic report(1) on measures taken to implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.(2) The Committee against Torture's conclusions of its consideration of Belarus' previous (second) periodic report,(3) in 1992, reflected hopes, shared by many at the time, that the sweeping political changes which Belarus had undergone would create a new situation, both in law and in practice, "which should be in keeping with the provisions of the Convention so as to guarantee its full implementation in the territory of Belarus."(4) Unfortunately, these hopes have been far from fulfilled, causing the UN Human Rights Committee to conclude, in 1997, that "remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State Party's third periodic report in 1992."(5) In the particular case of torture and ill-treatment, the past few years have seen several cases of possible "disappearances", routine use of violence by police officers towards demonstrators and detainees, widespread application of the death penalty, and extremely poor prison conditions. All this is set against a background of general curtailment of the independence of judges, lawyers and the media, and the intimidation and harassment of opposition activists, victims or families of victims who complain against ill-treatment. Following an overview of the general human rights situation in Belarus, the briefing will focus on those issues relating to the implementation of the Convention against Torture which Amnesty International views with particular concern.

1. Comments of Other Intergovernmental Bodies

Amnesty International has not been alone in expressing concern about the human rights situation in Belarus in recent years. The Belarusian authorities have been criticized by bodies and mechanisms of the Council of Europe. In January 1999 the Parliamentary Assembly of the Council of Europe undertook a fact-finding mission to Belarus in order to assess the overall human rights situation in the country. The subsequent mission report commented, among other things, on the ill-treatment of detainees, stating: "Many instances of arbitrary detention and police violence have been reported. There does not seem to be independent, effective supervision of the police by prosecutors and judges. Opposition representatives said that the police are omnipresent and are often used against political opposition".(6)

A year later in January 2000 the Parliamentary Assembly of the Council of Europe discussed and adopted a particularly critical report of the overall human rights situation in Belarus. The

report, which was entitled *Situation in Belarus*, stated: "The Assembly expresses its profound concern that Belarus continues to fall seriously short of Council of Europe standards as regards pluralist democracy, the rule of law and human rights".(7) The report went on to state that: "The Assembly also condemns the persecution of opponents of the current regime, such as members of the 13th Soviet, which is the last legitimate parliamentary representation of Belarus, opposition parties and independent trade unions, journalists and participants in demonstrations and strikes. It expresses its profound concern at the disappearance of political opponents in Belarus".(8) The report stressed: "In these circumstances, the Assembly considers that there can be no change in the present situation regarding the suspension of special guest status and of the accession procedure".(9)

In 1997 the Human Rights Committee expressed concern about instances of physical abuse of detainees by police officers and the widespread existence of impunity, stating: "The Committee expresses its concern about numerous allegations of ill-treatment of persons by police and other law enforcement officials during peaceful demonstrations and on arrest and detention, and about the high number of cases in which police and other security officials resort to the use of weapons. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expresses concern that these phenomena may lead to impunity for members of the police and other security officials".(10) In its recommendations the Human Rights Committee stated: "The Committee recommends that, in order to combat impunity, steps be taken to ensure that all allegations of ill-treatment and unlawful use of weapons by security and police officials be promptly and impartially investigated by an independent body, that the perpetrators be prosecuted and punished, and that the victims be compensated".(11) Throughout this briefing many of the issues highlighted in this general overview of the human rights situation in Belarus will be returned to in greater detail.

Torture and Ill-treatment in Belarus

2. Possible "Disappearances": Failure to Investigate

Articles 12, 13 and 16 of the UN Convention against Torture require that each state shall ensure that there is a prompt and impartial investigation, whenever there is reasonable ground to believe an act of torture or other cruel, inhuman or degrading treatment has been committed. In the period 1999 to 2000 Amnesty International has expressed concern about the possible "disappearances" of several prominent figures in Belarus' opposition and an independent television cameraman. The organization considers a "disappearance" to have occurred whenever there are reasonable grounds to believe that a person has been apprehended by the authorities or their agents, and the authorities deny the victim is being held, thus concealing the victim's whereabouts and fate and thereby placing the victim outside the protection of the law. In May 1999 the former Minister of the Interior, Yuri Zakharenko, apparently "disappeared", leaving behind his wife and two daughters, while in September 1999 the chairman of the unofficial electoral commission, Viktor Gonchar, and a companion, Anatoly Krasovsky, apparently "disappeared", leaving behind several family members. In July 2000 the whereabouts of the Russian Public Television (ORT) cameraman, Dmitry Zavatsky, also became unknown. These possible "disappearances" occurred at key political moments and the Belarusian authorities have shown great reluctance to investigate the cases. Instead, they have accused Belarus' opposition of staging the "disappearances" for the purposes of seeking international attention or have stated that the individuals concerned have been sighted abroad. In its 1999 Human Rights Report the US Department of State also noted: "Although government authorities denied any involvement, there is no public evidence of concrete progress by government investigators to resolve the cases".(12)

Amnesty International considers incommunicado detention for anything but the briefest length of time as amounting to cruel, inhuman and degrading treatment under Article 16 of the Convention, even when not accompanied by further abuse. Prolonged incommunicado detention, certainly for months, amounts, in Amnesty International's view, to torture as defined in Article 1(1) of the Convention. This is especially true in cases where isolation from the outside world is total, and the very fact of the person being held in custody is denied by the authorities. The victims of torture in such cases would be not only those who "disappeared" but their families as well. The imprisonment of a family member in what are often cruel, inhuman and degrading conditions, their exposure to ill-treatment or possibly to torture, the uncertainty of their fate in cases where family members have "disappeared" are

causes of great suffering and hardship. Amnesty International is certainly not alone in reaching this conclusion. "Disappearances" constitute violations of the Convention against Torture as far as the rights of the "disappeared" persons are concerned. UN and regional bodies and mechanisms such as the Human Rights Committee(13) and the Inter-American Court of Human Rights(14) have in the past also determined that "disappearances" constitute torture or other cruel, inhuman or degrading treatment of the families of the "disappeared" as well. Thus the Special Rapporteur on Torture, Sir Nigel Rodley, recently concluded that "there is a trend towards recognizing that to make someone 'disappear' is a form of prohibited torture or ill-treatment, *clearly as regards the relatives of the 'disappeared' person*, and arguably in respect of the disappeared person him or herself" [emphasis added].(15) This "trend," should, in Amnesty International's view, be strengthened.

The families of Yury Zakharenko, Viktor Gonchar, Anatoly Krasovsky and Dmitry Zavadsky have been forced to endure numerous pressures as a result of their possible "disappearances" and in some instances they themselves have received anonymous threats. Members of the opposition who have spoken out in support of the men and their families and have demanded thorough and impartial investigations into the possible "disappearances" have also been intimidated by the Belarusian authorities.

The apparent "disappearances" of the individuals, referred to above, have caused considerable concern abroad, prompting a number of international bodies to take a position with regard to the allegations against the Belarusian authorities. A 1999 Report of the UN Working Group on Enforced or Involuntary Disappearances noted that it had requested information from the Belarusian authorities about the possible "disappearance" of Yury Zakharenko, stating: "One case was transmitted to the Government under the urgent action procedure. It concerns a former Minister for Internal Affairs who was very active in the presidential campaign of an opposition leader."(16) In August 2000 Amnesty International was informed by the Secretary of this UN Working Group that the cases of Viktor Gonchar and Anatoly Krasovsky had also been transmitted to the Belarusian government as urgent appeals.

In January 2000 a Parliamentary Assembly of the Council of Europe report, entitled *Situation in Belarus*, also expressed alarm at the allegations, stating: "It [Parliamentary Assembly] expresses its profound concern at the disappearance of political opponents in Belarus".(17) The Parliamentary Assembly urged the Belarusian authorities to "... clarify what has happened to the people who have disappeared and put an end to political persecution".(18) In commenting on the report *Situation in Belarus* drafted by the Political Affairs Committee of the Parliamentary Assembly, the Rapporteur of the Committee on Legal Affairs and Human Rights, Gunnar Jansson, stated in his concluding report: "From the above [report], it is clear that the human rights situation in Belarus is very bad. Especially worrying is the fact that the regime, not content with silencing its opponents by way of arrests and unfair trials, has even resorted to orchestrating 'disappearances'".(19) In May 2000 the Inter-Parliamentary Union (IPU) published a report of an IPU delegation visit to Belarus in November 1999. The delegation had raised the issue of the "disappearance" of Viktor Gonchar with the Belarusian Ministry of the Interior and had spoken with Viktor Gonchar's wife Zinaida Gonchar. In its report the IPU stated: "With regard to the case of Mr Gonchar, the delegation, noting with concern that the investigation has hitherto proved fruitless, insists on the state's duty to make every effort to shed light on Mr Gonchar's fate".(20)

(A) The case of Yury Zakharenko

Amnesty International has repeatedly expressed concern for the safety of opposition activist and former Minister of the Interior Yury Zakharenko, who failed to return home on the first day of the campaign of the unofficial presidential elections held in May 1999.

Yury Zakharenko is a senior figure in the opposition movement and was working closely with the former prime minister, Mikhail Chigir, in the unofficial presidential elections. He is married to Olga Zakharenko and the couple have 15-year-old and 23-year-old daughters, Julia and Elena Zakharenko. Yury Zakharenko's family have not heard from him since 7 May 1999, when he reportedly telephoned his daughter to say he was on his way home at about 8pm. His wife believes that he was arrested for his involvement in the unofficial presidential elections. In an interview on 10 May Olga Zakharenko reportedly stated: "During the last two weeks two cars would always follow him. Reliable people warned Zakharenko that someone wanted to kill him and he ought to be very careful. I also warned him. But he believed in the rule of law and he never agreed with absolute tyranny". She also reportedly added: "I don't hope for the best. I have no hope that he is alive. He has been murdered and his body will never be

found. This is an act by that criminal Lukashenka who hired the killers and got rid of his uncompromising opponent, Zakharenko". Olga Zakharenko has reportedly also been subjected to intimidation. She has stated that she has received anonymous telephone calls threatening her and her two daughters and warning her to leave the country.

A spokesperson for the Ministry of Internal Affairs is reported to have said in May that Yuri Zakharenko was not being held in Minsk, and that his whereabouts were unknown. In the light of the apparent unwillingness of the Belarusian authorities to investigate his possible "disappearance", members of the opposition set up their own commission to ascertain what had happened to Yuri Zakharenko and to pressure the authorities to conduct a thorough and impartial investigation. The head of the commission, the lawyer Oleg Volchek, reportedly stated at a press conference on 10 August 1999, at which Olga and Elena Zakharenko were present, that there was evidence that he had been detained on Zhykovsky Street in Minsk and forced into a car. The authorities have been reluctant to investigate the case further.

After founding the commission to look into Yuri Zakharenko's possible "disappearance" Oleg Volchek became an object of state attention. He was arrested and ill-treated by police officers during a peaceful march in Minsk on 21 July 1999, during which at least 50 other people were arrested by police officers. Amnesty International learned that he was allegedly beaten unconscious at a police station and detained until the next day. Although he made a number of complaints to the authorities about his ill-treatment, the authorities reportedly failed to investigate his allegations. He was subsequently charged under Article 201 (1) of the Belarusian Criminal Code with "*aggravated hooliganism*" and faced a possible prison sentence of up to one year, but when his case came to trial in late November a court in Minsk dismissed the case.

Amnesty International has called on the Belarusian authorities to initiate a thorough and impartial investigation into the possible "disappearance" of Yuri Zakharenko. If he is in police custody the organization has urged that he be protected from any further ill-treatment. The organization has also urged that he be given immediate access to his family and to legal representation as enshrined in international human rights standards⁽²¹⁾ and that any criminal charges against him are made public.

(B) The case of Viktor Gonchar and Anatoly Krasovsky

Amnesty International has also expressed serious concern for the safety of prominent opposition leader Viktor Gonchar and a companion Anatoly Krasovsky, who failed to return home on 16 September 1999. The two men had visited a sauna on Fabrichanaya Street in Minsk on the evening of 16 September and are believed to have attempted to leave in Anatoly Krasovsky's car at approximately 10.30pm. There are reports that traces of blood, broken pieces of Anatoly Krasovsky's car, skid marks and a damaged tree struck by a car were found on the ground near the sauna, from where the men may have been forcibly abducted. The IPU report of May 2000 stated that the former Belarusian Minister of the Interior, Yuri Sivakov, confirmed during the delegations's mission to Minsk in November 1999 that the glass splinters and blood were attributable to Viktor Gonchar but "there was no other reliable evidence: no trace of Mr Krasovsky's jeep had been found and no trace of the car crossing the border".⁽²²⁾ Since they went missing there has been no reliable information about the whereabouts of the men. Amnesty International learned that on 19 September 1999, three days after the men's possible "disappearance", Viktor Gonchar was due to give a key report to members of the former parliament on the political situation in the country.

Viktor Gonchar was chairman of the electoral commission before President Lukashenka dissolved parliament after the controversial referendum of November 1996 and he had a leading role organizing the unofficial presidential elections of May 1999. His companion, Anatoly Krasovsky, is reported to run a publishing business. Both men are married and at the time of their "disappearances" Viktor Gonchar had a 17-year-old son and Anatoly Krasovsky 16-year-old and 21-year-old daughters. After their possible "disappearances" Viktor Gonchar's wife, Zinaida Gonchar, reportedly contacted the police and the KGB to find out if he had been arrested but she was unable to get any information. It was also reported that after the two men went missing Zinaida Gonchar and Anatoly Krasovsky's wife, Irina Krasovsky, visited a number of foreign embassies in Minsk in search of support. In her efforts to find her husband Zinaida Gonchar has sent a number of open letters to foreign governments and international governmental organizations, among some of whom the spate of possible "disappearances" of prominent opposition figures has caused a significant amount of concern. In a letter to the Organization for Security and Co-operation in Europe (OSCE) in early October Zinaida Gonchar reportedly stated: "Belarusian special services had been openly

shadowing Gonchar 24 hours a day since the start of the year, law enforcement bodies cannot but know his whereabouts", and added: "Because it was they who organized Gonchar's kidnapping, they do not need to search for him". In October 1999 the OSCE stated in a press release that in order that meaningful negotiations between the opposition and the government be undertaken the organization urged "the Belarus authorities to clarify convincingly the disappearance of Victor Gonchar, acting Chairman of the 13th Supreme Soviet". The press release also stressed the fact that "This is the third unresolved disappearance of a leading political figure in four months".(23)

Amnesty International has also received copies of several letters which Zinaida Gonchar addressed to the head of the Belarusian KGB, Vladimir Matskevich. In one letter dated 18 September 1999 she wrote: "You must understand, that the abduction of Gonchar is a political crime, which has caused indignation throughout the world. Therefore, as the legitimate president of the KGB, approved by the Supreme Soviet, you have the obligation to undertake all necessary measures to find my husband and find the organizers and perpetrators of this crime. Otherwise the leadership of the KGB and you personally will shoulder the same responsibility as the organizers of the crime".

Viktor Gonchar has a long history of peacefully opposing President Lukashenka and is a former Amnesty International prisoner of conscience. At the beginning of March 1999 he was sentenced by a Minsk court to 10 days' imprisonment for organizing an unsanctioned meeting in a café with other members of the electoral commission. While in prison he reportedly suffered a serious heart complaint. Amnesty International adopted him as a prisoner of conscience and expressed concern about his health and the failure of the prison authorities to provide him with appropriate medical care. He was officially charged under Article 190 of the Criminal Code of the Republic of Belarus, "*Wilful self-conferment of an official title or authority*", which carries a maximum penalty of two years' imprisonment or correctional labour. At a press conference of the electoral commission on 19 May 1999 Viktor Gonchar confirmed that the charges against him still stood.

Like Olga Zakharenko, Zinaida Gonchar has also complained that she has become a target of harassment and intimidation. In November 1999 she reportedly told a delegation from the IPU that "she continued to receive threats - telephone calls from people threatening to come to her apartment and beat her up, or suspicious-looking persons ringing the doorbell and running away when asked to identify themselves. Her building was constantly under surveillance: two cars were constantly on duty, observing not only Ms. Gonchar but also all her visitors, who were systematically tailed for several hours. On 1 October 1999, she had complained about this to the Chairman of the Committee for State Security (KGB) but apparently no investigations have been conducted".(24) In the subsequent report of its findings from the research mission the IPU delegation stated: "The delegation also urges the authorities to investigate the threats and acts of intimidation reported by Ms. Gonchar and to provide her with necessary protection".(25)

Opposition spokespersons in Belarus have complained that the authorities have failed to investigate the possible "disappearances" of the two men. The deputy head of the presidential administration, Ivan Pashkevich, reportedly stated shortly after the men's possible "disappearances" that Viktor Gonchar had deliberately gone missing to attract attention to the sessions of the dissolved parliament, the former 13th Supreme Soviet. In a television interview on 23 September 1999 the leader of the police team investigating the case, Valyantsin Patapovich, appeared to give little credibility to the claim that the possible "disappearances" had been politically motivated, stressing that either the men had fallen victim to robbers, absented themselves voluntarily or somehow fallen victim to an organized crime group in connection with Anatoly Krasovsky's business affairs. On 25 September 1999 the state-owned newspaper, *Belorusskaya Niva*, circulated a story that Viktor Gonchar had been seen in Lithuania on 19 September in conversation with the exiled speaker of the dissolved parliament, Seymon Sharetsky. The story, which was widely reported in the state-controlled media, was condemned by Belarus' opposition as pure fabrication on the part of the Belarusian authorities. Over a month later, on 30 October 1999, President Lukashenka also reportedly commented on the men's possible "disappearances" during a meeting with Adrian Severin, the head of the OSCE Parliamentary Assembly's working group on Belarus, stating that Yury Zakharenko was in Ukraine and Viktor Gonchar was in Russia. The opposition rejected the statement saying that there was no evidence that the missing men were abroad. In November 1999 the former Minister of the Interior, Yury Sivakov, confirmed to the IPU delegation visiting the country that according to his investigations "Reports that Mr Gonchar had been seen in a neighbouring country had proved false".(26)

(C) The case of Dmitry Zavadsky

Similar statements of denial also accompanied the apparent "disappearance" of the Belarusian television cameraman, Dmitry Zavadsky. The whereabouts of the Russian Public Television (ORT) cameraman became unknown on 7 July 2000 when he drove to Minsk airport to meet his former ORT colleague Pavel Sheremet, who was arriving on an aeroplane from Moscow later that morning. Dmitry Zavadsky failed to meet his colleague, even though his car was found parked at the airport. A press release made by the Committee to Protect Journalists stated that "Zavadsky was [reportedly] seen in the airport not long before the arrival of Sheremet's flight from Moscow". (27)

The Belarusian authorities have denied any involvement in the apparent "disappearance" of Dmitry Zavadsky. On 8 July in an interview with Russia's Interfax news agency the first deputy chief of the Presidential Administration, Vladimir Zamyatalin, reportedly accused Belarus' opposition of having staged the abduction of Dmitry Zavadsky in order to tarnish Belarus' image abroad. The BBC news agency reported a broadcast made by state-controlled Belarusian television on 9 July, which accused Pavel Sheremet and the opposition of staging the "disappearance": "There is another area in Belarus where mostly the opposition is fishing. It has to do with people's disappearances. At a convenient moment one of the more or less prominent oppositionists disappear. A great fuss is kicked up. Then it turns out that the whole thing is a fake and the missing person has been seen somewhere in Europe, near the sea, in a great mood and obviously not without money. A wonderful advertising trick, getting a bit stale recently, though ... The unsophisticated scam was used by a former presenter of the "Vremya" programme, [Pavel] Sheremet, to gain publicity on Friday. His cameraman allegedly went missing..." (28) President Alyaksandr Lukashenka also reportedly accused the ORT television company of withholding information about Dmitry Zavadsky's whereabouts. On 21 July President Lukashenka reportedly stated in an ORT interview: "Your bosses have a lot to disclose about Zavadsky, believe me". Pavel Sheremet reportedly rejected these allegations, stating that all the information obtained by ORT about the "disappearance" was immediately passed onto the Belarusian Transport Prosecutor's Office, which had opened a criminal investigation into the case because Dmitry Zavadsky's car was found in its jurisdiction at the airport. In turn, the Director of ORT, Konstantin Ernst, also made a statement on 25 July refuting President Lukashenka's accusations.

The apparent "disappearance" prompted expressions of concern in Belarus and abroad and a number of international non-governmental organizations in the field of press freedom and human rights have called on the Belarusian authorities to immediately and thoroughly investigate the case. On 14 July a spokesperson for the US State Department reportedly stated: "Zavadsky's disappearance adds significantly to our concerns about the harassment of journalists, restrictions on freedom of expression, and the growing climate of fear in Belarus... We are especially disturbed at the reaction of high-ranking Belarusian authorities, who have dismissed the disappearance as a provocation perpetrated by the democratic opposition".

Pavel Sheremet, the then Belarusian bureau chief of ORT, Dmitry Zavadsky and the television crew's driver, Yaroslav Ovchinnikov, had previously been detained by the Belarusian authorities. The three men were arrested in Minsk on 26 July 1998 in connection with a journey they made across the Belarusian-Lithuanian border the same month, reportedly while making a film documentary about smuggling. At their trial in January 1999 Pavel Sheremet and Dmitry Zavadsky were found guilty of illegally crossing the border and were given suspended prison sentences of two and one-and-a-half-years respectively. Pavel Sheremet had reportedly previously had his press accreditation removed from him for making unfavourable comments about political events in the country.

Dmitry Zavadsky's wife, Svetlana Zavadsky has reportedly stated that her husband continued to be an object of attention for the Belarusian security services long after his trial. She has also reportedly stated that after her husband and Pavel Sheremet returned from Chechnya, where they made a documentary film, Dmitry Zavadsky began to receive telephone calls from an unknown person requesting a meeting with him. She has maintained that her husband, suspecting the Belarusian security services were behind the calls, refused to consider the request.

Amnesty International has repeatedly called for an immediate and impartial investigation into the possible "disappearances" of Yuri Zakharenko, Viktor Gonchar, Anatoly Krasovsky and Dmitry Zavadsky and for the results to be made public. If they are in police custody, the organization has called for their whereabouts to be immediately made known to their families,

that they be given legal representation and that they be protected from any form of torture or ill-treatment. Amnesty International has also called on the authorities to ensure that the families of the three men are protected against all forms of intimidation and are not subjected to further torture and ill-treatment. The authorities should ensure that Oleg Volchek, the head of the independent commission demanding a thorough and impartial investigation into the possible "disappearances", is not subjected to any form of intimidation for his opposition activities.

3. Police Ill-treatment: Failure to Investigate

Amnesty International has continued to receive numerous reports of alleged police ill-treatment of detainees. Amnesty International has expressed concern that investigations into these allegations have not been prompt or impartial as required by Articles 12, 13 and 16 of the UN Convention against Torture, which require that each state shall ensure that there is a prompt and impartial investigation, whenever there is reasonable ground to believe an act of torture or other, cruel, inhuman or degrading treatment has been committed.

In the past the Committee against Torture has expressed concern about several states parties failing to fulfil their obligations under Articles 12, 13 and 16 of the UN Convention against Torture. At the 21st session of the Committee against Torture alone, in November 1998, the Committee expressed concern over Croatia's and Hungary's apparent failures to undertake prompt and impartial investigations into allegations of torture and ill-treatment. In the case of Croatia concern was expressed about "the incompetence revealed in investigations of cases of serious violations of the Convention, including deaths which have not yet been explained".(29) In the case of Hungary the Committee stated that it was "disturbed by information to the effect that a number of complaints of torture or treatment contrary to article 16 of the Convention do not result in the initiation of investigations by prosecutors".(30) In Amnesty International's experience one of the most important factors contributing to the practice of torture and ill-treatment is impunity. Perpetrators of human rights violations are likely to become all the more confident when they are not brought before the law. In its consideration of Venezuela's initial report in May 1999 the Committee against Torture also recognized the dangers of impunity, stating: "The failure of the competent organs of the State to fulfil their duty to investigate complaints and punish those responsible, who generally enjoy impunity; *this encourages the repetition of the conduct in question* [emphasis added]".(31) In Belarus such accountability continues to be a rarity.

Belarus' third periodic report to the Committee against Torture states: "It should be noted that article 15 of the Code of Criminal Procedure stipulates that the court or judge, the procurator, the investigator and the person conducting the inquiry are obliged to take all measures specified under the law to ensure that all circumstances of cases involving the crimes listed in the Convention are thoroughly, fully and objectively investigated and to identify circumstances supporting the charge of the defence as well as mitigating and aggravating circumstances".(32) The report also states: "Article 108 of the Code of Criminal Procedure provides that the procurator, the investigator, the authority conducting the inquiry and the judge must receive statements and reports of any crimes committed or being prepared, verify them and reach a decision".(33) However, in Amnesty International's experience in recent years, when formal complaints have been lodged and judicial investigations opened in cases of alleged police ill-treatment, they have been grossly inadequate. In the rare instances that investigations have been initiated they have lacked impartiality and thoroughness. Amnesty International knows of very few judicial investigations into allegations of ill-treatment which have resulted in the prosecution of police officers. The following cases illustrate the wide gap between law and practice in Belarus regarding its obligation to conduct prompt and impartial investigations into allegations of police ill-treatment:

(A) The alleged ill-treatment of Oleg Volchek

Amnesty International learned about the arrest and alleged ill-treatment of the prominent human rights defender Oleg Volchek after a pro-democracy demonstration on 21 July 1999. Oleg Volchek is a lawyer and also the chairman of the non-governmental committee which has demanded an independent investigation into the possible "disappearance" of Yury Zakharenko. Amnesty International has expressed concern that he was deliberately targeted for punishment by the Belarusian authorities for working on Yury Zakharenko's behalf and his role as a human rights defender.

After the demonstration dispersed Oleg Volchek and his companions were arrested on

Moskovskaya Street in Minsk and taken to the Moskovsky District Department of Internal Affairs. Oleg Volchek alleges that he was repeatedly punched and kicked about the body and head there by three police officers. He has also stated that the police officers laughed while they punched and kicked him and afterwards they reportedly refused him access to a doctor. Oleg Volchek and his companions were not released until the next day. Although he has made a number of complaints to the authorities about his alleged ill-treatment the authorities have apparently failed to investigate his allegations.

In contrast, as a result of his complaint Oleg Volchek was charged under Article 201 (2) of the Belarusian Criminal Code with "malicious hooliganism". If convicted, he faced several years in prison. Amnesty International learned that the charges against him were dropped in late November 1999, reportedly due to a lack of evidence. In March 2000 Oleg Volchek informed a representative from Amnesty International that he thought it very unlikely that he would receive any form of redress for his ill-treatment and loss of liberty, since the prosecuting authorities had refused to consider his complaint. By failing to conduct a prompt and impartial investigation into Oleg Volchek's allegations of ill-treatment Amnesty International believes that the Belarusian authorities failed to fulfil their obligations with regard to Article 13 of the Convention against Torture.

Amnesty International has not been alone in expressing concern about the failure of the Belarusian authorities to conduct prompt and impartial investigations into allegations of police ill-treatment. In January 1999 the Parliamentary Assembly of the Council of Europe undertook a fact-finding mission to Belarus in order to assess the overall human rights situation in the country. The subsequent mission report also commented on the inadequacy of investigations into police ill-treatment, stating: "Many instances of arbitrary detention and police violence have been reported. There does not seem to be independent, effective supervision of the police by prosecutors and judges".(34)

The Human Rights Committee has also raised the issue with the Belarusian authorities. During the review of the fourth periodic report of Belarus by the Human Rights Committee in 1997 a committee member is recorded in the summary record of the meeting to have commented: "... the right to complain to the President's Office and the role of the Procurator's Office in defence of human rights had existed in the Soviet Union but had remained largely a dead letter". The committee member proceeded to ask "whether there were effective independent monitoring bodies to deal with individual and system-wide complaints [?]"(35) In her reply Ms Mazei of the Belarusian delegation admitted that no such independent body existed, stating: "... there was, at the moment, no single organ which accepted human rights complaints and followed them up".(36)

In the May 2000 report of the IPU delegation visit to Belarus in November 1999, the IPU also expressed concern about allegations of police ill-treatment and the problem of impunity: "The delegation notes with deep concern the many corroborative allegations regarding ill-treatment of arrested and detained persons by law enforcement officers. Not a single case of alleged ill-treatment brought to its attention seems to have given rise to serious investigations with tangible results. It therefore remains unconvinced by the authorities' assurances that such complaints are systematically investigated... Any allegation of ill-treatment or torture must be investigated through independent and impartial procedures. Likewise, the delegation is concerned that complaints regarding threats or intimidation may not be investigated with the necessary diligence and efficiency, so that the perpetrators of such criminal acts are assured of impunity".(37) The IPU also noted "with concern, however, that the norms of criminal procedure currently in force still give wide discretionary powers to State prosecution and law enforcement personnel, whose decisions are largely beyond judicial control. No action has been taken to date on the United Nations Human Rights Committee's recommendations in that regard".(38)

(B) The cases of Alyaksandr Shchurko and Olga Baryalai

Belarus' opposition staged a large-scale demonstration in Minsk on 17 October 1999, the so-called Freedom March, in which around 20,000 demonstrators are reported to have taken part, once again to protest against President Lukashenko's refusal to hold fresh elections and his increasingly unpopular rule. Amnesty International learned that at least 200 demonstrators were detained by the police. Once again, the arrests were accompanied with significant numbers of reports that police officers physically ill-treated the detainees.

Alyaksandr Shchurko has alleged that he was detained at around 5.30pm on 17 October on Yanka Kupala Street in Minsk by police officers, forced into a police car and taken to the

Partizansky District Department of the Interior. He was charged with taking part in an unsanctioned demonstration and detained until approximately 3am on 18 October when he was transferred with 10 other detainees to another detention centre in a police bus manned by police officers from the special police unit, the OMON. Olga Baryalai, mother of three children, who had been detained earlier in the afternoon was also on the police bus and, like Alyaksandr Shchurko, bore witness to the police ill-treatment the detainees were forced to endure.

During the two-hour journey to the detention centre Alyaksandr Shchurko has alleged that he and the other detainees were both physically and verbally abused. He has stated that upon entering the bus he suffered a blow to the head causing him to lose consciousness, only to be kicked, punched, sworn and spat at after he had regained consciousness. He has stated that the police officers kicked and punched him and other detainees, hit them with their truncheons and forced them to the floor. He reportedly lost consciousness for a second time later in the journey after being hit. The police officers are alleged to have spat at the detainees, verbally abused them and threatened them with murder and rape. In addition to being physically assaulted and verbally abused, he was given a five-day sentence of administrative detention for taking part in the Freedom March demonstration. Olga Baryalai was also hit and thrown to the floor of the police bus but, unlike the other detainees, she managed to escape being kicked. After arriving at the Okrestina detention centre in Minsk a chief official who saw from her passport that she was a mother of three small children ordered that she be taken back into the city and released. Olga Baryalai has alleged that on the way to the city on the police bus she was repeatedly verbally abused by the OMON police officers, who threatened to rape her and punish her and her family. She received a warning the next day at Partizansky district court. Amnesty International has been informed of a number of other occasions after the Freedom March during which detainees were seriously physically ill-treated by police officers on board police buses and other vehicles.

Alyaksandr Shchurko has written to the Belarusian authorities, including the Partizansky and Minsk Prosecutor's Offices and various courts, complaining about his ill-treatment on the police bus and the unlawfulness of his detention and has demanded compensation. The Partizansky Prosecutor's Office reportedly rejected his and other people's initial complaints, stating that they were participants in an unsanctioned demonstration. Alyaksandr Shchurko appealed against the decision and on May 30 2000 Alyaksandr Shchurko's complaint was scheduled to be heard at the Moskovsky Court in Minsk but was postponed until August 2000. The day previously the offices of the Human Rights Center, whose chairperson Vera Stremkovskaya is representing Alyaksandr Shchurko, were burgled and valuable documents and equipment were lost. The offices of the legal advice centre Legal Assistance to the Population had also been burgled in the previous week. The Legal Assistance to the Population had assisted Alyaksandr Shchurko after his initial arrest and was reportedly closely linked with his compensation claim.

Alyaksandr Shchurko informed Amnesty International that as a result of his persistent complaints to the authorities and his efforts to secure redress, the Belarusian authorities have applied pressure on him and his family. One of the police officers alleged to have ill-treated him reportedly threatened him earlier in May 2000 saying that the street in Minsk where he lives is very narrow and he should be careful when he returns home at night. He has complained of receiving anonymous threatening telephone calls instructing him to terminate his complaints. In particular, his 20-year-old son who is studying economics at a state institute reportedly began to score very low marks after previously being a very good student. Alyaksandr Shchurko believes his son has been deliberately targeted by the authorities in order to punish him for complaining about his ill-treatment and unlawful arrest. Olga Baryalai, like Alyaksandr Shchurko, lodged a number of complaints highlighting her ill-treatment by the police officers but came under increasing pressure from the authorities to drop her complaints. In December 1999 she left Belarus and is currently claiming political asylum in a Western European country.

Amnesty International is concerned that these police counter-actions against the complainants violated Article 13 of the Convention against Torture, which states: "Steps shall be taken to ensure that the complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given". Amnesty International is particularly concerned about the alleged police intimidation, since very few complainants have succeeded in taking a complaint of police ill-treatment through the complaint system as far as Alyaksandr Shchurko. Amnesty International has also expressed concern about allegations that witnesses of police ill-treatment of detainees have also been subjected to

police intimidation, as the following case reveals:

(C) The alleged intimidation of Lieutenant Oleg Batourin

While the main Freedom March demonstration, referred to above, reportedly passed without incident there were reports of violence later in the day. Amnesty International received a significant number of reports of police ill-treatment of demonstrators, who were subsequently taken into police custody. After the demonstrators arrived at their final destination at Bangalor Square in Minsk a smaller group of protestors attempted to march into the centre of the city, clashing with police officers who blocked their path. It is reported that demonstrators retaliated by throwing stones at the police after police officers attacked them with batons and riot shields. On 9 February 2000 the independent newspaper *Narodnaya Volya* published an open letter from a serving police officer, Lieutenant Oleg Batourin, which reportedly highlighted the role police agent provocateurs had played in the clashes during the Freedom March. He stated in the letter: *"My task was a simple one - to watch and remember the faces of the main activists and, afterwards, detain those whom they told me to detain. However, my major mission was to provoke clashes, insult the police officers and direct the crowd towards the police ambush. Unfortunately, among those throwing stones were some desperate youths, but all of their actions were provoked and planned beforehand. The crowd was purposefully guided toward the place, where the stones were piled. Riot police squads were hiding there in an ambush."* As a result of the open letter Oleg Batourin was reportedly dismissed from the police force and the authorities have charged him with slandering the police. His brother was reportedly attacked and threatened and both he and Oleg Batourin have been forced into hiding. Due to considerations for his own personal safety Oleg Batourin reportedly left Belarus for Poland, where he is claiming political asylum.

Amnesty International has called on the Belarusian authorities to initiate prompt, thorough and impartial investigations into all allegations of police ill-treatment and to bring to justice any police officers suspected of ill-treating or torturing detainees. The following, more recent case once again shows the failure of the Belarusian authorities to consider complaints of police ill-treatment, particularly when the complainant belongs to the opposition.

(D) The alleged ill-treatment of Yury Belenki

Amnesty International received numerous reports of arrests during an unsanctioned demonstration to protest against President Lukashenka in Minsk on 25 March 2000, which coincided with the anniversary of the creation of the first Republic of Belarus in 1918. During the demonstration between 400 - 500 demonstrators were reportedly detained for several hours by the police, who were patrolling the centre of Minsk in large numbers. While around 200 detainees were reportedly held in a city sports hall, others were held at various police stations and detention centres. Most of the detainees were reportedly released between two and three hours later.

Amnesty International has received reports that police officers used significant degrees of force to detain some protestors. A number of people have complained of being knocked to the ground, beaten with truncheons, kicked by police officers and verbally abused. The deputy chairman of the Conservative Christian Party of the Belarusian Popular Front, Yury Belenki, has alleged that he and his companions were attacked by a group of police officers at around 12.15pm opposite the Stolichny department store in Minsk during which he was reportedly hit in the face with a truncheon, knocked to his feet and repeatedly punched and kicked. As a result of his ill-treatment he allegedly lost consciousness and was diagnosed as suffering from concussion after his release. He was then arrested and held in detention for three days at Okrestina detention centre in Minsk. While in detention he was reportedly refused medical treatment. Upon his release he reportedly proceeded directly to the Sovetsky Prosecutor's Office in Minsk, where he made a formal complaint against the arresting police officers. The Sovetsky Prosecutor's Office rejected the allegations of ill-treatment of Yury Belenki, even though the alleged incident had been filmed and his ill-treatment was reportedly clearly visible. Yury Belenki appealed against this decision with the result that the City's Prosecutors's Office ordered that the case be re-examined. However, after further examination the Sovetsky Prosecutor's Office rejected the charges against the police officers reportedly without interviewing the majority of the key witnesses. In addition, the video footage of the incident, which was reportedly sent to Sovetsky Prosecutor's Office by Sovetsky District Court did not arrive at its intended destination.

Amnesty International was informed that on 11 August 2000 the Sovetsky District Prosecutor's Office rejected Yury Belenki's repeated attempt to bring charges against the police officers who allegedly arrested and physically abused him. The organization has

learned that Yury Belenki intends to file another appeal with the prosecuting authorities.

4. The Death Penalty

Amnesty International regards the death penalty as the ultimate cruel, inhuman and degrading punishment. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities. During its review of the fourth periodic report of Belarus in November 1997 the Human Rights Committee also noted with concern "that the number of crimes for which the death penalty is applicable under the Criminal Code is still very high, and that decrees defining new crimes punishable by death, such as the Presidential Decree No.21 of 21 October 1997, have recently been enacted. The Committee expresses its serious concern at the very high number of death sentences actually carried out. Furthermore, the Committee is also concerned at the secrecy surrounding the procedures relating to the death penalty at all stages".(39) During the same review the Belarusian delegation member, Mr Sherbau, was reported in the summary record of the meeting to have stated that between 1990 and the first half of 1997, 192 people had been sentenced to death.(40) On 5 August 1999 the Chairman of the Supreme Court of Belarus Valyantsin Sukala told a news conference that so far in 1999, 29 people had been executed (41) compared with a reported figure of 33 for the period January - August 1998.

Amnesty International has repeatedly called on the Belarusian authorities to abolish this cruel, inhuman and degrading form of punishment and how the veil of secrecy surrounding the death penalty inflicts considerable suffering on the relatives of prisoners on death row. Information about the death penalty is classed as a state secret in Belarus and it is very difficult to obtain information. The relatives of the executed receive only a death certificate, are not told the date and place of execution and are not entitled to the body. The body is usually buried in an unmarked grave inside the prison grounds.

(A) The case of Anton Bondarenko

In July 1999 Amnesty International was contacted by the mother of Anton Bondarenko, whose son was being held under sentence of death. Anton Bondarenko was sentenced to death in June 1998 for a murder he committed when he was 19 years old. His appeal was rejected and the original death sentence was upheld. His mother informed Amnesty International that she had visited the prison where her son was being held on a daily basis for several weeks to see if her son was still alive. The prison authorities refused to inform her of the exact date when her son would be executed. Amnesty International appealed urgently to the authorities against the execution of Anton Bondarenko. On 15 July 1999 Amnesty International was informed by a friend of Anton Bondarenko's mother that the previous day she and his mother had staged a two-person picket outside the building of the Presidential Administration, where the mother had reportedly pleaded for her son's sentence to be commuted. The two women were arrested by police officers and detained for three hours. Anton Bondarenko was eventually executed on 24 July 1999.

The OSCE has also noted the frequency and wide application of the death penalty in Belarus, stating: "Capital punishment is actively used in Belarus. The Criminal Code of Belarus provides for the death penalty for a wide range of crimes, namely treason, plotting to seize power, terrorism, sabotage, bombings that threaten public safety, undermining the work of a prison, premeditated murder, and aggravated rape".(42) During its review of the fourth periodic report of Belarus the Human Rights Committee called on the Belarusian authorities to move towards abolition of the death penalty, stating: "The Committee recommends that the application of the death penalty be restricted to the most serious crimes, as provided for in article 6, paragraph 2, of the Covenant, and that its abolition be considered by the State party at an early stage".(43) During the same review the Belarusian delegation member, Mr Sherbau, was reported in the summary record of the meeting to have stated: "...when the national referendum had been held on 24 November 1996, the question of the abolition of the death penalty had been raised, but only 17 per cent of the electorate had been in favour. Any comment was therefore premature. However, the Government was taking specific steps to abolish the death penalty in the near future...".(44)

Regrettably, in the intervening period Belarus has made little progress towards implementing the Human Rights Committee's recommendation. In January 2000 a report of the Parliamentary Assembly of the Council of Europe, entitled *Situation in Belarus*, also condemned the lack of progress towards abolition of the death penalty, stating: "It [Parliamentary Assembly] condemns in the strongest possible terms the executions in Belarus

and deplores the fact that Belarus is currently the only country in Europe where the death penalty is enforced and, moreover, is regularly and widely enforced".(45) The Parliamentary Assembly urged the Belarusian authorities to "declare an immediate moratorium on executions and set in motion the legislative procedure for the abolition of capital punishment".(46)

5. Prison conditions amounting to cruel, degrading, or inhuman treatment or punishment

In the recent past the Committee against Torture has expressed concern about conditions of detention in a number of countries. During the consideration of Hungary's third periodic report it expressed concern "about reports on conditions in prisons, detention centres and holding centres for refugees such as overcrowding, lack of exercise, education and hygiene".(47) Many of these same problems are evident at places of detention in Belarus and Amnesty International has repeatedly expressed concern that conditions in prisons and pre-trial detention centres fall well below international minimum standards and amount to cruel, degrading or inhuman treatment. Prisoners are poorly fed, receive inadequate medical care and are housed in poorly heated and ventilated conditions in overcrowded cells. As a result of their poor diet, lack of medical provision and substandard conditions of detention, disease and illness among prisoners is reported to be widespread.

The Human Rights Committee also expressed its concern "at the overall conditions of detention in prisons, in particular with respect to overcrowding..."(48) during its review of the fourth periodic report of Belarus in November 1997. The Human Rights Committee recommended "that steps be taken to improve prison conditions ...and that in so doing account be taken of the Committee's General Comment No. 21 (44) on article 10 of the Covenant and the United Nations Minimum Standard Rules for the Treatment of Prisoners".(49) The Human Rights Committee gave particular attention to the use of punishment cells and the system of 'pressovchiki' which is frequently used to maintain internal order in Belarusian prisons(50), stating: "The Committee recommends in particular that the practice of 'punishment cells', in which particularly harsh conditions are imposed on prisoners, and the use of the pressovchiki in prison cells, are contrary to the Covenant, and recommends that their use be abolished".(51)

In its 1999 Human Rights Report the US Department of State echoed many of Amnesty International's concerns, stating: "Prison conditions are poor, and are marked by severe overcrowding, shortage of food and medicine, and the spread of diseases such as tuberculosis, syphilis, and AIDs... Detainees in pre-trial detention facilities also reported poor conditions, which contributed to their declining health while they awaited trial. OSCE Advisory and Monitoring Group officers who visited a detention facility in Vitebsk during June noted that in 1 cell 16 female prisoners shared 10 beds, while in another, 14 prisoners between the ages of 14 and 17 shared 8 beds".(52) The 1998 Human Rights Report of the US Department of State outlined the case of the opposition activist, Vadzim Kabanchuk, who, after being released from six months in detention, complained that he had been forced to share a cell designed for 14 prisoners with 32 other people.(53) In August 1998 the former Deputy Prosecutor General, Alyaksandr Ivanowsky, reportedly told journalists that 61,000 prisoners, 11,000 of whom were in pre-trial detention, were being held in Belarus' detention facilities, which were designed to house only 41,000 inmates. The US Department of State also went on to note in its Human Rights Report that the former Minister of the Interior himself, Yuri Sivakov, had publicly acknowledged in November 1999 that the prison population remained at over 60,000 persons and conditions of detention did not meet basic standards.(54)

The subsequent report of the Parliamentary Assembly of the Council of Europe fact-finding visit to Belarus in January 1999 also commented on prison conditions, stating: "Conditions both in prisons and places of provisional detention have been severely criticised. In both there is overcrowding, food and care are far from acceptable, prisoners' contact with their families and lawyers is restricted or non-existent, and numerous cases of violence towards prisoners have been reported".(55)

(A) Conditions of Detention: The case of Valery Shchukin

Valery Shchukin is a member of the dissolved parliament, a leading opposition activist and journalist for the independent newspaper *Narodnaya Volya*. He has been arrested on numerous occasions and has served multiple prison sentences for his opposition activities. Among the various detention centres and prisons in which he has been detained, he has

described conditions in the Minsk Special Detention and Distribution Centre. According to Valery Shchukin "Hygienic conditions were disastrous. There were mice in the cells and all the inmates had to use the same cup to drink water, a fact which facilitated the spread of diseases. The lavatory pan, the washbasin and the drinking water tap connected to form a single structure, and everyone using the lavatory had to do it in plain sight of other inmates. There was no toilet paper or soap and the detainees were not allowed to use their own toiletries or change clothes. Parcels brought for inmates by relatives were accepted very seldom. Cells were heavily overcrowded and without ventilation. Detainees were not allowed to have TV sets, radios, make phone calls, write, draw, read, play any kinds of games or study".(56)

(B) Conditions of Pre-trial Detention: The case of Andrey Klimov

Amnesty International expressed serious concern about the conditions of prisoner of conscience Andrey Klimov's two-year period in pre-trial detention. Former member of the dissolved parliament, the 13th Supreme Soviet, Andrey Klimov was arrested on 11 February 1998 and spent over two years in pre-trial detention before being sentenced to six years' imprisonment at a hard labour colony with confiscation of property in March 2000 on charges relating to his business interests. During the first months of his pre-trial detention Andrey Klimov was reportedly forced to share a small cell with five other inmates, who had to take turns in sleeping due to the lack of sufficient sleeping berths and had very limited access to drinking water. While in pre-trial detention he undertook two hunger strikes protesting against the conditions of his confinement, lack of access to his wife and children and the refusal of the prison authorities to provide him with adequate medical treatment. As a result of his failing health he was hospitalized on a number of occasions and continues to require treatment for a heart condition - microcardial dystrophy.

It is important also to note that the Human Rights Committee has previously expressed concern about the prolonged length of pre-trial detention in Belarus, stating: "The Committee notes with concern that pre-trial detention may last up to 18 months, and that the competence to decide upon the continuance of pre-trial detention lies with the Procurator and not with a judge, which is incompatible with article 9, paragraph 3, of the Covenant".(57) The Human Rights Committee recommended that the laws and regulations relating to pre-trial detention be reviewed as a matter of priority so as to comply with the requirements of Article 9 of the ICCPR.(58)

(C) Conditions of Detention: The case of Vyacheslav Sivchik

On 30 March 2000 the deputy chairman of the Belarusian Popular Front Vyacheslav Sivchik received a ten-day prison sentence for his part in organizing a demonstration several days previously. After his release from the Okrestina detention centre he reportedly stated in an interview with the independent newspaper *Nasha Svaboda* on 11 April: "During my ten-day term, the guards transferred me to a different cell five times to make it harder for me to adjust to life in jail. Two days before my release, I was placed in a cell with a broken window. Given the unseasonably cold weather, it was a true punishment cell. The guard told me later that all political prisoners are 'tested' in such cells. Some of my fellow inmates suffered from a severe form of tuberculosis, but they were not kept separately from others. On April 7, the last day of my term, the guards spread a disinfectant all over the cell without letting us out first".(59)

In addition to expressing concern about the overall egregious conditions of detention, the Human Rights Committee expressed concern about the absence of an independent mechanism for the investigation of allegations of torture and ill-treatment in Belarus' detention facilities. The Human Rights Committee stated: "The Committee further notes with concern that the supervision of places of detention, by virtue of the Law of the Procurator's Office, is under the competence of the Procurator's Office, and that there is no independent mechanism competent to receive and investigate complaints by detainees".(60) Amnesty International is concerned that, although allegations of ill-treatment of prisoners by prison officials are reported, there does not appear to exist any effective independent mechanism to investigate such allegations. The organization is informed that prisoners who have been victims of torture and ill-treatment have been reluctant to lodge complaints with the Prosecutor's office owing to a fear of reprisals from prison officials or a lack of faith that any concrete steps will be taken to address the issue. The following allegations made by a former Amnesty International prisoner of conscience, who was imprisoned for his peaceful opposition activities, illustrate the absence of any effective legislative, judicial or administrative measures to prevent the ill-treatment of prisoners in Belarus.

(D) Conditions of and Alleged Ill-treatment in Detention: The case of Aleksey Shidlovsky

Aleksey Shidlovsky, who was 19 years old at the time of his conviction, was released from prison in February 1999 after 18 months in prison. Aleksey Shidlovsky was arrested in August 1997 for writing anti-government and anti-presidential graffiti on public buildings in the town of Stolptsy and for reportedly replacing a official Belarusian national flag with the banned red and white flag, which is a symbol of the opposition and Belarusian Popular Front, of whose youth party Aleksey Shidlovsky was a member. He has alleged that during pre-trial detention in the town of Zhodino he and other detainees were made to leave their cells and stand in painful positions with their arms and legs stretched against a wall. Prison guards kicked them if they moved or fell. Meanwhile guards would fill their cells up with cold water and then force detainees to take off their shoes and socks and empty the cells using cups. He stated that if the cells were not emptied within 20 to 30 minutes, the whole exercise was repeated. On 25 February 1999, after his release, he reportedly told a journalist from the Belarusian Service of Free Radio Europe/Radio Liberty that: "Prisoners have no rights. [Prison] conditions do not meet any international standards. People are held in prison for nothing, as under Stalin's [regime]". He also reportedly commented that he and other prisoners were forced to undertake work in conditions which were detrimental to their health. He had worked in a paint and varnish workshop where "safety rules were not observed".(61)

Inadequate Domestic Legal Provisions

6. Lack of a distinct crime of torture in the Belarusian Criminal Code

Article 4 of the Convention against Torture states that each state party shall ensure that all acts of torture are offences under its criminal law, which are punishable by appropriate penalties which take into account their grave nature. Amnesty International is informed that there is no definition of the distinct crime of "torture" in the domestic legislation of Belarus. The organization recognizes that Article 15 of the 1998 Act on International Treaties gives force to international treaties, such as the Convention against Torture, in domestic legislation. In addition, both the 1994 Constitution and the new Constitution adopted as a result of the November 1996 referendum provide for the inviolability of the person and specifically prohibit torture, as well as cruel, inhuman, or degrading punishment. Article 25 of the Constitution states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment or be subjected without his consent to medical or other experimentation". However, acts of torture and ill-treatment do not appear to feature in criminal legislation as distinct, punishable offences in their own right. During the review of the fourth periodic report of Belarus by the Human Rights Committee in 1997 a member of the Belarusian delegation, Mr Sherbau, is recorded in the summary record of the meeting to have stated: "... the Penal Code did not consider torture or cruel and inhuman punishment as specific crimes. Those acts came under article 167 of the Penal Code on the abuse of power".(62)

In recent years the Committee against Torture has made the recommendation to several countries, such as Austria, Finland and Sri Lanka, whose domestic legislation lacked a definition of the distinct crime of "torture".(63) Amnesty International is also concerned about the absence of a specific crime of torture in Belarus' penal code as defined in Article 1 of the Convention against Torture, and, as required by Article 4, paragraph 2 of the Convention against Torture. Amnesty International recommends legislative changes be made to incorporate the definition contained in Article 1 of the Convention as a punishable offence in accordance with Article 4, paragraph 2 of the Convention against Torture.

7. Wide Gap between Law and Practice

Articles 2, 11 and 16 of the Convention against Torture require each state to take effective legislative, administrative, judicial or other measures to prevent torture and ill-treatment and to keep under systematic review interrogation rules and practices and other arrangements for overseeing the custody and treatment of detainees, in order to prevent acts of torture and other, cruel, inhuman or degrading treatment. While Amnesty International recognizes that there exist domestic legal provisions in Belarus, aimed to prevent acts of torture and ill-treatment and preserve the rights of detainees, there simultaneously exists a wide gap between law and actual practice. In the recent past the Committee against Torture has also expressed

concern about the wide gap between law and practice in a number of countries. In its consideration of Venezuela's initial report in May 1999 the Committee against Torture stated: "The marked contrast between the extensive legislation on matters addressed by the Convention and the reality observed during the period covered by the report would appear to indicate insufficient concern on the part of the authorities responsible for ensuring the effective observance of the Convention".(64) In response to the second period report of Tunis in November 1998, the Committee against Torture expressed concern "...over the wide gap that exists between law and practice with regard to the protection of human rights".(65) In the case of Belarus Amnesty International is particularly concerned about reports that the legal rights of prompt access to a lawyer and a doctor and the prohibition of evoking criminal confessions through torture are frequently violated in practice (see below).

Policies and Practices Contributing to the Practice of Torture and Ill-treatment

8. Denial of access to a lawyer

The requirement that detainees should be given immediate access to a lawyer is a principle supported by international human rights standards, such as Principles 7 and 8 of the UN Basic Principles on the Role of Lawyers and Principle 17 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The failure of the Belarusian authorities to ensure that this right is upheld has been of concern to Amnesty International and other human rights organizations. The organization has received a significant number of reports of detainees not being given prompt access to a lawyer, particularly in the case of demonstrators who have been arrested in the course of demonstrations.

In the experience of Amnesty International detainees are of the greatest risk of ill-treatment and intimidation in the period immediately following deprivation of liberty. Access by people who have been deprived of their liberty to a lawyer during this period may serve as an important safeguard against ill-treatment. The presence of a lawyer is particularly important in the context of interrogation, during which a detainee may be subjected to verbal and physical pressure by police officers. Amnesty International also believes that immediate access to a lawyer allows the detainee access to the practical help they need immediately after detention, including assessing whether their rights have been infringed and seeking remedial action.

In its 1999 Human Rights Report the US Department of State also noted: "By law detainees may be allowed unlimited access to legal counsel, and, for those who cannot afford legal counsel, the court appoints a lawyer. However, investigators routinely fail to inform detainees of their rights and conduct preliminary investigations without giving detainees an opportunity to consult counsel. The information gained then is used against the defendant in court. Even when appointed by the State, defence attorneys are subordinate to the executive branch of power".(66)

9. Subordination of lawyers to the Ministry of Justice

Amnesty International has also expressed concern about constraints on the independence of lawyers in Belarus, since lawyers are subject to significant external political pressures and are not free to practise their profession according to international standards. On 3 May 1997 President Lukashenko issued Decree No. 12 "On Several Measures on Improving the Practice of Lawyers and Notaries in the Republic of Belarus". The decree introduced severe restrictions on the independence of lawyers from the executive power by appointing the Ministry of Justice in charge of licencing lawyers and by introducing mandatory membership of all lawyers in a centralized body, the Collegium of Advocates, whose activities are controlled by the Ministry of Justice. The obligation of lawyers to belong to the state-controlled Collegium of Advocates directly violates international standards with regard to the role of lawyers, such as Article 23 of the UN Basic Principles on the Role of Lawyers, which states: "Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference". Lawyers in

Belarus are not only unable to form and join self-governing professional associations but are prohibited from practising their profession if they do not join the state-controlled Collegium of Advocates or are expelled from it. The Human Rights Committee expressed concern about the adoption of the decree during its review of Belarus' fourth periodic report in November 1997, stating: "The Committee stresses that the independence of the judiciary and the legal profession is essential for a sound administration of justice and for the maintenance of democracy and the rule of law. The Committee urges the State party to take all appropriate measures, including review of the Constitution and the laws, in order to ensure that judges and lawyers are independent of any political or other external pressure".(67) In recent years Amnesty International has been informed of a number of lawyers who have not been allowed to practise as lawyers either because they refused to join the state Collegium of Advocates or were expelled from it for so-called "violation of the professional ethics".

10. Statements made as a result of torture or ill-treatment

Article 15 of the Convention against Torture precludes the invocation of any statement as evidence in any proceedings against a person which is established to have been made as a result of torture, except against a person accused of torture as evidence that the statement was made. Belarus' third periodic report to the Committee against Torture states: "Article 27 of the Constitution contains the provision that evidence obtained in violation of the law shall have no legal force. This applies equally to evidence used in any judicial proceedings which was obtained under duress or by means of threats or other unlawful acts by the person conducting the inquiry or pre-trial investigation, criminal responsibility for which is established by article 175 of the Criminal Code. Part 2 of the article lays down that such acts, when accompanied by violence or bullying are punishable by 3 to 10 years' imprisonment. According to the available data, one person was found guilty under that article between 1992 and 1998 (in 1997)".(68)

Amnesty International has expressed concern about a report by a judge of the alleged widespread practice of law enforcement officials forcing detainees to sign confessions through ill-treatment and torture. In February 1999 Yury Sushkov, a court judge from Bobruysk district, who fled to Germany and claimed political asylum, reportedly commented on the requirement of court judges to produce verdicts of guilt, even in the absence of sufficient evidence, and the widespread practice of forcing detainees to sign confessions through ill-treatment and torture. The organization is concerned that, if this allegations has any basis, the previously cited figure that only one person was convicted between 1992 and 1998 for violating Article 27 of the Constitution suggests a much wider tolerance of the practice of forced confessions, in violation of Article 15 of the Convention against Torture.

11. Denial of access to a doctor

Amnesty International has learned of numerous cases of detainees being brought into custody who have subsequently required medical treatment for injuries sustained at the hands of law enforcement officers as well as for conditions which pre-existed detention or developed during it. Detainees have particularly suffered injuries after being detained for taking part in anti-government demonstrations and being ill-treated by the arresting police officers. The organization has been informed of detainees who have been punched, kicked, forced to the ground, hit with police truncheons and verbally abused and threatened (see the case of Alyaksandr Schurko). Amnesty International has repeatedly called on the Belarusian authorities to ensure that all detainees are allowed access to a medical practitioner of their choice and are provided with adequate medical care. However, Amnesty International has received reports of injured detainees being refused access to a doctor, resulting in their considerable suffering. In some cases, where injured detainees were sentenced to periods of detention, they have succeeded in obtaining medical attention only after their release (see the case of Yury Belenki). Amnesty International has also learned of prisoners in pre-trial detention and prison who have been refused access to a doctor and related medical care, as the following cases reveals.

(A) The ill-treatment of Andrey Klimov and the refusal of medical provision

Amnesty International has expressed concern that Andrey Klimov was ill-treated by prison officials during his pre-trial detention in December 1999 and about the subsequent refusal of the authorities to provide him with medical care. He alleged that during his trial on 13 December 1999 prison officials kicked and punched him while he was lying handcuffed on the floor of his cell. The ill-treatment allegedly occurred after Andrey Klimov refused to

leave his prison cell and go to court, protesting he was not receiving a fair trial. On 8 and 9 December the judge presiding over the Leninsky court in Minsk reportedly refused to allow Andrey Klimov's defence to bring key witnesses to testify. He was ejected from the court room after questioning the independence and objectivity of the court. After being ill-treated by prison officials Andrey Klimov was then dragged into a Minsk courtroom in torn clothes and without shoes. An ambulance was called to the court, but the judge presiding over the court refused to allow the defendant to be taken to hospital. As a result of his ill-treatment, which was condemned abroad, he suffered injuries to his head and bruising to his body necessitating medical care. However, he was reportedly not hospitalized until some nine days later on 22 December. The Belarusian authorities have refused to investigate the allegations of ill-treatment and to bring any of the prison officials to justice.

12. Inadequate education, training and instructions on the prohibition against torture and other cruel, inhuman or degrading treatment

Articles 10 and 16 of the Convention against Torture stipulate that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment be fully included in the training of law enforcement personnel and others and that this prohibition against torture and cruel, inhuman or degrading treatment should be included in the rules or instructions issued in regard to the duties and functions of such personnel. Amnesty International is concerned that the Belarusian authorities have not fully fulfilled their obligation to educate police officers in this respect.

During the fourth periodic report of Belarus in 1997 the Human Rights Committee commented on the need for human rights instruction and training. The Human Rights Committee stated: "Moreover, in accordance with paragraph 10 of the Committee's General Comment No. 20 (44) on article 7 of the Covenant, 'enforcement personnel (...), police officers of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training' concerning the ban on torture and other cruel, inhuman or degrading treatment prohibited by article 7 and the observance of other human right norms".(69)

Amnesty International has also expressed concern about the general low level of human rights education and training in Belarus. The organization has learned from several prominent human rights lawyers in Belarus that both the quality and quantity of the human rights education and training which police officers receive in the course of their initial training and overall career, is far from desirable. Amnesty International believes that the overall inadequate levels of training and education contribute to the risk of detainees and prisoners being tortured or ill-treated while in custody.

Amnesty International believes that much more work is required in the area of human rights education among police officers at all levels of seniority and that the Belarusian authorities should take further steps to impress on police officers of all ranks the centrality of human rights to law enforcement and inform them of the sanctions they face if the principle of proportionality in the use of force and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment are violated.

(1) UN. Doc. CAT/C/34/Add.12, 29 November 1999.

(2) Adopted by UN General Assembly resolution 39/46 of 10 December 1984. "Other cruel, inhuman or degrading treatment or punishment" will henceforth be referred to as 'ill-treatment'.

(3) UN Doc. CAT/C/17/Add.6.

(4) UN Doc. A/48/44 at 40 (Forty-eighth session, 1993) - paragraph 259.

(5) UN Doc. CCPR/C/79/Add.86. Concluding observations of the Human Rights Committee: Belarus. 19/11/97 - paragraph 7.

(6) Doc. 8292 Addendum II to the Progress Report, Council of Europe Parliamentary Assembly, 6 January 1999 - paragraph 43.

(7) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 2.

(8) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 4.

- (9) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 8.
- (10) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 9.
- (11) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 9.
- (12) US Department of State, Country Report on Human Rights Practices 1999: Belarus p.2.
- (13) *Maria del Carmen Almeida de Quinteros, on behalf of her daughter, Elena Quinteros Almeida, and on her own behalf v. Uruguay*, Communication No. 107/1981 (17 September 1981), UN Doc. Supp. No. 40 (A/38/40) at 216 (1983), paragraph 14.
- (14) *Godínez Cruz Case*, Compensatory Damages (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Inter-Am.Ct.H.R. (Ser. C) No. 8 (1990), paragraphs 48-9.
- (15) Nigel Rodley, *The Treatment of Prisoners in International Law*, second edition, Oxford, Oxford University Press 1999, p. 261.)
- (16) UN Doc. E/CN.4/2000/64 21 December 1999 - paragraph 27.
- (17) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 4.
- (18) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 14 (ii).
- (19) Doc. 8625, conclusions of the Committee on Legal Affairs and Human Rights 24 January 2000 - paragraph 18.
- (20) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.21.
- (21) Principles 7 and 8 of the UN Basic Principles on the Role of Lawyers and Principle 17 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- (22) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.10.
- (23) Press Release by the OSCE Chairman-in-Office 7 October 1999.
- (24) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.9.
- (25) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.21.
- (26) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.10.
- (27) Committee to Protect Journalists 12 July 2000.
- (28) BBC 10 July 2000.
- (29) UN Doc. A/54/44 (1998) - paragraph 68.
- (30) UN Doc. A/54/44 (1998) - paragraph 82.
- (31) UN Doc. A/54/44 (1999) - paragraph 137.
- (32) UN Doc. CAT/C/34/Add.12 - paragraph 16.
- (33) UN Doc. CAT/C/34/Add.12 - paragraph 22.
- (34) Doc. 8292 Addendum II to the Progress Report, Council of Europe Parliamentary Assembly, 6 January 1999 - paragraph 43.
- (35) CCPR/C/SR Summary record of the 1633rd meeting: Belarus 30/10/97 - paragraph 65.
- (36) CCPR/C/SR Summary record of the 1633rd meeting: Belarus 30/10/97 - paragraph 76.
- (37) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.21.
- (38) Inter-Parliamentary Union, Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Belarus 19 - 24 November 1999, CL/166/16 (c) - R.2 April-May 2000 - p.21.
- (39) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 8.
- (40) CCPR/C/SR Summary record of the 1632nd meeting: Belarus 24/3/98 - paragraph 12.
- (41) This figure included people who were sentenced prior to 1999.
- (42) ODIHR Background Paper *The Death Penalty in the OSCE Area: A Survey January 1998 - June 1999*, September 1999 - paragraph 4.4.
- (43) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee -

paragraph 8.

(44) CCPR/C/SR Summary record of the 1632nd meeting: Belarus 24/3/98 - paragraph 11.

(45) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 3.

(46) Doc. 1441 (2000), recommendation of the Political Affairs Committee, *Situation in Belarus*, adopted by the Parliamentary Assembly 26 January 2000 - paragraph 14 (i).

(47) UN Doc. A/54/44 (1998) - paragraph 83.

(48) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 11.

(49) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 11.

(50) 'Pressovchiki': the term used to describe a system of control in former Soviet prisons by which appointed prisoners maintain internal order in return for special privileges. Control is often maintained by threats and physical violence.

(51) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 11.

(52) U.S. Department of State, Country Report on Human Rights Practices 1999: Belarus p.4.

(53) US Department of State, Country Report on Human Rights Practices 1998: Belarus p.3.

(54) U.S. Department of State, Country Report on Human Rights Practices 1999: Belarus p.5.

(55) Doc. 8292 Addendum II to the Progress Report, Council of Europe Parliamentary Assembly, 6 January 1999 - paragraph 42.

(56) Extract from International Helsinki Federation for Human Rights Annual Report 1999 p.6.

(57) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 10.

(58) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 10.

(59) *Nasha Svaboda* 11 April 2000.

(60) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 11.

(61) RFE/RL Newline, 3 March 1999, quoted in Penal Reform International Newsletter March/April 1999 p.7.

(62) CCPR/C/SR Summary record of the 1632nd meeting: Belarus 30/10/97 - paragraph 13.

(63) UN Doc. CAT/C/23/2 (1999) - paragraph 5(a), CAT/C/23/3 (1999) - paragraph 4(a) and A/53/44 (1998) - paragraph 254(a).

(64) UN Doc. A/54/44 (1999) - paragraph 135.

(65) UN Doc. A/54/44 (1998) - paragraph 96.

(66) US Department of State, Country Report on Human Rights Practices 1999: Belarus p.5.

(67) UN Doc. CCPR/C/79/Add.86 (1997) - paragraph 14.

(68) UN Doc. CAT/C/34/Add.12 - paragraph 18.

(69) CCPR/C/79/Add.86 - Concluding Observations of the Human Rights Committee - paragraph 9.

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