Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**242**
Land:	Belarus
Kilde:	UN Human Rights Committee
Titel:	Concluding observations on the fifth periodic report of Belarus
Udgivet:	22. november 2018
Optaget på baggrundsmaterialet:	5. februar 2019

United Nations CCPR/C/BLR/CO/5

International Covenant on Civil and Political Rights

Distr.: General
22 November 2018

Original: English

Human Rights Committee

Concluding observations on the fifth periodic report of Belarus*

1. The Committee considered the fifth periodic report of Belarus (CCPR/C/BLR/5) at its 3530th and 3531st meetings (CCPR/C/SR.3530 and 3531), held on 8 and 9 October 2018. At its 3556th meeting, held on 25 October 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee regrets the significant delay in reporting under article 40 of the Covenant, and is grateful to the State party for having accepted the simplified reporting procedure and for submitting its fifth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/BLR/QPR/5). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party:

(a) The adoption of the inter-agency action plan on human rights for 2016–2019 (Decision No. 860 of the Council of Ministers) on 24 October 2016;

(b) The adoption of the new Refugees Act in July 2016;

(c) The amendments to the Action against Human Trafficking Act made on 16 December 2014, setting up a national mechanism for the identification and referral of victims of trafficking.

4. The Committee also welcomes the State party's ratification of, or accession to, the following international instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities, on 29 November 2016;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 3 February 2004;

* Adopted by the Committee at its 124th session (8 October–2 November 2018).

(c) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, on 23 January 2002 and 25 January 2006 respectively.

C. Principal matters of concern and recommendations

The Covenant in the domestic legal order

5. While noting the State party's argument that the absence of court decisions referring to the Covenant stems from the incorporation of the main provisions of the Covenant into domestic law, the Committee remains concerned about the lack of reference to provisions of the Covenant that have not been incorporated, and to the interpretations and specific recommendations of the Committee relating, for example, to the regulation of the exercise of freedom of assembly and freedom of expression. In view of this, and noting that the Committee's Views are not widely circulated, the Committee is concerned that awareness and knowledge about the Covenant among government officials, judges, prosecutors and lawyers remains limited (art. 2).

6. **The State party should take all measures necessary to ensure that all Covenant rights are given full effect in its domestic legal order, that domestic courts refer to them and interpret domestic law in the light of the Covenant and its interpretation by the Committee, and that specific and adequate training on the Covenant is provided to government officials, judges, prosecutors and lawyers, including by making the Covenant and the work of the Committee part of legal education.**

Views under the Optional Protocol and interim measures of protection

7. The Committee regrets that the State party continues not to comply with its requests for interim measures, mainly in death penalty cases submitted under the Optional Protocol, and executes individuals before the Committee has concluded its consideration of their cases, arguing that such requests for interim measures are based on the Committee's rules of procedure and are thus not binding. The Committee is aware of 10 individuals having been executed in this way, and is concerned about the fate of 3 other individuals who have been sentenced to death and with regard to whom interim measures have been issued. Moreover, the Committee regrets the State party's position that Views adopted under the Optional Protocol are merely advisory in nature and its ensuing failure to implement any of the 104 Views adopted to date that found violations of the Covenant. The Committee regrets the explicit refusal of the State party to fully cooperate with the Committee in the framework of individual communications, due to the Committee's practice of registering cases without requiring that the supervisory review procedure be first exhausted and of accepting cases not submitted by the alleged victims themselves but by their legal representatives.

8. The Committee recalls its jurisprudence providing that article 39 (2) of the Covenant authorizes it to establish its own rules of procedure, and that interim measures under rule 92 of its rules of procedure, adopted in accordance with article 39 of the Covenant, are essential to its role under the Optional Protocol in order to avoid irreparable damage to the victim of an alleged violation of the Covenant. Flouting of that rule, especially by irreversible measures, such as the execution of individuals sentenced to death before the Committee has concluded its consideration of their communications, compromises the protection of Covenant rights and constitutes a serious violation of the Optional Protocol.

9. The Committee further observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Covenant (preamble and art. 1 of the Optional Protocol). Implicit in the adherence of a State to the Optional Protocol is an undertaking to cooperate with the Committee in good faith, and it is incompatible with its obligations under article 1 of the Optional Protocol for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of communications and in the expression of its Views.

10. The Committee further recalls its long-standing position, articulated in its general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, that its Views exhibit some of the principal characteristics of a judicial decision and represent an authoritative determination by the organ established under the Covenant charged by all States parties with the task of interpreting that instrument. Thus, the Committee regards implementation of the remedies indicated in its Views as an important part of the obligations that States parties have undertaken under article 2 (3) of the Covenant and under the Optional Protocol.

11. Moreover, the Committee reiterates its long-standing jurisprudence that the supervisory review procedure constitutes an extraordinary remedy and is not a remedy that must be exhausted before the submission of a communication, and that authors of individual communications have the right to legal representation in approaching the Committee (art. 2 of the Covenant and art. 1 of the Optional Protocol).

12. **The State party should revisit its position with a view to fulfilling its obligations under the Optional Protocol by fully cooperating with the Committee in good faith in the consideration and examination of communications under the Optional Protocol, including by complying with requests for interim measures of protection and by fully implementing all the Views adopted by the Committee so as to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant, in accordance with article 2 (3) of the Covenant.**

National human rights institution

13. While noting that the State party has been exploring the possibility of establishing an independent national human rights institution by studying international experience in that regard, the Committee is concerned about the slow progress and the lack of a timeline to complete this process. It notes that none of the specialized institutions with mandates related to human rights referred to by the State party comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2).

14. **The State party should establish, without undue delay, an independent national human rights institution with a mandate to protect the full range of human rights, which is fully compliant with the Paris Principles and which functions independently, transparently and effectively to promote and protect human rights.**

Anti-discrimination framework

15. The Committee, while noting that the general principles of equality before the law and non-discrimination are enshrined in the Constitution and in various legislative acts, is concerned that the existing legal framework does not afford comprehensive protection against discrimination on all the grounds prohibited under the Covenant, nor does it provide for effective remedies for discrimination. These shortcomings are reportedly attributable to the absence of a comprehensive anti-discrimination law. The Committee notes that amendments to legislation to strengthen an open-ended list of prohibited grounds for discrimination are under way and that the ongoing three-year legislation review, currently in its second phase, will clarify whether adopting a specific anti-discrimination law is advisable (arts. 2 and 26).

16. **The State party should take all measures necessary, such as adopting a comprehensive anti-discrimination law, to ensure that its legal framework provides adequate and effective substantive and procedural protection against all forms of direct, indirect and multiple discrimination, including in the private sphere, on all the prohibited grounds under the Covenant, as well as access to effective and appropriate remedies against any form of discrimination.**

Discrimination against Roma

17. While noting the information provided by the State party on measures taken to protect the interests of the Roma minority, the Committee remains concerned about reports of manifestations of discrimination against Roma, including hate speech and racial profiling

by law enforcement officials, and about the high rates of illiteracy and school non-attendance among Roma children (arts. 2, 26 and 27).

18. **The State party should take effective measures to address discrimination against Roma, to combat hate speech directed at them and to eliminate racial profiling by law enforcement officials, inter alia by providing mandatory training on addressing hate crimes and on the impermissibility of ethnic profiling. It should strengthen efforts to ensure school attendance and the attainment of adequate educational standards for Roma children on an equal footing with other children.**

Discrimination on the grounds of sexual orientation and gender identity

19. While noting the information provided by the State party in this regard, the Committee remains concerned about reports of discrimination based on sexual orientation and gender identity, including harassment, homophobic discourse, hate speech and violence against lesbian, gay, bisexual and transgender individuals, and about the lack of adequate protection against such discrimination, both in law and in practice. The Committee is also concerned about reported violations of privacy and other rights of transgender persons, inter alia through gendered identity numbers in passports making gender reassignment information available to a broad range of government officials and through military identification documents for transgender men indicating that they are unfit for service under category 19a (serious mental disorder) of the Disease Schedule approved by the Ministries of Health and Defence (arts. 2, 7, 17 and 26).

20. **The State party should take vigorous steps to eradicate effectively all forms of discrimination and violence on the basis of sexual orientation and gender identity, inter alia by: (a) explicitly listing sexual orientation and gender identity among the prohibited grounds for discrimination in comprehensive anti-discrimination legislation; (b) providing appropriate training on combating discriminatory attitudes towards lesbian, gay, bisexual and transgender persons to law enforcement and other officials; and (c) sanctioning such conduct properly, including by promptly and effectively investigating any reports of violence or hatred motivated by sexual orientation and gender identity and by bringing perpetrators to justice. The State party should amend relevant regulations and procedures governing gender transition with a view to ensuring their compatibility with the Covenant, including with the right to privacy.**

Rights of persons with disabilities

21. The Committee, while acknowledging the positive steps taken to address the rights of persons with disabilities, is concerned about the pace of reforms in this field and about the reported inadequate funding of various programmes, including the national plan of action to implement the Convention on the Rights of Persons with Disabilities for 2017–2025. The Committee is concerned at reports of slow progress in ensuring the physical accessibility of public spaces, public transportation, buildings and other facilities and in integrating children with disabilities in inclusive education (arts. 2 and 26).

22. **The State party should strengthen the measures taken to promote and protect the rights of persons with disabilities and provide adequate funding for their effective implementation in practice. It should, inter alia, ensure improved accessibility for, and non-discriminatory access by, persons with disabilities to public transportation, buildings and other facilities, and should make progress on integrating children with disabilities in inclusive education.**

Violence against women, including domestic violence

23. While welcoming the measures taken to address violence against women, including the adoption in 2014 of the Principles of Crime Prevention Act, which introduced restraining orders, the Committee remains concerned at the reported prevalence of gender-based violence against women. In addition, since 2013, there has been a substantial increase in the number of administrative offences dealt with under article 9.1 (2) of the Code of Administrative Offences (intentional infliction of bodily harm) instead of under the

Criminal Code. Further, there is still an absence of legislation specifically criminalizing domestic violence and marital rape. While noting that a concept law on domestic violence has been developed and is pending adoption, the Committee regrets that the State party has provided no timeline for its adoption. The Committee also regrets the State party's position (CCPR/C/BLR/5, para. 115) that there is "no need to introduce special rules criminalizing marital rape" since such rules would "constitute discrimination against victims of sexual violence perpetrated outside the family or domestic sphere" (arts. 2, 3, 6, 7 and 26).

24. **The State party should strengthen its efforts to prevent and combat all forms of violence against women, including by:**

(a) **Adopting without undue delay legislation specifically criminalizing violence against women, particularly domestic and sexual violence including marital rape, and ensuring its effective implementation in practice;**

(b) **Strengthening preventive measures, including by raising awareness of the unacceptability and adverse impact of violence against women, systematically informing women of their rights and encouraging the reporting of such violence to law enforcement authorities;**

(c) **Ensuring that law enforcement officials, the judiciary and other relevant stakeholders receive appropriate training on gender-sensitive detection, handling and investigation of cases of violence against women;**

(d) **Ensuring that comprehensive data on violence against women is collected and that all such cases are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to effective remedies and means of protection, including sufficient, safe and adequately funded shelters and crisis centres and suitable support services throughout the country.**

Enforced disappearance

25. The Committee is concerned about the State party's failure to conduct a thorough and effective investigation to establish the fate and whereabouts of Viktar Hanchar, Yuri Zakharenko, Dimitry Zavadsky and Anatoly Krasovsky, who have been identified as victims of enforced disappearance, in violation of its obligations under article 2 (3), read in conjunction with articles 6 and 7 of the Covenant, and deplores the fact that the State party did not provide any further information on those cases during the constructive dialogue (arts. 2, 6, 7, 9 and 16).

26. **The State party should:**

(a) **Criminalize enforced disappearance effectively, in accordance with international standards;**

(b) **Conduct a thorough, credible and impartial investigation into the fate and whereabouts of Viktar Hanchar, Yuri Zakharenko, Dimitry Zavadsky and Anatoly Krasovsky, who have been identified as victims of enforced disappearance; ensure that the victims and their relatives are informed of the progress and results of the investigation; identify those responsible and ensure that they are prosecuted and punished with appropriate penalties that are commensurate with the gravity of their crimes; ensure that victims of enforced disappearance and their families are provided with full reparation, including rehabilitation, satisfaction and guarantees of non-repetition; and take into account the Committee's Views in *Krasovskaya and Krasovskaya v. Belarus* (CCPR/C/104/D/1820/2008) and *Zakharenko and Zakharenko v. Belarus* (CCPR/C/119/D/2586/2015).**

Death penalty

27. The Committee regrets the lack of progress made by the State party towards the abolition of the death penalty and ratification of the Second Optional Protocol to the Covenant. It remains concerned that the death penalty continues to be imposed and enforced, including in cases with regard to which the Committee has issued interim measures, and that there is still no effective appeal mechanism against death sentences

handed down by the Supreme Court as a court of first instance. The Committee is concerned about the failure to remedy violations identified in the Views adopted by the Committee in the seven individual communications under the Optional Protocol referred to in para. 28 (c) below, the particulars of which include:

(a) Violation of the fair trial guarantees provided for in article 14, which include the right to effective legal representation, the presumption of innocence and the right to review by a higher tribunal. The Committee recalls in this respect its long-standing jurisprudence that denial of these fundamental guarantees leads to a violation of article 6 of the Covenant;

(b) Individuals on death row and their relatives not being notified about the date of execution, the body of the executed individuals not being returned to the relatives and the burial site not being disclosed (article 175 (5) of the Penalties Enforcement Code), in violation of article 7 of the Covenant (arts. 2, 6, 7 and 14).

28. **The Committee underscores that the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and the progressive development of human rights. In the light of the foregoing, and taking due account of the temporary nature of the use of the death penalty as enshrined in the State party's Constitution, the State party should consider establishing a moratorium on executions as an initial step towards legal abolition of the death penalty and ratification of the Second Optional Protocol to the Covenant, commute all pending death sentences to imprisonment and increase efforts to change public perception about the necessity of maintaining the death penalty. Pending the abolition of the death penalty, the State party should:**

(a) **Ensure that, if imposed at all, the death penalty is never imposed in violation of the Covenant, including in violation of fair trial guarantees, and provide for an effective right of appeal against death sentences;**

(b) **Amend article 175 of the Penalties Enforcement Code with a view to bringing it into line with the State party's obligations under article 7 of the Covenant;**

(c) **Promptly and fully comply with the Views adopted by the Committee in the cases of Vasily Yuzepchuk, Pavel Selyun, Oleg Grishkovtsov, Andrei Burdyko, Vladislav Kovalev, Andrei Zhuk and Alexandr Grunov.**

Torture and ill-treatment

29. The Committee, while observing the note added to article 128 of the Criminal Code in 2015 that specifically defines torture, is concerned that shortcomings in the definition and its applicability remain, as not all acts that constitute torture are covered by the definition and the penalties for torture are not commensurate with the gravity of the crime. The Committee is also concerned at continued allegations that: (a) law enforcement officers resort to the use of torture and ill-treatment in order to extract confessions from suspects and that such confessions are used as evidence in court; (b) allegations of torture and ill-treatment are often not investigated, and the Investigative Committee lacks the required independence to conduct effective investigations into such allegations; and (c) medical units called to document injuries inflicted on prisoners are structurally part of the prison system. The Committee notes with concern the State party's statement that no convictions under articles 128 and 394 of the Criminal Code took place until 2016, and regrets that no updated information was provided in that regard. The Committee also regrets the State party's assertion that no complaints of torture or ill-treatment have been made by Andrei Sannikov, Ales Mikhalevich or Aliaksandr Kazulin in connection with political candidates for and activities relating to the 2006 presidential election or opposition demonstrations on election day in December 2010, noting that, in respect of Mr. Sannikov's allegations, the State party argued in the context of the individual communication submitted by Mr. Sannikov to the Committee (CCPR/C/122/D/2212/2012) that his allegations had not been confirmed (arts. 2, 7 and 14).

30. **The State party should take vigorous measures to eradicate torture and ill-treatment, inter alia, by:**

(a) **Bringing the definition of torture into conformity with article 7 of the Covenant and other internationally accepted standards, including by ensuring that the crime of torture is not subject to a statute of limitations and is punished with sanctions that are commensurate with the nature and gravity of the crime;**

(b) **Providing law enforcement officials with adequate training on torture prevention and humane treatment;**

(c) **Ensuring independent and reliable medical examinations and recording of injuries;**

(d) **Ensuring that confessions obtained in violation of article 7 of the Covenant are not accepted by courts under any circumstances;**

(e) **Ensuring that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an effective and fully independent and impartial body; that perpetrators are prosecuted; that those convicted are punished with sanctions commensurate with the gravity of the crime; and that victims and, where appropriate, their families are provided with full reparation, including rehabilitation and adequate compensation.**

Judicial control of detention

31. The Committee is concerned that, according to the legislation in force: (a) pretrial detention of persons arrested or detained on a criminal charge may be authorized by a large number of individuals, including the procurator, the procurator's deputy, the Chair of the Investigative Committee, the head of the State Security Committee or persons performing those functions and the body conducting the initial inquiry or the investigator if authorized by the procurator or deputy prosecutors; and (b) judicial review of detention (habeas corpus) is limited to checking the legality of the procedure (art. 9).

32. **The State party should bring its legislation and practice into line with article 9 of the Covenant, in particular by ensuring that: (a) persons arrested or detained on a criminal charge are brought promptly before a judge or other officer authorized by law to exercise judicial power, ordinarily within 48 hours, in order to bring their detention under judicial control; and (b) the judicial review of the detention of anyone who is deprived of his or her liberty satisfies the standards required under article 9 (4) of the Covenant and entails a review of the factual basis for the detention. The Committee draws attention to its general comment No. 35 (2014) on liberty and security of person, particularly to paragraphs 32, 33 and 39, indicating, inter alia, that a public prosecutor cannot be considered as an officer exercising judicial power under article 9 (3) of the Covenant.**

Preventive detention and forced psychiatric hospitalization of human rights defenders

33. The Committee is concerned at reports that administrative detention for the purposes of establishing the identity of a person against whom an administrative case has been opened is reportedly applied overly broadly and in an abusive manner. The Committee is particularly concerned that preventive detention of individuals prior to political or social events is allegedly used routinely, especially against human rights defenders and journalists, and that it is formally based on the legal framework of administrative detention. Such reported cases include the arrest and detention on 25 March 2017 of 57 persons attending a training session in the office of the Viasna Human Rights Centre on monitoring peaceful assemblies in preparation for a demonstration planned for later that day, as well as the arrest and subsequent detention for 10 days of political opposition leader and former presidential candidate Mikalay Statkevich, among others, on the eve of the Freedom Day marches in March 2018. The Committee is concerned at continued reports of the possible arbitrary compulsory psychiatric hospitalization of human rights defenders, and regrets that the State party provided no information on the outcome of reviews undertaken by the judiciary into the alleged forced hospitalization of Igor Postnov, a doctor who had

investigated corruption in the health system, and of Andrei Kasheuski for wearing a ribbon from the Euromaidan protests in Kyiv (arts. 2, 9, 10, 14, 19 and 21).

34. **The State party should bring its administrative detention legislation and practices into compliance with article 9 of the Covenant, taking into account the Committee's general comment No. 35 (2014) on liberty and security of person. It should ensure that the principles of legality and proportionality are strictly observed in any decisions restricting the right to liberty and security of individuals and that due process rights are fully respected. The State party should end the practices of the preventive detention of human rights defenders and journalists and the arbitrary forced psychiatric hospitalization of human rights defenders, which are inconsistent with the State party's obligations under articles 9, 14, 19 and 21 of the Covenant.**

Treatment of prisoners

35. The Committee notes the legislative and other measures taken to reduce the number of detainees and improve conditions of detention, but remains concerned at reports of overcrowding, suicides and deaths in custody due to a lack of proper medical care, including in the cases of Siarhei Ishchuk and Valentyn Pishchalau, who died in Penal Colony No. 13 in Hlybokaye in June 2016 and January 2017 respectively, and in the case of Alexander Lembovich, who died in Penal Colony No. 15 in Mahiliou. While noting that work on amending the procedure governing the status of the public oversight commissions is under way, the Committee is concerned at their reported lack of full independence and their limited effectiveness owing, inter alia, to their lack of access to all places of deprivation of liberty (arts. 6, 7 and 10).

36. **The State party should:**

(a) **Take effective measures to eliminate overcrowding in places of detention, including by increasing resort to non-custodial alternative measures to detention;**

(b) **Strengthen its efforts to improve conditions of detention and the provision of adequate and timely medical care, in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(c) **Ensure prompt, impartial and independent investigations into the circumstances surrounding deaths in custody, bringing responsible persons to justice, where appropriate, and providing victims' families with reparation;**

(d) **Ensure that public oversight commissions are fully independent and operate effectively and have the mandate and capacity to carry out regular unannounced visits to all places of deprivation of liberty and facilitate monitoring and inspection visits by independent organizations.**

Forced labour

37. While noting the prohibition of forced labour in the Constitution, the Committee is concerned that elements of forced labour continue to be enshrined in legislation and in certain policies, including:

(a) Presidential Decree No. 18 of 24 November 2006 on supplementary measures for affording State protection to children in dysfunctional families sets out a duty for parents whose children are under State care to reimburse the expenses for this care, which may result in an employment order being issued against such parents if they are unemployed or underemployed. These employment orders are enforceable by criminal sanction (article 174 of the Criminal Code), administrative liability (article 9.27 the Code of Administrative Offences) and extrajudicial arrest by order of the Ministry of Internal Affairs (article 3.6 of the Procedural Executive Code of Administrative Offences);

(b) Law No. 104–3 of 4 January 2010 On Procedure and Conditions of Sending Citizens to Occupational Therapy Rehabilitation Centres, requiring compulsory labour from persons subject to involuntary isolation and medical and social rehabilitation, including

persons suffering from chronic alcoholism, drug addiction and substance abuse (arts. 8 and 9).

38. **The State party should undertake a comprehensive review of the above-mentioned legislation and all practices involving non-voluntary work, with a view to bringing such regulations into full compliance with the Covenant, particularly articles 8 and 9.**

Independence of the judiciary and fair trial

39. While noting the measures taken as part of judicial reform, such as the 2016 amendments to the Code on the Judicial System and the Status of Judges, the Committee remains concerned that the independence of the judiciary continues to be undermined by the President's role in, and control over, the selection, appointment, reappointment, promotion and dismissal of judges and prosecutors and by the lack of security of tenure of judges, who are appointed initially for a term of five years with the possibility of reappointment for a further term or for indefinite terms. It is also concerned that the salaries of judges are determined by presidential decree rather than by law. The Committee is further concerned about: (a) the violation of the presumption of innocence for criminal defendants who continue to be held in glass or metal cages in court proceedings, and who are sometimes required to enter and leave the courtroom shackled and in a bent position, as addressed repeatedly by the Committee in its Views under the Optional Protocol; and (b) the reported failure to observe fair-trial guarantees, including the right to a public hearing, access to counsel and respect for the presumption of innocence during the trial of opposition candidates and activists relating to the elections of 2006 and 2010 (art. 14).

40. **The State party should take all measures necessary to safeguard, in law and in practice, the full independence of the judiciary, including by: (a) reviewing the role of the President in the selection, appointment, reappointment, promotion and dismissal of judges; (b) considering establishing an independent body to govern the judicial selection process; and (c) guaranteeing judges' security of tenure. The State party should also ensure that defendants are afforded all fair trial guarantees, including the presumption of innocence, and should discontinue the practices referred to in paragraph 39 (a) above.**

Independence of the legal profession and harassment of lawyers

41. The Committee is concerned at continuous reports of pressure on and harassment of lawyers, particularly those taking on politically sensitive cases, including through the certification procedure of the lawyers' certification commission, which may issue a negative assessment of lawyers' professional knowledge, and regrets the absence of information on the availability of effective appeals against the ensuing revocation of licences. The Committee is also concerned about the extraordinary inspections reportedly conducted in respect of more than 20 lawyers in September 2017, which especially affected lawyers of the Minsk City Bar Association, and about reports that the relationship between the bar associations and the Ministry of Justice is undermining the independence of the legal profession (arts. 14 and 22).

42. **Taking into account the Covenant and the 1990 Basic Principles on the Role of Lawyers, the State party should revise its regulations and practices regarding the licensing and monitoring of lawyers' work with a view to ensuring the full independence of bar associations and lawyers and their effective protection against any form of undue interference or retaliation in connection with their professional activity.**

Right to privacy

43. The Committee is concerned at reports that legislation provides for broad powers of surveillance and that the interception of all electronic communications, including through the system of operative investigative measures, which allows remote access to all user communications without notifying providers, does not afford sufficient safeguards against arbitrary interference with the privacy of individuals (art. 17).

44. **The State party should ensure that: (a) all types of surveillance activities and interference with privacy, including online surveillance for the purposes of State security, are governed by appropriate legislation that is in full conformity with the Covenant, in particular article 17, including with the principles of legality, proportionality and necessity, and that State practice conforms thereto; (b) surveillance and interception is conducted subject to judicial authorization as well as effective and independent oversight mechanisms; and (c) affected persons have proper access to effective remedies in cases of abuse.**

Freedom of religion

45. The Committee is concerned about undue restrictions on the exercise of the freedom of religion, such as the mandatory registration of religious communities, the alleged repeated denial of registration to some religious communities and the permission required by foreign citizens to participate in religious activities (arts. 18 and 26).

46. **The State party should guarantee the effective exercise of the freedom of religion in law and in practice, including by repealing the requirement of mandatory State registration of religious communities, and should refrain from any action that may restrict that freedom beyond the narrowly construed restrictions permitted under article 18 of the Covenant.**

Conscientious objection to military service

47. The Committee notes the adoption of the Alternative Service Act in 2015, but remains concerned that conscientious objection to military service can be exercised on religious grounds only and is not extended to persons who hold non-religious beliefs grounded in conscience. It is also concerned at the difference in the length of alternative service compared with military service between those with and without higher education, with alternative service for the latter category being twice as long as military service. While noting that the justification given for this difference is to prevent abuses and avoid an increase in the number of requests for alternative service, the Committee is concerned at the discriminatory and punitive aspects of this difference (arts. 18 and 26).

48. **The State party should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensuring that alternative service is not punitive or discriminatory in nature or duration by comparison with military service.**

Freedom of expression

49. The Committee is concerned about laws and practices that do not appear to comply with the principles of legal certainty, necessity and proportionality as required by the Covenant, and that severely restrict freedom of opinion and expression, including:

(a) Restrictions on Internet-based expression such as the amendments to the Mass Media Act adopted in June 2018, which extend State control to online media outlets and introduce, inter alia, a procedure for registering as official online media outlets and an obligation for news portals to implement mandatory identification of website visitors;

(b) The power of the executive to shut down media outlets and the extensive practice of using warnings to media outlets, which has a chilling effect on freedom of expression;

(c) The broadly formulated provision of article 38 of the Mass Media Act defining which information it is forbidden to distribute among the mass media, especially information from non-registered organizations and information “harming the national interest”;

(d) Laws prohibiting information that harms the honour and dignity of high-ranking officials, including criminal responsibility for defamation of the President of Belarus (article 367 of the Criminal Code) and for defamation of Belarus, or that establishes

liability for knowingly providing a foreign State or a foreign or international organization with false information on the political, economic, social, military or international status of Belarus or the legal status of citizens in Belarus that damages the image of Belarus or its authorities;

(e) The reported harassment and persecution of journalists working for foreign, unaccredited news outlets;

(f) Arbitrary travel bans reportedly imposed on human rights defenders, lawyers and journalists in connection with their activities (arts. 12, 17 and 19).

50. **The State party should take all measures necessary to guarantee the full enjoyment of the freedom of expression by everyone, including by:**

(a) **Repealing or revising the laws mentioned above with a view to bringing them into conformity with its obligations under the Covenant, taking into account the Committee's general comment No. 34 (2011) on freedoms of opinion and expression;**

(b) **Considering decriminalizing defamation and, in any case, resorting to criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation, as set out in general comment No. 34 (2011) on freedoms of opinion and expression;**

(c) **Lifting all other undue restrictions on the exercise of freedom of expression and ensuring that the necessity of any restriction imposed and the proportionality of the response meet the strict requirements of article 19 (3) of the Covenant.**

Freedom of peaceful assembly

51. The Committee is concerned that the State party regulates peaceful assembly in a manner that undermines the exercise of this right. It is particularly concerned about such undue restrictions as:

(a) Broad authorization requirements for holding all types of protests; the stringent conditions for granting authorization, including undertakings to ensure public order and safety and the provision of medical and cleaning services; the limitations on the holding of assemblies, especially their being restricted to certain permissible locations only, the size of assemblies organized by physical persons being restricted to less than 1,000 persons and the banning of spontaneous assemblies. While noting that the 2018 amendments to the Mass Events Act introduce a notification-based procedure for holding assemblies, the Committee remains concerned that the notification procedure may be used only for assemblies held at permanent locations as designated by the authorities, which are reportedly located far away from city centres;

(b) The obstruction of annual rallies on Freedom Day in March and Chernobyl Memorial Day in April;

(c) The disproportionate enforcement of criminal and administrative sanctions against persons organizing, calling for or participating in mass events, including:

(i) The detention and criminal conviction of Dzmitry Paliyenka in 2016 following his participation in a peaceful protest on 29 April 2016 against restrictions on cyclists, and his reportedly being subjected to ill-treatment and solitary confinement;

(ii) The excessive use of police force, mass arrests, detention and punishments for administrative offences in connection with the Freedom Day events on 25 March 2017, when police allegedly detained at least 700 persons, including about 100 journalists and 60 human rights activists, with at least 177 protestors reportedly found to be in violation of the Code of Administrative Offences following proceedings that lacked fair trial guarantees.

52. The Committee regrets that the restrictions imposed on assemblies and gatherings are being used to deny the political opposition the ability to meaningfully participate in public life and to influence public opinion (arts. 7, 9, 10, 14, 19, 21 and 25).

53. **The State party should revise its laws, regulations and practices, including the Mass Events Act, with a view to guaranteeing the full enjoyment of the right to freedom of assembly, both in law and in practice, and to ensuring that any restrictions on the freedom of assembly, including through the application of administrative and criminal sanctions against individuals exercising that right, comply with the strict requirements of article 21 of the Covenant. The State party should promptly and effectively investigate all cases of excessive use of force by law enforcement officials, arbitrary arrest and detention of peaceful protesters, and it should bring the perpetrators to justice.**

Freedom of association

54. The Committee is concerned about undue restrictions on the freedom of association. While noting plans to amend the Public Associations Act and the Political Parties Act in order to simplify the registration of non-governmental organizations (NGOs), the Committee is concerned about the restrictive and disproportionate rules on the registration of public associations and political parties, requiring, inter alia, relatively high numbers of founders, geographical diversity, high fees for registering non-profit associations and limits on the use of residential premises as an official address, resulting in the inability of many associations, including most human rights NGOs, to meet the registration requirements. The Committee is further concerned about the criminalization of the organization of or participation in the activities of unregistered public associations under article 193-1 of the Criminal Code and, while noting plans to repeal that article and replace it with an administrative offence imposed by a non-judicial official, the Committee nonetheless raises its concern about the necessity and proportionality of such a measure. The Committee is also concerned at:

(a) The denial of registration to public associations such as Gender Partnership and the Ruzha Gender Centre (because of their statutory purpose of counteracting gender discrimination), the Viasna Human Rights Centre, PACT and the Lambda Human Rights Centre;

(b) The repeated denial of registration to new political parties, with no such parties registered since 2000;

(c) The restrictive regulations on foreign funding (Presidential Decree No. 5 of 31 August 2015), which limit the purposes for which such funding may be used and prohibit such use, inter alia, for "the organization or conduct of assemblies, rallies, marches, demonstrations, picketing or strikes"; and the imposition of criminal liability for obtaining foreign funding in contravention of the law (article 369-2 of the Criminal Code);

(d) Obstacles to registering trade unions; the application of the Mass Events Act to trade unions; limitations on the right to strike; anti-union interference, including the discriminatory use of fixed-term contracts in cases involving trade union activists; and specific problems in the application of collective bargaining (arts. 19, 22 and 25).

55. **The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of articles 22 and 25 of the Covenant, including by:**

(a) **Simplifying registration rules so as to ensure that public associations and political parties can exercise their right to association meaningfully;**

(b) **Repealing article 193-1 of the Criminal Code and considering not replacing it with an administrative offence;**

(c) **Ensuring that regulations governing foreign funding for public associations do not lead in practice to undue control or interference over their ability to influence public opinion and to operate effectively, including by revisiting the list of activities for which foreign funding may be used;**

(d) **Addressing the obstacles to the registration and operation of trade unions, lifting the undue limitations on the right to strike, investigating all reports of interference in the activities of trade unions and of the retaliatory treatment of trade**

union activists, and revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant.

Participation in public affairs

56. While welcoming the State party's intention to improve legislation and practices related to holding elections, the Committee remains concerned about reports of the persecution, intimidation, harassment and detention of opposition political candidates, including in connection with the 2010 elections; the respect for electoral rights, including the expansive interpretation of criminal sanctions for such acts as demonstrations and protests related to the electoral process; and the lack of transparency in vote counting (arts. 19, 21 and 25).

57. **The State party should bring its electoral regulations and practices into full compliance with the Covenant, including its article 25, inter alia by ensuring: (a) the full and meaningful enjoyment of electoral rights by everyone, including opposition political candidates; (b) the freedom to engage in pluralistic political debate, including by way of holding peaceful demonstrations and meetings and by refraining from using criminal law provisions in an attempt to suppress such protected conduct and expression or to exclude opposition candidates from electoral processes; and (c) the transparency of the vote-counting process.**

D. Dissemination and follow-up

58. **The State party should widely disseminate the Covenant, its first Optional Protocol, its fifth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the periodic report and the present concluding observations are translated into the official languages of the State party.**

59. **In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, by 2 November 2020, information on the implementation of the recommendations made by the Committee in paragraphs 12 (Views under the Optional Protocol and interim measures of protection), 28 (Death penalty) and 53 (Freedom of peaceful assembly) above.**

60. **The Committee requests the State party to submit its next periodic report by 2 November 2022. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its sixth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.**