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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Note verbale dated 7 August 2012 from the Permanent Mission of Belarus to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Belarus to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to enclose herewith the comments by the Government of Belarus with regard to the opinion adopted by the Working Group on Arbitrary Detention on case 14/2012 (see annex).

The Permanent Mission requests that the information provided by the Government of Belarus be published as a document of the twenty-first session of the Human Rights Council under agenda item 3, in all official languages of the United Nations.

* Reissued for technical reasons on 30 October 2012.

Annex

[Original: Russian]

Comment by the Republic of Belarus concerning the opinion issued by the Working Group on Arbitrary Detention on case No. 14/2012

1. Belarus has seen the opinion of the Working Group on Arbitrary Detention concerning case No. 14/2012 (A/HRC/WGAD/2012/14), and considers that it lacks objectivity, is biased and is legally unfounded.
2. Some of the judgements made in the opinion exceed the mandate of the Working Group and go against the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.
3. The document of the Working Group lacks an independent and legally justifiable line of reasoning on the case, and the assertions that so-called violations of a number of international legal instruments were committed against supposed victims have in no way been proven. The Working Group, in its attempt to find a reasoned foundation for its opinion, could do no better than to refer to a biased, five-year-old assessment made by the Special Rapporteur on Belarus, who fully discredited himself and was therefore removed from his post by the United Nations General Assembly in 2007.
4. Regretfully, we note that the information provided by the competent Belarusian agencies demonstrating their openness and constructive relationship with the Working Group was ignored. On the other hand, the opinion of the Working Group literally rehashes word for word the point of view of the source who initiated consideration of Mr. Sannikov's case by the Working Group.
5. We hereby submit comprehensive information from the competent Belarusian bodies on the situation of Mr. Sannikov, including information on the legal aspect of this case.

Detention of Mr. Sannikov

6. On 19 December 2010, at 8 p.m., unauthorized demonstrations were held on October Square and Independence Square in Minsk, protesting against the results of the voting in the presidential election. Mr. Sannikov, acting in violation of the legislation in force, was one of the organizers.
7. The rally included calls for a change of power and demands for new elections without the participation of the current President. A group of over 400 people made two attempts to storm the Government House, using stones, bottles and steel reinforcement bars, with the aim of taking over the building and thus overthrowing the Government.
8. With the help of video recordings, an investigation ascertained the identity of all those who took part in the storming of the building, including Mr. Sannikov.
9. The law enforcement officers remained calm despite the illegal actions of the demonstrators and used loudspeakers to call on them to end the unrest.
10. The participants in the demonstration used steel concrete reinforcing rods, crowbars, wrecking bars and other objects to inflict serious injuries on law enforcement officers and

engage in street fighting. Their action was clearly aggressive in nature. As a result of the clash with the demonstrators, 87 militia officers were injured to various degrees and 9 were hospitalized.

11. Mr. Sannikov was arrested while attempting to flee from a car stopped by militiamen; to arrest him they used an authorized technique known as an “undercut”. As a result he sustained minor soft tissue injuries in one leg. He did not file any complaint of bodily harm related to his arrest with the Office of the Procurator-General.

12. Under the Code of Criminal Procedure, arrest warrants and/or charges are not presented during an arrest. The arrest consists in the actual apprehension of the person and delivery to a criminal prosecution body, with short-term detention of up to 72 hours in custody. Immediately after the arrested person is brought to the criminal prosecution body, he or she is booked and a report is drawn up indicating the basis for the detention, the time and place of the arrest and the results of an examination of the person in question, along with the time the report was compiled.

13. After the actual arrest at 11.45 p.m. on 19 December 2010, Mr. Sannikov was taken to the temporary holding facility of the State Security Agency, where an arrest report was written up, the rights and duties of the suspect were set out and a decision relating to the detention was subsequently issued. On 20 December 2010 a defence attorney was present when Mr. Sannikov first faced questioning as a suspect.

14. On 22 December 2010, Mr. Sannikov was placed in pretrial detention as a preventive measure in accordance with article 126, paragraph 1, of the Code of Criminal Procedure, with the consent of the Minsk municipal procurator.

Pretrial detention

15. On 29 December 2010 charges were filed against Mr. Sannikov under article 293, paragraph 1, of the Criminal Code, for an especially serious offence punishable by deprivation of liberty of 5 to 15 years.

16. On 31 December 2010, at the request of the defence, the Central District Court in Minsk reviewed the legality and the justification of the use of detention as a preventive measure. The complaint was denied following the judicial review.

17. On 14 May 2011 the Partizan District Court in Minsk found Mr. Sannikov guilty under article 293, paragraph 1, of the Criminal Code (organization or participation in mass unrest) and sentenced him to deprivation of liberty of 5 years (from 20 December 2010 to 20 December 2015). The sentence legally entered into force on 15 July 2011.

18. The Code of Criminal Procedure sets out the procedure for the use of detention as a preventive measure and establishes which officials have the right to approve it. The President of Belarus is not among those who may approve it, and thus does not have the authority to “issue an arrest warrant”. The authorization to arrest Mr. Sannikov was issued by the Minsk municipal procurator, in accordance with the Code of Criminal Procedure.

19. Mr. Sannikov was detained at the State Security Agency’s temporary holding facility between 19 December 2010 and 18 May 2011 in accordance with the Detention Procedures and Conditions Act and the regulations for temporary holding facilities of State security agencies.

20. On 10 January 2011, in response to a personal request, and owing to overcrowding at the temporary holding facility, Mr. Sannikov was transferred to another cell so as to maintain compliance with established health standards and requirements.

21. During his time in detention at the temporary holding facility Mr. Sannikov filed no complaints regarding the actions of the staff. Staff from the Office of the Procurator-General carried out numerous inspections. They received no complaints or statements from Mr. Sannikov pertaining to the conditions of detention.

22. Under the Code of Criminal Procedure, visits with close relatives are authorized by the official responsible for the pretrial investigation after an application is received from the detainee and/or the close family member.

23. An application for a visit was received from Mr. Sannikov and his relatives only once, and it was received after the criminal case had already been transferred to the Minsk procurator for transmission to the court. In such circumstances, the official responsible for the pretrial investigation had no legal basis to allow a visit. It was explained to Mr. Sannikov and his relatives that the question had to be handled by the office of the procurator for Minsk.

24. Meetings between detainees and their defenders are conducted in private and confidentially, with no limitation on the number or length of interviews. A staff member of the temporary holding facility can see the detainee and defence counsel, but cannot hear their conversation.

25. There were no restrictions on Mr. Sannikov's meetings with his lawyer while he was in the temporary holding facility of the State Security Agency. He held confidential meetings with his lawyer on numerous occasions. All investigation proceedings were conducted in the presence of the defenders invited by Mr. Sannikov's relatives. All testimony given by Mr. Sannikov was submitted in the presence of defence lawyers, who were in the same room as the investigator and the person being questioned. Once the interrogation was completed, the lawyers were given the opportunity to question their client, and this was duly noted in the record of the interrogation. Immediately after the interrogation finished, Mr. Sannikov and his lawyers were presented with the record so that they could read it and sign it.

26. In accordance with article 257 of the Code of Criminal Procedure, the criminal case file was presented in full to Mr. Sannikov and his lawyers once the preliminary investigation was complete. This was reflected in the corresponding record.

Judicial proceedings

27. Mr. Sannikov's trial took place strictly in accordance with the Constitution and the Code of Criminal Procedure, and in compliance with the general conditions for judicial proceedings.

28. The court, maintaining its objectivity and impartiality, took all the measures called for by law for a comprehensive, complete and objective consideration of the case.

29. There was no indication that the convict was subjected to restrictions on the rights to a defence and to submit evidence or that the court allowed any violations of the Code of Criminal Procedure.

30. During the judicial hearings, Mr. Sannikov was provided with two professional defence lawyers, who had been assigned to the case in accordance with an agreement concluded with his relatives.

31. Mr. Sannikov and his defenders made no statements to the court indicating that after the filing of the charges, insufficient time had been available for the preparation of his defence.

32. In accordance with articles 24 and 292 of the Code of Criminal Procedure, the court observed the principles of presumption of innocence and of equality of the parties in adversarial proceedings. In the judicial proceedings, the parties were given equal rights to make petitions and to examine the evidence.

33. All petitions made by the defence and the prosecution during the judicial proceedings were discussed by the parties and were the subject of reasoned decisions.

34. Upon verification, it was ascertained that there was no information indicating that the defence had been denied the opportunity to examine evidence that could have had a substantial impact on the outcome of the case.

35. The court took all necessary measures to allow victims and witnesses to attend the proceedings. It also decided to make public the information provided in pretrial statements by persons who could not appear in court for reasons covered by article 333 of the Code of Criminal Procedure. During the judicial examination, 15 victims and 25 witnesses were questioned, and testimony was heard from 18 persons.

36. The military procurator's office investigated reports from Mr. D. Korsak and the chairman of the Belarusian Helsinki Committee, Mr. O. Gulaka, stating that staff of the temporary holding facility of the State Security Agency had used violence against Mr. Sannikov, but it found no indications that this had occurred. It thus issued a decision that a criminal case should not be initiated in this respect.

37. According to the record of the judicial proceedings, Mr. Sannikov's requests for recess were granted. On the other hand, his requests for the hearings to be postponed because he did not feel well were rejected as unfounded.

38. The cassation appeals filed by the participants in the criminal proceedings were considered on 15 July 2011 by the criminal chamber of the Minsk municipal court, in strict compliance with the Code of Criminal Procedure. Under the Code, the presence of the accused is not called for during a session of a cassation court (article 382 of the Code of Criminal Procedure).

39. The Supreme Court, in its supervisory capacity, heard a complaint by the defence lawyers and considered the criminal case file, verifying that the conviction of Mr. Sannikov was legal and well-founded. It concluded that there was no doubt that the decision taken by the court had been correct.

40. The criminal prosecution of Mr. Sannikov for carrying out actions that were prohibited by the Criminal Code and that posed a danger to society was thus justified in respect of the principles of legality, equality of citizens before the law and personal responsibility. It does not constitute arbitrary detention.

41. On 23 January 2012 a formal request from Mr. Sannikov for a pardon was received by the citizenship and pardons department of the Presidential Executive Office. On 14 April 2012 Mr. Sannikov was pardoned by a decision of the President and was released.

42. The information on the supposed arbitrary nature of the detention of Mr. Sannikov and the violation of his rights and freedoms provided under articles 18, 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights and articles 19, 20 and 21 of the Universal Declaration of Human Rights, and the alleged violation of principles 10, 15, 17, 18, 19 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and also the legislation of Belarus, including its Constitution, is incorrect.