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Human rights situations that require the Council's attention

Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 May 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

What is not permitted is prohibited: Silencing civil society in the Republic of Belarus

Summary

Hundreds of persons in the Republic of Belarus every year are directly deprived of their rights to freedom of association and assembly. Civil society organizations face closure, and individuals face prosecution if they criticize the authorities. Any form of public action, even a one-person picket, is subject to permission which is rarely granted, and peaceful demonstrators face fines or short prison sentences. Civil society activists face repressive legislation, presidential decrees, and overzealous interpretation of these laws and decrees by ministry officials and judges.

The lack of freedom of peaceful assembly in Belarus came to the world's attention in December 2010, when a mainly peaceful demonstration following the presidential elections was brutally suppressed by law enforcement officers. Hundreds of protesters were beaten, arbitrarily arrested and summarily sentenced. All the main opposition presidential candidates and many prominent opposition activists were imprisoned. Mykalau Statkevich, Pavel Sevyarynets, Eduard Lobau and Zmitser Dashkevich remain in prison to this day.

1. Freedom of association

In Belarus non-governmental organizations (NGOs) must register with the authorities or their members face the possibility of prosecution for acting in the name of an unregistered organization. NGOs face stringent requirements for registration. While registration may be a legitimate administrative requirement in order to be able to obtain legal personality as an organization, or to obtain benefits such as tax exemption for charities, the failure to register is not reason to prohibit individuals from exercising their right to freedom of association.

Article 15 of the Law on Associations states that the decision to refuse registration can be taken, in cases where there have been violations of the regulations for registration “if such infringements are irreversible.” Civil society organizations are frequently denied registration in violation of the legislation for minor faults in documentation which could be easily remedied. Organizations that are refused registration can appeal to a court, but Amnesty International has been unable to find any examples of successful appeals against a refusal to register.

Once registered, NGOs face close monitoring of their activities and may be suspended or liquidated for even minor violations of legislation. For instance, Dobraya volya (Good Will), an NGO offering advice and support to foster and adoptive parents, was suspended for two months in November 2012 for violating the Law on Association because, among other things, the name of the organization on its rubber stamp was spelt with two capital letters rather than one, as in the registration documents.

1.1 Criminal prosecution – human rights defenders

Article 193-1 of the Criminal Code criminalizes any activity on behalf of an unregistered organization, including political parties and religious organizations, and imposes a fine or imprisonment for up to two years. In 2011, the Council of Europe's Venice Commission stated that “by its very existence Article 193-1 has a chilling effect on the activities of Non-governmental organizations” and that “the restriction is so severe that it not only restricts

freedom of association but also freedom of opinion and expression to an unjustifiable degree.”¹

The lack of impartial prosecution and independent judiciary facilitates the conviction and imprisonment on politically-motivated charges of high profile human rights defenders. Ales Bialiatski, the Chair of the unregistered human rights organization Human Rights Centre Viasna and Vice-President of the International Federation for Human Rights has paid a very high price for his human rights activities. On 24 November 2011, after a trial that violated international fair trial standards, he was sentenced to four and a half years on charges of “concealment of income on a large scale” (Article 243.2 of the Belarusian Criminal Code) for the use of his personal bank accounts in Lithuania and Poland to support his organization's human rights work in Belarus. Since its derecognition the Human Rights Centre Viasna had been barred from opening a bank account in its name in Belarus, and its members had no choice but to use bank accounts in neighbouring countries to fund their human rights work. Amnesty International considers Ales Bialiatski to be a prisoner of conscience, and calls for his immediate and unconditional release.²

1.2 Excessive restrictions

In order to register an association or a trade union, the founders are required to have a business address and to provide a notarized letter of guarantee and proof of ownership of the premises from the landlord. In Belarus, where private landlords can be pressured by the state not to provide premises, this requirement prevents many people from exercising their right to freedom of association.

This requirement is a particular problem for independent trade unions. In January and February 2012 workers at the Granit gravel quarry in Mikashevichy tried unsuccessfully to rent premises and secure a legal address so that they could register an independent trade union. As a result, registration was refused and the founders of the independent trade union have since faced reprisals for their attempt to set up the trade union.

NGOs face excessive restrictions on their access to funding. Since 2011, Article 21 of the Law on Associations prohibits Belarusian NGOs from keeping funds in banks and other institutions abroad, while there are no such restrictions for individuals and commercial enterprises. NGOs that accept foreign donations “in violation of the law” face administrative penalties.

2. Freedom of assembly

According to international human rights standards the exercise of the right to freedom of assembly should not be subject to previous authorization, but at the most should be subject to a prior notification procedure. In Belarus organizers must apply for permission at least 15 days before an event. Local authorities are obliged to inform the organizers whether their application has been successful or not less than five days before the event. Any publicity of the event before official permission is given is banned.

¹ Opinion on the Compatibility with Universal human rights standards of Article 193-1 of the Criminal Code on the rights of non-registered associations of the Republic of Belarus, Adopted by the Venice Commission at its 88th Session, Venice, 14 – 15 October 2011, <http://www.venice.coe.int/webforms/documents/?opinion=633&year=all>.

² See: Still behind bars: The plight of long-term prisoners in Belarus, AI Index: EUR 49/013/2012, 2 August 2012.

2.1 Over regulation

The Law on Mass Events which came into force in 1997 provides detailed regulations for the conduct of public events. Even an action by a single person may fall under the Law on Mass Events.

The Law effectively prevents any demonstrations in the centre of large cities by providing an exhaustive list of where public events are prohibited including any location less than 200 metres from the President's residence, the National Assembly and metro stations.

Article 15 of the Law on Mass Events provides for the immediate liquidation of any organization that fails to abide by the law or that organizes assemblies that cause "serious damage or violate the rights and legal interests of citizens, organizations, or state or public interest."

Furthermore, Presidential Decree No. 11 (7 May 2001) "On Certain Measures for Improvement of the Procedure for the Conduct of Assemblies, Rallies, Street Processions, Marches and other Mass Events in the Republic of Belarus" requires organizers of public events to provide copies of certificates and contracts concluded with state service providers for public order and security, medical facilities and cleaning of the location at the end of the meeting. Many applications are rejected because of a failure to provide evidence of such contracts.

2.2 Administrative prosecutions – environmental activists

In 2012 at least 15 human rights activists, environmentalists, journalists and opposition activists were prosecuted under Article 17.1 of the Administrative Code for swearing in public while exercising their right to freedom of assembly. The punishments imposed range from a fine to 10 days imprisonment.

On 18 July 2012, Tatyana Novikova from the anti-nuclear NGO, Ekodom and Russian environmentalist Andrei Ozharovski were detained on their way to deliver a letter to the Russian embassy in Minsk on the occasion of the visit of Dmitry Medvedev. They wished to communicate their opposition to the construction of the nuclear power station at Astravyets, a joint venture with Russia. Tatyana Novikova was sentenced to five days detention, and Andrei Ozharovski received a 10 day sentence for swearing in public.

Conclusion

Law and practice in Belarus are not in line with international standards on freedom of peaceful assembly and association.

Amnesty International calls on the Belarusian authorities to:

- release immediately and unconditionally all those who are detained solely for the peaceful expression of their political or other opinions;
- immediately abolish Article 193-1 of the Criminal Code;
- ensure that NGOs are not denied registration because they have found it impossible to obtain premises for a business address;
- abolish the administrative prohibition and criminal liability for accepting foreign grants and lift the prohibition on associations keeping funds in banks in foreign countries;
- bring the Law on Mass Events into line with Belarus' international human rights obligations, by reducing the restrictions on the location of events to only those which in the particular instance are demonstrably necessary for a permissible

purpose recognised in international human rights law, removing the requirement on organizers to provide for services to cover the event, and removing Article 15 of the Law on Mass Events providing for the liquidation of any organization that fails to abide by that law.
