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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situations that require the Council's attention

## Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus\*

### *Summary*

The present report is submitted in accordance with Human Rights Council resolution 17/24, in which the Council requested the United Nations High Commissioner for Human Rights to monitor the human rights situation in Belarus and to present to the Council, in an interactive dialogue at its twentieth session, a comprehensive report on the human rights situation in Belarus following the presidential election of 19 December 2010. The report covers the period from 19 December 2010 to 23 March 2012. The High Commissioner presented an oral report on the situation to the Council at its eighteenth session.

The situation of human rights has significantly deteriorated in Belarus following the presidential election. The Government's response to a mostly peaceful demonstration in Minsk, contesting the electoral process, was followed by a massive crackdown on political opponents, human rights groups and independent media. Overall, more than 600 people were arrested and detained on or shortly after election day; 43 opposition leaders, activists and independent journalists were sentenced, including five out of nine opposition candidates.

Since the election, the human rights situation has further deteriorated, particularly the rights to freedoms of association, assembly and expression, and the right to a fair trial. Allegations of torture and ill-treatment in custody, impunity of perpetrators, violations of due judicial process and pressure on defence lawyers persist. The lack of an independent judiciary and a national human rights institution aggravate the human rights situation and

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\* The annex to the present report is reproduced as received, in the language of submission only.

impede progress.

The High Commissioner makes recommendations aimed at addressing systemic challenges, as well as urgent human rights issues.

As the Office of the High Commissioner was not allowed access to Belarus, the present report is based on a variety of sources, including information provided by the Government.

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## **I. Introduction**

### **A. Mandate**

1. On 17 June 2011, the Human Rights Council adopted resolution 17/24, in which it expressed its deep concern at the overall human rights situation in Belarus and its severe deterioration since the presidential election of 19 December 2010, including credible allegations of torture, arbitrary detention and increasing harassment of opposition leaders, representatives of civil society, human rights defenders, lawyers, independent media, students and those defending them.

2. In resolution 17/24, the Human Rights Council requested the United Nations High Commissioner for Human Rights to monitor the human rights situation in Belarus and to present to the Council, in an interactive dialogue to be held at its eighteenth session, an oral report thereon, including on alleged human rights violations committed in Belarus following the presidential election of 19 December 2010. The High Commissioner presented an oral report to the Council at its eighteenth session. The Council also requested the High Commissioner to present to the Council, in an interactive dialogue to be held at its twentieth session, a comprehensive report on the human rights situation in Belarus.

### **B. Cooperation of the Government**

3. In its resolution 17/24, the Human Rights Council called upon the Government of Belarus to cooperate fully with all mechanisms of the Council, the Office of the High Commissioner (OHCHR) and human rights treaty bodies, to permit access to visit the country and to provide all necessary information. Accordingly, OHCHR addressed three notes verbales (on 18 July and 15 December 2011, and 17 February 2012) to the Government of Belarus, requesting that it allow access to an OHCHR team to the country. OHCHR did not receive any written reply to its requests. During the interactive dialogue at the eighteenth session of the Council, the Ambassador of Belarus Mikhail Khvostov pointed out that his Government did not recognize resolution 17/24 and therefore refused to cooperate with OHCHR on it. This position was reiterated at subsequent bilateral meetings between OHCHR and representatives of Belarus.

4. On 30 August 2011, the High Commissioner received a letter, signed 19 August, from the Minister for Foreign Affairs of Belarus, in which he invited her to visit Belarus. The High Commissioner expressed her appreciation for the invitation and informed the Government that the possibility of such a visit might be considered only after the completion of the mandate of the Council. She pointed out that the invitation could not be regarded as a substitute for a technical mission by OHCHR to Belarus for the purpose of fulfilling the mandate of the Council under resolution 17/24.

5. Since December 2010, the Government of Belarus has communicated on a regular basis its views and information pertaining to resolution 17/24. The most recent comments were received from the Government in a note verbale of the Permanent Mission of Belarus dated 20 February 2012, and were taken into consideration in the preparation of the present report. OHCHR also acknowledges the availability of the Ambassador of Belarus for meetings with the High Commissioner in January and August 2011, and with OHCHR staff in the course of 2011.

6. Belarus was reviewed at the eighth session of the universal periodic review mechanism, in May 2010. The Government accepted most of the recommendations therefrom, and cooperated with OHCHR in the implementation of some of them. Cooperation, was however, mainly limited to areas pertaining to trafficking. In February

2012, the Government transmitted to OHCHR an interdepartmental plan on the implementation of universal periodic review recommendations for the period 2010-2013, and submitted its mid-term progress report on their implementation. The submission of mid-term reports is not an obligation, but is a good practice that has been encouraged by the High Commissioner.

7. Belarus has interacted with human rights treaty bodies on a regular basis over the past year, and does not have any reports long overdue. Belarus has accepted communications procedures under the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. In 2011, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child conducted a dialogue with the Government and issued concluding observations following consideration of State party reports.<sup>1</sup> Belarus submitted comments to the Committee against Torture on the concluding observations, including an annex on the events of 19 December 2010 and the post-electoral period. Belarus also maintains a dialogue with the Human Rights Committee, which it has provided with replies regarding specific cases.

8. In resolution 17/24, the Human Rights Council also encouraged relevant thematic special procedures mandate holders, in particular the special rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders, on the independence of judges and lawyers, on torture and other cruel, inhuman or degrading treatment or punishment, on the rights to freedom of peaceful assembly and of association, the Working Group on Enforced or Involuntary Disappearances as well as the Working Group on Arbitrary Detention, within their respective mandates, to pay particular attention to the human rights situation in Belarus and to contribute to the report of the High Commissioner with recommendations thereon.

9. Since 19 December 2010, 12 joint communications have been sent by mandate holders. At the time of completion of the present report, only six substantive responses had been received from the Government, while procedural responses were received for six of them (requests for communications to be in Russian, allegations of breach of the code of conduct). The main concerns addressed in these communications were the situation of human rights defenders and journalists following the 2010 elections in the light of the harassment, arrests, detention and severe restrictions they had to face as a consequence of their work; the situation of former candidates in the elections and of political opponents in general, including arrests and detention; and the pattern of intimidation and interference in the discharge of the professional functions of lawyers, including proceedings against them and access to a lawyer, in connection with the demonstrations and events of December 2010.

10. Further to resolution 17/24, on 21 July 2011, the Special Rapporteur on the situation of human rights defenders addressed a letter to the Government of Belarus, in which she reiterated her request to the Government to extend an invitation to her to carry out an official visit. In addition, on 26 August 2011, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent another request for a country visit to the Government. Also, in September 2011, the Special Rapporteur on the rights to freedom of peaceful assembly and of association sent a country visit request. To date, no response has been received to these requests.

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<sup>1</sup> CEDAW/C/BLR/CO/7, CAT/C/BLR/CO/4, CRC/C/BLR/CO/3-4, CRC/C/OPSC/BLR/CO/1, CRC/C/OPAC/BLR/CO/1.

## C. Methodology

11. Owing to lack of access to the country, the collection and verification of information for the present report was a challenging task. The report therefore relies to a significant extent on secondary sources, which OHCHR endeavoured to verify.

12. OHCHR collected information about facts and the sequence of events, and also included detailed accounts by witnesses. Factual information transmitted by the Government was studied in detail and is reflected in the report. Information was also sought from the United Nations human rights treaty bodies and special procedures, as well as regional organizations, such as the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe.

13. Significant quantities of information were collected from public reports issued by Belarusian and international media, civil society groups and human rights defenders. While collecting information, particular attention was paid to the credibility of the source, its accuracy and possible verification of allegations.

14. The present report covers the period from 19 December 2010 to 23 March 2012. It is not intended to be a complete and exhaustive account of the human rights situation in Belarus, but aims at highlighting major trends and patterns of human rights violations, and makes recommendations on possible ways to improve the situation in the country.

## II. Context

### A. General background

15. Belarus gained independence in 1991. The Constitution was adopted in 1994 and amended in 1996 and 2004. Under the Constitution of 1994, the President could only serve for two five-year terms. In September 2004, however, President Aliaksandr Lukashenka,<sup>2</sup> who had been in office since 1994, decreed that a referendum be held, which led to the repeal of the two-term limit.

16. For many years, concerns over the human rights situation in Belarus have been raised systematically in a number of international settings. The mandate of the Special Rapporteur on the situation of human rights in Belarus, established in 2004 by the Commission on Human Rights in its resolution 2004/14, was discontinued in 2007 further to the request of the Government. OSCE and the Council of Europe have denounced the systematic and widespread irregularities reported in the country's successive elections, including on 19 December 2010. Regrettably, the Government decided to discontinue the mandate of the OSCE Office in Minsk, which was closed on 31 March 2011. In February 2012, the Government also expelled the ambassadors of the European Union and of Poland in reaction to the sanctions introduced by the European Union against selected public officials and private individuals listed as responsible for the electoral irregularities during the election of 19 December 2010 and the continuing prosecution and harassment of civil

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<sup>2</sup> Article 17 of the Constitution declares Belarusian and Russian as the two official languages of Belarus; for this reason, Belarusian names may have two transliterated versions in English. Belarusian transliteration is used in the present report.

society and the opposition.<sup>3</sup> In solidarity, other Member States of the European Union recalled their diplomatic envoys.

## **B. International legal obligations**

17. Belarus is a party to the International Covenant on Civil and Political Rights and the Optional Protocol thereto; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto; and the Convention on the Rights of the Child and Optional Protocols thereto.

## **C. National legal framework**

18. According to article 8 of the Constitution, Belarus recognizes the supremacy of the universally acknowledged principles of international law and is to ensure that its laws comply with such principles. The Constitution also stipulates that the State is to guarantee the rights and liberties of the citizens of Belarus that are enshrined in the Constitution and the law, and specified in the State's international obligations.

19. The already restrictive laws regulating civil and political rights were further tightened by amendments to various laws adopted by Parliament on 21 October 2011: the Law on Public Associations, the Law on Political Parties, the Law on Mass Events, the Law on State Security Bodies, the Criminal Code, the Criminal Procedure Code, the Code of Administrative Offences and the Electoral Code.

20. Amended article 7 of the Law on Public Associations prohibits associations from assisting foreign entities to provide citizens of Belarus with "special benefits" relating to their political or religious views or nationality. The vagueness of this provision may lead to broad interpretation and be used as a pretext for limiting public associations' contacts with foreign entities. Amended article 21 of the same law prohibits public associations from depositing money or storing precious metals or other valuables in banks and other financial institutions located in foreign States. The Criminal Code of Belarus was amended along the same lines, establishing criminal liability for receiving foreign grants or donations in violation of State laws. Civil society organizations, in an open joint letter of 21 October 2011 on the new legislative amendments limiting freedom of assembly and association and imposing new restrictions on civil society groups in Belarus, pointed out that these new limitations restricting the possibility of receiving funds from abroad make civil society operations in Belarus virtually impossible.<sup>4</sup> In addition, article 356 of the Criminal Code broadened the definition of espionage to include not only "intelligence-gathering activity" but "any form of other assistance to a foreign State, foreign organization or their representative in carrying out activities to the detriment of the national security of Belarus". This definition could potentially target civil society organizations critical of the authorities.<sup>5</sup>

21. Amendments to the Electoral Code have also introduced restrictions affecting civil society. In particular, article 481, section 41, prohibits non-governmental organizations

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<sup>3</sup> European Union Council decision 2010/639/CFSP implementing Article 8a (1) of Regulation (EC) No. 765/2006.

<sup>4</sup> See <http://www.fidh.org/Open-Joint-letter-regarding-the>.

<sup>5</sup> See [www.omct.org/human-rights-defenders/urgent-interventions/belarus/2011/10/d21449/](http://www.omct.org/human-rights-defenders/urgent-interventions/belarus/2011/10/d21449/).

from contributing to election funds in cases where they have received foreign donations within a year prior to making a contribution. Furthermore, article 481, section 71, prohibits such contributions from non-governmental organizations if the latter have been registered for less than a year prior to making a contribution.

22. The amendments to the Law on Political Parties prohibit parties from receiving foreign financial support or contributions, and from holding funds in foreign banks or other financial institutions. Article 24 of the law retains the requirement that political parties, unions or legal entities established by them must transfer cash or other assets from prohibited sources (specifically foreign resources) to the Government of Belarus, which has the prerogative of seizing them. Accordingly, new article 3692 of the Criminal Code establishes criminal liability for “receiving, storing or transferring foreign contributions for the purpose of financing political parties”.

23. Amendments to the Law on Mass Events prohibit the presence of people in predetermined public space at a scheduled time to perform predetermined actions organized for public expressions of social or political interests, or protest. They also broaden the definition of mass event, while significantly limiting possible locations, even for authorized public gatherings. Organizers of such gatherings are required to report financial sources used for the event and are not allowed to disseminate information about the event before official permission has been granted. Furthermore, the amendments broaden the powers of law enforcement officials during public gatherings, including the possibility of making audio and video recordings, limiting access of participants and conducting full-body searches of participants.

24. In the same manner, article 3692 of the Criminal Code establishes criminal liability for organizing or conducting meetings, protests, street marches, demonstrations or strikes, the production and distribution of propaganda materials, and the staging of seminars and other forms of political and propaganda activities. Accordingly, amendments to the Code of Administrative Offences introduce further restrictions on “foreign gratuitous aid” for civil society organizations (art. 23.24) and on the organization of mass events (art. 23.34).

25. On 30 December 2011, the President of Belarus signed the Law on the Bar and Legal Practice in the Republic of Belarus, which will come into force on 6 April 2012. According to analysts, the law significantly expands the competences of the Ministry of Justice with regard to regulating the bar and curtailing its rights.<sup>6</sup>

26. The Government has also tightened its control over the Internet. Article 22.16 on the “violation of demands on the use of the national segment of the Internet” was added to the Code of Administrative Offences, requiring Internet providers to restrict access of employees of governmental organizations and cultural and educational establishments to “banned” websites. The article does not, however, concern private Internet users. In addition, Internet providers may be penalized if they fail to register their Internet users or to identify their modem devices.<sup>7</sup>

27. On 24 November 2011, three special procedures mandate holders issued a press release warning that the new legislative amendments could severely and arbitrarily restrict the rights to freedom of peaceful assembly, association and expression, and breach international law. They viewed these restrictions as part of an effort to obstruct and criminalize the legitimate activities of human rights defenders and associations working in

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<sup>6</sup> Viasna, 22 February 2012; see <http://spring96.org/ru/news/50195>.

<sup>7</sup> Belarusian Association of Journalists, annual review 2011 on violations of journalists’ and mass media rights.

the defence and promotion of human rights and fundamental freedoms, including those who may be critical of Government actions and policies.

28. All above-mentioned amendments were introduced in an expedited manner – in two readings during one sitting – and were not available to the public in advance.<sup>8</sup> These amendments appear to contradict the spirit of international human rights law, *inter alia*, articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights, and articles 5, 8 and 13 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

### III. Situation since 19 December 2010

#### A. Sequence of events

29. On 19 December 2010, a presidential election was held, for which 10 candidates stood for election to the post. The election was monitored by a number of international observers, including the OSCE election observation mission and the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS). Discrepancies were found between their conclusions: the CIS observers concluded that the presidential election had been held in an orderly and transparent manner;<sup>9</sup> the OSCE mission, while acknowledging certain improvements in the electoral process, noted a lack of independence and impartiality in election administration, a restrictive media environment, a lack of transparency at key stages of the electoral process and a legislative framework for elections that fell short of providing a basis for genuinely democratic elections.<sup>10</sup>

30. According to the Central Electoral Commission of Belarus, Mr Lukashenka received 79.65 per cent of votes. Before the official results were announced, supporters of opposition presidential candidates and non-partisan opponents of the incumbent President gathered in downtown Minsk to voice their protest over what they believed to be an unfair election, denouncing massive irregularities and falsifications. According to official information, the rally started in the Oktyabrskaya Square in Minsk at 6.50 p.m., and by 9.20 p.m. had moved towards Independence Square.<sup>11</sup>

31. According to credible witness accounts, the first violent incident happened at around 7 p.m. in the evening of 19 December, when one of the opposition candidates, Uladzimir Niakliaieu, and his supporters peacefully marching towards Independence Square were stopped and attacked, allegedly by law enforcement agents.<sup>12</sup> In the meantime, the demonstration at Independence Square was reportedly peaceful until a small isolated group started breaking the windows of a nearby government building; according to official accounts, this took place between 10.00 and 10.30 p.m.<sup>13</sup> The identity of these persons remains unclear; the Government claims that they were opposition supporters, while the opposition alleges that they were provocateurs sent by the Government. Law enforcement

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<sup>8</sup> Article 19, 20 October 2011; see [www.article19.org/resources.php/resource/2787/en/new-legislative-amendments-limiting-freedom-of-assembly-and-association-and-imposing-new-restrictions-on-civil-society-groups-in-belarus](http://www.article19.org/resources.php/resource/2787/en/new-legislative-amendments-limiting-freedom-of-assembly-and-association-and-imposing-new-restrictions-on-civil-society-groups-in-belarus).

<sup>9</sup> Comments of Belarus on the concluding observations of the Committee against Torture, 28 December 2011.

<sup>10</sup> See OSCE Rapporteur's report on Belarus (available from [www.osce.org/odihr/78705](http://www.osce.org/odihr/78705)), June 2011.

<sup>11</sup> CAT/C/BLR/CO/4/Add.1.

<sup>12</sup> Naviny, 20 May 2011; see [http://naviny.by/rubrics/society/2011/05/20/ic\\_articles\\_116\\_173496/](http://naviny.by/rubrics/society/2011/05/20/ic_articles_116_173496/).

<sup>13</sup> CAT/C/BLR/CO/4/Add.1.

agents dispersed the group, and then used this incident to charge, at 10.37 p.m.,<sup>14</sup> against the rest of the demonstrators, the vast majority of whom were reportedly peaceful. Many peaceful demonstrators were reportedly beaten with batons and injured.<sup>15</sup> According to Government information, the police did not use tear gas, water cannon, rubber bullets or other special means.

32. Police intervention was followed by mass arrests, detentions and raids targeting opposition activists, non-governmental organizations and journalists. Many observers reported that the Government launched a coordinated crackdown on political opponents. Seven of the 10 presidential candidates were arrested and detained on election day or shortly after. According to various reports, more than 600 people were detained by the end of December 2010,<sup>16</sup> mostly participants in the protest, opposition activists and journalists. Most of those arrested were later released, many after receiving administrative charges or fines, or after having spent five to 15 days in custody. More than 40 people were, however, charged, and stood trials in Minsk district courts.

33. OSCE, the Council of Europe, the European Union and the leaders of several States issued statements raising concern about the human rights situation in Belarus. The High Commissioner issued two statements, on 21 December 2010 and on 21 February 2011, in which she expressed her concern at the deterioration of the human rights situation in the aftermath of the election, and called upon the Government to put an end to the persecution and harassment of political opponents, journalists and human rights defenders.

## **B. Freedom of assembly**

34. Belarus is a party to the International Covenant on Civil and Political Rights. Article 21 of the Covenant stipulates the right to freedom of peaceful assembly. Article 35 of the Constitution of Belarus also protects this right in accordance with the law.

35. The dispersal of the rally at Independence Square on 19 December 2010 was followed by numerous arrests of rally participants in the subsequent days and weeks. Many were accused of “unauthorized protest acts” and charged under articles Nos. 293 (“organization of or participation in mass disorder”), 339 (“hooliganism”) and 342 (“organization and preparation of acts gravely violating public order”) of the Criminal Code. According to official information, the courts found 27 people guilty of active participation in the unrest,<sup>17</sup> although it was recognized that the vast majority did not commit any violent acts. Between 17 February and 26 May 2011, 13 court trials relating to the events of 19 December 2010 were held in Minsk. In total, 43 people were convicted and sentenced, including 28 people for their “participation in mass disorder”.

36. Restrictions to the right to freedom of assembly continued beyond the events of 19 December 2010. The Government systematically refused to authorize peaceful demonstrations and rallies throughout 2011, including peaceful silent protests whereby

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<sup>14</sup> Ibid.

<sup>15</sup> “Four Belarus opposition leaders arrested following ‘vote-rigging’ riot over President Lukashenko’s landslide victory”, Mail Online, 20 December 2010. Available from [www.dailymail.co.uk/news/article-1340131/Belarus-presidential-candidate-Neklyayev-seriously-injured-vote-rigging-protest.html](http://www.dailymail.co.uk/news/article-1340131/Belarus-presidential-candidate-Neklyayev-seriously-injured-vote-rigging-protest.html).

<sup>16</sup> “Behind the scenes of one conspiracy (part 2): some declassified documents on the events of December 19”, Belarus Today, 17 January 2011. Available from [www.sb.by/post/111190/](http://www.sb.by/post/111190/).

<sup>17</sup> CAT/C/BLR/CO/4/Add.1.

demonstrators merely stood together and clapped their hands. On 29 June 2011, the police arrested at least 100 participants in a silent protest in Minsk.<sup>18</sup>

37. On 13 August 2011, the Government pardoned and released nine people sentenced to imprisonment in connection with the events of 19 December 2010. This was followed by the pardoning of four people on 1 September, and of 11 more on 14 September.<sup>19</sup> Some of those released alleged that they had been forced to admit their guilt and to sign a request for a pardon. As at early March 2012, five people convicted in connection with the events of 19 December were still in prison: Zmitser Bandarenka, Zmitser Dashkevich, Lobau, Andrei Sannikau and Mykalai Statkevich.

38. In the meantime, the authorities have continued to arrest, detain and sentence political opponents, in violation to their right to freedom of assembly. For example, activist Pavel Vinahradau was arrested on 22 February 2012 and sentenced to 10 days of administrative detention for organizing a “toy rally” near a Government building in Minsk.<sup>20</sup>

### C. Treatment of political opponents

39. Since 1996, election campaigns in Belarus, including the presidential campaigns of 2001 and 2006, have been described by OSCE as non-compliant with international standards for free and democratic elections. The failure to meet international standards for free and fair elections violates the right of citizens to political participation, counter to article 25(b) of the International Covenant on Civil and Political Rights.

40. The pattern of persecution, intimidation and harassment of political opponents to the incumbent President resumed during the election of 19 December 2010, when the authorities arrested seven of nine opposition candidates and launched a massive crackdown on and intimidation campaign against opposition leaders and activists. Five of nine opposition presidential candidates received prison sentences: Andrei Sannikau, Mykalai Statkevich and Dzmitry Uss were sentenced under article 293.1 (“organization of or participation in mass disorder”), and Uladzimir Niakliaieu and Vital Rymasheuski were sentenced under article 342.1 (“organization and preparation of acts gravely violating public order”) of the Criminal Code.<sup>21</sup> It is to be noted that the law precludes any convicted person from standing in future elections.

41. On 19 December 2010, Uladzimir Niakliaieu was beaten unconscious. He was taken by his supporters to hospital for medical treatment. A few hours later, he was abducted from the hospital by unidentified masked men, who later proved to be agents of the KGB.<sup>22</sup> He was reportedly held at the KGB detention centre and denied medical treatment, despite suffering from serious hypertension. On 29 January 2011, Mr Niakliaieu was placed under strict house arrest, with no access to telephones, the Internet or newspapers. On 30 March, he was charged under article 342.1 of the Criminal Code for “organization of or

<sup>18</sup> “Belarusian ‘silent rally’ protesters rounded up”, BBC, 29 June 2011. Available from [www.bbc.co.uk/news/mobile/world-europe-13969346?SThisEM](http://www.bbc.co.uk/news/mobile/world-europe-13969346?SThisEM).

<sup>19</sup> Speech by Ambassador Mikhail Khvostov, Permanent Representative of Belarus, 20 September 2011.

<sup>20</sup> “Vinahradau sentenced to 10 days for toys”, Charter 97, 7 March 2012; available from <http://charter97.org/en/news/2012/2/22/48356/>.

<sup>21</sup> “Criminal trials in Belarus after December 19”, Legal Transformation Center; available from <http://lawtrend.org/ru/data/752/>.

<sup>22</sup> Jerome Taylor, “British law firm steps up fight against Europe’s last dictator”, *Independent*, 27 September 2011. Available from [www.independent.co.uk/news/uk/home-news/british-law-firm-steps-up-fight-against-europes-last-dictator-2361449.html](http://www.independent.co.uk/news/uk/home-news/british-law-firm-steps-up-fight-against-europes-last-dictator-2361449.html).

participation in mass disorder”.<sup>23</sup> On 20 May, he was given a two-year suspended sentence. Other prominent opposition figures included in the case were former presidential candidate Vital Rymasheuski, sentenced to two years conditionally; Anastasiya Palazhanka, a staffer for Mr Rymasheuski, sentenced under article 342.1 of the Criminal Code to one year conditionally; and Mr Niakliayeu’s pre-election staff, Andrei Dzmitryeu, Aliaksandr Fiaduta and Siarhei Vazniak, also given a suspended sentence under article 342.1 of two years.<sup>24</sup>

42. On 4 May 2011, the Working Group on Arbitrary Detention adopted opinion No. 13/2011, in which it declared the detention of Mr. Statkevich arbitrary under categories II and III, and that it was in breach of article 9 of the International Covenant on Civil and Political Rights and of the Universal Declaration of Human Rights.

43. On 14 May, another presidential candidate, former Deputy Minister for Foreign Affairs and co-funder of Charter 97, Andrei Sannikau, was sentenced to five years in a high security prison, charged for “leading a crowd that committed excesses” and found guilty of “organizing mass disturbances, accompanied by violence against the person, attacks and destruction of property”.<sup>25</sup> Mr Sannikau stated that the demonstrations were peaceful. Four other co-defendants in the trial received sentences under article 293.2 (“participation in mass disorder”) of the Criminal Code: opposition activists Ilya Vasilevich, Uladzimir Yeremenka and Fiodar Mirzayanau were sentenced to three years, and Aleh Hnedchyk to three and a half years in a high-security prison.<sup>26</sup>

44. On 26 May, a district court in Minsk sentenced former presidential candidates Mikalai Statkevich and Dzmitry Uss to six and to five and a half years in a medium-security prison. Other defendants in the case were sentenced to various prison terms: Aliaksandr Klaskouvski (five years), Artsiom Hrybkou (four years), Aliaksandr Kviatkevich and Dzmitry Bulanau (three years) and Andrei Pazniak (two years of “restricted freedom”).<sup>27</sup> On 19 July, the Minsk City Court reviewed and upheld the prison sentences of Messrs Statkevich, Uss, Klaskouvski, Hrybkou, Kviatkevich, Bulanau and Pazniak.<sup>28</sup>

45. In addition to detentions, arrests, apartment searches and trials, many participants in the rally of 19 December experienced other forms of harassment and pressure. In particular, they were targeted by Government-controlled media criticism. President Lukashenka’s rhetoric regarding the protests has been harsh, frequently referring to the political opposition as a “fifth column” that aims at destroying Belarus.

#### **D. Prison conditions, torture and ill-treatment**

46. Numerous reports indicate that prison conditions, especially in pretrial detention centres, do not meet relevant international standards. Detainees are allegedly kept in

<sup>23</sup> Mr Niakliayeu’s charges were later re-qualified as “instigating violation of public order” (Criminal Code, art. 342).

<sup>29</sup> Viasna Human Rights Center, “More verdicts in 19 December 2010 trials”, 20 May 2011.

<sup>25</sup> Shaun Walker, “Belarus opposition candidate jailed for post-election protest”, *Independent*, 16 May 2011. Available from [www.independent.co.uk/news/world/europe/belarus-opposition-candidate-jailed-for-postelection-protest-2284756.html](http://www.independent.co.uk/news/world/europe/belarus-opposition-candidate-jailed-for-postelection-protest-2284756.html).

<sup>26</sup> Vesti.ru, 14 May 2011; see

[www.vesti.ru/doc.html?id=452252&utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.vesti.ru/doc.html?id=452252&utm_source=twitterfeed&utm_medium=twitter).

<sup>27</sup> Naviny, “Statkevich sentenced to six years, Uss to 5 ½ years”, 27 May 2011. Available from [http://naviny.by/rubrics/english/2011/05/27/ic\\_articles\\_259\\_173781](http://naviny.by/rubrics/english/2011/05/27/ic_articles_259_173781).

<sup>28</sup> BelaPAN, 19 July 2011; see <http://belapan.com/archive/2011/07/19/485447/>.

overcrowded cells with poor food and inadequate sanitation, and limited access to medical assistance and clergy. They are also reportedly routinely subjected to humiliating searches, verbal and physical abuse, and other forms of harassment. These deficiencies in the penitentiary system became particularly evident in the context of the administrative and criminal cases relating to the events of 19 December 2010.

47. During the court hearings, Andrei Sannikau alleged that, after his arrest on 19 December, he was severely beaten, and denied medical treatment and access to a restroom. He was reportedly forced to lie still on a wooden bunk bed in bright light.<sup>29</sup> On 22 January, Mr Sannikau was reportedly visited by KGB chief Vadzim Zaitsau, who allegedly threatened the “life and health” of Mr Sannikau’s wife (journalist Iryna Khalip) and his 3-year-old son.<sup>30</sup>

48. Another presidential candidate, Ales Mikhalevich, alleged that, in January 2011, the KGB tortured him and other detainees at its high-security prison in Minsk.<sup>31</sup> He was forced to write “a plea for indulgence” to President Lukashenka and to “strike a deal” with the KGB, which he later denounced. According to the Government, the Office of the Prosecutor-General conducted a formal investigation of Mr Mikhalevich’s allegations, but reportedly found no evidence and nobody was charged.<sup>32</sup> Another former detainee, journalist Natalia Radzina, declared after her release that KGB officers had subjected her to psychological pressure and attempted to recruit her as an informant. On 10 March, the European Parliament adopted a resolution in which it condemned the torture of Mr Mikhalevich and Ms Radzina.<sup>33</sup> Other detainees (including Aliaksandr Atroshchankau, Zmitser Bandarenka and Myjalai Statkevich) also alleged that they had been subjected to torture or degrading treatment while in detention. In some cases, torture was reportedly inflicted by masked personnel – allegedly State security agents – which made it difficult to identify them and impossible to bring charges against them.<sup>34</sup>

49. In some cases, ill-treatment allegedly continued after sentencing.<sup>35</sup> Uladzimir Kobets, Head of the electoral headquarters of Mr Sannukau, alleged that he was forced to sign documents on collaboration with the KGB; he was reportedly threatened by security agents that his refusal to collaborate might put his family and friends at risk.<sup>36</sup>

## E. Freedom of expression and the media

50. According to article 19 of the International Covenant on Civil and Political Rights, everyone has the right to hold opinions without interference and the right to freedom of expression. Article 34 of the Constitution of Belarus guarantees freedom of speech. However, independent and international media observers and journalists have consistently denounced the Government’s restrictions on freedom of speech and the media.

<sup>29</sup> BelaPAN, 12 May 2011; see <http://news.tut.by/politics/226615.html>.

<sup>30</sup> Amnesty International: Urgent Action, “Belarus: Further information: Prisoner of conscience now incommunicado”, 18 May 2011. Available from [www.amnesty.org/en/library/info/EUR49/013/2011/en](http://www.amnesty.org/en/library/info/EUR49/013/2011/en).

<sup>31</sup> McCue & Partners, Case summary of the prosecution of Alexander Lukashenko, Major General Vadim Zaitsev, Anatoly Kuleshov for crimes of torture and hostage taking, 26 September 2011. Available from [www.mccue-law.com/wp-content/uploads/2011/09/00001.BEL\\_.2011.09.26.Case-summary-f2.pdf](http://www.mccue-law.com/wp-content/uploads/2011/09/00001.BEL_.2011.09.26.Case-summary-f2.pdf).

<sup>32</sup> CAT/C/BLR/CO/4/Add.1.

<sup>33</sup> European Parliament resolution P7\_TA-PROV(2011)0099.

<sup>34</sup> Jerome Taylor, “President’s rival tells of torture in Belarus jail”, *Independent*, 1 March 2011.

<sup>35</sup> See FIDH, [www.fidh.org/The-International-Federation-for](http://www.fidh.org/The-International-Federation-for), 10 June 2011.

<sup>36</sup> See Charter 97, <http://charter97.org/ru/news/2011/9/19/42696>, 19 September 2011.

51. The Media Law of Belarus, which came into force in 2008, is restrictive by nature; it establishes a cumbersome bureaucratic process for the accreditation of journalists and does not include the concept of freelance journalism. Journalistic activities are controlled through various measures, such as television and radio censorship, surveillance of activities of independent journalists, and control over publishing houses. Journalists from independent and opposition media are repeatedly prosecuted and convicted for their professional activities.

52. In the crackdown on the protests of 19 December 2010 and its aftermath, at least 21 reporters were beaten, 27 journalists were detained, and 13 were sentenced to 10 to 15 days in custody.<sup>37</sup> The KGB reportedly raided dozens of media offices and seized more than 100 items of electronic equipment.<sup>38</sup> By mid-May 2011, seven journalists had been tried in connection with the events of 19 December.

53. One of the most prominent cases of media harassment is the case of Iryna Khalip, a human rights journalist for the Russian newspaper *Novaya Gazeta* and wife of opposition presidential candidate Andrei Sannikau. On 19 December 2010, while giving a live interview for Russian radio station *Ekho Moskvy* regarding the violent break-up of the Independence Square rally, she was arrested, taken to the special isolation centre of the KGB and charged under criminal investigations opened by the Department of the Interior under article 293, parts 1 and 2 of the Criminal Code (“organization of or participation in mass disorder”). On 16 May 2011, a Minsk court gave her a two-year suspended prison sentence.

54. Andrzej Poczobut, an independent journalist, has been repeatedly prosecuted and convicted for his professional activities. He was detained for 15 days after his coverage of the events of 19 December 2010. Mr Poczobut was arrested on his way to the office of the European Union delegation in Minsk on charges of acts of “libel” and “insults”/“defamation” (articles 367 and 368 of the Criminal Code) against President Lukashenka, allegedly published in the *Gazeta Wyborcza*, a major Polish periodical, as well as on Mr Poczobut’s personal blog and other sites on the Internet. On 25 March 2011, law enforcement agents searched Mr Poczobut’s apartment, where they seized a computer and other items. He was re-arrested on 6 April; on 5 July 2011, he was sentenced to three years in prison, with two years suspension.<sup>39</sup>

55. In early 2011, another leading journalist, Natalya Radina, editor of the news website Charter 97, was detained and allegedly subjected to psychological pressure. She was extensively interrogated by prosecutors. Charter 97 computers and individual e-mail accounts were inspected. According to several observers, this followed criticism by Charter 97 of the restrictive Belarusian Internet law and an anti-Lukashenka documentary produced by the Russian channel NTV. Ms Radina was released on 28 January 2011, and subsequently fled the country.<sup>40</sup>

56. On 12 January 2011, the Government cancelled the broadcasting license of the Minsk-based private station Autoradio and closed it. The popular radio station was accused of broadcasting calls for “extremist behaviour”.<sup>41</sup> The station’s appeal against the decision was unsuccessful. On 14 April 2011, the Ministry of Information issued a warning to the

<sup>37</sup> Belarusian International Implementers Meeting, Monitoring Report on Developments in Belarus, December 2010 - May 2011, p. 3.

<sup>38</sup> Oral briefing by Belarusian non-governmental organizations in Geneva, 17 March 2011.

<sup>39</sup> See Belorusskiy Partizan, [www.belaruspartisan.org/bp-forte/?newsPage=0&backPage=13&news=92799&page=100&locale=ru](http://www.belaruspartisan.org/bp-forte/?newsPage=0&backPage=13&news=92799&page=100&locale=ru), 5 July 2011.

<sup>40</sup> Front Line Defenders, 31 January 2011.

<sup>41</sup> International Press Institute, 14 January 2011.

newspaper *Nasha Niva* for “publication of false information on the terrorist act of 11 April”. It also issued a warning to the newspaper *UzHorak* in Mahiliau oblast, and the next day issued another to the newspaper *Narodnaya Volya* “for dissemination of untrue and offensive data”.<sup>42</sup> The Ministry then filed lawsuits to have *Nasha Niva* and *Narodnaya Volya*, the largest independent newspapers in Belarus, closed down.<sup>43</sup> On 13 July, the Ministry withdrew its claim against *Narodnaya Volya*.

57. During the period under review, the Government continued to impede journalists from exercising their professional duties. For example, on 3 July 2011, several journalists, members of the Belarusian Association of Journalists, were detained and sentenced after covering a “silent protest” in Minsk. On 12 July, 30 journalists signed a collective appeal to the Prosecutor-General and the Minister for Internal Affairs regarding numerous police attacks and detentions of media workers during the protest.<sup>44</sup>

58. Throughout 2011, at least 95 journalists were detained during “silent protest” actions: 22 journalists stood trials in courts, 13 were sentenced to various terms of administrative arrest, while others were fined.<sup>45</sup> At the end of 2011, the authorities had further tightened Internet control, including through additional measures for Internet regulation.<sup>46</sup>

## F. Freedom of association and human rights defenders

59. According to article 22.1 of the International Covenant on Civil and Political Rights, everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his/her interests. Nevertheless, the Criminal Code criminalizes the “organization of unregistered public associations” (art. 193.1). Throughout the period under review, human rights defenders and non-governmental organizations were subjected to various forms of pressure, including arrests, interrogations, office raids and confiscation of materials, as well as acts of intimidation linked to contacts with international and intergovernmental organizations. These actions violate the Covenant, as well as articles 5(c), 9.4 and 12 of the Declaration on Human Rights Defenders.

60. As an indication of the seriousness of the human rights situation in Belarus, a case of reprisal against the Belarusian Helsinki Committee for cooperation with the Special Rapporteur on the independence of judges and lawyers was included in the report of the Secretary-General on cooperation with the United Nations, its mechanisms or representatives in the field of human rights.<sup>47</sup>

61. In the spring of 2011, several human rights defenders (citizens of the Russian Federation and Ukraine) from the International NGO Observation Mission to Belarus were deported from Belarus; some had not been allowed to enter the country.<sup>48</sup> For example, on 16 March 2011, the Head of the Mission, Andrei Yurov (Russian Federation), was briefly detained by Belarusian law enforcement agents under part 2 of article 371 of the Criminal

<sup>42</sup> Viasna, Weekly review of post-election situation in Belarus (11-17 April). Available from <http://spring96.org/en/news/42705>.

<sup>43</sup> OSCE press release, 16 May 2011.

<sup>44</sup> Belarusian Association of Journalists, Belarus Media News, 13 July 2011.

<sup>45</sup> Belarusian Association of Journalists (see footnote 7).

<sup>46</sup> Presidential decree No. 60, February 2009.

<sup>47</sup> See A/HRC/18/19, paras. 28-30.

<sup>48</sup> See statement of the Committee on International Control over the Situation with Human Rights in Belarus of 22 April 2011.

Code (“Illegal crossing of State borders by a person previously denied entry into the country”).<sup>49</sup>

62. The Human Rights Centre Viasna has also been repeatedly targeted by the authorities. Since cancelling its registration in 2003, the Belarusian authorities threatened Viasna Chairman Ales Bialiatski (also the Vice-President of the International Federation for Human Rights and a member of the Belarusian Association of Journalists) with criminal prosecution for “unauthorized NGO activity” (Criminal Code, art. 193.1). The latest warning was issued in April 2011. On 20 December 2010, KGB officers reportedly raided the Viasna offices, seized computers and documentation, and detained 10 staff members, who were released later the same day. On 4 August 2011, Mr Bialiatski was again arrested, placed in a pretrial detention centre of the Ministry of the Interior and charged with tax evasion. On 24 November, he was sentenced by the Pershamayski District Court in Minsk to four and a half years of maximum security imprisonment and his property confiscated.<sup>50</sup> Mr Bialiatski was convicted for “concealment of incomes on an especially large scale” (Criminal Code, art. 243.2). The court ruled that Mr Bialiatski had intentionally avoided paying taxes from the money he allegedly kept in bank accounts abroad; the court disregarded the fact that the money was not Mr Bialiatski’s personal income. He appealed against the verdict, which was, however, confirmed on 24 December 2011 by the Minsk City Court. In February 2012, Mr Bialiatski was taken to Babruysk correctional colony No. 2.<sup>51</sup> Another Viasna member, Valiantsin Stefanovich, was also found guilty of tax evasion and, on 16 December 2011, the court in Minsk sentenced him to a fine for having concealed income.

63. The defamation campaign launched by Government-controlled media against leaders of the political opposition also targeted human rights defenders and journalists. For example, the Internet website “Traitors” ([www.predатели.com](http://www.predатели.com)), which is linked to the group of supporters of the incumbent President,<sup>52</sup> contains names and pictures of human rights activists, journalists and opponents of President Lukashenka and is considered part of a smear campaign aimed at silencing dissidents.

## **G. Administration of justice, right to a fair trial, and independence of judges and lawyers**

64. Several lawyers defending opposition leaders arrested after the rally of 19 December 2010 have reportedly faced intimidation and threats. They have been prohibited from revealing violations of their clients’ rights and the state of their health while in detention; some of them have been able to meet with clients only once since the arrest. Mykalai Statkevich, Zmitser Bandarenka and Siarhei Martseleu were allowed to contact their lawyers only after several weeks of detention. Some were unable to meet their clients privately, their meetings taking place in the presence of an investigator.

65. On 29 December 2010, the Ministry of Justice accused some lawyers of abusing their professional role by “presenting information about the investigation, their clients’ opportunities to use legal assistance, their clients’ state of health and prison conditions, and the work of law enforcement bodies of the country in a biased manner”.<sup>53</sup> On 5 January 2011, the Ministry issued a warning to several defence lawyers of imprisoned opposition

<sup>49</sup> See Front Line Defenders, [www.frontlinedefenders.org/node/14732](http://www.frontlinedefenders.org/node/14732), 17 March 2011.

<sup>50</sup> See Belarusian Association of Journalists, <http://baj.by/en/node/9099>, 24 November 2011.

<sup>51</sup> See Naviny.by, [http://naviny.by/rubrics/society/2012/02/17/ic\\_news\\_116\\_387234/](http://naviny.by/rubrics/society/2012/02/17/ic_news_116_387234/), 17 February 2012.

<sup>52</sup> See [www.lukashenko2008.ru](http://www.lukashenko2008.ru).

<sup>53</sup> Front Line: Protection of Human Rights Defenders, appeal of 14 January 2011.

presidential candidates for having denounced alleged violations of their clients' rights and those of other individuals to the media.

66. On 14 February 2011, the licenses of defence lawyers Uladzimir. Toustsik, Tamara Garayeva, Aleh Aheyeu and Tatsiana Aheyeua were revoked. On 6 March, another defence lawyer, Pavel Sapelka, was excluded from the Minsk City Bar, effectively preventing him from continuing his practice. By mid-May 2011, 53 defence lawyers had been put under investigation and their activities inspected by the Ministry of Justice.

67. Access to lawyers reportedly remained problematic for some of those convicted in relation to the events of 19 December 2010. For example, on 16 November 2011, Andrei Sannikau's lawyer discovered that her client had been transferred from the correctional colony of Babruysk to prison No. 4 in Mahiliau, then transferred to another correctional institution near Vitsebsk. The authorities reportedly failed to inform the lawyer about her client's transfer. The lawyer was also refused access to Mr Sannikau on the basis that he was still in transit, even after his arrival in Vitsebsk.<sup>54</sup>

68. As the trials in connection with the events of 19 December 2010 began, a team from the OSCE Office for Democratic Institutions and Human Rights was invited by the Government to monitor the trials of opposition leaders and activists. The monitors reported a number of deficiencies and violations of international norms regulating the right to a fair trial, including concerns at the basis of the defendants' detention, access to counsel, treatment in detention, influence of the executive on judiciary matters, close relations between the prosecutor and the judge, presence of Ministry of the Interior and KGB personnel at the trials, and apparent denial of the right to the presumption of innocence until proven guilty,<sup>55</sup> findings that run counter to the provisions of article 14.2 of the International Covenant on Civil and Political Rights, which declares that anyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

## H. The right to life and the death penalty

69. Belarus is the only country in Europe that retains the death penalty for certain crimes during times of peace and war. In a referendum held in 1996, one of the seven questions asked concerned the abolition of the death penalty; 80.44 per cent of voters voted against it.

70. On 11 May 2011, Amnesty International disseminated information on the case of Alek Gryshkautsou and Andrei Burdyka, who were sentenced to death on 14 May 2010 for crimes committed during an armed robbery in the town of Hrodna, in October 2009. On 17 September 2010, the Supreme Court turned down their appeals, after which the two men appealed for clemency from President Lukashenka, which was also refused. At the time, the cases of Mr Gryshkautsou and Mr Burdyka were submitted to the Human Rights Committee for consideration. On 20 July 2011, however, *Vecherny Grodno*, an official newspaper, reported that the men had been executed. As in previous cases of the death penalty, the execution and the subsequent formalities were not transparent.

71. On 30 November 2011, a Minsk court sentenced Dzmitry Kanavalau and Uladzslau Kavalyou to death for the terrorist attacks in the Minsk underground on 11 April 2011. Mr

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<sup>54</sup> Amnesty International, "Belarus: jailed presidential candidate denied access to lawyer", 17 November 2011.

<sup>55</sup> OSCE report, Trial Monitoring in Belarus (March - July 2011).

Kavalyou withdrew his confession which, he claimed, was obtained under duress.<sup>56</sup> On 19 March 2012, Human Rights Watch reported that the two men had been executed.

72. In February 2012, another person on death row, Ihor Malik, was allegedly executed.<sup>57</sup> This information could not be verified when the present report was being drafted.

#### **IV. Conclusions and recommendations**

73. **The information collected and its analysis suggest a pattern of serious violations of human rights since 19 December 2010. A number of actions, on 19 December 2010 and in the aftermath, were clearly aimed at curtailing the rights to freedoms of association, assembly and expression, and the right to a fair trial. To date, allegations of torture and ill-treatment in custody, impunity of perpetrators, violations of due judicial process and pressure on defence lawyers persist. The lack of an independent judiciary aggravates the situation and impedes progress.**

74. **Despite the release, in August and September 2011, of a number of those imprisoned in connection with the events of 19 December 2010, amendments to several laws have further restricted civil and political rights. This situation indicates that the deficiencies pertaining to human rights in Belarus are of a systemic nature. They need to be addressed by the authorities through a comprehensive approach, which would include a review of the legislation, policies, strategies and practice pertaining to human rights.**

75. **While presenting the oral report of the High Commissioner to the Human Rights Council at its eighteenth session, the Deputy High Commissioner made several preliminary recommendations to the Government of Belarus. As those recommendations remain largely unimplemented, OHCHR reiterates them, broadening their scope and adding additional ones. The High Commissioner thus recommends that the Government of Belarus:**

**(a) Immediately and unconditionally release remaining political opponents, activists and journalists who were not involved in any violence in the events of 19 December 2010 and its aftermath;**

**(b) Conduct an impartial, credible and objective investigation of the circumstances in which the above persons were arrested and detained, and take steps to promptly rehabilitate them;**

**(c) Conduct a comprehensive, transparent and credible investigation into all reported cases of torture and ill-treatment, and bring those responsible to justice; ensure in all circumstances the physical and psychological integrity of detained and imprisoned persons; and establish an independent national preventive mechanism for the prevention of torture at the domestic level;**

**(d) Ensure the full implementation of the rights to freedom of association and assembly, in accordance with international law, and put an immediate end to all forms of political and administrative pressure on and harassment of political opponents;**

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<sup>56</sup> Amnesty International, "Death penalty for two men in Belarus", 30 November 2011.

<sup>57</sup> See Tut.by, <http://news.tut.by/society/276782.html>, 29 February 2012.

(e) Put an immediate end to all forms of pressure on and harassment of civil society organizations, as well as individual human rights defenders; and release immediately and unconditionally Ales Bialiatski, and withdraw charges brought against him and other human rights defenders;

(f) Take measures to ensure that civil society organizations have the freedom to perform their tasks; revoke the official warnings issued against civil society organizations, and cease the practice of issuing such warnings;

(g) Put an immediate end to all forms of pressure on journalists and media workers; withdraw all charges against journalists prosecuted for their professional activities, and take measures to rehabilitate them; and recall official warnings issued against newspapers and cease such practice;

(h) Ensure freedom of expression and create a legal environment and practices conducive to the effective freedom of the media; eliminate the practice of censorship and self-censorship; and ensure that Internet control measures are minimal and that regulations do not lead to censorship of electronic media and freedom of speech;

(i) Ensure full compliance with international standards for due process and fair trial; put an immediate end to all forms of pressure on judges, lawyers and members of the bar; and ensure that the bar is free and independent of all forms of administrative control by the Government;

(j) Cooperate fully with all United Nations human rights mechanisms, and fully implement all recommendations made at the universal periodic review and by treaty bodies and special procedures;

(k) Cooperate fully with OHCHR, including by providing access to an OHCHR technical team to visit Belarus and to engage directly with the relevant authorities and civil society actors;

(l) Establish a national human rights institution in compliance with the Paris Principles;

(m) Establish a moratorium on all executions with a view to abolishing the death penalty, and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;

(n) Initiate a comprehensive review of the overall legal framework, including the Criminal Code, as well as the laws amended in 2011, bringing them into line with the State's international human rights obligations, and, in doing so, seek international expertise available from the United Nations, OSCE and the Council of Europe;

(o) Study the findings and observations reflected in the report of the OSCE election observation mission in Belarus, the report of the OSCE Moscow Mechanism Rapporteur<sup>58</sup> and the report of the OSCE Office for Democratic Institutions and Human Rights on trial monitoring in Belarus,<sup>59</sup> and implement fully the recommendations made therein.

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<sup>58</sup> See footnote 10.

<sup>59</sup> Available from [www.osce.org/odihr/84873](http://www.osce.org/odihr/84873).

## Annex

### **Status of persons charged in connection with the events of 19 December 2010 (information provided by the Government of Belarus)**

Приговоры вынесены в отношении следующих лиц:

По ч.1 ст. 342 УК РБ (организация групповых действий, грубо нарушающих общественный порядок, либо активное участие в таких действиях):

1. И.Халип: 2 года с отсрочкой наказания на 2 года;
2. И.Василевича: 3 года колонии усиленного режима;
3. О.Гнедчика: 3,5 года колонии усиленного режима;
4. Ф.Мирзоянова: 3 года колонии усиленного режима;
5. В.Еременка: 3 года колонии усиленного режима;
6. Сопредседателя партии БХД П.Северинца: 3 года в учреждении открытого типа;
7. Руководителя штаба Н.Статкевича С.Марцелева: 2 года условно (с испытательным сроком на 2 года);
8. Члена команды А.Санникова Д.Бондаренко: 2 года колонии общего режима;
9. В.Некляева: 2 года с отсрочкой на 2 года;
10. В.Рымашевского: 2 года с отсрочкой на 2 года;
11. Руководителя штаба В.Некляева А.Федуты: 2 года с отсрочкой на 2 года;
12. Доверенного лица В.Некляева С.Возняка: 2 года с отсрочкой на 2 года;
13. Доверенного лица В.Некляева А.Дмитриева: 2 года с отсрочкой на 2 года;
14. Доверенного лица В.Рымашевского А.Полаженко: 1 год с отсрочкой на 1 год;

По ч. 1, 2 ст. 293 УК РБ (организация либо участие в массовых беспорядках):

15. А.Санникова: 5 лет колонии усиленного режима;
16. Д.Доронина: 3,5 года колонии общего режима;
17. С.Казакова: 3 года колонии общего режима;
18. В.Лобана: 3 года колонии общего режима;
19. В.Мацукевича: 3 года колонии строгого режима;
20. Е.Секрета: 3 года колонии общего режима;
21. О.Федоркевича: 3,5 года колонии общего режима;
22. Зампредседателя «Молодого фронта» А.Киркевича: 4 года колонии усиленного режима;

23. Члена команды В.Некляева П.Виноградова (ранее судим по «делу 14-ти»): 4 года колонии усиленного режима;
24. Члена инициативной группы А.Санникова Д.Дрозда: 3 года колонии усиленного режима;
25. Волонтера кампании Я.Романчука А.Протасени: 3 года колонии усиленного режима;
26. В.Хомиченко: 3 года колонии усиленного режима;
27. Активиста движения «За свободу!» Н.Лиховида: 3,5 года колонии усиленного режима;
28. Гражданина РФ А.Бреуса: штраф в размере 300 базовых величин;
29. Гражданина РФ И.Гапонова: штраф в размере 300 базовых величин;
30. Д.Медведя: 3 года без направления в учреждение закрытого типа;
31. Пресс-секретаря А.Санникова А.Отрощенко: 4 года колонии усиленного режима;
32. А.Молчанова: 3 года колонии усиленного режима;
33. Д.Новика: 3,5 года колонии усиленного режима;
34. Активиста штаба В.Некляева В.Парфенкова (судим и имеет непогашенную судимость по статье 218 «Умышленное уничтожение или повреждение имущества» УК к 3 годам лишения свободы и освобожден условно-досрочно): 4 года колонии строгого режима;
35. Н.Статкевича: 6 лет в колонии усиленного режима;
36. Д.Усса: 5 лет в колонии усиленного режима;
37. А.Класковского: 5 лет в колонии усиленного режима;
38. А.Квяткевича: 3,5 года колонии усиленного режима;
39. А.Позняка: 2 года ограничения свободы;
40. Д.Буланова: 3 года колонии усиленного режима;
41. А.Грибкова: 4 года в колонии усиленного режима с принудительным лечением от алкоголизма;

По ч. 2, 3 ст. 339 Уголовного кодекса РБ (хулиганство):

42. Лидера «Молодого фронта» Д.Дашкевича: 2 года колонии общего режима;
  43. Активиста «Молодого фронта» Э.Лобова: 4 года колонии строго режима;
- Адвокаты части осужденных (в т.ч. А.Санникова, В.Некляева, Н.Статкевича и Д.Усса) обжаловали вынесенные приговоры. По результатам рассмотрения ходатайств в июле с.г. Минский городской суд оставил приговоры в отношении указанных лиц без изменения.

При этом полностью признали свою вину:

А.Молчанов - подтвердил факт нанесения ударов по милицейскому заграждению, дверям Дома Правительства, срыв государственных флагов со здания КГБ, оценил

свои действия как ошибку, признав, что это были беспорядки, и выразил сожаление по поводу своего участия в них;

В.Хомиченко (дважды судимый по уголовным делам) – признал факт нанесения, будучи в нетрезвом виде, ударов по заграждениям в дверях, поврежденный Дому Правительства (оторвал кусок водосточной трубы и вырвал уплотнитель между дверными стеклами), заявил, что «сожалеет, что оказался на площади, что он «не такой, как все», многое не понимает и готов честно работать»;

А.Протасеня – признал, что «нанес несколько ударов рукой по щитам, установленным на дверях Дома Правительства» и хотел проникнуть в Дом Правительства;

Н.Лиховид – признал, что «нанес несколько ударов (по деревянным заграждениям на входе в Дом правительства) руками, ногами и плечом». Кроме того, он подтвердил, что помогал вытягивать деревянный щит в нижней части дверного проема на входе в здание, а затем помог вытянуть щит сотрудника милиции и передать его толпе. («Причины своих действий мне пояснить сложно... Раскаиваюсь в том, что совершил»);

В.Еременок – признает вину полностью и раскаивается в содеянном. Подтвердил, в частности, что взял с собой фомку, которую готов был использовать, если бы милиция применила силу против мирных демонстрантов, но выбросил ее по дороге, когда увидел, что никто никого не разгоняет;

С.Марцелев – признал, что призывал граждан собраться на Октябрьской площади 5 декабря во время радиодebатов, находясь на Октябрьской площади 19 декабря, вышел на проезжую часть и, двигаясь в составе колонны демонстрантов, дошел до площади Независимости, тем самым препятствуя движению общественного транспорта.

Признали вину частично: Д.Новик (подтвердил факт нанесения ударов по милицейскому заграждению) и Д.Бондаренко (участвовал в массовой акции, которая мешала работе транспорта), И.Василевич (нанес несколько ударов по стеклу Дома Правительства, «чтобы обезопасить людей от травм»), А.Полаженко (признала, что агитировала прийти на Октябрьскую площадь вечером 19 декабря, предоставляла иногородним участникам акции возможность остановиться в своей квартире – т.е.акция была спланирована заранее), А.Дмитриев (не подчинился требованиям милиции и призвал людей выйти на площадь), С.Возняк (призывал людей выйти на площадь, а также занимался организацией доставки средств для кампании «Говори правду!» из Вильнюса курьерами) и ряд других.

Судебные процессы над обвиняемыми проводились публично с участием родственников, общественности и наблюдателей от ОБСЕ.

Белорусская сторона, руководствуясь своими обязательствами в рамках ОБСЕ (в частности, п.12 Копенгагенского документа СБСЕ 1990 года<sup>60</sup>), в ответ на обращения

<sup>60</sup> (12) Государства-участники, желая обеспечить большую открытость в выполнении обязательств, взятых на себя в разделе о человеческом измерении СБСЕ венского итогового документа, постановляют принять в качестве меры по укреплению доверия присутствие наблюдателей, направляемых государствами-участниками, и представителей неправительственных организаций и других заинтересованных лиц на судебных процессах, как это предусматривается в национальном законодательстве и международном праве; при этом понимается, что судебные процессы могут быть закрытыми (*in camera*) лишь при наличии обстоятельств, предписанных законом и соответствующих обязательствам по международному праву и международным обязательствам.

действующего председательствa ОБСЕ и директора БДИПЧ ОБСЕ Я.Ленарчича приняла решение, в порядке исключения, пригласить группу экспертов ОБСЕ в Беларусь для наблюдения за порядком ведения судебных процессов над организаторами и участниками массовых беспорядков в г.Минске вечером 19 декабря 2010 года.

Такое решение явилось жестом доброй воли белорусской стороны и наглядным подтверждением ее позиции о готовности продолжать прямое предметное сотрудничество с ОБСЕ и ее институтами после закрытия Офиса ОБСЕ в г.Минске.

11 августа 2011 г. 9 ранее осужденных фигурантов дела 19 декабря были помилованы Главой государства: Д.Дрозд, А.Грибков, С.Казаков, В.Хомиченко, Е.Секрет, В.Еременок, В.Парфенков, В.Мацукевич, А.Квяткевич. Решение было принято «на основании просьб указанных лиц с учетом того, что они осознали противоправный характер своих действий, признали вину и искренне раскаялись».

1 сентября 2011 г. указом Президента были освобождены четверо осужденных: А.Киркевич, А.Протасеня, О.Гнедчик и Д.Доронин.

14 сентября 2011 г. Президент помиловал еще 11 осужденных: П.Виноградова, А.Класковского, Ф.Мирзоянова, В.Лобана, Д.Новика, О.Федоркевича, Д.Буланова, А.Отрошенкова, Н.Лиховида, А.Молчанова и И.Василевича.

1 октября 2011 г. по соображениям гуманности был помилован экс-кандидат в президенты Д.Усс.

Кроме того, в отсутствие состава преступления прекращено уголовное преследование в отношении находившихся под следствием руководителя незарегистрированной организации «Молодые демократы» О.Корбана, доверенного лица Н.Статкевича А.Арестовича, руководителя штаба А.Санникова В.Кобеца, лидера ОГП А.Лебедько, журналистки Н.Радиной, бывшего кандидата в президенты – зампреда БНФ Г.Костусева.

Остающиеся в заключении фигуранты событий 19 декабря содержатся под стражей в условиях, предусмотренных национальным законодательством. Д.Бондаренко, Н.Статкевичу и А.Санникову оказана необходимая медицинская помощь, включая оперативное лечение и последующую реабилитацию с учетом режима содержания.

Вместе с тем, по результатам рассмотрения ходатайства Д.Бондаренко об условно-досрочном освобождении администрацией исправительного учреждения 4 января 2012 г. было принято решение отказать «до изменения степени аттестации» (т.е. достижения соответствия нормативно регламентированным критериям, позволяющим администрации исправительного учреждения аттестовать заключенного для УДО). По имеющейся информации, осужденный Д.Бондаренко не выполнил указанное требование в части признания своей вины в инкриминируемых ему противоправных действиях.

1 февраля 2012 года Д.Бондаренко подал прошение о помиловании на имя Главы государства, которое будет рассмотрено в установленном порядке.

В связи с систематическими нарушениями Н.Статкевичем внутреннего распорядка 12 января 2012 г. суд принял решение перевести заключенного для дальнейшего отбытия наказания в тюремное учреждение.

По информации Департамента исполнения наказаний МВД, А.Санниковым 23 декабря 2011 г. *(по информации некоторых СМИ – 20 ноября 2011 г.)* подано прошение о помиловании на имя Главы государства, которое будет рассмотрено в установленном порядке.