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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information received **concerning new legislative amendments that may further restrict the exercise of the rights to freedom of peaceful assembly and of association in Belarus**. In October 2011, the Belarusian National Assembly reportedly adopted legislation amending the Law on Public Associations, the Law on Political Parties, the Criminal Code, the Election Code and the Code of Administrative Violations.

According to the information received:

The recent amendments to the **Law on Public Associations** prohibit a) activities of public associations and their unions directed at the provision of benefits and preferences by foreign States to citizens of Belarus relating to political, religious views or nationality, "in violation of the legislation". Amendments to this law also prohibit to b) store money, precious metals or other valuables in banks and other financial institutions located in foreign states by Belarusian public associations and their unions.

Amendments to the **Law on Political Parties** retain the requirement that political parties, unions or legal entities transfer cash and other assets from "prohibited sources" to the Government of Belarus. With the new amendments, in case of refusal to transfer these assets voluntarily, the State can seize foreign funds received "in violation of legislation". Furthermore, should an organization that has received foreign contributions during the past year seek to make a donation to a

political party, the organization must return the contributions to the source or transfer the contributions to the Government of Belarus.

The amendments introduced in the **Law on Public Gatherings** stipulate that any public gathering previously planned without the consent of the incumbent authorities can be considered violating “the order of organisation or holding mass gatherings”. Moreover, organizers have a reporting liability to fulfill on the “financial sources” used for the event, and are not be allowed to spread information about such an event, including through social networking sites, until the official permission is granted to conduct such a gathering. Additionally, any “public call for initiating” a gathering or a rally “in violation of established order” can also be an administrative offence.

With regard to the reported amendments to the **Criminal Code**, the following would now be considered to be criminal offenses punishable by a penalty of detention up to 3 months or a prison term up to 2 years, if conducted within a year after imposition of an administrative penalty for the same violation: a) organizing or conducting meetings, protests, street marches, demonstrations, or picketing strikes; the production and distribution of propaganda materials; and the staging of seminars and other forms of political and propaganda activities amongst the population; b) financing any activity designed to help prepare for elections and relating to elections, referenda, or the recall of deputies or members of the Soviet Republic of the National Assembly of Belarus; and c) the receipt, storage or transfer of foreign contributions for the purpose of carrying out extremist activities or other activities or inactivity prohibited by Belarusian legislation, or to finance political parties or unions (associations) of political parties. As well, public calls to conduct meetings, protests, street marches, demonstrations or picketing “in violation of legal requirements” and “established procedure” are punishable by detention up to 6 months or prison terms of up to 3 years.

It is also reported that amendments to the Criminal Code referring to the provisions on State treason now stipulate that revealing information that could be considered as State secrets to foreign States, foreign organizations or their representatives; carrying out activities that could be considered spying; or providing assistance to foreign States, foreign organizations or their representatives in the conduct of activities that could be considered as “damaging to the national security”, could lead to a prison sentence of between 7 and 15 years. It is also reported the amended the **Election Code** now stipulates that if foreign “gratuitous” assistance received is not returned by the recipient to those who provided such a donation or if such a return is not possible, within one year since the date of receipt of the donation, it shall transfer such assistance to the State before the date of making a contribution to the election funds. Furthermore, amendments to the Election Code also contain new provisions that new NGOs cannot contribute to election funds if they are registered for less than a year prior to making a contribution to such funds.

Moreover, amendments to the **Code of Administrative Violations** provide that foreign citizens will be deported from Belarus if they give “gratuitous assistance”

for the purpose of conducting activities “prohibited by the legislation” and such assistance will be confiscated.

In connection with the above, we would like to refer to the situation of Mr. Ales Bialiatski, the President of Human Rights Centre (HRC) “Viasna”, and the current legal proceedings against him for alleged tax evasion. We would like to acknowledge receipt of the reply of your Excellency’s Government to the urgent appeal sent on 15 August 2011 jointly by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; the Special Rapporteur on the Situation of Human Rights Defenders; and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Should this information be corroborated, serious concerns are expressed that the aforementioned amendments to various laws and the situation of Mr. Bialiatski could be part of a broader effort to obstruct and criminalise the legitimate activities of human rights defenders, activists as well as *de facto* and *de jure* associations working in the defence and promotion of human rights and fundamental freedoms, including those who may be critical of actions and policies of the Government. Moreover, concerns are expressed that some of the reported amendments to the Criminal Code could be used to unduly hamper and criminalize contacts between human rights defenders, including activists and associations, with international bodies or organizations, the United Nations included. With regard to the alleged amendments on the Law on Public Associations and the Law on Political Parties, we wish to remind to your Excellency’s Government the common provisions stipulated under article 21 and 22 of the International Covenant on Civil and Political Rights, whereby “(n)o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. Such permissible restrictions, however, can only be justified in a democratic society for achieving one of the abovementioned purposes and shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights.

We would like to draw to your Excellency’s Government attention to the General Comment 31 of the Human Rights Committee on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant which states that the legal provisions under article 2 paragraph 1 of the International Covenant on Civil and Political Rights imply that “any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right”.¹

In this connection, we recall the relevant jurisprudence of the Human Rights Committee with reference to a “democratic society”, which in particular indicates that “the existence and functioning of a plurality of associations, including those which

¹ CCPR/C/21/Rev.1/Add. 13 para 6.

peacefully promote ideas not favourably received by the government or the majority of the population, is one of the foundations of a democratic society. Therefore, the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose”.²

With regard to the alleged amendment to the Criminal Code which criminalizes the production and distribution of propaganda materials, we would also like to refer to General Comment 34 of the Human Rights Committee on Article 19: Freedom of Opinion and Expression which provides that “Paragraph 2 requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, subject to the provisions in article 19, paragraph 3, and article 20. It includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20. Paragraph 2 protects all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression”. (Paragraph 11 and 12, General Comment 34)

In addition, with respect to our concern that the recent legal amendments described above as well as the situation of Mr. Bialiatski could be part of a broader effort to obstruct and criminalise the legitimate activities of human rights defenders, activists as well as *de facto* and *de jure* associations, we would like to refer Your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

² Case No. 1119/2002, *Lee vs The Republic of Korea*, 824 HRC 2005 Report, vol. II, annex V, sect. U, paras 7.2.-7.3; as quoted in A/64/226 para. 28.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, which provide for the rights of human rights defenders to communicate with non-governmental or intergovernmental organizations as well as to solicit, receive and utilize resources, including financial resources.

- article 5 points b) and c) provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

- article 13 (b) and (c) stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

In connection to the concerns expressed that some of the reported amendments to the Criminal Code could be used to unduly hamper and criminalize contacts between human rights defenders, including activists and associations, with international bodies or organizations, including the United Nations, we wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3). Moreover, we reiterate the conclusions and recommendations of the Special Rapporteur on the situation of Human Rights Defenders presented to the General Assembly in 2009.³ In particular, we wish to reiterate that while “States should not criminalize or impose criminal penalties for activities in defence of human rights and for participating in unregistered entities” and should “not interfere with the internal management and activities of NGOs”, States should also:

- allow independent human rights organisations in line with the International Covenant on Civil and Political Rights “to engage in activities for the benefit of their members and for the public; and should be free to participate in public policy debates, including debates about and criticism of existing or proposed State policies or actions”. And that “no distinction regarding the types of permitted activities should be made between national and foreign organizations”, as “(a)ny limitations, within these parameters, including lists of permitted and prohibited activities, are incompatible with the right to freedom of association”.
- “allow access by NGOs to foreign funding, and such access may only be restricted in the interest of transparency, and in compliance with generally

³ See A/64/226 op. cit., p 22 -24.

applicable foreign exchange and customs laws”, since “(r)estrictions on foreign funding may limit the independence and effectiveness of NGOs” and “should therefore review existing laws in order to facilitate access to funding.”

- amend “(v)ague definitions of terrorism, extremist activities and slander provisions”, since they “allow for arbitrary application against individuals and associations”. As well, eliminate “(t)he use of slander laws and other provisions by Government officials to sanction critical statements and reports by human rights NGOs.”

We would also like to refer to Human Rights Council Resolution 17/24 whereby the Council “(e)ncourages 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 on how to redress the human rights situation in Belarus, to be presented to the Human Rights Council at its twentieth session” (A/HRC/RES/17/24, op5).

In connection to the allegations and concerns described above, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights to freedom of peaceful assembly association and freedom of opinion and expression are upheld. We also encourage your Excellency’s Government to adopt the necessary measures to ensure that defenders, activists and civil society organizations can carry out their human rights work in a free and safe environment.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide the full details of the recently adopted legislation amending the Law on Public Associations, the Law on Political Parties, the Law on Public Gatherings, the Criminal Code, the Election Code and the Code of Administrative Violations. Are these amendments in accordance with your obligations under international human rights law? Please explain.
3. Please indicate what measures have been taken to ensure that human rights defenders, activists and civil society organizations can operate in an

enabling environment and can carry out their legitimate activities without fear of harassment, stigmatisation or criminalisation of any kind.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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