



Recommendations for the International Community on Actions on the Human Rights Situation in Belarus after the Presidential Elections on 19 December 2010

by the Committee on International Control over the Situation with Human Rights in Belarus

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On the occasion of the 17th session of the UN Human Rights Council

Framework for actions by the international community:

1. The human rights situation in Belarus should be discussed at the **17th session of the UN Human Rights Council**. The Council should **adopt a resolution** on the situation in Belarus and **establish a monitoring and reporting mechanism**. The best option would be establishment of a **position of a Special Rapporteur** on the Human Rights Situation in Belarus.
2. The **Human Rights Council special procedures**, in particular, the Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on Torture, and the Special Rapporteur on Freedom of Assembly and Association, should pay more attention to the human rights situation in Belarus and take all possible measures, individually and together, within their mandates to address it.
3. New reports on the human rights situation in Belarus, including an upcoming **report by the OSCE Rapporteur within the framework of the Moscow Mechanism** and the **Interim Human Rights Assessment of the Events of 19 December 2010 in Minsk, Belarus, by the Special Rapporteur of the Committee on International Control over the Situation with Human Rights in Belarus**, should be distributed among the delegates of the 17th session of the UN Human Rights Council and used to the maximum extent possible as a basis for discussing and developing further steps in addressing the human rights situation in Belarus.
4. Governments should build their **relations with the authorities of Belarus**, including continuation, introduction and discontinuation of cooperation programs, such as economic and technical assistance programs, and any decisions to adopt or terminate political, economic and other sanctions, **on evidence of substantial and measurable progress in meeting international human rights obligations** by the Belarus Government. **Release of all political prisoners should be a minimum requirement, a pre-condition for any dialogue** and should be seen as only a first step in addressing deep and systemic problems in human rights and rule of law in Belarus which had progressively developed for the last 15 years and made the dramatic events of December 19, 2010 and thereafter possible. International community should not engage in bargaining with Mr. Lukashenko around release of political prisoners in exchange for loans and ending sanctions. Instead, comprehensive change in the political and legal system, measured by progress in upholding international human rights obligations, should be the goal and the condition of re-establishing dialogue and cooperation with Belarusian government.

5. **International financial institutions** (the World Bank, the European Bank for Reconstruction and Development, the European Investment Bank) and other international cooperation organisations (including the Eurasian Economic Community) should build their relations with Belarus, including continuation, introduction and discontinuation of cooperation, such as investments, loans, economic and technical assistance, on the Belarus Government's progress in compliance with international human rights standards.
6. National governments should advise **national financial institutions and corporations** to consider, in making decisions about investments and other forms of economic cooperation, the Belarus Government's compliance with the rule of law and international human rights standards.
7. The **OSCE**, in cooperation with Belarusian and international civic organisations and other international organisations, should develop a strategy for bringing Belarus back to effective and comprehensive compliance with OSCE commitments, including progress in all areas of concern listed below.
8. **Belarusian civil society** should be granted full support, protection and solidarity from the international community. International, intergovernmental organisations and national governments should cooperate and hold regular consultations with human rights NGOs in Belarus on the strategy and actions to improve the situation in Belarus regarding human rights and freedoms.

International community should extend the following concrete demands to the Government of Belarus:

9. Conduct a prompt, thorough and impartial **investigation into the use of force by the law enforcement officers** when clearing the Independence Square from participants of the main demonstration beginning on 22:30 on December 19, after the violent actions involving window-smashing in the Government House by a small group of people had already ended, and into the circumstances of the attack against presidential candidate Vladimir Neklyayev and his supporters at approximately 19:10, and subsequent taking of Vladimir Neklyayev away from the hospital by force, before he was brought to the KGB prison.
10. It is essential that the investigation and trial of participants and organisers of the 19 December protests **should be based on clear and reliable evidence of the defendants' direct involvement in violence, incitement to violence**, or any actions causing significant damage to property. It is very important to **establish a clear distinction between "participating in" or "organising" the mass riots vs. "participating in" or "organising" unsanctioned peaceful protests**. Any organiser or participant of the unsanctioned peaceful protest should not be charged with involvement in the riot, even though the riot may have occurred at the same time as the peaceful protest. Riot charges should rely on specific, consistent and clear evidence that the suspect personally engaged in violence or incited others to serious and illegal acts of violence, while coordinating his or her actions with a significant number of other people. Being an organiser or participant of the unsanctioned peaceful protest is not an offense warranting riot charges. Thus, criminal charges against alleged offenders and court verdicts against already convicted should be reclassified to reflect a less serious administrative offense, or dropped altogether.
11. The fact that relatively few people were directly involved in the attack against the Government House raises questions as to **whether anyone should be charged with "mass riot"** (by definition, a violent act committed by a crowd); arguably, charges under a number of other criminal or administrative provisions (such as "hooliganism") may be more appropriate for a type of public order offense which does not involve many people. Many of those involved in the violent attack against the Government House can be easily identified from publicly accessible video footage. Criminal proceedings against anyone charged with violence or incitement to violence should be based on such conclusive evidence. Courts **must base their judgments on clear and verifiable evidence of accused individuals' direct engagement in the illegal acts** they are charged with.

12. Courts should **review all decisions imposing administrative liability** on participants of the unsanctioned peaceful demonstration on 19 December, taking into account the peaceful nature of the protest and questioning the grounds for restricting the freedom of assembly and expression, and proportionality of the punishment. It would also be advisable to examine the fairness of judgments based on virtually identical written reports by police officers who, according to human rights defenders, should have been physically incapable of observing specific demonstrators and arresting them, given the manner in which the police actions against the demonstrators were organised.
13. Investigate thoroughly and make a **legal assessment of reported ill-treatment**, including torture and degrading conditions of detention, of people arrested and detained in connection with the 19 December events, and examine their complaints of being denied access to counsel and any contact with family.
14. Based on the of fair trial principles, the authorities of Belarus should **initiate a review of court judgments in cases where individuals were found guilty under various provisions of the Criminal Code** for their participation in, or organisation of, the 19 December protests, and ensure fair trial in all pending cases. Pending the review, all persons convicted to real prison terms should be immediately released.
15. Allow members of **international and foreign civic organisations**, including human rights groups, to exercise their legitimate activities of monitoring, reviewing and reporting on trials of participants and organisers of the 19 December events (see the OSCE Moscow Document, para 43). This includes removal the names of representatives of international and foreign civic organisations from the "List of persons whose entry into the Republic of Belarus is prohibited or undesirable" and stop the practice of including their names in such lists, leading to their arbitrary and unfounded detention by law enforcement and border security officers and their expulsion from Belarus.
16. Allow members of **Belarusian nongovernmental organisations and mass media** to exercise their legitimate activities of monitoring, reviewing and reporting on trials of participants and organisers of the 19 December events. In particular, this involves: stopping the harassment and arbitrary searches of NGOs and editorial offices and homes of their members and staff; stopping confiscations of office equipment and materials; refraining from unsubstantiated warnings against mass media; stopping the initiation of criminal libel proceedings against critics of public officials; stopping firing activists from their jobs and expelling students from educational institutions, and; condemning such practices as illegal.
17. **Stop publicising data** allegedly taken from the investigation files (such as phone tapping records) in mass media to make the public believe that the accused have been preparing a coup d'état or mass riots, etc.
18. Take concrete steps to **ensure independence of the judiciary**; amend domestic legislation to ensure compliance with international fair trial standards, including presumption of innocence, access to legal counsel, effective right to appeal, and transparency of proceedings; ensure that all trials comply with international fair trial standards; stop detentions and prosecutions on political grounds; guarantee independence of lawyers and stop any harassment of and pressure on lawyers, such as withdrawal of their status as a defence lawyer, arbitrary audits and banning their participation in training programs abroad; restore such status to lawyers unfairly stripped of it in connection of their role in defending political figures, civil society activists and journalists; cooperate with the UN Special Rapporteur on the Independence of Judges and Lawyers, and take substantive steps towards implementing earlier recommendations from international organisations.
19. Take concrete steps towards the full and absolute **prohibition and elimination of torture**, inhuman, cruel and degrading treatment in detention centres, prisons, penitentiary colonies and closed institutions; include the definition of torture in domestic law in conformity with provisions of Article 1 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; ratify the Optional Protocol to the Convention; ensure that conditions of detention in pre-trial detention centres,

prisons, colonies and closed establishments conform with international standards prohibiting torture, inhuman, cruel and degrading treatment; prohibit judges from accepting confessions and statements obtained under torture, inhuman, cruel and degrading treatment; ensure effective, impartial and full investigation into all reports of torture, inhuman, cruel and degrading treatment of detainees and prisoners; cooperate with the UN Special Rapporteur on Torture; implement in full the recommendations of the UN Committee against Torture.

20. Take concrete steps to guarantee **freedom of association** in accordance with relevant international standards, such as the International Covenant on Civil and Political Rights and the OSCE commitments; review domestic legislation, in particular with a view to simplify registration of non-governmental associations, trade unions and political parties; decriminalise involvement and membership in unregistered nongovernmental organisations (Art. 193-1 of the Criminal Code); discontinue the practice of politically motivated unreasonable denials of registration to non-governmental organisations on formalistic and far-fetched procedural grounds; put an end to pressure and harassment against NGOs, in particular human rights groups, in the form of arbitrary inspections, searches, confiscation of property, warnings, etc.; stop unlawful attempts to prevent interaction between domestic human rights groups and international organisations; cooperate with the UN Special Rapporteur on Freedom of Assembly and Association.
21. Take effective steps to guarantee **freedom of assembly** in accordance with international standards; bring the Law on Mass Events in accordance with the International Covenant on Civil and Political Rights and the OSCE Guidelines on Freedom of Peaceful Assembly; in particular, simplify the procedure for requesting authorisation of a public meeting or introduce notification instead of authorisation; stop discriminatory practices in authorising meetings; put an end to unnecessary and disproportionate use of force in dispersing unauthorised demonstrations; discontinue the practice of restricting demonstrations to remote venues where the target audience cannot see or hear the demonstrators; cooperate with the UN Special Rapporteur on Freedom of Assembly and Association.
22. Take comprehensive and effective steps to guarantee **freedom of expression** and information in accordance with international standards, including relevant provisions of the International Covenant on Civil and Political Rights, the OSCE commitments, and the recommendations of the OSCE Representative on Freedom of the Media; in particular, take legislative and practical measures to guarantee independence of the media, freedom of information and access to information on the internet; abolish the "two warnings rule" whereby a media outlet may be closed following two official warnings; stop and prohibit any direct and indirect censorship of the media; decriminalize "libel" and "insult"; adopt easy and non-discriminatory procedures for media registration and accreditation of foreign journalists; repeal the Presidential Decree of February 2010 on the Internet Regulation which requires registration of online resources, user identification in internet cafes, and storage of e-zines for 12 months, and limits access to "prohibited" content; put an end to practices of harassment and detention of independent journalists; protect journalists from pressure, harassment and attacks; stop issuing unfair and politically motivated warnings to non-governmental print media; cooperate with the UN Special Rapporteur on Freedom of Expression and with the OSCE Representative on Freedom of Media.
23. Take effective measures to ensure **safety of human rights defenders** and their unhindered operation, so that they and other civic activists may engage in their legitimate activities and exercise their freedoms of speech, association and assembly without fear for their safety, free from harassment, pressure and undue restriction, as prescribed by the International Covenant on Civil and Political Rights and the UN Declaration on Human Rights Defenders; ensure effective investigation into threats, attacks and harassment targeting human rights defenders and civic activists, and bring the perpetrators to justice; cooperate with the UN Special Rapporteur on Human Rights Defenders.
24. Take effective measures to guarantee **electoral rights** and change the electoral legislation and practice, to ensure free and fair elections in accordance with the international standards, such as the International Cov-

enant on Civil and Political Rights, the OSCE Copenhagen Document of 1990, and the OSCE and Venice Commission's recommendations on reform of the electoral legal framework, including candidates' equal access to the mass media and to voters, detailed rules for setting up election commissions to make sure they are formed in a non-discriminatory manner and function independently, transparency of the vote count, and giving more rights to observers; cooperate with the OSCE/ODIHR on the electoral reform and election monitoring; ensure prompt and impartial investigation of complaints of irregularities during elections leading to prosecution of those responsible; in case of serious irregularities likely to have affected the voting, declare elections invalid and run new elections.

25. Declare a **moratorium on executions**, converting all death sentences to prison sentences, and take concrete and consistent steps towards **abolition of the death penalty**; ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Sixth and Thirteenth Protocols to the European Convention on Human Rights and Fundamental Freedoms banning the death penalty.
26. Establish **national institutions for the protection of human rights**, including the Ombudsman; making sure they comply with the International Principles Relating to the Status of National Institutions (The Paris Principles), such as their independence and adequate resourcing; set up an advisory body of representatives of human rights groups to advise public authorities on human rights-related matters, and; create mechanisms of civic oversight of the law enforcement agencies.
27. Submit all required **periodic reports to the UN treaty bodies** that monitor state parties' compliance with their human rights obligations, especially the overdue periodic reports; implement effectively and fully all decisions and recommendations of the UN treaty bodies based on their consideration of periodic reports submitted by Belarus, in particular, the recommendations of the Committee on Human Rights and the Committee Against Torture.
28. Take effective and prompt measures to implement the **decisions of the UN Committee on Human Rights based on findings from individual complaints** filed against the Republic of Belarus concerning violations of the International Covenant on Civil and Political Rights.
29. Effectively **implement all recommendations** adopted by the UN Human Rights Council following the 2010 **Universal Periodic Review** of Belarus; in particular, reconsideration of the decision to reject 20 recommendations.
30. Cooperate effectively with all **special procedures of the UN Human Rights Council**, in particular: extending standing invitations to all special procedures mandate holders and responding positively to their requests to visit Belarus; promptly agree to the dates of visits with the eight mandate holders who have already received invitations; respond in good faith and fully to communications on alleged violations from the UN special procedures.
31. Cooperate effectively with the **OSCE** and its various bodies, including the Office for Democratic Institutions and Human Rights and the Representative on Freedom of the Media; restore the mandate of the OSCE mission in Belarus.