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ICJ Submission to the Universal Periodic Review of Belarus
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The International Commission of Jurists (ICJ) welcomes this opportunity to present its submission to the Universal Periodic Review (UPR) of Belarus. This review is of key importance given the persistent failure of Belarus to meet many of its international human rights obligations. The Human Rights Council (Council) and its Working Group on the UPR (Working Group) should address the frequent violations of human rights in Belarus, including violations of freedom of expression, assembly, and association; violations of the right to liberty and security of person through the practice of arbitrary detention; and violation of the right to a fair trial, in the context of executive control of the judiciary and the legal profession. It is also essential to recall the obligation of Belarus to cooperate with international human rights mechanisms.

I. Judicial independence and the role of lawyers

Judicial Independence

The judicial system in Belarus lacks independence, and operates in the context of extremely broad presidential powers under the 1996 Constitution, including total discretion to appoint and remove judges and other officials¹. The President controls the appointment of judges and appoints all judges of the ordinary courts² as well as six of the twelve justices of the Constitutional Court.³ The President also has an exclusive right to dismiss any judge, with no safeguards against arbitrary dismissal. The Code on the Court System and the Status of Judges enables the President to impose “any disciplinary measure on any judge without instituting disciplinary proceedings,”⁴ which includes among other measures dismissal of judges⁵. Where disciplinary proceedings are instituted, they may be brought on vague or overbroad grounds, including violation of the law while administering justice, violating the code of honour, violating internal regulations or committing other omissions.⁶ Salaries of judges are totally dependent on the executive.⁷ Under Presidential Edict No. 625 of 4 December 1997 the salaries of the President of the Constitutional, Supreme and High Economic Courts are set personally by the President. Following a retroactively applied Presidential Edict No. 25 of 1997, houses of judges were defined as ‘official dwellings’, which judges lose if they are dismissed.⁸ Together, these measures establish the subservience of the judiciary to the executive, contrary to the UN Basic

¹ Code on the Court System and the Status of Judges, Arts. 99, 115, 122; Report on the mission to Belarus of the Special Rapporteur on the independence of the judges and lawyers, Dato’ Pram Cumraswamy, E/CN.4/2001/65/Add.1, 8 February 2001, para. 100

² The Code of the Republic of Belarus on the Court System and the Status of Judges, 29 June 2006, № 139-3, Art. 99

³ Constitution of the Republic of Belarus, Art. 84(10). The other six Constitutional Court judges are appointed by Parliament on nomination of the President of the Constitutional Court: Code on the Court System and the Status of Judges, Art.21.

⁴ Code on the Court System and the Status of Judges, Art.122

⁵ Ibid. Art. 112.

⁶ Ibid. Art. 111.

⁷ Under Presidential Edict No.625 of 4 December 1997 the salaries of the President of the Constitutional, Supreme and High Economic Courts are set personally by the President.

⁸ Report on the mission to Belarus of the Special Rapporteur on the independence of the judges and lawyers, Dato’ Pram Cumraswamy, E/CN.4/2001/65/Add.1, 8 February 2001, para. 24

Principles on the Independence of the Judiciary, and in violation of the right to fair trial protected by Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

The ICJ is particularly concerned at Presidential powers to interfere directly in the judicial process. In 2000, the President established an interdepartmental commission for control over high profile cases. The Commission works secretly and issues findings in respect of criminal cases prior to court hearings. Furthermore, under Presidential Order No. 426 of 2005, the President vested himself with the right to release from any criminal liability without trial persons responsible for crimes of inflicting essential damage to State property or public interest.⁹ Such an extra-judicial mechanism and interference in the administration of justice seriously hampers the independence of courts contrary to Principles 3 and 4 of the Basic Principles on the Independence of the Judiciary, and the right to a fair trial by an independent and impartial judiciary.

The Working Group should recommend that the Human Rights Council call on the Government:

- **To take urgent steps to restore judicial independence, in accordance with the UN Basic Principles on the Independence of the Judiciary;**
- **To establish an independent and transparent system of selection and discipline of judges;**
- **To ensure that the system of remuneration of judges enables them to exercise their functions independently and impartially;**
- **To abolish the interdepartmental commission on high profile cases and other measures permitting executive interference in the administration of justice.**

Independence of the Legal Profession and Access to Legal Advice

A Presidential Decree of 1997 banned private bar associations and made membership in associations controlled by the Ministry of Justice a condition of practicing law.¹⁰ Despite the concerns expressed by the Human Rights Committee that these measures undermine the independence of lawyers, and contrary to the Committee's recommendations to review the measures,¹¹ this system is still in place. Contrary to the UN Basic Principles on the Role of Lawyers,¹² lawyers are prevented from forming independent bar associations; the Ministry of Justice controls the bar association, regulates entry to the profession and the operation and governance of the bar, and considers complaints leading to disciplinary measures.¹³ In addition, lawyers' licenses to practice law must be renewed every five years, a provision which is used to undermine the independence of lawyers.¹⁴ In practice, lawyers reportedly face harassment for defence of their clients,¹⁵ and are subject to unannounced undercover inspections as well as regular scrutiny of legal and financial documents. Such measures are contrary to Article 16 of the Basic Principles on the Role of Lawyers, which requires that lawyers be able to perform their functions without intimidation, hindrance, harassment or improper interference. The ICJ is also particularly concerned that the Ministry of Justice reportedly demands that lawyers provide details of confidential lawyer-client communications, and that failure to provide such information may lead to lawyers losing their license to practice. Such measures violate the right to fair trial,¹⁶ as well as Principle 8 of the UN Basic Principles on the Role of Lawyers.

Legal aid is not provided in criminal cases, except for a suspect or a defendant's first consultation with a lawyer; subsequent legal expenses are paid by the state but must be reimbursed by the defendant if convicted.¹⁷ These restrictions have serious consequences for the right to fair trial in

⁹ Decree of the President of Belarus of 12 September 2005. №426 "On Amendments and Additions to the Decree of the President of the Republic of Belarus of 3 December 1994 r. N 250"

¹⁰ Edict of the President of the Republic of Belarus of 3 May 1997. №12 "On some measures on improvement of lawyers' and notary activity in the Republic of Belarus".

¹¹ Concluding Observations of the UN Human Rights Committee, CCPR A/53/40 (1998)

¹² UN Basic Principles on the Role of Lawyers, Principles 24, 27, 28.

¹³ The Law on the Bar of 15 June 1993 r. № 2406-XII, arts.13; 19; 31

¹⁴ Report of the Working Group on Arbitrary Detention, Mission to Belarus, E/CN.4/2005/6/Add.3, 25 November 2004

¹⁵ Report of the Special Rapporteur on the independence of the judges and lawyers, op cit, pp. 22-23.

¹⁶ *Gridin v Russian Federation*, Communication No.770/1997.

¹⁷ Criminal Procedure Code Article 41.5, Article 43.4. Article 46.2.9 The State does not provide free legal assistance in civil or administrative proceedings.

criminal cases and are contrary to the right to free legal assistance in criminal proceedings protected by Article 14.3.d of the ICCPR.

The Working Group and the Human Rights Council should call on the Government:

- To amend the laws enabling Ministry of Justice control of the legal profession;
- To restore the right of lawyers to organise self-governing independent bars;
- To ensure that lawyers practice without interference, harassment, intimidation or consequences for proper defence of clients' interests;
- To refrain from interference with lawyer-client confidentiality;
- To ensure the right to a fair trial, as provided under international standards, including adequate legal assistance, full access to evidence used against the accused, equality of arms and observance of presumption of innocence;
- To provide to the public, media and observers effective access to trials.

II. Restrictions on right to freedom of expression

While Articles 33 and 34 of the Constitution of Belarus guarantee the rights to freedom of expression and to information, certain provisions of Presidential decrees as well as the Criminal Code, the Administrative Offences Code, and the Law on Mass Media, and their application in practice impose undue restrictions on the exercise of such rights. Belarus has been repeatedly found by the Human Rights Committee to have restricted individuals' rights to freedom of opinion and expression without justification as to whether such restrictions are legitimate and necessary.¹⁸

Vague legislative wording enables the authorities to adopt broad and abusive interpretations, contrary to the principle of legality. The ICJ is particularly concerned at a provision, which serves to obstruct cooperation between civil society and international organisations. Article 369-I of the Criminal Code criminalises "[d]iscrediting the Republic of Belarus" by giving international organisations "false information" on the situation in the country or legal status of citizens.¹⁹

Freedom of expression of the media is particularly severely hampered in Belarus. The Government controls most of the broadcast media, printing plants and newspaper distribution networks.²⁰ Independent media face persecution, including harassment and detention of journalists, banning of coverage of opposition demonstrations, especially during periods of elections or referenda, and suspension or closure of media activities.²¹ Requirements of registration and re-registration create room for abuse for political purposes.²² In addition, foreign journalists are often denied accreditation as under Article 35 of the Law on Mass Media any unauthorised media activity in Belarus may effectively be rendered illegal.²³ These measures constitute unwarranted interference with freedom of expression and further limit public access to information, in violation of Article 19.2 of the ICCPR.

The Working Group and the Council should recommend that the Government:

¹⁸ See e.g., *Viktor Korneenko v. Belarus*, Communication No.1553/2007, UN Doc.CCPR/C/95/D/1553/2007, 24 April 2009, para. 8.3; *Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko v. Belarus*, Communication No.1009/2001, UN Doc. CCPR/C/87/D/1009/2001, 8 August 2006, para. 7.5; *Vladimir Velichkin v. Belarus*, Communication No.1022/2001, UN Doc. CCPR/C/85/D/1022/2001, 23 November 2005, para. 7.3.

¹⁹ Article 369-1 of the Criminal Code, as amended in 2005. "Discrediting" is defined as "the fraudulent representation of the political, economic, social, military or international situation of the Republic of Belarus, the legal status of its citizens or its government agencies." This may prevent, for example, NGOs from providing information to Human Rights Council Special Procedures: Adrian Severin, Special Rapporteur on the situation of human rights in Belarus, *Report of the Special Rapporteur on the situation of human rights in Belarus*, UN Doc. A/HRC/4/16, 15 January 2007, para. 15.

²⁰ *Report of the Special Rapporteur on Belarus, op cit*, para. 17.

²¹ General Assembly Resolution 62/169, *Situation of human rights in Belarus*, UN Doc. A/RES/62/169, 20 March 2008, para. 1(e).

²² Organization for Security and Co-operation in Europe (OSCE), Office of the Representative on Freedom of the Media, *Comments on the Draft Law of the Republic of Belarus on the Mass Media*, p.16, www.osce.org

²³ Reporters Sans Frontières, *Foreign news media still being arbitrarily denied accreditation*, 29 September 2009, <http://www.rsf.org/Foreign-news-media-still-being.html>.

- Repeal laws imposing undue restrictions on the right to freedom of expression, including Article 369-I of the Criminal Code on “discrediting the Republic of Belarus,” and ensure that any restrictions are provided by law and necessary to serve a legitimate purpose in accordance with Article 19.3 of the ICCPR;
- Ensure that independent media have access to printing and distribution services and that journalists are protected from harassment and intimidation and can carry out their professional activities freely;
- Refrain from any unlawful interference with the exercise of freedom of expression.

III. Obstruction of freedoms of assembly and association and harassment of human rights defenders

Belarus law subjects peaceful demonstrations and assemblies to significant control and suppression. Articles 5 and 6 of the Law on Mass Actions establish excessive requirements on organisers in the application process for authorisation of assemblies. The organisers must indicate in the application measures on securing the public order and safety and measures connected with medical service and cleaning the territory after holding the gathering, but the overly broad legislation does not provide any guidance as to what specific measures would satisfy such requirements. In response to the demonstrations calling for a free and fair election before and after the 2006 Presidential election, the Government engaged in excessive use of force in repression, including through use of teargas and mock grenades.²⁴ Additionally, reliable reports indicated mass and politically motivated arrests and arbitrary detention of peaceful protesters²⁵ and beating and ill treatment of the detained political opponents and human rights defenders.²⁶ Despite the international criticism following the election, the Government continues to deny applications to hold mass actions, restrict locations of demonstrations to remote areas, use excessive force against demonstrators, and impose administrative sanctions and criminal prosecution upon participants,²⁷ without regard to the necessity of such restrictions to meet a legitimate purpose under Article 21 of the ICCPR.

Human rights organisations and other NGOs must register and fulfil a number of administrative requirements, which unduly hinder the exercise of freedom of association.²⁸ Activities of unregistered organisations are banned,²⁹ and it is a criminal offence to organise or participate in such activities under Article 193-1 of the Criminal Code. Furthermore, many human rights defenders face charges as a result of their monitoring elections in Belarus.³⁰ NGOs that have successfully registered are nevertheless under strict supervision by the Government,³¹ especially in areas of tax and financial aid, which may even lead to the termination and dissolution of the organisation.³² Such measures, which prevent associations from freely carrying out their activities, give rise to violations of the right to freedom of association as protected by Article 22 of the ICCPR.³³

²⁴ Statement by the Special Rapporteur on the situation of human rights in Belarus, *Special Rapporteur on Belarus condemns further escalation of human rights violations*, 24 March 2006,; Joint Statement by seven independent human rights experts of the United Nations, *UN human rights experts express serious concern over the deterioration of the human rights situation in Belarus*, 29 March 2006.

²⁵ *Id.*; Amebyi Ligabo, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report of the Special Rapporteur, Amebyi Ligabo, Addendum: Summary of cases transmitted to Governments and replies received*, UN Doc. A/HRC/4/27/Add.1, 26 March 2007, para. 63.

²⁶ Statement by the Special Rapporteur on the situation of human rights in Belarus, *Special Rapporteur on situation of human rights in Belarus condemns escalation of violations ahead of polls*, 15 March 2006.

²⁷ The Human Rights Center “Viasna”, *Situation in the Field of Human Rights in Belarus in 2008: Analytical Review*, pp. 108, 110, http://spring96.org/files/book/2008_analytics_en.pdf; Belarusian Helsinki Committee, *BHC about the dispersion of peaceful action on the 16th of September*, 16 September 2009, <http://belhelcom.org/?q=en/node/2329>.

²⁸ *Report of the Special Rapporteur on Belarus*, *op cit.*, para. 21; *Boris Vozzskov et al. v. Belarus*, Communication No.1039/2001, UN Doc. CCPR/C/88/D/1039/2001, 10 November 2006, paras. 7.3-7.4.

²⁹ Article 16 of the Law on Public Association.

³⁰ Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Addendum: Summary of cases transmitted to Governments and replies received*, UN Doc. A/HRC/4/37/Add.1, 27 March 2007, paras. 55, 60, 71.

³¹ *Situation in the Field of Human Rights in Belarus in 2008*, *op cit.*, p. 102.

³² *Viktor Korneenko et al. v. Belarus*, Communication No.1274/2004, UN Doc.CCPR/C/88/D/1274/2004, 10 November 2006, paras.2.3-2.4.

³³ *Aleksander Belyatsky et al. v. Belarus*, Communication No.1296/2004, UN Doc. CCPR/C/90/D/1296/2004, 7 August 2007, para.7.2

The Working Group and the Council should urge the Government:

- **To amend the law to prevent the imposition of excessive or arbitrary restrictions on peaceful demonstrations, contrary to freedom of assembly as protected by Article 21 of the ICCPR;**
- **To amend the criteria for registration of NGOs and for supervision of registered organisations, so as to comply with freedom of association as protected by Article 22 of the ICCPR;**
- **To provide appropriate training to all law enforcement officials involved in operations relating to demonstrations to ensure that they are competent to carry out their work in accordance with international human rights standards;**
- **To fully investigate the allegations of violations of freedoms of expression, assembly and association arising from the operations by the police during the demonstrations in the aftermath of the presidential election of 2006 and hold responsible officials accountable for violations of human rights that constitute criminal conduct;**
- **To develop an environment conducive to the establishment and free operation of NGOs as guaranteed in the Belarus Constitution.**

IV. Pre-trial detention

Under Belarusian law, once a suspect is arrested, placement in pre-trial detention is decided by the prosecutor, who may impose additional restrictions on the conditions of detention. Family visits and correspondence and contacts with the outside world are frequently prohibited, despite the absence of provision for such restrictions in the Law on Procedure and Conditions of Detention.³⁴ Suspects may be subject to prolonged detention,³⁵ harsh living conditions,³⁶ and psychological pressure to secure “confessions,”³⁷ in violation of Articles 7, 9, 10 and 14 of the ICCPR. As a result of the heavy reliance on pre-trial detention, convictions are often based on information obtained from torture or other ill treatment³⁸ while those who “fabricate” false cases through abuses cannot be held accountable.³⁹

The right of an individual to review by a court of the lawfulness of detention or arrest, although guaranteed by Article 25 of the Constitution, is not adequately secured by legislation and judicial practice. The Criminal Procedure Code empowers the court to order the release of a detainee only where the court finds procedural defects: where it determines a violation of the order and the terms of its implementation, a violation of the right to defence or defects in the procedural documents.⁴⁰ The courts apply this narrow interpretation of judicial review of detention, with the result that the review becomes merely formal rather than real and does not effectively ensure release in appropriate cases, thereby falling short of the standard of review of detention required by Article 9.4 of the ICCPR.⁴¹

The ICJ requests the Working Group and the Council to urge the Government:

- **To reconsider the legal framework relating to pre-trial detention to ensure that placement in detention may be only ordered by a judge, that pre-trial detention should only be imposed in exceptional circumstances, and for the shortest possible time;**
- **To investigate allegations of torture or other ill-treatment in detention, and hold accountable those responsible, including through criminal trials where the allegation amount to criminal conduct under international or domestic law;**

³⁴ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Belarus*, UN Doc. E/CN.4/2005/6/Add.3, 25 November 2004, para. 23.

³⁵ According to Article 127(5) of the Criminal Procedure Code, pre-trial detention can last up to 18 months. *Aleksander Smantser v. Belarus*, Communication No. 1178/2003, UN Doc. CCPR/C/94/D/1178/2003, 17 November 2008, para. 10.3.

³⁶ *Yuri Bandajevsky v. Belarus*, Communication No. 1100/2002, UN Doc. CCPR/C/86/D/1100/2002, 18 April 2006, para. 10.6.

³⁷ *Report of the Working Group on Arbitrary Detention, op cit*, para. 51

³⁸ 2008 Country Reports on Human Rights, US Department of State, 25 February 2009

³⁹ *Report of the Working Group on Arbitrary Detention, op cit*, para. 54

⁴⁰ Criminal Procedure Code, Article 144

⁴¹ *A v. Australia*, Communication No.560/1993, UN Doc.CCPR/C/59/D/560/1993, 30 April 1997, para.9.5; *Danayal Shafiq v. Australia*, Communication No.1324/2004, UN Doc.CCPR/C/88/1324/2004, 13 November 2004, para. 7.4.

- To prevent recurrence of torture or other ill-treatment in detention, including by establishing effective monitoring of places of detention and by ratifying the Optional Protocol to CAT;
- To ensure that conditions of detention comply with Belarus's international legal obligations and international standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners;
- To review national legislation, policy and practice to ensure that judicial review of detention corresponds to international standards and provide the courts with the authority to order release when the detention is arbitrary.

V. Cooperation with United Nations human rights mechanisms

As a State Party to six of the core international human rights treaties, Belarus is obliged to regularly submit reports to the relevant treaty bodies on measures taken to implement respective treaty obligations. Submission of reports by Belarus to the treaty bodies has often been delayed.⁴² In particular, outstanding periodic reports to the Human Rights Committee,⁴³ the Committee against Torture, and the Committee on Economic, Social and Cultural Rights are long overdue. In instances where reports are submitted, concluding recommendations made by the treaty bodies have not been considered or implemented by the Government of Belarus.⁴⁴

In addition, the Government of Belarus has failed to update fully the Human Rights Committee on the follow-up to its Views on individual communications.⁴⁵ In those instances where the Government replied as part of follow up to the Views, the information provided was inadequate, because it failed to address the Committee's Views at all or related only to certain aspects of them.⁴⁶

Belarus has also failed to cooperate fully with expert mechanisms of the Human Rights Council⁴⁷ and to respond favourably to requests for visit by Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on human rights defenders and on torture and other cruel, inhuman or degrading treatment or punishment. Nor did the Government of Belarus extend any cooperation, including in response to a request to visit, to the Special Rapporteur on the situation of human rights in Belarus, whose mandate has now been discontinued.

The Working Group and the Council should recommend that the Government:

- Submit its reports on the implementation of treaty obligations in a timely manner and implement concluding observations of the treaty bodies through relevant laws, policies and practices;
- Provide responses on follow-up to the Views by the Human Rights Committee and undertake necessary legislative and practical measures to implement the Committee's recommendations on individual communications, including, where appropriate by providing the victims with a remedy and reparation;
- Extend invitations to Special Procedures of the Council with pending requests to visit Belarus.

⁴² E.g., the last report submitted by Belarus to the Committee on the Elimination of Racial Discrimination was 6 years overdue.

⁴³ E.g., Belarus has not yet submitted its fifth periodic report on the implementation of the ICCPR, which was due on 7 November 2001, *General Assembly Official Records, Sixty-third session, Supplement No. 40, UN Doc. A/63/40, 3 March 2009. Volume I, p.16.*

⁴⁴ Due to absence of the recent scrutiny by the Human Rights Committee, see *Report of the Special Rapporteur on Belarus, op cit*, para. 58.

⁴⁵ See e.g., *Vladimir Petrovich Laptsevich v. Belarus*, Communication No.780/1997, UN Doc.CCPR/C/68/D/780/1997, 13 April 2000; *Mikhail Ivanovich Pastukhov v. Belarus*, Communication No.814/1998, UN Doc.CCPR/C/78/D/814/1998, 19 August 2003; *Alexandre Dergachev v. Belarus*, Communication No.921/2000, UN Doc.CCPR/C/74/D/921/2000/Rev.1, 19 July 2002; *Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko v. Belarus*, Communication No.1022/2001, UN Doc.CCPR/C/87/D/1009/2001, 8 August 2006, *Vladimir Velichkin v. Belarus, op cit*; *Leonid Sinitsin v. Belarus*, Communication No.1047/2002, UN Doc.CCPR/C/88/D/1047/2002, 16 January 2007, *General Assembly Official Records, Sixty-third session, Supplement No.40, UN Doc. A/63/40, 3 March 2009, Vol. I, pp.118 – 119.*

⁴⁶ *Ibid*; the Human Rights Committee found the Government's response unsatisfactory with respect to *Sergei Malakhovskiy and Alexander Pikul v. Belarus*, Communication No. 1207/2003, UN Doc. CCPR/C/84/D/1207/2003, 23 August 2005.

⁴⁷ General Assembly Resolution 62/169, *op cit*, para. 1(b); Commission on Human Rights Resolution 2005/13, *Situation of human rights in Belarus*, UN Doc. E/CN.4/RES/2005/13, 14 April 2005, para. 1(i).