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Oral report by United Nations High Commissioner for Human Rights

18th session of the Human Rights Council

The Human Rights Situation in the Republic of Belarus

Geneva
20 September 2011

Madame President,
Distinguished Members of the Human Rights Council,

Excellencies,

Ladies and Gentlemen,

On behalf of the High Commissioner, and in line with the Human Rights Council Resolution 17/24 adopted at its 17th session, I am presenting today the High Commissioner's oral report on the human rights situation in the Republic of Belarus. It will be followed by a comprehensive written report at the 20th session of the Council next year.

Background

OHCHR does not have a presence in the Republic of Belarus. Thus the collection and verification of information for this oral report has been very challenging. On 19 July, OHCHR sent a Note Verbale to the Permanent Mission of the Republic of Belarus and requested a visit to Belarus to meet with Government officials, civil society organizations, UN and other international agencies, and other relevant stakeholders with a view to assessing the human rights situation in fulfilment of the mandate of the Human Rights Council. The requested timeframe for the visit was early September, but to date we have not received a reply.

In preparation for this oral report, the Office monitored human rights developments in Belarus from Geneva headquarters. Hence, significant segments of information come from secondary sources, and some of the allegations remain unverified. Nevertheless, the information collected has enabled us to distil a pattern of violations in the human rights situation in Belarus following the 19 December 2010 presidential election.

Since December 2010, the Permanent Mission of the Republic of Belarus has been communicating its views and information pertaining to the subject matter of the

Resolution; the latest comments from the Government of Belarus were received on 12 September 2011 through a Note Verbale, which is being issued for the present session of the Council as a Government's letter. We also acknowledge Ambassador Khvostov's availability for meetings with the High Commissioner in January and August 2011. We also appreciate the invitation for the High Commissioner to visit Belarus, recently received from Mr. Sergei Martynov, Minister of Foreign Affairs of the Republic of Belarus.

Given that the Resolution also referred to the Universal Periodic Review of Belarus, we also note that the Government of Belarus sought OHCHR's expertise and cooperated with the Office in the implementation of some UPR recommendations. I would like to use this opportunity and call upon the Government to fully implement all accepted recommendations and to broaden the scope, with particular attention paid to recommendations related to civil and political rights. OHCHR is ready to continue providing its assistance and expertise.

Legal framework

Belarus has signed and/or ratified most of the core UN human rights instruments. The country's Constitution stipulates that "[t]he State shall 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". However, some of the limitations reflected in specific legislative acts and the Criminal Code of Belarus are excessive and go beyond the accepted conditions under international law. In particular, the legal framework regulating the rights to freedom of assembly, freedom of association and freedom of expression, the registration and functioning of public and non-governmental organizations, the media, and the independence of the judiciary is restrictive. Recently there have also been reports that the Government of Belarus is considering introducing additional legal and administrative restrictions on the freedoms of assembly, in particular as related to gatherings for the so called "silent protests". A detailed analysis of the existing legal framework in the comprehensive report will be presented to the 20th session of the Council.

2010 presidential election and its aftermath

The human rights situation significantly deteriorated after the 19 December 2010 presidential election. As the first results were being made public, citizens started gathering at Independence Square in central Minsk to protest, claiming that the election was not free and fair, and that the results were flawed. This election was monitored by a number of international observers, including the Election Observation Mission of the Organization for Security and Cooperation in Europe (OSCE) and the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS). There were discrepancies between their conclusions. The CIS election observers concluded that the presidential election was free and fair. But the OSCE Observation Mission, while acknowledging certain improvements in the electoral process, noted that Belarus still had a considerable way to go in meeting OSCE standards for democratic elections. More specifically, the OSCE noted a lack of independence and impartiality in election administration, a restrictive media environment, and a lack of transparency at key stages of the electoral process.

According to credible accounts made available to OHCHR, the first incident happened in the evening of 19 December, when one of the opposition candidates, Mr. Vladimir Neklyayev, and his supporters were stopped and then attacked en route to Independence Square, allegedly by law enforcement agents. Mr. Neklyayev was taken by his supporters to hospital for medical treatment. Later that night he was abducted from the hospital by unidentified masked men. His whereabouts were unknown for several hours until he was reported to be detained at the National Security Agency's detention centre.

The demonstration at Independence Square was peaceful until a small isolated group of persons started breaking windows of a nearby government building. The identity of these persons is still contested. The law enforcement agents dispersed this group, but then used this incident to charge against the rest of the demonstrators, the vast majority of whom were reportedly protesting peacefully. Many peaceful demonstrators were beaten with batons and injured. Among those attacked and beaten up by the police were also bystanders, who were not involved in any protest action.

The police intervention was followed by arrests, detentions and raids throughout Minsk targeting opposition activists and non-governmental organizations. The authorities reportedly launched a coordinated crackdown on political opponents. Seven out of ten presidential candidates were arrested and detained on election day or shortly after. According to various reports, over 600 persons – mostly participants in the protest, opposition activists, and journalists – were detained by the end of December. Most of those arrested were later released – many after receiving administrative charges/fines or serving 5 to 15 days in custody – but some others faced serious charges. According to information provided by the Government, 41 defendants stood trials in Minsk District Courts.

The High Commissioner issued two statements – on 21 December 2010 and 21 February 2011 – expressing her concern regarding the deterioration of the human rights situation in Belarus in the aftermath of the election, and calling upon the Government to put an end to persecution and harassment of the political opponents, journalists and human rights defenders. No immediate action seems to have been taken and the pattern of persecution and harassment continued. Between February and May 2011, about 40 opposition leaders, activists and independent journalists received prison sentences – many charged under Article 293 ("organization of mass riots") of the Criminal Code. Several defendants claimed that during the pre-trial period they were subjected to torture and other forms of physical, psychological pressure and threats. As a result of court hearings, all defendants were sentenced to various prison penalties, some received conditional sentences. The latest in the series of court rulings against presidential candidates was on 26 May, when a district court in Minsk sentenced Nikolay Statkevich and Dmitri Uss, respectively to 6 and to 5 years and 6 months of imprisonment. Many of these trials were allegedly conducted in violation of international norms pertaining to the principles of fair trial. The Government invited the OSCE trial monitors to follow the trials.

Right to fair trial

Based on information we have received, the authorities have allegedly attempted to intimidate several defence lawyers whose clients were charged in relation to the 19

December events. Many of them were unable to meet their clients privately; some were allowed to have their first meeting only a month after their clients were detained. In the course of investigations, the Ministry of Justice issued a "warning" to the defence lawyers of imprisoned opposition presidential candidates. At least five defence lawyers had their licenses revoked in early 2011; some were also excluded from the Bar Association as a result of administrative pressure. OHCHR was informed that later in 2011 more defence lawyers have reportedly been under investigation.

Freedom of expression

The authorities have reportedly tightened their already highly restrictive control over the media since December 2010, thus further limiting freedom of expression. In the mass crackdown that followed the 19 December 2010 protests, at least 21 reporters were allegedly beaten, 27 journalists were detained and 13 were placed under 10-15 days of administrative arrest. The state security services have reportedly raided offices of several independent media and confiscated equipment. Eight journalists faced trials in connection with the events of 19 December, and some were sentenced. The latest court ruling was against journalist Andrzej Poczobut who, on 5 July 2011, was sentenced under Article 367.1 of the Criminal Code ("defamation of the President") to 3 years in prison with 2 years suspension. There are also reports that the authorities are considering placing further legal and administrative restrictions on information on the internet.

Freedom of association

The authorities have allegedly been conducting a policy of harassment against independent non-governmental organizations and human rights defenders. Several major human rights NGOs have been refused registration on various grounds; Article 193 of the Criminal Code criminalizes the "organization of unregistered public associations". The authorities have been threatening individual human rights defenders with criminal prosecution for "unregistered activity". Various other forms

of political and administrative pressure on human rights defenders and NGOs include arrests, questioning, raids of offices, confiscation of documents, as well as acts of intimidation linked to contacts with international and intergovernmental organizations. The latest is the case of Mr. Ales Byalyatski, President of the Human Rights Centre "Viasna" and Vice-President of the International Federation for Human Rights (FIDH), who was arrested on 4 August and placed in a pre-trial detention centre of the Ministry of Interior on charges of "concealment of incomes on an especially large scale" (Article 243.2 of the Criminal Code) which stipulates imprisonment for up to 7 years with confiscation of property. Without prejudging the substance of the charges brought against Mr. Byalyatski, we note that for many years the authorities have been refusing to register his Centre and that he has been threatened with criminal prosecution for "unauthorized NGO activity".

On 12 January 2011, another leading human rights NGO, the Belarusian Helsinki Committee, declared on its website that it had sent a letter to the Special Rapporteur on the Independence of Judges and Lawyers. Immediately afterwards, the Head of Department of Non-Commercial Organizations of the Ministry of Justice reportedly requested the Committee to promptly provide them with the text of the letter. On that same day, a statement was issued by the Ministry of Justice accusing the Committee of distorting information contained in reports issued by the Ministry regarding the demonstrations. The Ministry issued a warning alleging that the information sent by the Committee to international organizations depicted a distorted view of the current state of affairs in the country and that such conduct was tantamount to a violation of domestic legislation governing non-governmental organizations.

Belarus's cooperation with the UN human rights mechanisms

The Human Rights Council's special procedures have been also following the situation of human rights in Belarus very closely, in particular in the aftermath of the presidential election. Since then, 10 joint communications have been sent by several special procedures. The main concerns addressed in these communications are the situation of human rights defenders and journalists after the election, referring to harassment, arrests, detention and severe restrictions they have to face in connection with their work; the situation of former candidates for the election 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 in connection with the December 2010 demonstrations and events. To date, 4 substantive responses from the Government of Belarus have been received by special procedures.

Special procedures have also expressed their concerns publicly. On 3 February 2011, several special procedures issued a press release asking Governments to pay more attention to people's voice.

The last visits to Belarus by the UN thematic special procedure mandate holders were the mission of the Working Group on Arbitrary Detention in 2004 and the Special Rapporteur on Trafficking in persons, especially in women and children, in 2009. The Special Rapporteur on the human rights of migrants received an invitation from Belarus in 2010. Dates for the visit remain to be agreed upon. On 21 July 2011, referring to Resolution 17/24, the Special Rapporteur on the situation of human rights defenders reiterated her request to the Government to extend an invitation to her to carry out an official visit.

Death penalty

Belarus remains the only country in Europe which still issues death sentences and carries out executions; the two latest executions were carried out in July this year. In 2009 and 2010 the High Commissioner urged the Government to consider introducing a moratorium on the death penalty.

Recent actions by the Government

On 13 August, the authorities pardoned and released 9 persons sentenced to imprisonment in connection with the 19 December 2010 events. This was followed by pardoning of 4 persons on 1 September, and 11 more persons were pardoned on 14 September. Still, around 10 persons sentenced in relation to 19 December events remain in custody, including several former opposition Presidential candidates. According to some public reports, President Lukashenka promised to release by

October all remaining prisoners sentenced in connection with 19 December events. He has also indicated his desire to launch a dialogue with his opponents. We welcome these statements and express the hope that they would lead to concrete and credible action, including bringing legislation, policies and practices in line with the country's international human rights obligations and commitments.

Conclusions

Information gathered by OHCHR concerning the Government's actions on the day of the presidential election on 19 December 2010 and its aftermath indicates a pattern of violations of human rights. Particular concerns relate to rights to freedoms of association, assembly, conscience, speech, and right to a fair trial. Serious allegations of torture and ill-treatment in custody, impunity of perpetrators, violations of due judicial process, lack of independence of judges and pressure on defence lawyers require on-site investigation.

Many international intergovernmental and non-governmental organizations reacted to the deterioration of the human rights situation in Belarus. The Government decided to close the OSCE Office in Minsk, which is regrettable.

In order for OHCHR to directly and objectively assess the human rights situation, and engage in a constructive dialogue with the Government, I request the authorities to accept an OHCHR mission to Belarus in the near future, well in advance of the 20th session of the Human Rights Council.

Preliminary recommendations

Given the preliminary nature of this oral report, I would like to limit myself to a short list of recommendations to the Government:

- Immediately and unconditionally release all political opponents, activists and journalists, who were not involved in any violence.

- Conduct an impartial, credible and objective investigation of circumstances in which these persons were arrested and detained, and of all reported cases of torture and ill-treatment and bring those responsible to justice.

- Put an immediate end to all forms of political and administrative pressure and harassment of human rights defenders, journalists and political opponents.

- Initiate a comprehensive review of the legal framework, including the Criminal Code, and bring it in line with Belarus's international human rights obligations.

- Accept an OHCHR mission to the country, in fulfilment of the mandate of this Council.

- Cooperate fully with all the UN human rights mechanisms, including thematic special procedures, the UPR and the human rights treaty bodies, as well as with regional organizations, such as the OSCE and the Council of Europe.

Thank you.