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3 July 2013

Excellency,

In my capacity as Rapporteur for the Follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the fourth periodic report of the Government of Belarus at its 47th Session in November 2011 (CAT/C/BLR/4). The Committee adopted its concluding observations (CAT/C/BLR/CO/4), in which it requested the Government of Belarus to provide further information on its response to the Committee's recommendations contained in paragraphs 6, 11, and 14.

On behalf of the Committee, I thank you for your comments dated 27 November 2012, providing information on paragraph 14 and referring to earlier comments dated 28 December 2011 on the Committee's concluding observations for information on paragraphs 6 and 11. The additional information provided assists the Committee in its ongoing analysis of the issues identified for follow up. As Rapporteur on Follow Up, I would be grateful for clarification and further information on the following matters, where sufficient information is not yet provided to complete the analysis of the progress made regarding implementation of the Committee's recommendations.

Fundamental legal safeguards (paragraph 6)

In paragraph 6 of its concluding observations, the Committee expressed concern about reports that detainees, particularly those charged under article 293 of the Criminal Code, held in pretrial detention facilities of the State Security Committee (KGB), and/or held under administrative detention, are frequently denied basic fundamental legal safeguards, including prompt access to a lawyer and medical doctor and the right to contact family members. In this respect, the Committee expressed particular concern about allegations of denial of safeguards made by Andrei Sannikov and Vladimir Neklayaev. The Committee recommended that the State party (a) ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the outset of detention; (b) guarantee the ability of all detained persons, including those under administrative detention, to challenge the legality of their detention or treatment; and (c) take measures to ensure audiotaping or videotaping of interrogations in police stations and detention facilities.

The Committee deeply regrets the State party's determination, articulated in its response of 28 December 2011, that it "cannot accept" paragraph 6 of the concluding observations. The Committee stresses the need for the State party to ensure detainees are afforded fundamental safeguards against torture in law and practice. The Committee is aware of numerous reports that individuals detained by State party's authorities were subjected to torture and ill-treatment

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in the immediate aftermath of deprivation of liberty [such as Pavel Plaska, who was allegedly tortured by police in the Leninski district in the days following his arrest in May 2012; and Andrei Molchan, who was allegedly beaten by police while in their custody in May and July 2012]. The fundamental safeguards recommended by the Committee are intended to deter and ensure early detection of such incidents.

As a matter of urgency, the Committee urges the State party to provide information on measures it has taken since November 2011 to implement the Committee's recommendations on fundamental safeguards. In this regard, the State party is requested to provide data on cases, if any, since the consideration of the last periodic report, in which police or other government personnel were subjected to disciplinary or criminal penalties for failing to provide fundamental legal safeguards to detained persons, such as access to a lawyer or doctor or the right to contact family members promptly following deprivation of liberty. Please also provide data on the number of cases since the consideration of the last periodic report in which detained persons have challenged the legality of their detention or treatment before the courts, indicating the number of cases that involved administrative detention, and indicate in how many cases the petitioner's claim was found to have merit and if the petitioner was released as a result. Please also provide data on the number of police stations and detention facilities in which interrogations are routinely audiotaped or videotaped, and indicate what measures, if any, are being taken to ensure that this practice is followed in all places of detention and for all interrogations.

Impunity and lack of independent investigation (paragraph 11)

In paragraph 11 of its concluding observations, the Committee expressed deep concern about the State party's failure to conduct prompt, impartial and full investigations into allegations of torture and ill-treatment and to prosecute alleged perpetrators, as well as the underreporting of such incidents. The Committee recommended that the State party establish an independent and effective mechanism to facilitate the submission of complaints of torture and ill-treatment by victims and ensure that complainants are protected against ill-treatment or intimidation; the Committee also repeated a previous recommendation that the State party consider establishing an independent and impartial national human rights commission with the power to investigate complaints of violations of the Convention. Additionally, the Committee recommended that the State party unambiguously condemn the use of all forms of torture and make it clear that perpetrators of or accomplices to torture will be held responsible and punished; ensure that suspected perpetrators of torture are suspended from duty during the investigation; and provide information on its investigations of allegations of torture and ill-treatment made by Alex Mikhalevich, Andrei Sannikov, Alexander Otroschenkov, Vladimir Nelayev, Natalia Radina and Maya Abromchick, as well as allegations that riot police used indiscriminate and disproportionate force against approximately 300 people in Independence Square on 19 December 2010.

The Committee seriously regrets the State party's determination, articulated in its response of 28 December 2011, that it "cannot accept" paragraph 11 of the concluding observations. The Committee reiterates its deep concern regarding consistent claims that allegations of torture and ill-treatment have not been promptly, impartially, and effectively investigated by authorities; that complaints of torture made by individuals in detention are not acted upon, and that detainees who complain of being subjected to torture and ill-treatment are subjected to harassment, threats, and violence.

The Committee urges the State party to provide information on measures it has taken since November 2011 to implement the Committee's recommendations on independent investigations and combatting impunity as a matter of urgency. In this regard, the State party is requested to provide information about any measures taken to publicly and unambiguously condemn the use of torture and make it clear that perpetrators and accomplices will be held responsible and punished. Please provide data on the number of complaints of torture or ill-treatment received by the authorities since November 2011 and the number of investigations



that were carried out into such allegations. For every investigation, please indicate whether the alleged perpetrator was suspended from duty pending the resolution of the investigation and the outcome of the investigation, including whether any individuals were prosecuted for torture or ill-treatment, and the articles of the Criminal Code under which they were charged. Please inform the Committee of any progress in its efforts to investigate the allegations of torture made by Alex Mikhalevich, Andrei Sannikov, Alexander Otroschenkov, Vladimir Nelayev, Natalia Radina and Maya Abromchick, as well as allegations that riot police used indiscriminate and disproportionate force against approximately 300 people in Independence Square on 19 December 2010, and particularly whether any individuals have been prosecuted for these alleged offenses, the charges under which this occurred, and any prison sentences they received.

Finally, the State party is requested to provide updated information on any measures it has taken to establish an independent and effective mechanism to facilitate the submission of complaints of torture and ill-treatment, and in this regard to provide updated information to the Committee on reports that in 2012, the State party indicated its intention to establish an institution of a human rights commissioner, in accordance with a recommendation from its Universal Periodic Review in 2010. Please in particular indicate whether such an official position has been created, and if it has or is anticipated to have a mandate to receive and investigate complaints of torture and ill-treatment by the authorities.

Monitoring and inspection of places of deprivation of liberty (paragraph 14)

In paragraph 14 of its concluding observations, the Committee expressed its concern at the lack of access for independent governmental and non-governmental monitoring mechanisms to detention facilities in the State party. The Committee recommended that the State party grant access to all detention facilities in the country and to strengthen its cooperation with United Nations human rights mechanisms, including the Special rapporteurs on torture and other cruel, inhuman and degrading treatment or punishment, on promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders, as well as the United Nations High Commissioner for Human Rights.

The Committee appreciates the information provided by the State party regarding the monitoring mechanisms in place for detention facilities and special facilities. Please provide additional data about the monitoring of places of detention carried out by the National Public Watchdog Commission and provincial and Minsk municipal public watchdog commissions during the reporting period, indicating any concerns reported by the associations about possible violations of legislation detected and what recourse the authorities took in response to such information.

The Committee would appreciate additional information regarding the “voluntary” or “civic” associations referred to in paragraph 3 of the response. The State party has indicated that article 21 of the Penal Enforcement Code makes it possible for such associations to take part in monitoring compliance with legislation in prisons. Please provide additional information on these associations, including how many exist, how their members are chosen, whether they are permitted to make unannounced visits to places of detention, and whether the reports of their visits to places of detention are made public. Please provide data on the number of places of detention visited by such civic associations during the reporting period, and indicate any concerns reported by the associations about possible violations of legislation detected, and what recourse the authorities took in response to such information.

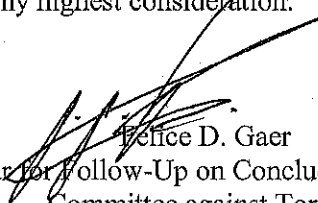
The Committee regrets that the State party did not provide information regarding access to places of detention for independent non-governmental monitoring mechanisms other than civic associations and public watchdog commissions. Please provide data on the number of visits to places of detention undertaken by non-governmental organizations, national or international, other than those undertaken by “civic” associations and watchdog commissions during the reporting period, and indicate if any of these visits were unannounced and if any possible violations of legislation were reported as a result of these visits.



The Committee takes note of the State party's assertion that it "cooperates constructively with the special procedures of the Human Rights Council and sends them all information requested." While the Committee appreciates the State party's provision of information to the special procedures, the Committee regrets that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and association and the Working Group on Arbitrary Detention have sought to make a visit to the State party since 2009, yet as of March 31, 2013, none of these special procedures had received a response to their request. The Committee encourages the State party to agree to visits by these special procedures without further delay.

The Committee takes note of the State party's assertion that it has extended an invitation to the United Nations High Commissioner for Human Rights, in August 2011, and that the High Commissioner has not informed the State party whether she is prepared to visit. The Committee notes that the High Commissioner indicated in July 2012 that the Ministry of Foreign Affairs of the State party had invited her to visit but made it clear that her visit "must be de-linked from her reporting obligations."¹ The Committee urges the State party to extend an invitation to the High Commissioner for herself or a team representing her Office to visit the country and to assess the human rights situation as part of that visit.

Accept, Excellency, the assurances of my highest consideration.


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Rapporteur for Follow-Up on Concluding Observations
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¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12298&LangID=E>