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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Belarus

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, in accordance with Human Rights Council resolution [41/22](#).

* [A/75/150](#).



Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin

Summary

In the present report, the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, focuses on the administration of justice, in particular juvenile justice, and the judicial harassment of human rights defenders, journalists and other members of civil society in Belarus.

I. Introduction

A. Executive summary

1. The Human Rights Council established the mandate of the Special Rapporteur on the situation of human rights in Belarus in its resolution 20/13, on the basis of a report by the United Nations High Commissioner for Human Rights (A/HRC/20/8). The Council requested the mandate holder to report to it and the General Assembly annually. The Council has since renewed the mandate seven times, for one year at a time, in resolutions 23/15, 26/25, 29/17, 32/26, 35/27, 38/14 and 41/22.

2. While the concerns raised by the Special Rapporteur in her report to the Human Rights Council (A/HRC/44/55) remain valid, the present report focuses on the issue of the administration of justice, in particular juvenile justice, and the judicial harassment of human rights defenders, journalists, bloggers and other members of civil society in Belarus.

3. The independence of the judiciary remains of serious concern. Procedures for the appointment, tenure and removal of judges undermine judicial independence and challenge the notion of the separation of powers and the rule of law. The independence of the judiciary is essential for democracy and for the promotion and protection of human rights.

4. The Special Rapporteur is concerned that the independence and integrity of prosecutors is undermined by excessive executive control. There are serious allegations that prosecutors fail to undertake prosecutions apparently for political reasons, in contravention of the Guidelines on the Role of Prosecutors.

5. On the basis of the information received, the independence and impartiality of the legal profession continue to be a concern. The Special Rapporteur emphasizes that the freedom of lawyers from interference by the Government must be maintained, including by enabling the establishment of a truly independent bar association and ensuring that lawyers, including those working for human rights defenders, are able to perform their work unimpeded and to exercise their freedom of expression without fear of retaliation or harassment from the authorities. The Basic Principles on the Role of Lawyers must be upheld.

6. The Special Rapporteur emphasizes her concerns relating to the legislative framework for youth offenders in Belarus, in particular young persons convicted of non-violent drug offences under article 328 of the Criminal Code. Despite the positive aspects of the amnesty laws signed in July 2019 and May 2020, which should be commended, some minors remain convicted of serious charges. While the Special Rapporteur commends the recent amendments to article 328, the article remains excessively punitive and does not integrate a human rights approach or pay due regard to the State's obligations to ensure the best interests of the child.

7. The Special Rapporteur reiterates her concern for the rights of children in Belarus to a fair trial, in line with articles 37 and 40 of the Convention on the Rights of the Child. Drug-related offences often lead to arrests and mistreatment that are not in line with human rights standards and can include forced confessions and psychological violence. Children should be treated with respect and dignity, and detention should be only a last resort, exercised in conformity with the law.

8. The Special Rapporteur notes her concern about the lack of effective public control over the conditions of detention of children, in particular the use of compulsory educational measures and a lack of effective oversight within such systems to ensure respect for children's rights, including freedom from corporal punishment.

9. The Special Rapporteur was informed that the right to secondary education frequently cannot be realized in the Belarusian penal system and that imprisonment prevents enrolment in higher education. She reiterates that access to education is a fundamental of particular importance for incarcerated youth.

10. The Special Rapporteur is alarmed by the poor standard of health care available to children and young people in detention and especially by certain harmful measures taken during the coronavirus disease (COVID-19) pandemic and a lack of other measures to effectively protect that particularly vulnerable group. She is concerned by reports of a lack of protective equipment available during the pandemic and more broadly by the lack of effective medical care for minors and young people in detention, in particular those with chronic illnesses.

11. On the basis of the information received, the conditions of detention for young people remain poor and are reportedly made even worse for those convicted of drug-related offences. However, the Special Rapporteur takes note of positive developments in some individual cases reported to her, which could be a sign of the Government's progress in understanding of the specific needs of children.

12. The Special Rapporteur also emphasizes her concern over the continuing practice of forced labour in places of detention, often with effects on health, and the lack of due process or legal safeguards in associated disciplinary proceedings.

13. The Special Rapporteur is concerned that criminal and administrative sanctions continue to be selectively and disproportionately enforced against human rights defenders, journalists, bloggers and other members of civil society, preventing their meaningful participation in public life.

14. The persistence of a restrictive environment and severe limitations on the exercise of fundamental freedoms as a result of the judicial harassment of human rights defenders, journalists, bloggers and other members of civil society could affect the exercise of the right to participate in the upcoming electoral processes. The Special Rapporteur recalls that the recommendations made in her previous report to the General Assembly ([A/74/196](#)), regarding the universality and indivisibility of human rights during electoral processes, remain valid.

B. Methodology

15. The Special Rapporteur performs her duties as a mandate holder in line with the principles of independence, impartiality and independence of sources. The Special Rapporteur is committed to fulfilling her mandate in compliance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. She continues to pay special attention to protecting her sources of information.

16. As in previous years, the Special Rapporteur submitted, on 4 December 2019, a request to visit Belarus in her official capacity. Her request remained unanswered. The Special Rapporteur would welcome opportunities to engage constructively with the Government of Belarus and encourages the Government to review its position towards her mandate.

17. The present report, submitted to the General Assembly pursuant to Human Rights Council resolution [41/22](#), covers the period up to 15 June 2020 and was prepared on the basis of information received up to that date.

18. Being unable to visit Belarus, the Special Rapporteur relied on the information available from various sources, including government statements, government responses to allegation letters and official publications, and reports received from civil society, human rights defenders, victims and witnesses of human rights

violations, the diplomatic community and international and regional organizations, including reports of United Nations treaty bodies.

II. Administration of justice

19. Belarusian law provides for the rights to a fair and public trial and to the presumption of innocence, but these rights are often disregarded in practice. The lack of judicial independence and encroachments on the rights of the defence all too frequently put the burden of proving innocence on the defendant.¹

A. Independence and impartiality of judges, prosecutors and lawyers

1. Judges

20. The Special Rapporteur commends the fact that, according to the Code of the Judicial System and the Status of Judges,² in the version of 22 December 2016, organizational, logistical and staffing support for the activities of the courts of general jurisdiction is provided by the Supreme Court of Belarus. This is a positive aspect of the judicial and legal reform,³ as these functions lie beyond the competence of the Ministry of Justice as an executive authority.⁴ However, the Special Rapporteur is concerned that issues remain that undermine judicial independence and negatively affect the realization of the right to a fair trial (see [CCPR/C/BLR/CO/5](#)).

21. The Special Rapporteur is concerned that the President retains absolute discretion to appoint and remove judges. Upon examining candidates for judges to be appointed or reappointed, the Office of the President consults the National Security Council, an interdepartmental body established on 15 November 1991 with a mandate to ensure the security of Belarus. The Council is allowed to involve special services in verifying candidates' credentials and approving their appointment. It is of particular concern that judges are nominated and appointed during closed sessions. Even though there are general requirements for candidates listed in article 76 of the Code of the Judicial System and the Status of Judges, the criteria applied by the President and the National Security Council while examining the candidates and making other decisions regarding judges remain undisclosed to candidates and the public. However, according to the information received, one of the main criteria in the selection of candidates is whether a judge has or has not made rulings that suited the National Security Council.⁵ The Special Rapporteur is concerned that persisting procedures for the appointment and removal of judges are not consistent with judicial independence and pose obstacles to the transparency and objectivity of judicial processes. The independence of the judiciary from the executive branch of power is

¹ United States Department of State, "2018 country reports on human rights practices: Belarus".

² Available at <http://pravo.by/document/?guid=3871&p0=hk0600139>.

³ On 29 November 2013, the President of Belarus signed a set of statutory acts on judicial reform, namely, Decree No. 6, Directive No. 529 and Directive No. 530. As stated in Decree No. 6, the reform is aimed at unifying laws on the judiciary, improving the quality of the administration of justice, further building the capacities of courts and judges, and improving the provision of material and technical supplies and personnel. The reform also leads to the creation of a single system of law enforcement bodies with the Ministry of Justice in charge. The new legislation entered into force on 1 January 2014.

⁴ National Human Rights Coalition, "Alternative report by the National Human Rights Coalition on implementation of the International Covenant on Civil and Political Rights in the Republic of Belarus", submission for the 124th session of the Human Rights Committee, 8 October–2 November 2018. Available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_E.pdf.

⁵ Ibid.

essential for the functioning of democracy and the promotion and protection of human rights.

22. The Code of the Judicial System and the Status of Judges, in the version of 22 December 2016, stipulates that “judges are appointed initially for a term of five years, with the possibility of reappointment for a new term or an indefinite term”. The situation regarding the legal status of judges in terms of the principle of non-removability is therefore of concern. No clear criteria are set by law for the appointment and reappointment of judges. Analysis of the presidential decrees appointing judges shows that 353 judges (87 per cent of all judges) have been selected for a term of five years. In addition, there are 25 judges who have been appointed to cover a period of leave of other judges.⁶ Therefore, 378 judges (93 per cent of all judges) have been appointed for a limited term, with only 30 judges appointed for an indefinite period. The Special Rapporteur stresses that, in line with the Basic Principles on the Independence of the Judiciary, in order to safeguard the independence of judges, their tenure must be guaranteed until a mandatory retirement age and should be adequately secured by law.

23. The salaries of judges are determined by Presidential Decree No. 625 of 4 December 1997 on the regulation of the remuneration of judges and material, technical and personnel support for the courts of Belarus, in accordance with which the official salaries of judges are determined as a percentage of the salaries of the Chairs of the Constitutional and Supreme Courts. The Special Rapporteur is concerned that the annex to the Decree in which this percentage is provided has not been published, which raises concerns about the adequacy of remuneration.

24. The President enjoys certain powers regarding disciplinary measures under article 102 of the Code of the Judicial System and the Status of Judges. The President has the power to prosecute or dismiss any judge without triggering any disciplinary proceedings.⁷ The Special Rapporteur is concerned that the President can dismiss any judge without fair procedures or an independent review of such a decision. This effectively prevents judges from performing their professional activities independently and without any interference.

2. Prosecutors

25. The Prosecutor’s Office is responsible for ensuring the supremacy of law and enforcing law and order, as well as for upholding the rights and freedoms of citizens and the legitimate interests of the State.⁸ It is governed by the Constitution of Belarus (arts. 125–128), the Act of 8 May 2007 on the Prosecutor’s Office of Belarus⁹ and other legislative acts specifying the competence and organizational and operational procedures of the Office and the powers of the prosecutors.

26. The General Prosecutor is appointed by the President with the consent of the Council of the Republic and is the head of a unified and centralized system of bodies of the Prosecutor’s Office. The General Prosecutor and the subordinate public prosecutors oversee the implementation of laws, decrees and regulations and the execution of court verdicts. In addition, they perform preliminary investigations and support State charges in court.

27. The Special Rapporteur is concerned that the independence and integrity of the prosecution is undermined by its high dependence on executive powers. There have been multiple allegations of prosecutions not being undertaken apparently for

⁶ Ibid.

⁷ Ibid.

⁸ Belarus, Act of 8 May 2007 on the Prosecutor’s Office of Belarus, art. 2.

⁹ Available at <http://pravo.by/document/?guid=3871&p0=H10700220>.

political reasons,¹⁰ or prosecutions being commenced or failing to be commenced owing to the executive's interference,¹¹ in contravention of the provisions of the Guidelines on the Role of Prosecutors.

28. Another concerning aspect is the close relationship between prosecutors and judges.¹² Prosecutors wield excessive and imbalanced authority because they may extend detention periods without the permission of judges.¹³ While article 24 of the Code of Criminal Procedure provides for equality of arms, in practice the prosecution enjoys several legal and procedural powers that are not available in the same manner to the defence. For instance, prosecutors have broader powers to present evidence, and motions of prosecutors are more frequently satisfied than those of the defence. Defence lawyers are often prevented from examining investigation files, being present during interrogations or examining evidence against defendants until a prosecutor formally brings the case to court.¹⁴ One of the functions of prosecutors is to protect the legal interests of citizens,¹⁵ but according to reports, complaints regarding human rights violations sent to the Prosecutor's Office are redirected to authorities that have violated the rights of people.¹⁶ Prosecutors should perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.¹⁷

3. Lawyers

Access to the legal profession

29. The Basic Principles on the Role of Lawyers provide that adequate protection of human rights and fundamental freedoms requires that all persons have effective access to legal services provided by an independent legal profession. According to article 62 of the Constitution of Belarus, all persons shall have the right to legal assistance to exercise their rights and freedoms, including the right to make use, at any time, of the assistance of lawyers and their other representatives in court, State bodies, local government bodies, enterprises, institutions, organizations and public associations, and also in relations with officials and citizens. The activities of lawyers in Belarus are regulated by a wide range of legislative acts, including the Bar and Advocacy Act.¹⁸

30. While lawyers must be independent and free of any pressure or influence,¹⁹ the laws of Belarus effectively limit the independence of lawyers by bringing their activities under excessive control of the authorities, in particular the Ministry of Justice, which undermines the core values of the independence of lawyers. Especially concerning is the situation of lawyers who protect human rights defenders, as the authorities reportedly selectively use laws to target such lawyers.²⁰ When adopting any laws, the executive branch should ensure that the independence of lawyers is guaranteed.

¹⁰ International Commission of Jurists, "Attacks on justice 2005: Belarus", 11 July 2008.

¹¹ United States Department of State, "2019 country reports on human rights practices: Belarus".

¹² Office for Democratic Institutions and Human Rights, *Trial Monitoring in Belarus* (March–July 2011) (Warsaw, Organization for Security and Cooperation in Europe, 2011).

¹³ United States Department of State, "2019 country reports on human rights practices: Belarus".

¹⁴ United States Department of State, "2018 country reports on human rights practices: Belarus".

¹⁵ Belarus, Act on the Prosecutor's Office of Belarus, art. 4.

¹⁶ [www.legin.by/laravel-filemanager/files/1/CAT-NGO-Belarus-2018-ru%20\(1\)%20\(2\).pdf](http://www.legin.by/laravel-filemanager/files/1/CAT-NGO-Belarus-2018-ru%20(1)%20(2).pdf).

¹⁷ Guidelines on the Role of Prosecutors.

¹⁸ Available at https://kodeksy-by.com/zakon_rb_ob_advokature.htm.

¹⁹ Basic Principles on the Role of Lawyers, principle 16.

²⁰ <https://naviny.by/article/20180629/1530282805-pochemu-advokaty-v-belarusi-zhivut-v-atmosfera-straha>.

31. As at 1 October 2019, there were 2,112 lawyers in Belarus. According to the law, all lawyers have to become members of a regional or Minsk city bar association. All of these associations are united under the Belarusian National Bar Association. In order to receive a licence, lawyers have to undergo an examination by the Certification Commission. The results thereof inform the final decision regarding the granting of the licence, which is made by the Ministry of Justice. The Special Rapporteur underlines that the independence of the Commission is in question because the members of the Commission are appointed by the Minister of Justice and the Commission is chaired by the Deputy Minister of Justice and includes five representatives of the Ministry.^{21,22} The Ministry of Justice thus exercises excessive control over the certification exams and the granting and renewal of licences.

32. Although licences are issued for life, every five years lawyers have to undergo certification inspections by the Certification Commission or by a territorial bar association on behalf of the Commission.²³ The authorities can request such inspections at any time. Such requests are allegedly made arbitrarily, but at times they appear to be politically motivated and intended to put pressure on lawyers perceived as being critical of the Government either because of earlier statements made in court or because of the type of clients they agree to defend, such as human rights defenders. This practice of suspending or threatening to suspend licences is used to silence lawyers who work on sensitive cases.

Professional association of lawyers

33. The Special Rapporteur is concerned that the Ministry of Justice executes broad control over the National Bar Association. The Ministry of Justice is empowered to propose candidates for the position of Chair of the Bar Association and to ask for the Chair's resignation or dismissal if the Certification Commission, which is also under the control of the Ministry of Justice, establishes that he or she has infringed the law.²⁴ Lawyers must be able to form self-governing associations under their right to freedom of association. The executive body of the Bar Association should be elected by its members and perform its functions without any interference.

Freedom of expression of lawyers

34. Article 33 of the Constitution of Belarus guarantees the rights to freedom of thought and belief and freedom of expression. However, the freedom of expression of lawyers in Belarus continues to be restricted. The Special Rapporteur is aware of cases in which lawyers' licences were revoked because of their professional activities, particularly in cases in which lawyers represented the interests of human rights defenders or individuals critical of the authorities or their policies. For instance, following the protests in 2010, six lawyers who defended the interests of presidential candidates and protesters lost their licences. In a letter to the Chair of the Bar Association in January 2012, the Ministry of Justice requested lawyers to seek

²¹ Belarus, Decision of the Ministry of Justice No. 105 of 30 November 2010 on the regulation of the Certification Commission for the legal profession in Belarus. Available at http://a-h.by/s153/archives/Polozhenie_O_Kvalifikacionnoj_komissii_po_voprosam_advokatskoj_dejatnosti_v_Respublike_Belarus.html.

²² <https://naviny.by/article/20180629/1530282805-pochemu-advokaty-v-belarusi-zhivut-v-atmosfere-straha>.

²³ Observatory for the Protection of Human Rights Defenders, *Belarus: Control over Lawyers Threatens Human Rights* (2018).

²⁴ Furthermore, the Ministry of Justice carries out the State registration of bar associations and makes amendments to their charters; organizes audits of bar associations and verifies individual credentials; suspends decisions of bar associations that are not confirmed under Belarusian laws; and initiates disciplinary action against lawyers (see <http://www.jurist.org/commentary/2012/06/volha-samasiuk-belarus-profession/>).

approval for their interviews with the authorities.²⁵ In September 2017, 8 out of 16 lawyers representing defendants in the so-called “White Legion” case²⁶ were subjected to extraordinary inspections that included a de facto oral examination by the Certification Commission to check their qualifications. Several months earlier, however, some of them had already undergone an ordinary inspection by the Commission. Following an extraordinary inspection, one lawyer lost the licence, while seven others were declared as “partially complying with legal requirements” and had to undergo the new extraordinary certification examination.²⁷ Such practices are reportedly used to apply pressure on and harass certain lawyers because of their roles in defending fundamental freedoms. The Special Rapporteur is concerned that this systematic restriction of the freedom of expression of lawyers has led to a situation in which lawyers have to self-censor for fear that their licences may be revoked by the Ministry of Justice. This is of particular concern given that no effective mechanism for appeals against the revocation of licences has been established to date (see [CCPR/C/BLR/CO/5](#), para. 41).

35. The Special Rapporteur is concerned about the pressure under which lawyers, especially those who defend opposition politicians, human rights defenders and critical journalists or bloggers, have to operate. Such defendants have access to a limited number of lawyers as a result of the authorities’ efforts to disbar or intimidate lawyers who would be ready to defend them. The law provides for the right to choose legal representation freely; however, a presidential decree prohibits members of non-governmental organizations who are lawyers from representing individuals other than members of their organizations in court.²⁸

36. In early 2020, a prominent lawyer, Aleh Volchek, was subjected to intimidation and harassment after Deutsche Welle aired, on 16 December 2019, a report on the topic of enforced disappearances in Belarus that included an interview with him. Mr. Volchek represents the interests of the family of Yuriy Zakharenko, the former Minister of Internal Affairs who went missing in 1999. On 3 January 2020, Mr. Volchek’s apartment in Minsk was searched twice by the Investigative Committee as part of a criminal investigation into the murder of a woman whose body had been found nearby. The rules and procedures for the search prescribed by law were allegedly not respected. The wide reporting on the situation in the media damaged the lawyer’s reputation and contravened the principle of the presumption of innocence.²⁹ On 5 January 2020, the alleged perpetrator of the murder was arrested in Vitebsk, thereby relieving Mr. Volchek from suspicion of murder. Such practices put lawyers under pressure and cause them to fear retaliation from the authorities, with negative effects on their professional reputation and physical and psychological health.

37. The Special Rapporteur is concerned about the targeting of lawyers who defend human rights defenders or take on politically sensitive cases and who aim to perform their duties free from interference. The harassment, intimidation and prosecution of lawyers for their legitimate professional activities contravenes principles 14 and 20 of the Basic Principles on the Role of Lawyers.

²⁵ <https://news.tut.by/society/271612.html>.

²⁶ The case against persons who participated in the large-scale protests of 2017.

²⁷ Observatory for the Protection of Human Rights Defenders, *Belarus: Control over Lawyers Threatens Human Rights*.

²⁸ United States Department of State, “2018 country reports on human rights practices: Belarus”.

²⁹ Joint communication from the Special Rapporteur on the situation of human rights in Belarus, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders of 19 March 2020. Available at www.hfhr.pl/wp-content/uploads/2020/01/en-BY_Alternative_report_CRC.pdf.

B. Juvenile justice

Legislative framework

38. According to the information received, 59.3 per cent of children deprived of their liberty in Belarus in 2019 were first-time offenders.³⁰ The Criminal Enforcement Code does not afford children deprived of their liberty a separate legal status and provides only minor prerogatives related to receiving parcels and visits and disciplinary measures compared with those for adults. In accordance with article 126 of the Code of Criminal Procedure, children (both suspects and accused) are placed in detention or under house arrest on the basis of practically the same procedural rules as for adults. A child may be detained or placed under house arrest on suspicion or charge of committing a crime that is punishable by law with detention for a term exceeding two years, except for some serious economic crimes. For children suspected or accused of serious and particularly serious offences (such as offences against the peace and security of humankind, offences against the State, war crimes or offences against life and health), preventive measures can be applied on the grounds of the gravity of the crime without taking the age of the child into consideration.³¹

39. The Special Rapporteur underlines that children have different needs and levels of physical and psychological development to adults and should therefore be treated differently; there should be a separate juvenile justice system that takes into account all these differences.³² The juvenile justice system should be focused on rehabilitation and restorative justice, rather than repression and punishment. The Committee on the Rights of the Child, in paragraph 36 of its general comment No. 10 (2007) on children's rights in juvenile justice, stated that the special rules of juvenile justice should apply for all children who, at the time of the commission of the offence, have not yet reached the age of 18 years. The Human Rights Committee, in paragraph 13 of its general comment No. 21 (1992) on article 10 (Humane treatment of prisoners deprived of their liberty), stated that all persons under the age of 18 years who are deprived of their liberty should be treated as juveniles, at least in matters relating to criminal justice.

40. The Criminal Code of Belarus sets the minimum age for criminal liability at 16 years, but provides an extensive list of exceptions whereby criminal liability for minors who have committed particularly serious crimes may begin at the age of 14 years.³³ On 28 December 2014, that list was extended by Presidential Decree No. 6 on urgent measures to counter drug trafficking, under which the age of criminal liability at the time of the offence for drug-related crimes was lowered from 16 years to 14 years.³⁴ As a result, since 2015, dozens of children have been sentenced to long prison terms as a result of the Government's heavy-handed approach to drug-related crimes, with no reduction of sentences envisaged for juvenile offenders. The Special Rapporteur is concerned that the best interests of the child are not taken into account when considering the measure of restraint for children, in violation of article 3, paragraph 1 of the Convention on the Rights of the Child.

³⁰ Belarusian Helsinki Committee and others, "Alternative report by coalition of Belarusian NGOs on implementation of the Convention of the Rights of the Child in the Republic of Belarus", submission for the eighty-third session of the Committee on the Rights of the Child, 20 January–7 February 2020. Available at www.hfhr.pl/wp-content/uploads/2020/01/en-BY_Alternative_report_CRC.pdf.

³¹ Belarus, Code of Criminal Procedure, art. 432.

³² Guidelines for Action on Children in the Criminal Justice System.

³³ Belarus, Criminal Code, art. 27. Available at https://kodeksy-by.com/ugolovnyj_kodeks_rb.htm.

³⁴ Available at http://president.gov.by/ru/news_ru/view/kommentarij-k-dekretu-o-neotlozhnyx-merax-po-protivodejstvu-nezakonnomu-oborotu-narkotikov-10537/.

41. According to government statistics (see [CRC/C/BLR/RQ/5-6](#)), the number of minors serving a sentence in penal colonies in Belarus has steadily decreased since 2016.³⁵ While no official information was published about juvenile prisoners for 2019, the number of all children serving sentences in detention facilities in Belarus should have decreased as a result of the amnesty laws adopted in July 2019 and May 2020, as well as following legislative changes.³⁶

42. In July 2019, the President of Belarus, Aleksandr Lukashenko, signed an amnesty law, by which an amnesty would be granted to approximately 6,000 convicts and people under investigation.³⁷ According to the provisions, the amnesty was to be granted within nine months from the date of the law's entry into force. People, including minors, convicted of crimes that were not classified as serious or particularly serious were to be released from punishment. All convicts under the age of 18 years at the time of the law's entry into force would have their sentences reduced by two years or be exempted from criminal liability.³⁸

43. On 8 May 2020, the President signed another amnesty law that had been previously approved by the Parliament. According to the Ministry of Internal Affairs, the amnesty, timed to coincide with the seventy-fifth anniversary of the victory in the Great Patriotic War, will affect about 5,400 people.³⁹ Certain categories of convicts, including those convicted of drug-related crimes under parts 1, 2 and 3 of article 328 of the Criminal Code, who cannot be exempted from criminal liability, will have their sentences reduced by one year. The Government will offer an amnesty to those serving sentences for drug-related crimes provided that they have demonstrated good behaviour in the detention facilities, expressed repentance and already served half their term and, for minors, that they have an adult relative or friend who will be responsible for them.

44. The Special Rapporteur commends the fact that the amnesty also applies to those convicted for drug-related crimes, especially minors. However, the amnesty applies only to minors convicted under parts 1, 2 or 3 of article 328 of the Criminal Code.⁴⁰ Those convicted under part 4 of article 328 do not fall under the amnesty law. The Special Rapporteur is therefore concerned that children who may have been mistakenly convicted under part 4 of article 328, the sanction for which is deprivation of liberty for a period of 10 to 20 years, do not fall under the provisions of the law.

45. The Special Rapporteur is aware of at least five cases of minors being sentenced under part 4 of article 328 to more than 10 years of imprisonment. This is of particular concern given that, according to the information available, there are numerous cases in which minors who were first-time offenders were convicted of the offence of participating in the activities of an organized criminal group simply because they had bought drugs from a dealer, while the authorities failed to identify or prosecute any other members of the "group".⁴¹

³⁵ The number of children serving sentences was 113 (109 boys and 4 girls) in 2016, 99 (92 boys and 7 girls) in 2017 and 63 (58 boys and 5 girls) in 2018.

³⁶ Viasna, *Monitoring Report of Places of Detention in Belarus in 2018–2019* (Minsk, Viasna, 2019). Available at https://spring96.org/files/book/ru/2019_prison_conditions_ru.pdf.

³⁷ Official website of Belarus, "Lukashenko signs amnesty bill into law", 22 July 2019. Available at www.belarus.by/en/government/events/lukashenko-signs-amnesty-bill-into-law_i_101527.html.

³⁸ Belarus, Amnesty Act (19 July 2019). Available at <http://pravo.by/document/?guid=12551&p0=H11900230&p1=1>.

³⁹ http://president.gov.by/ru/news_ru/view/aleksandr-lukashenko-podpisal-zakon-ob-amnistii-v-svjazi-s-75-letiem-pobedy-v-velikoj-otechestvennoj-vojne-23621/.

⁴⁰ Article 328 of the Criminal Code relates to illicit trafficking in narcotic drugs and psychotropic substances and their precursors and analogues.

⁴¹ Amnesty International, "Belarus: serious human rights concerns persist", submission for the thirty-sixth session of Working Group of the Universal Periodic Review, 2–13 November 2020.

46. The Special Rapporteur is concerned that many children and young persons convicted of drug-related offences have been declared persistent offenders (*zlostnik* in Russian), a status set out in article 117 of the Criminal Enforcement Code. According to reports, approximately 30 per cent of all prisoners have the status of persistent offender. The Special Rapporteur is concerned that the status of persistent offender is granted in a non-transparent and highly arbitrary manner. For instance, there are cases in which children and young persons received such status because they had laid down on their bed when they were not authorized to do so or because they had not brushed their hair. Emil Ostrovko, who was arrested and sentenced in 2018 at the age of 17 years, was declared a persistent offender because his hair was too long and he had been seen taking off his protection mask at work. However, because of his chronic asthma, he has difficulties breathing in a mask. His parents tried to appeal the decision of the educational colony, but the courts of first and second instances dismissed their complaint.⁴²

47. With regard to legislative changes, the Special Rapporteur commends the amendments to article 328 passed on 13 June 2019 by the House of Representatives. According to the amendments, the lower limit of punishment under parts 2 and 3 of article 328, which criminalizes drug distribution, was reduced by two years. Nevertheless, the Special Rapporteur is concerned that the drug policy in Belarus remains excessively punitive and fails to integrate a human rights-based approach, and that alternatives to the criminalization of minor, non-violent drug-related offences are not implemented.⁴³

48. The Special Rapporteur notes that Belarus developed national action plans to improve the situation of children and safeguard their interests (for the periods 2012–2016 and 2017–2021) and stresses that, in order for the law to advance and promote children’s rights in Belarus, the provisions need to be in line with international human rights standards, in particular the provisions of the Convention on the Rights of the Child.

Fair trial rights of minors suspected and convicted of drug-related offences

49. Children and young people (up to the age of 29 years) accused of drug-related offences experience a multitude of human rights violations from the moment of their detention, during the investigation and trial, and until they are sentenced. According to available data, since changes were introduced to the Criminal Code in January 2015, up to 15,000 children and young people have been prosecuted and sentenced to lengthy prison terms for drug-related offences.⁴⁴ The elements of due process, such as the principles of legality, proportionality and the presumption of innocence, the right to a fair trial, the right to legal advice, the right of access to courts and the right to appeal, should be guaranteed for children as they are for adults.

50. Arrests of children suspected of drug-related offences are not carried out in accordance with the criminal procedure laws of Belarus or with international human rights standards. According to reports, parents and legal guardians are not contacted promptly upon the arrest of their child or during the initial questioning and other

⁴² <https://mspring.online/ru/astrauko-regional-court/?fbclid=IwAR0ttcb5f1rY9zX2fVZdNWwHg4SQQmQ7fUzYuoN1lki6-g9q3xsTVRaWoFw>.

⁴³ The amendments did not introduce a clear definition of responsibility based on the quantity and types of drugs. Part 4 of article 328 still provides a penalty of up to 20 years of deprivation of liberty for drug trafficking as part of an organized criminal group, without specifying what qualifies as a drug cartel.

⁴⁴ Amnesty International, “Urgent action: protect rights of juvenile prisoners (Belarus: UA 36.19)”, 21 March 2019. Available at www.amnesty.org/download/Documents/EUR4901002019ENGLISH.pdf.

investigative proceedings. When orphans are arrested, no alternative external support is provided to them in the early phases of the legal proceedings.

51. In one case, a child, upon his arrest, was beaten and deprived of food and water, and his parents were not informed of his whereabouts for at least eight hours. When the parents filed a complaint about the unlawful actions of the police, the Investigative Committee refused to open a criminal case. The parents appealed the decision of the Committee, but the court dismissed their appeal on 7 May 2020. Although the minor gave his mother permission to represent him in court, the judge did not allow the mother to do so because he had reached the age of 18 years.⁴⁵

52. The Special Rapporteur is also aware of systematic practices of delays in the appointment of lawyers and of children being detained alongside adults in the pretrial phase. There are also cases in which minors are forced to sign a self-incriminating statement dictated by investigative officers and are subjected to psychological and physical violence. In one case, a child was not allowed to read the interrogation documents, but was forced to sign them. The Special Rapporteur is concerned that such practices violate the right to a fair trial and other rights provided by the Convention on the Rights of the Child, in particular the guarantees provided by articles 37 and 40. Every child should be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the particular needs of persons of his or her age.⁴⁶ No child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child must be in conformity with the law and used only as a measure of last resort and for the shortest appropriate period of time.

53. The Special Rapporteur is concerned that children suspected of drug-related offences are treated in violation of the principle of the presumption of innocence. According to reports, children are brought to investigative proceedings in handcuffs, and children under investigation are brought to the courtroom in handcuffs and kept in a cage. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. A child accused of having infringed the law must have the benefit of the doubt and is only guilty when so proven according to the law. Furthermore, children may behave suspiciously as a result of being fearful and lacking an understanding of the process. The authorities must therefore not assume that a child is guilty without proof of guilt beyond any reasonable doubt.⁴⁷

Public monitoring of the conditions of detention of children

54. The Special Rapporteur is concerned about the absence of effective public monitoring of the conditions of detention of children. Public monitoring commissions have been repeatedly criticized by the United Nations treaty bodies (CCPR/C/BLR/CO/5, paras. 31–32). Such commissions observe the detention of children in a single juvenile correctional facility and do not monitor pretrial detention facilities or special closed educational institutions. Children are sent to such educational institutions in accordance with the Code of Civil Procedure, and the participation of a lawyer is not obligatory. Children aged from 11 to 18 years are placed in special closed educational institutions for a term of up to two years for the systematic commission of minor offences or the commission of acts that have signs of offences or crimes.⁴⁸ Pursuant to article 117 of the Criminal Code, persons under

⁴⁵ <https://nash-dom.info/60415>.

⁴⁶ Convention on the Rights of the Child, art. 37 (c).

⁴⁷ Committee on the Rights of the Child, general comment No. 24 (2019) on children's rights in juvenile justice, replacing general comment No. 10 (2007).

⁴⁸ Belarus, Criminal Code, art. 117 (Conviction without sentencing involving the application of compulsory educational measures).

the age of 18 years committing their first offence under part 1 of article 328 are subject to compulsory educational measures in lieu of punishment.⁴⁹

55. According to the information obtained, in 2018, 78 children aged from 12 to 17 years were held at the Kryvichy special closed medical school; 68 children aged from 14 to 18 years were held at the Mahilyow special closed school; and more than 40 girls aged from 13 to 17 years were held at the Pyetrykaw special closed school. In 2019, three heads of the Mahilyow school were convicted of using violence against children.⁵⁰ During the investigation, it became evident that beating children was common practice at that institution.⁵¹ The Special Rapporteur commends the investigation of instances of violence against children and stresses that any instances of deprivation of liberty of children must comply with the human rights standards for children deprived of their liberty.⁵²

Access to education in detention facilities

56. There are no clear rules on the continuation of school education for children in pretrial detention facilities, in which children often spend up to one year. In penal colonies, children have the right by law to receive secondary education.⁵³ However, the Special Rapporteur was informed that, in practice, children have either no or insufficient access to education. For example, there are only a couple of diploma courses from which to choose, and they are all limited to technical specialities. There are reportedly cases in which school representatives refuse to conduct examinations in detention facilities, which effectively prevents children from receiving their graduation certificates and consequently violates the right to education.

57. Higher education facilities in Belarus do not offer courses to persons held in detention facilities. Given the lack of access to high-quality education while in detention, the professional and personal opportunities of incarcerated youth are limited upon their release, which will ultimately have a tangible effect on the community to which they return upon release. Education is a fundamental right, and all children of compulsory school age have the right to education, including the right to take exams, suited to their needs and abilities and designed to prepare them for their return to society.⁵⁴

Access to health care for children in detention facilities

58. Access to health care for children in detention facilities is of particular concern. First-hand information was received by the Special Rapporteur about extremely poor hygiene and nutrition conditions, including the unavailability of milk products and animal proteins, which are recognized as essential nutrients for a child's healthy development. It is common practice for the prison authorities to forbid families from providing inmates with medicine and vitamins. Such restraint extends to detained

⁴⁹ Response of the Government of Belarus to the joint communication of 28 October 2019 from the Vice-Chair of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to education, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35090>.

⁵⁰ <https://naviny.by/article/20181128/1543393893-osuzhdeno-rukovodstvo-mogilevskogo-sptu-zakrytogo-tipa>.

⁵¹ Belarusian Helsinki Committee and others, "Alternative report on the implementation of the Convention of the Rights of the Child in Belarus".

⁵² United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

⁵³ Belarus, Education Code, art. 158 (11).

⁵⁴ Committee on the Rights of the Child, general comment No. 24 (2019).

minors, thus violating their right to be treated in a manner that takes into account the needs of persons of their age.

59. In the context of the COVID-19 pandemic, the lack of access to health care is particularly alarming. During the pandemic, the prices of essential goods, such as protective equipment and products to maintain immunity, sharply increased in Belarus. Reliable sources reported that no masks or gloves were provided to protect the prisoners. Children in detention are a particularly vulnerable group, and the absence of proper health care during the pandemic endangers their right to health.⁵⁵

60. Even though the Government did not enforce a lockdown, all detention facilities in the country have adopted self-isolation measures and restricted visits, meaning that relatives can only send packages to convicts. While it is possible to provide an additional 10 kg of food in parcels for prisoners during the pandemic, given the economic crisis, the price of food is significant for most families of prisoners.⁵⁶ On a positive note, however, the Special Rapporteur commends the fact that, in some individual cases reported to her, detained children were given the opportunity to speak to their relatives by video call to compensate for the absence of in-person visits. She encourages prison administrations to make further use of available communication technologies in order to increase the opportunities for prisoners to maintain contact with their relatives and lawyers.

61. Although certain groups of children in detention were released in accordance with the amnesty law of 2019, juveniles who received the longest sentences for drug-related crimes pursuant to part 4 of article 328 of the Criminal Code are still serving their sentences. Others who have been declared persistent offenders are also ineligible for pardon. On 31 March 2020, Amnesty International launched a campaign for the release of Vladislav Sharkovsky and Emil Ostrovko, who were sentenced, in 2018, to 10 and 8 years of imprisonment, respectively, for a first and non-violent drug offence.⁵⁷ Mr. Ostrovko has chronic asthma. Mr. Sharkovsky did not have any health problems before his arrest, but in detention he developed a persistent and recurring cough, flashes and floaters in his vision and, more recently, deep vein thrombosis. His mother reported that, on 9 March 2020, he complained of a stomach ache in the morning and fainted later that day. Even though he was given an injection, the stomach ache persisted. The prison medical staff did not provide Mr. Sharkovsky and his relatives with any information about his ailment. Amid the rapid spread of COVID-19, the risk to the health of these and other children and young people is growing daily.

Adequate living standards in detention facilities

62. According to information received, the living conditions in places of detention of minors and young people are very poor. The clothing provided in such facilities are reportedly either too small or too large and are not appropriate for the seasons, despite the fact that children and young people have to perform hard physical work, usually without protective equipment. Juveniles deprived of their liberty have the right to adequate living conditions that meet all the requirements of health and human dignity.

⁵⁵ United Nations, Office of the United Nations High Commissioner for Human Rights (OHCHR), “UN experts urge Belarus to release children and young people jailed for drug offences amid COVID-19 crisis”, 7 May 2020.

⁵⁶ https://nash-dom.info/60140?utm_source=telegram&utm_medium=channel&utm_campaign=nash_dom&tg_rhash=92fb8eb52ff317.

⁵⁷ <https://eurasia.amnesty.org/2020/04/01/belarus-potrebuje-osvobodit-vladislava-sharkovskogo-i-emilya-ostrovko-ih-zdorove-v-opasnosti/>.

63. There are also reports that juveniles convicted of drug-related offences are discriminated against by prison authorities and subjected to particularly harsh treatment. There have been cases in which juveniles have been forced to wear clothes that differentiate them from other prisoners and denied access to recreational facilities.⁵⁸ In addition, there are reports that parcels for juveniles convicted of drug-related offences have been distributed among other prisoners.

64. The Special Rapporteur was also informed that, in one colony, cells for juveniles are located in the basement, where there is not enough sunlight and it is always humid and cold. The bathroom facilities are not separated from the living area. In a notorious statement on 3 December 2014, President Lukashenko said that “unbearable conditions need to be created for [persons convicted of drug-related crimes] in the places where they serve their sentences” and that conditions should be made so intolerable that they would rather “ask for death”.⁵⁹ The Special Rapporteur is alarmed at such statements by senior officials, as they spread dehumanizing messages and contribute to the creation of humiliating and inadequate living conditions for detainees convicted of drug-related offences.

Forced labour

65. According to available reports, children and young people in penal colonies are subjected to hard physical labour without decent pay. If they refuse to perform their work, they face sanctions prescribed by law, in the same way as adult detainees do.⁶⁰ Children reportedly have to work for the whole day with only one hour of rest.⁶¹ One mother informed the Special Rapporteur that, at penal colony No. 22, children had to solder wires that originated from the radioactively contaminated Chernobyl area and could have caused irreparable damage to children’s health.⁶²

66. The administrations of places of deprivation of liberty frequently do not allow children to receive the aid of legal representatives while the disciplinary offences are under consideration within the penal system. Refusal to work or unauthorized termination of work constitutes a violation of the established procedure for serving a sentence and entails the application of penalties. Persons who violate the procedure can receive the status of persistent offender, which deprives them, among other things, of the opportunity to be considered for presidential pardon and amnesty.

C. Administration of justice in administrative and criminal cases against human rights defenders, journalists and bloggers

67. The Special Rapporteur is concerned that the judicial harassment of human rights defenders, journalists and bloggers increased throughout May 2020. From 1 May to 9 June, at least 340 persons, including human rights defenders, journalists, bloggers, medical workers and other members of civil society, were arrested and fined in connection with their participation in protests or for having otherwise peacefully expressed their views.⁶³

⁵⁸ Amnesty International, “Urgent action”.

⁵⁹ www.interfax.by/news/belarus/1173223.

⁶⁰ www.mvd.gov.by/ru/page/departament-ispolneniya-nakazaniy/informaciya-dlya-rodstvennikov-osuzhdennyh.

⁶¹ https://nash-dom.info/lib/browse/belarus_state_slavery.

⁶² This practice was ended after a fire incident on 18 June 2019 that destroyed the premises where prisoners were working (<https://nash-dom.info/57445>).

⁶³ Our House International Centre for Civil Initiatives, “Alexander Lukashenko threatens to execute the peaceful demonstrators by firing squad”, 9 June 2020.

68. Most of these arrests were carried out following the arrest by the police in Mahilyow on 6 May 2020 of a well-known critical blogger, Siarhei Tsikhanouski, who was placed in administrative detention for 15 days.⁶⁴ Mr. Tsikhanouski's supporters organized protests across the country to demand his immediate release. While in detention, Mr. Tsikhanouski announced his intention to run for president, but his registration was declined. This decision sparked new gatherings in several Belarusian cities, notably Grodno, where Mr. Tsikhanouski was arrested again on 29 May. The police disrupted peaceful assemblies, and at least 72 individuals were fined and 69 were sentenced to up to 15 days of detention on charges of violating the procedure for holding a mass event.^{65,66} Trials were held in Lida, Mahilyow, Gomel, Vitebsk, Grodno and other cities throughout the country. The police also reportedly detained human rights defenders who were monitoring the protests. Four journalists⁶⁷ and 12 bloggers who covered the peaceful assemblies were reportedly detained by the police and subsequently sentenced to administrative detention. Two medical workers were detained for allegedly sharing concerns related to COVID-19 with Mr. Tsikhanouski during an online streaming event and sentenced to seven days in detention.

69. All those detained were reportedly charged under article 23.34 of the Code of Administrative Offences with violating the rules for holding mass events, the sanction for which is a fine or administrative detention.

70. Those charged with administrative offences faced several irregularities in the pretrial and trial stages. Before the court hearings, the defendants were kept in pretrial detention facilities without access to their lawyers. Restrictions on access to lawyers were reportedly implemented in the light of the COVID-19 pandemic. In some instances, the defendants remained in the detention facility while the trial was taking place and were allowed to participate only by video link.

71. The convictions for participation in unsanctioned assemblies were reportedly based solely on the testimonies of police officers. The defendants were prevented from providing testimonies or summoning witnesses. Many of the trials were not open to the public, which was reportedly justified by the judges as a preventive measure during the COVID-19 pandemic, despite the fact that no in-country physical distancing measures have been put in place by the health authorities. No such measures have been introduced at the legislative level, and the Supreme Court has not issued any instructions to limit the public nature of court hearings. The Special Rapporteur is concerned that judicial harassment is used as a tool to silence the critical voices of human rights defenders, journalists and bloggers and other members of civil society in violation of 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, also known as the Declaration on Human Rights Defenders.

72. Of particular concern is the continuous judicial harassment of environmental rights defenders for their participation in peaceful protests against the construction of

⁶⁴ The blogger, who runs a YouTube channel, is known for his critical stance on government policies. He had recently announced his intent to run for president in the upcoming elections in August 2020.

⁶⁵ <http://spring96.org/ru/news/97316>.

⁶⁶ United Nations, OHCHR, "Belarus must stop crackdown to silence opposing views – UN experts", 5 June 2020.

⁶⁷ <https://baj.by/ru/content/v-belarusi-chetyreh-zhurnalistov-sudyat-za-uchastie-v-nesoglasovannyh-akciyah>.

a battery plant in Brest.⁶⁸ In the period from 25 February 2018 to 18 May 2020, participants in those protests received fines amounting to a total of 49,141 Belarusian roubles (approximately \$20,500), and 67 persons were arrested and sentenced to a total of 130 days of administrative detention.⁶⁹ The Special Rapporteur is concerned that judicial harassment has intensified. From 23 April to 18 May 2020, 34 persons were arrested and sentenced to a total of 115 days in detention and received fines amounting to 19,980 Belarusian roubles (approximately \$8,300).⁷⁰ According to reports, following the peaceful protest in Brest on 10 May 2020, the police detained Roman Kislyak, a human rights lawyer, and Uladzimir Vialichkin, an environmental rights activist and member of the Viasna human rights centre, who were monitoring the assembly. For two days following their arrest, neither their relatives nor their colleagues were informed of their whereabouts. On 12 May 2020, their location was identified, as they were transferred to a court, where they received a fine of 1,350 Belarusian roubles (approximately \$550) each under article 23.34 of the Code of Administrative Offences.⁷¹ They were not released, but rather were taken to a pretrial detention centre to await another court hearing. Such judicial practices could amount to enforced disappearance and are used to intimidate human rights defenders and other members of civil society.

Imprisonment for disobeying the prison administration

73. The Special Rapporteur remains concerned about the systematic application of article 411 of the Criminal Code (Disobeying the administration of the correctional facility), by which the duration of the sentence can be extended indefinitely. The Special Rapporteur was informed of one case in which, in August 2017, six months before his release, a prisoner was sentenced under part 2 of article 411 for disobeying the administration of the penal colony to one year and nine months of imprisonment. In March 2019, he was sentenced again under part 2 of article 411 to an additional two years of imprisonment. In February 2020, another criminal case was initiated against the prisoner under part 2 of article 411. In this case, criminal liability under article 411 was triggered by the prisoner's refusal to clean the grounds of the colony, failure to greet the head of the colony, non-compliance with the prison uniform code, failure to follow the administration's instructions to get out of bed and refusal to do physical exercise. For all those breaches of internal regulations, he had received disciplinary sanctions, including transfer to the isolation cell for one month. Such cases, which are reported to be widespread, therefore violate the principle of *non bis in idem* (double jeopardy), which provides that no one should be punished twice for the same cause of action.

74. The Special Rapporteur is concerned that the application of article 411 is arbitrary and disproportional and has been frequently used to silence and harass human rights defenders in detention, such as Mikalai Dziadok, who was sentenced to another year in prison a few days before he was set to be released in February 2015.⁷² This creates a situation in which criminal liability depends on the bias of the prison

⁶⁸ Since 25 February 2018, people have been gathering peacefully every Sunday on Lenin Square in Brest to protest the construction of the battery plant. Authorizations to hold the protests have been sought by the organizers 325 times but have been constantly denied by the authorities, except for once on 29 April 2018. The protests have therefore usually involved people meeting to carry balloons or feed pigeons.

⁶⁹ <http://ecohome-ngo.by/kak-presleduyutsya-brestskie-aktivisty-na-protiyazhenii-protesta-tsifry-i-fakty/>.

⁷⁰ <http://ecohome-ngo.by/sbor-sredstv-na-oplatu-shtrafov-brestskim-aktivistam/>.

⁷¹ International Federation for Human Rights, "Belarus: arbitrary arrest of several environmental rights defenders in Brest", 15 May 2020.

⁷² Viasna, "Pavel Sapelka: 'Punishment under article 411 of the Criminal Code is arbitrary deprivation of liberty'", 25 March 2015.

administration in the application of disciplinary measures.⁷³ Disciplinary offences should be considered within the framework of the application of disciplinary measures, as the gravity of the penalty under article 411 is not proportional to the gravity of such offences and such offences do not pose any threat to society.

75. Another concern is that the legislation of Belarus does not contain an exhaustive list of conduct that constitutes a disciplinary offence, in contravention of the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

III. Conclusions and recommendations

76. **The Special Rapporteur reiterates her regret regarding the continuous policy of non-engagement with the mandate and hopes that the Government of Belarus will reconsider this position. Engagement with the mandate is a real opportunity for the Government to show its willingness to reflect on human rights issues and engage with United Nations special procedures with a view to improving the human rights situation.**

77. **The Special Rapporteur regrets the lack of meaningful progress towards the protection of human rights in Belarus. However, the Special Rapporteur welcomes the Government's engagement with the Senior Human Rights Adviser of the Office of the United Nations High Commissioner for Human Rights based in Minsk and the wider United Nations family on human rights matters in Belarus. The Special Rapporteur encourages the Government to continue its engagement with the United Nations system on the issue of drug policy. The Special Rapporteur commends the engagement of the Government with international human rights mechanisms and hopes that it will fulfil its commitment to meaningful, constructive engagement in practice.**

78. **Most of the recommendations made in the previous reports of the Special Rapporteur remain valid.**

79. **The Special Rapporteur further recommends that the Government of Belarus:**

(a) **Establish an independent judicial council for the impartial selection, promotion and disciplining of judges, in line with the provisions of the Basic Principles on the Independence of the Judiciary;**

(b) **Ensure security of tenure for judges, which is essential for them to be able to perform their duties independently, without any improper influences, inducements, pressure, threats or interference;**

(c) **Ensure that prosecutors can perform their duties without undue interference from the executive branch, in line with the Guidelines on the Role of Prosecutors;**

(d) **Sensitize judges and prosecutors of the concept of judicial independence, its values and principles, and provide them with adequate training to that end;**

(e) **Ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference, and that lawyers are not subjected to, or threatened with, prosecution or**

⁷³ Human Rights House Foundation, "Article 411 is a new way to hold political prisoners behind bars", 3 April 2015.

administrative, economic or other sanctions for any action taken in accordance with internationally recognized professional duties, standards and ethics;

(f) Review regulations and practices regarding the licensing and monitoring of lawyers' work, ensuring the full independence of bar associations and lawyers and their effective protection against any form of undue interference or retaliation in connection with their professional activities;

(g) Lift any restrictions on the freedom of expression of lawyers;

(h) Ensure that lawyers can form self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity;

(i) Establish a comprehensive system of juvenile justice with specialized courts and procedures and trained judges, lawyers and law enforcement professionals;

(j) Ensure, in law and in practice, the provision of independent and high-quality legal aid to children accused of, or recognized as, having infringed criminal law from the beginning of legal proceedings;

(k) Ensure the participation of children's legal guardians, teachers, psychologists and relevant authorities from the beginning of legal proceedings;

(l) Ensure respect for the principle of the presumption of innocence, in particular in cases of children in conflict with the law;

(m) Promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, as a priority, the use of non-custodial sentences, such as probation or community service, in line with the principle of the best interests of the child;

(n) Ensure that deprivation of liberty is used as a measure of last resort and for the shortest possible period of time and that it is regularly reviewed with a view to its withdrawal;

(o) In cases in which the detention of children is unavoidable, ensure that children have access to high-quality health care, including adequate hygiene, food and nutrition and medical services, and to education, and are not subjected to forced labour, in line with international human rights standards;

(p) During the COVID-19 pandemic, introduce a moratorium on children entering detention, implement alternatives to detention and release from detention facilities all children who can be safely released and do not pose a threat to society;

(q) Bring administrative detention laws and practices into line with article 9 of the International Covenant on Civil and Political Rights, taking into account general comment No. 35 (2014) of the Human Rights Committee on article 9 (Liberty and security of person);

(r) Ensure that the principles of legality and proportionality are strictly observed in any decisions restricting the right to liberty and security of individuals and that due process rights are fully respected;

(s) Put an end to the judicial harassment of human rights defenders, journalists, bloggers and other members of civil society, and guarantee that their rights to freedom of expression and peaceful assembly are respected at all times, especially in the lead-up to the elections;

(t) **Ensure that human rights defenders, journalists, bloggers and other members of civil society receive a fair trial before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights;**

(u) **Ensure that human rights defenders, journalists, bloggers and other members of civil society can operate in an enabling environment and carry out their legitimate activities without fear of reprisals, threats, harassment or criminalization of any kind;**

(v) **Repeal from the Criminal Code article 411, by which the duration of the sentence for disobeying the administration of a correctional facility can be extended indefinitely, and elaborate an exhaustive list of conduct constituting disciplinary offences in prisons.**
