



BELARUS: SERIOUS HUMAN RIGHTS CONCERNS PERSIST

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 36TH SESSION OF THE UPR WORKING GROUP, MAY 2020

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INTERNATIONAL**



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INTRODUCTION

This briefing was prepared for the Universal Periodic Review (UPR) of Belarus in June 2020.

In it, Amnesty International evaluates the implementation of recommendations made to Belarus in its previous UPR. The organisation also presents a summary of its vision of the human rights situation on the ground in Belarus. It specifically reiterates its longstanding concern about the continued use of the death penalty and calls for an immediate moratorium and an end to inhumane treatment of families of the convicted and executed persons. It also highlights other long-standing concerns about Belarus's consistent failure to abide by its obligations under international human rights law, including with regards to freedom of expression, association and peaceful assembly, juvenile justice and fair trials, and discrimination, amongst other human rights.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second UPR in May 2015, Belarus accepted 152 recommendations in full, six recommendations in part, and rejected 101 of the 259 recommendations made to it by other states.¹

DEATH PENALTY

Most prominently, Belarus rejected all the recommendations calling for the establishment of a moratorium on the death penalty, as a pathway towards its abolition.² These included recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights,³ and Protocols No. 6 and No. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,⁴ and to provide the families of the condemned the

¹ Report of the Working Group on the Universal Periodic Review, Belarus, A/HRC/30/3, and Report of the Working Group on the Universal Periodic Review, Belarus, Addendum, A/HRC/30/3/Add.1.

² A/HRC/30/3, recommendations 129.31 (Uruguay), 129.32 (Sweden), 129.34 (Brazil), 129.35 (Costa Rica), 129.36 (France), 129.38 (Holy See), 129.39 (Ireland), 129.40 (Lithuania), 129.41 (Montenegro), 129.42 (Norway), 129.43 (Netherlands), 129.44 (Portugal), 129.45 (Sierra Leone), 129.46 (Spain), 129.47 (Italy), 129.48 (Slovenia), 129.49 (Australia), 130.1 (Namibia), 130.6 (Luxembourg), 130.7 (UK), 130.8 (Austria).

³ A/HRC/30/3, recommendations 129.44 (Portugal), 129.48 (Slovenia), 129.49 (Australia), 129.34 (Brazil), 130.1 (Namibia), 130.2 (Paraguay), 130.3 (Sweden), 130.4 (Italy), 130.5 (Finland), 130.6 (Luxembourg), 130.7 (UK), 130.8 (Austria).

⁴ A/HRC/30/3, recommendation 130.5 (Finland).

chance to say goodbye,⁵ and to notify them of the date of execution and burial site.⁶ However, Belarus supported recommendations calling on it to revitalize discussions within the parliamentary working group on the death penalty and ensure that the minimum standards are applied pending an eventual moratorium.⁷ Amnesty International welcomes work by the Parliamentary Working Group on the Death Penalty (recently renamed the Parliamentary Working Group on Studying Abolition of the Death Penalty) to raise awareness of the issue of the death penalty in the regions, in collaboration with external experts including Amnesty International, and looks forward to its reformation in the near future.

NON-DISCRIMINATION

Belarus accepted in part the recommendations on adopting a comprehensive anti-discrimination legislation⁸ and accepted a recommendation to adopt measures to combat discrimination faced by persons belonging to Roma communities,⁹ but considered that it had already implemented these fully or partly. However, to date there is no anti-discrimination law and discrimination against the Roma community and other vulnerable minorities continues.

Belarus also accepted recommendations to strengthen the measures aimed at reducing cases of discrimination on the grounds of race,¹⁰ disability,¹¹ and gender.¹² While Belarus' support of these recommendations is welcome, its rejection of recommendations to adopt specific legislation to prevent discrimination on the grounds of sexual and gender identity is a particular concern,¹³ as is its rejection of recommendations to adopt specific and comprehensive anti-discrimination legislation¹⁴ and to end harassment of civil society organizations defending the rights of lesbian, gay, bisexual, transgender and intersex groups.¹⁵

MEDIA FREEDOM

Belarus accepted recommendations to improve freedom of the media and press, ensure the safety of journalists, and investigate reports of violence against them.¹⁶ Yet Belarus simultaneously rejected recommendations to amend the Law on Mass Media in line with international standards, to enable journalists and civil society to carry out their activities freely and safely, and to remove

⁵ A/HRC/30/3, recommendation 129.50 (Spain).

⁶ A/HRC/30/3, recommendation 130.7 (UK).

⁷ A/HRC/30/3, recommendations 129.29 (Belgium), 129.30 (Ecuador), 129.33 (Rwanda).

⁸ A/HRC/30/3, recommendations 129.25 (Slovakia), 129.26 (Chile).

⁹ A/HRC/30/3, recommendation 128.1 (Finland).

¹⁰ A/HRC/30/3, recommendation 127.50 (Argentina).

¹¹ A/HRC/30/3, recommendation 127.109 (Senegal).

¹² A/HRC/30/3, recommendations 129.24 (Uruguay), 129.27 (Serbia), 127.40 (Viet Nam), 127.41 (Bahrain), 127.42 (Bolivia), 127.43 (Lithuania), 127.44 (Pakistan), 127.45 (Namibia), 127.46 (State of Palestine), 127.47 (Thailand), 127.48 (Philippines), 127.49 (Syria), 127.83 (Nicaragua).

¹³ A/HRC/30/3, recommendation 129.28 (Spain).

¹⁴ A/HRC/30/3, recommendations 129.24 (Uruguay), 129.28 (Spain).

¹⁵ A/HRC/30/3, recommendations 129.73 (Denmark), 129.81 (Canada).

¹⁶ A/HRC/30/3, recommendations 127.79 (Slovenia), 129.60 (Senegal), 129.67 (Italy), 129.69 (Romania), 129.75 Austria, , 129.79 Japan.

the accreditation requirement for journalists.¹⁷ Since the last review, Belarus introduced amendments to the Law on Mass Media which even more seriously curtail these freedoms, particularly in online fora.

HUMAN RIGHTS DEFENDERS AND NGOS

Belarus accepted recommendations to allow human rights defenders to exercise their rights to freedom of expression, assembly and association without fear of unsubstantiated prosecution,¹⁸ and to comply with the provisions of the United Nations Declaration on Human Rights Defenders.¹⁹ Nonetheless, human rights defenders continue to be obstructed from enjoying these freedoms.

Belarus rejected recommendations to halt and prevent threats, intimidation and harassment against, as well as arbitrary detention of, journalists, human rights defenders, NGOs and opponents of the government.²⁰ Civil society continues to operate in a context of obstruction and persecution. Moreover, by refusing to end its surveillance of the internet, despite recommendations made by the OSCE representative on Freedom of the Media, Belarus continues to obstruct freedom of expression on the internet.²¹

FREEDOM OF ASSOCIATION

Belarus accepted or accepted in part recommendations to create and maintain a safe and enabling environment for civil society by agreeing to simplify registration processes of civil society associations, organizations and foundations.²² However, it rejected the recommendations to remove obstacles to the official registration of NGOs, to lift the prohibition on NGOs receiving foreign funds, and to amend the Law on Public Association.²³ Despite rejecting recommendations to abolish article 193-1 of the Criminal Code which criminalizes activities by non-registered organizations²⁴, it subsequently did so.

FREEDOM OF PEACEFUL ASSEMBLY

Belarus accepted recommendations to respect the right to peaceful assembly and peaceful protest, and to ensure that peaceful demonstrators are not imprisoned, harassed or ill-treated by the police.²⁵ Despite this, peaceful protestors have been consistently targeted including most recently following protests at the end of 2019 which have seen over 150 people arrested and penalised with lengthy (in some cases repeated) detention and heavy fines.²⁶ Belarus rejected recommendations to amend the Law on Mass Events, specifically rejecting the call to eliminate the requirement to request a license prior to the organization of assemblies and public

¹⁷ A/HRC/30/3, recommendations 129.57 (Netherlands), 129.58 (Norway), 129.59 (Poland), 129.65 (France).

¹⁸ A/HRC/30/3, recommendations 129.61 (Slovenia), 129.63 (Croatia).

¹⁹ A/HRC/30/3, recommendation 129.78 (Hungary).

²⁰ A/HRC/30/3, recommendations 129.76 (Uruguay), 129.77 (Greece).

²¹ A/HRC/30/3, recommendations 129.56 (Sweden), 129.77 (Greece).

²² A/HRC/30/3, recommendations 129.72 (Czech Republic- accepted in part), 129.80 (Ireland).

²³ A/HRC/30/3, recommendations 129.71 (United States of America), 129.72 (Czech Republic), 129.73 (Denmark), 129.74 (Lithuania), 129.83 (Poland), 129.86 (Switzerland), 129.88 (Canada).

²⁴ A/HRC/30/3, recommendations 129.71 (USA), 129.73 (Denmark), 129.74 (Lithuania)

²⁵ A/HRC/30/3, recommendations 129.62 (Costa Rica), 129.81 (Canada), 129.90 (Denmark).

²⁶ Amnesty International, *Belarus must end repression against peaceful protestors*, 6 February 2020, Index: EUR 49/1773/2020, <https://www.amnesty.org/en/documents/eur49/1773/2020/en/>

demonstrations, and to abolish the requirement for the applicants to pay for the maintenance of public order.²⁷

Political prisoners

Belarus rejected the numerous recommendations to immediately and unconditionally release all political prisoners (including prisoners of conscience), to lift their travel bans, and to ensure their full rehabilitation.²⁸ Belarus also rejected calls to end the practice of arbitrary detention as a form of persecuting civic and political dissent and to investigate reports of mistreatment of political prisoners by law enforcement personnel.²⁹ The persecution of civil society activists and political opponents has continued, including through periods of arrest or imprisonment as a direct tool of obstruction.

THE HUMAN RIGHTS SITUATION ON THE GROUND

DEATH PENALTY

Belarus remains the only country in Europe and the former Soviet Union which is still executing prisoners. The secrecy surrounding death sentences persists with no final meeting granted to relatives. The time and date of execution is not given and bodies are not handed over to relatives for burial or the burial site of executed prisoners disclosed.

Despite continuing dialogue between the international community and Belarus on the issue of a moratorium on executions as a first step towards abolition, in 2019 Belarus executed at least three men and sentenced three others to death. In 2020, Belarus has already sentenced two young men to death. While there were no executions in 2015, there have been at least 13 executions since then.

News of the execution of Aliaksandr Zhylnikau emerged on 13 June 2019. His lawyer was informed that Aliaksandr Zhylnikau had “served his sentence.” At the time of writing, there was still no official information regarding the fate of his co-defendant, Viachaslau Sukharko, but it is believed he was also executed. Both men had been sentenced to life imprisonment in March 2017 for the murder of three people in December 2015. Following a retrial, at the request of the Prosecutor, in January 2018 they were sentenced to death. The UN Human Rights Committee had requested a stay of execution for Aliaksandr Zhylnikau while it considered his case, which was registered on 24 December 2018. Since 2010, Belarus has ignored 13 such requests by the UN Human Rights Committee and executed prisoners whose cases were under consideration.

On 9 January 2019, Aliaksandr Asipovich was sentenced to death by the Mahiliou Regional Court, after being found guilty of killing two women in July 2018. The sentence was upheld by the Supreme Court in May 2019 and he was executed on 17 December 2019.

²⁷ A/HRC/30/3, recommendations 129.91 (Mexico), 129.92 (Croatia), 129.93 (Germany).

²⁸ A/HRC/30/3, recommendations 130.39 (Lithuania), 130.40 (Luxembourg), 130.41 (Estonia), 130.42 (Slovenia), 130.43 (Australia), 130.44 (Poland), 130.46 (Norway), 130.48 (Czech Republic).

²⁹ A/HRC/30/3, recommendations 130.45 (Brazil), 130.47 (Canada), 130.48 (Czech Republic).

There are currently at least four people on death row. On 30 July 2019, Viktor Paulau was sentenced to death by the Viciebsk Regional Court, after being found guilty of killing two elderly women in December 2018. The sentence was upheld by the Supreme Court on 12 November 2019.

On 25 October 2019, Brest Regional Court sentenced Viktor Serhil to death for the murder of a minor. It was the first death sentence passed in the Brest region in ten years. His Supreme Court appeal was pending at the time of writing.

On 10 January 2020, two brothers, Illia and Stanislau Kostseu, aged 21 and 19 respectively, were sentenced to death by the Mahiliou Regional Court after being found guilty of the murder of their former teacher. Their case will be appealed at the Supreme Court.

FREEDOM OF EXPRESSION AND MEDIA FREEDOM

Freedom of expression continues to be severely restricted in Belarus, in both law and in practice. Government critics and other dissenting voices who attempt to exercise this right, face harassment and other reprisals from the authorities, including administrative and criminal proceedings.

Changes to the Law on Mass Media entered into force in December 2018, considerably tightening state control over online media. Both registered and unregistered online media outlets are now obliged to record the names of people who submit comments, such as those under articles or in online forums (thus infringing on people's right to anonymity), and to disclose the relevant information to the authorities on request. The owners of registered online media outlets are now legally responsible for the content of the comments. This has encouraged a culture of intense surveillance, further curtailing open debate and freedom of expression.

Despite a hiatus in the harassment of journalists which coincided with the European Games in Minsk in June, the authorities continue to impose heavy fines on freelance journalists cooperating with international media outlets, with reference to Article 22.9 of the Code of Administrative Offences ("unlawful creation and dissemination of mass media production").

In October 2019, Minsk Regional Court released former prisoner of conscience, Dzmitry Paliyenka who had been in detention since March 2019, but sentenced him to ten months of restricted freedom (parole-like non-custodial sentence). Dzmitry Paliyenka was violently detained in his home on 20 March 2019 and in April 2019 charged under three articles of the Belarusian Criminal Code. Two charges related to graffiti which he was accused of spraying (Article 341 "damage to public property" and Article 130 part 1 "inciting public enmity") and one charge related to an alleged incident of assault (Article 339 part 3 "especially malicious hooliganism"). While in pre-trial detention, two further charges were brought against him, including "publicly insulting a state official", under Article 369, and a second count of "damage to public property". Amnesty International claimed that while there were serious concerns regarding grounds for the charge of "especially malicious hooliganism", all other charges against him were illegitimate and related to his right to freedom of expression. On the first day of the trial, the prosecutor dropped those latter charges. The judge also reversed a decision to hold the trial behind closed doors following significant opposition from human rights defenders and civil society. There were concerns for Dzmitry Paliyenka's treatment in pre-trial detention, consistent with the authorities' harassment of him, including arbitrary placement in solitary confinement and failure to deliver to him parcels and post.

FREEDOM OF PEACEFUL ASSEMBLY

The right to freedom of peaceful assembly remains unduly and severely restricted in Belarus, in law and in practice, and those who attempt to exercise it face arrest by police (often using excessive force), heavy fines and arbitrary detention, and in some cases imprisonment.

Changes to the Law on Mass Events entered into force in January 2019 and established new procedures and fees for organisers who are obliged to pay for policing, medical and clear-up costs of any public event. This serves as a direct obstacle to organisations and individuals who cannot afford such expenditure for exercising their right to peaceful assembly. The amendments also extended the so-called notification procedure to certain, previously not requiring prior approval, areas (designated typically in remote locations), while requests for assemblies in non-allocated areas are routinely refused or delayed.

The unofficial Freedom Day celebrations in March 2019, marking the 101st anniversary of the proclamation of the short-lived Belarusian People's Republic, were severely restricted. An Amnesty International representative witnessed heavy policing on 25 March 2019 around Kastryčnickaja Square where independent media and civil society were prevented from holding a peaceful commemorative event. At least 15 people were detained in unmarked police vehicles, including two opposition politicians and four well-known musicians who tried to play on the street. Others were detained just for carrying flowers or holding the red and white flag of the Belarusian People's Republic. An pre-approved event in Kyiv Park on 24 March 2019 also resulted in peaceful participants being detained.

Article 23.34 of the Code of Administrative Offences (“violating the rules on organising and holding mass events”) continues to be used to prevent people from exercising their right to peaceful assembly. Most recently, according to local human rights defenders, over 150 people have been prosecuted and fined under articles of the Code of Administrative Offences, including Article 23.34, following their peaceful participation in protests in November and December 2019. Protestors have been fined, up to over US\$600, and/or been sentenced to terms of administrative detention ranging from five to 15 days. Prominent figures, such as the well-known Belarusian blogger, Dzmitry Kazlou, or the opposition politician, Pavel Sevyaryniets, have been given a number of consecutive sentences of 15 days' administrative detention. Some of those who were detained, were arbitrarily denied access to their legal representatives for days following their arrest despite numerous requests.

FREEDOM OF ASSOCIATION

Obstacles to registering organisations perceived to threaten the status quo remain in place with applications from non-governmental organisations turned down for arbitrary reasons, often repeatedly.

The welcome repeal of Article 193.1 of the Belarusian Criminal Code, which criminalised participation in the activities of an unregistered organisation, was tainted by the adoption of Article 23.88 of the Belarusian Code of Administrative Offences, according to which, participants can be fined up to 1,275 Belarusian roubles (US\$ 615). Such fines can be decided by an official of the Ministry of Internal Affairs, which can lead to further abuses.

JUVENILE JUSTICE AND FAIR TRIALS

Thousands of teenagers and young people are serving lengthy prison sentences for alleged minor, non-violent drug-related offences committed when they were minors. In cases brought to Amnesty International's attention, children as young as 16 have been sentenced to between 8-10 years' imprisonment under Article 328 of the Belarusian Criminal Code for “illicit trafficking in narcotic and psychotropic substances, their precursors and analogues”. They were found guilty of

being part of a group although the authorities failed to identify or prosecute any other members of “the group”.

There have been consistent allegations of human rights violations, including excessive use of force by law enforcement officials at the point of arrest or detention, the use of unsubstantiated or disproportionately harsh charges against suspects, violations of their right to a fair trial, failure to inform their legal guardian and lawyer following their arrest, deprivation of liberty and lengthy prison sentences, and discriminatory treatment of children and young people imprisoned on charges under Article 328.

DISCRIMINATION

Belarus lacks effective legal mechanisms and specific and comprehensive legislation to ensure equality and protection against discrimination. General legal provisions on the principles of equality and non-discrimination do not provide for effective implementation measures. Vulnerable minority groups continue to face discrimination by the authorities leading to a climate of fear and self-censorship.

ROMA

On 16 May 2019, following the suspected murder of a traffic police officer, the authorities in Mahiliou brutally raided a number of Roma communities using excessive force to detain dozens of women and men. According to local human rights defenders, over 50 men were arbitrarily detained for three days without criminal charges being brought against them; The police officer’s death was later attributed to suicide. Despite an official apology to the Roma communities, to date no law enforcement officers have been prosecuted for using excessive use against the Roma.

SEXUAL AND GENDER IDENTITY

The lesbian, gay, bisexual and transgender (LGBTI) community continues to face harassment as well as inflammatory and discriminatory rhetoric from state officials.

In May 2019, the Ministry of Internal Affairs published an article on its website entitled *Sexual violence against children as a threat to national security*. In it, a ministry spokesman referred to “the destructive impact of the views and ideas of the LGBT community” continuing that “[a]lthough science has not established a direct relationship between paedophilia and same-sex sexual relations, the numbers speak for themselves”.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF BELARUS TO:

THE DEATH PENALTY

- Immediately commute all death sentences to terms of imprisonment and establish an official moratorium on executions with a view to abolishing the death penalty;

- Lift all secrecy surrounding the use of the death penalty and inform the families of those previously executed about the location of their graves, the date of the execution, and offer the families the possibility to receive additional details about the execution, if they so desire;
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

FREEDOM OF EXPRESSION AND MEDIA FREEDOM

- Respect the right to freedom of expression, and lift all undue restrictions in law and in practice, in particular all provisions in the Law on Mass Media that violate Belarus' obligations under international human rights law;
- End reprisals against government critics and other dissenting voices and, in particular, administrative and criminal proceedings initiated against individuals in connection with their attempts to exercise their right to freedom of expression, and where these proceedings have resulted in conviction and imprisonment, quash the conviction and release them immediately and unconditionally;
- End harassment and other reprisals against free media outlets and individual journalists;
- Abolish the provision requiring freelance Belarusian journalists contributing to foreign-based media to obtain accreditation from the Ministry of Foreign Affairs;
- Repeal or review the provision in the Law on Mass Media under which the Ministry of Information can compel internet providers to block access to specific online resources without judicial review.

FREEDOM OF PEACEFUL ASSEMBLY

- Fully respect the right to freedom of peaceful assembly;
- Bring legislation in line with Belarus's international commitments, and in particular abolish the unduly restrictive rules and regulations governing public assemblies, including the requirement to seek prior express permission for such events from the authorities, and the imposition of fees for policing, medical and clean-up costs on the organisers;
- End all administrative and criminal proceedings that have been initiated against individuals in connection with their attempts to exercise the right to freedom of peaceful assembly, and where these proceedings have resulted in conviction and fines and/or imprisonment, quash the conviction, drop the fines and release them immediately and unconditionally.

FREEDOM OF ASSOCIATION

- Bring national legislation and practice on freedom of association into full compliance with its international obligations and, in particular, repeal Article 23.88 of the Code of Administrative Offences;

- Register those political parties and non-governmental organisations that have been arbitrarily denied official recognition.

JUVENILE JUSTICE AND FAIR TRIALS

- Reform the juvenile justice system to ensure that children's rights are fully respected in line with international human rights law and standards;
- Respect all fair trial guarantees of children accused of having committed a criminal offence, including drug-related offences, and guarantee the right to be presumed innocent until proven guilty, the right to a fair trial which takes account of their age and personal circumstances, and the right not to be compelled to confess guilt;
- Immediately release all prisoners convicted solely for their use or possession of drugs for personal use, or for other minor, non-violent drug offences allegedly committed when they were children – by quashing, commuting or reducing existing convictions and/or sentences – and ensure and facilitate their full social reintegration, including by clearing their criminal record.

DISCRIMINATION

- Develop and adopt a comprehensive anti-discrimination law including on the grounds of sexual orientation and gender identity, with the involvement of a wide range of stakeholders, including civil society representatives;
- Ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination.

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IS A GLOBAL MOVEMENT
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WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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