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Joint written submissions:

**Freedom of associations and legal conditions for
civil society organizations (CSOs) in Belarus**

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Prepared by coalition of national CSOs:



Assembly of Pro-Democratic NGOs of Belarus -

The largest umbrella association of CSOs and civil initiatives in Belarus that promotes development of democracy and rule of law. The Assembly was founded in 1997 and now it unites more than 300 organizations. State three times refused to register the Assembly and now it is registered abroad in neighboring Lithuania.

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Legal Transformation Center –

noncommercial organization, whose aim is improvement of law culture, organization of educational, analytical and research activity in the law field. The organization is registered and based in Minsk, Belarus.

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1. Basic comments

1.1. In the first round of the UPR (2010) a range of recommendations on improving observance of freedom of association and legal conditions for activity of civil society organizations (CSOs) were brought forward to Belarus. Some of these recommendations were recognized by Belarus as acceptable (recommendations of Belgium, Bolivia, Canada, Indonesia, Lithuania, the Netherlands, Norway, Poland, Spain, Switzerland).

1.2. Despite that, no changes for better have been made in this field: legal conditions for implementation of freedom of association and CSOs activity have remained among the worst in the region. Restrictions of freedom of association, observed in the first cycle of the UPR, have remained. At the same time, in the period of 2010-2014 new legal acts and laws, which additionally restrict freedom of association, have been adopted (see Section 2).

1.3. Main existing restrictions are the following: a) procedure for state registration of public associations, political parties, their local branches and foundations is extremely complicated and burdensome, it provides the possibility for arbitrary refusal to register any newly-established organization; b) ban on activity of various forms of unregistered CSOs has been imposed, for violation of which there is a criminal responsibility with the punishment of imprisonment for the terms up to 2 years; c) legislation stipulates prominent restrictions for receipt of financing by CSOs both from internal and foreign sources; d) CSO's right to holding of peaceful assemblies¹ and freedom of expression and opinions² are significantly restricted.

1.4. Article 36 of the Constitution of Belarus guarantees freedom of association for everybody. Belarus has signed the International Covenant on Civil and Political Rights. However, Belarusian government doesn't execute the United Nations Human Rights Committee's recommendations on individual appeals of the members of the liquidated organizations and public associations, which have been refused registration.

1.5. Belarus is not a member of the Council of Europe and, consequently, doesn't accept European standards for freedom of association and its restriction, stipulated in the European Convention on Human Rights and developed in the decisions of the European Court of Human Rights.

¹ CDL-AD(2012)006-e Joint opinion on the law on mass events of the Republic of Belarus adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 march 2012) <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282012%29006-e> and «Afterword. Square 2010 through the Eyes of Belarusian Human Rights Defenders» by Legal Transformation Center (2012) http://issuu.com/lawtrend/docs/afterword_square_2010_trough_the_eyes_of_belaru; «Administrative detentions and court procedures: analysis of the law enforcement practice in the context of freedom of assembly» by Legal Transformation Center (2013) http://issuu.com/lawtrend/docs/administrative_detentions_and_court_procedures.

² «Mass Media in Belarus – 2013. Summary Analytical Review» by Belarusian Association of Journalists http://www.baj.by/sites/default/files/monitoring_pdf/brief_2013_mass_media_in_belarus_en.pdf

2. Amendments to the legislation, relating to CSOs activity

2.1. The law “On introduction of additions and amendments to certain laws of the Republic of Belarus on the issues of political parties’ and other public associations’ activity”, which introduced amendments to the law “On public associations”, was adopted on October 2, 2013 and came into force on February 20, 2014. The law mitigated the criteria for territorial representation of founders while establishing national and local public associations (the requirement for the total number of founders was preserved: 50 founders for national public associations and 10 founders for local ones). The law also slightly reduced the list of documents, which are to be submitted for registration, specified some issues of registration of international public associations’ branches, and introduced other improvements of technical character.

2.2. At the same time, the mentioned amendments to the law “On public associations” introduced additional ground for liquidation of a public association by court: public association’s failure to submit the required by the legislation annual reports to the registering body (the Ministry of Justice and its regional branches) within 3 years in succession.

2.3. In autumn 2011 the Article 369-2 “Receipt of foreign gratuitous aid in violation of the legislation of the Republic of Belarus” was introduced to the Criminal Code. It imposed criminal responsibility for the violation of the procedure for receipt of donations from abroad³. Article 369-2 stipulates that receipt, storage and relocation of foreign gratuitous aid for conduct of extremist activity and other actions, which are banned by the legislation of the Republic of Belarus, or financing of political parties, unions (associations) of political parties, preparation or holding of elections, referenda, recall of a deputy, a member of the Council of Republic of the National Assembly of the Republic of Belarus, organization or holding of meetings, rallies, street processions, demonstrations, pickets, strikes, production or distribution of agitation materials, holding of seminars and other forms of political and mass agitation work with the population, conducted within a year after imposition of administrative penalty for the same violations entails criminal responsibility with possible punishment in the form of imprisonment for the terms up to 2 years.

2.4. In January 2013, the ban to be a founder or a head of certain forms of CSOs was introduced in respect of individuals, who are on the KGB or Ministry of Internal Affairs preventive books⁴. Legislation on preventive books provides state bodies with the opportunity to arbitrarily put citizens on the books, and the established judicial order for

³ «Analysis of Amendments Initiated to be Introduced into the Legislation of the Republic of Belarus Analytical Note by Belarusian Human Rights Defenders» October 17, 2011 by The Assembly of Pro-Democratic NGOs, Republican Human Rights Public Association “Belarusian Helsinki Committee”, Human Rights Center “Viasna”, Legal Transformation Center. <http://www.belhelcom.org/en/node/14434>

⁴ What Decree №2 Mean for Non-Commercial Organizations? <http://belngo.info/2013.what-decree-2-mean-for-non-commercial-organizations.html>

appeal against such decisions is not an effective means for restoration of the violated rights (courts never satisfy such claims).

2.5. In summer 2013, on the basis of Article 9.28 of the Code of Administrative Offences, administrative responsibility in the form of a fine was introduced for conduct of opinion polls by organizations, which haven't received special accreditation from the commission of the State Academy of Sciences of Belarus⁵.

3. State registration of different forms of CSOs

3.1. According to the Ministry of Justice's data, for July 1, 2014 there were 15 political parties, 37 trade unions, 2567 public associations, 33 unions of public associations, 148 foundations registered in Belarus.

3.2. According to the Ministry of Justice's data, in 2013 institutions of justice registered 70 new public associations, 1 union of public associations, 11 foundations. The number of registered within a year public associations and foundations decreased in 2013 in comparison with rates of the previous years and for public associations has been the smallest since the year 2005⁶. A half of the registered in 2013 public associations has a sport character of activity, which corresponds with the general trend of registrations.

3.3. The order for registration of the majority of CSO forms remained difficult for founders of new associations (especially for political parties). There were set tough criteria, which are to be met for registration of an association: there must be not less than 50 founders for registration of a national association, who represent the majority of country's regions and Minsk, any CSO must have a juridical address in a nonresidential premise in order to be registered, state fee for registration of a national public association is twice as high as for commercial organizations, etc.

3.4. Wordings of the norms on possible grounds for refusals to register public associations are very blurred, which provides the Ministry of Justice's bodies with the possibilities to arbitrarily refuse registration on the basis of technical abnormalities and insignificant drawbacks in the execution of documents. In practice, grounds for decisions to refuse to register an association are failure to state working or home phone number, mistake in the date of birth of one of the founders, organization founders' having previous administrative penalties, execution of the documents in a wrong font size, etc. They also practice refusals to register CSOs on the grounds that they earlier acted as non-registered organizations. As a result, in the period of 2010-2014 state

⁵ The "house of representatives" has introduced fines for opinion polls on "elections" and "referendums".
<http://charter97.org/en/news/2013/6/28/71395/>

⁶ Freedom of Association and Legal Status of Non-Commercial Organizations in Belarus in 2013 (Assembly of Pro-Democratic NGOs of Belarus and Legal Transformation Center): <http://www.lawtrend.org/freedom-of-association/zakonodatelstvo-ob-nko-analitika/monitoring-pravovogo-polozheniya-nko-i-svobody-assotsiatsij-v-belarusi>

bodies refused to register dozens of associations, including human rights ones⁷. In particular, in July 2014 public association “PACT”, established in order to further execution of the United Nations Human Rights Committee’s recommendations, developed on the basis of Belarusian individual appeals, was refused to be registered.

3.5. Conditions for establishment of political parties in practice don’t provide the possibility to exercise the right to found new political parties. The last case of registration of a new political party was in the year 2000⁸. In the period of 2010-2014 such political parties as the Belarusian Christian Democracy⁹, the Belarusian Communist Party of Workers¹⁰ and local branches of the BPF Party¹¹ were repeatedly refused to be registered.

3.6. Stipulated by the law possibility of judicial appeals against refusals in registration doesn’t serve in practice as a means of restoration of the right to association, as courts just don’t satisfy claims against decisions to refuse to register CSOs¹², made by institutions of justice. In addition, national associations are not provided with the opportunity of cassation appeals against courts’ decisions to refuse registration.

3.7. The practice of liquidating CSOs by means of registering bodies’ submitting actions to courts hasn’t been as widespread as in the beginning of 2000-s, but is still used. In particular, in 2013 the human rights institution “Platform”, which dealt with protection of prisoners’ rights, was liquidated by the court’s decision.

3.8. There is a stable trend in the civil society structure, which is the increase of the fraction of CSOs, which are registered in the form of institutions and are not based on the membership.

3.9. As a result of such a state policy, public activity is realized in non-organizational forms, such as informal initiatives and projects. Many new initiatives, which are successful in their activity, very often don’t seek organizational growth, as they realize the obstacles, which are inherent to the stage of transformation into a full-fledged CSO.

3.10. As a result of tough conditions, which make it difficult to get a registered status of a legal entity in Belarus, many newly-established CSOs are forced to seek registration abroad, in neighbouring countries (Lithuania, Poland, etc.)¹³.

⁷ In particular, see «Freedom of Association and the Legal Status of Non-Profit Organizations in Belarus in 2012» published by the Assembly of Pro-Democratic NGOs and the Legal Transformation Center.

<http://belngo.info/2013.freedom-of-association-and-legal-status-of-non-commercialorganizations-in-belarus.html>

⁸ See official web-site of the Ministry of Justice http://minjust.by/ru/site_menu/about/struktura/obschestv/registr/politpart

⁹ The Belarusian Christian Democracy party has been denied state registration for the fourth time in January 2012

<http://bchd.info/index.php?newsid=6119>

¹⁰ <http://www.interfax.by/news/belarus/1082336>

¹¹ BPF Hrodna office denied registration <http://spring96.org/en/news/55921>

¹² «Monitoring freedom of association and the status of non-profit organizations in Belarus for the second quarter 2014» published by the Assembly of Pro-Democratic NGOs and the Legal Transformation Center.

<https://docs.google.com/file/d/0Bwh6rJZ1JOWsQmZTM1BzUGh2a28/edit>

¹³ Registration of Belarusian NGOs abroad: functions and types of non-profit outsourcing, Yury Chavusau. *Bell No. 4 (34)* http://www.eesc.lt/uploads/news/id495/Bell_2013_4%2834%29.pdf

4. Ban on activity of non-registered organizations

4.1. Since 2005, there has been Article 193-1 in the Criminal Code of Belarus, which stipulates that organization of activity or participation in the activity of a non-registered public association, political party, religious organization or foundation is punished with a fine, or arrest for the terms up to 6 months, or imprisonment for the terms up to 2 years. The Venice Commission of the Council of Europe “For Democracy Through Law” recognized existence of such an article as a violation of international standards of freedom of association¹⁴.

4.2. In the first round of the UPR Belarus received manifold recommendations to abolish Article 193-1 of the Criminal Code (including recommendations from Belgium, Czech Republic, France, Israel, the Netherlands, Poland, some of which were recognized by the government of Belarus as acceptable). However, this article hasn't been abolished so far¹⁵.

4.3. In the period of 2010-2014 new sentences under Article 193-1 of the Criminal Code of Belarus haven't been fixed, although in the period of 2005-2010 not less than 18 people were convicted under this article. However, from time to time criminal cases under this article are initiated in respect of heads of non-registered CSOs¹⁶.

4.4. State Prosecutor's Office and KGB (including regional offices of both services) regularly issue manifold official warnings about bringing members of non-registered associations to criminal responsibility (based on Article 193-1 of the Criminal Code of Belarus), in case they don't stop their public activity in the framework of public association or religious organization without state registration¹⁷. Legislation on press forbids the media to publish information about activity of any non-registered public associations.

4.5. Such a practice furthers latency of civil society structures – many of them don't advertise their work, trying to avoid situations, when certain public activity is associated with structures, which don't have state registration, as they are afraid of criminal punishment.

¹⁴ CDL-AD(2011)036-e. Opinion on the compatibility with universal human rights standards of article 193-1 of the criminal code on the rights of non-registered associations of the Republic of Belarus adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011)

<http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD%282011%29036-e>

¹⁵ «Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus» by September 2013 Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus 1 International Center for Not-for-Profit Law under Belarus Reforms and Media Assistance Program (BRAMA), p. 93

http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf

¹⁶ Shchuchyn resident faces criminal charges under Art. 193.1 <http://spring96.org/en/news/64021>

¹⁷ New Wave of Warnings Under Article 193.1 <http://belngo.info/2013.new-wave-of-warnings-under-article-193-1.html>

5. Conditions for financing CSOs

5.1. Necessity to get preliminary state's approval for the usage of foreign donations, as well as closed list of aims, at which internal corporate donations could be received, significantly restrict opportunities for receipt of financing by CSOs¹⁸, especially by human rights ones.

5.2. The system of state support of CSOs is extremely undeveloped in Belarus. It is based mainly on direct financing of several loyal to the state organizations (which means fully-controlled and governed by the state bodies) from national and local budgets, such as the Belarusian Republican Union of Youth, the Union of Women, the Association of Veterans. Legislation in a directive way determines the list of sport CSOs, which receive financial support from state-owned enterprises.

5.3. In early 2014 amendments to the legislation on social security came into force and social contracting mechanisms have been introduced. They allowed social CSOs to receive funds from the state budget for rendering of social services on the basis of competitive bidding. Emergence of the mechanism of distribution of state funds among CSOs on the basis of competitive bidding has been a positive innovation.

5.4. The order for receipt of foreign donations is regulated by the Decree of the President № 24. Foreign aid is subject to obligatory preliminary registration in the Department on Humanitarian Activity of the Administration of the President prior to its usage. In practice registration of foreign aid is of a selective character. Legislation determines the closed list of purposes, foreign aid is received for, which lacks purposes, connected with human rights protection. In autumn 2011 criminal responsibility for violation of the order for receipt and usage of foreign gratuitous aid was introduced (see point 2.3).

5.5. The Decree №24 extends the same permissive order, determined for foreign aid, on anonymous donations, regardless of the fact, that the donor could be an anonymous Belarusian citizen.

5.6. Internal donations from corporate donors (enterprises) are restricted with the targeted use. Legislation regulates the order for the grant of such donations and determines the closed list of possible purposes, which donations can be granted for. These purposes lack human rights activity, as well as many other areas of civil society structures' activity (gender equality, and environmental protection, etc.). Providing of resources for purposes, which are not included in the list, is possible only with the president's permission.

¹⁸ «Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus» by September 2013 Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Belarus 1 International Center for Not-for-Profit Law under Belarus Reforms and Media Assistance Program (BRAMA), p. 76
http://www.icnl.org/programs/eurasia/Belarus_Assessment%20of%20NGO%20Legislation.pdf

5.7. Public associations are banned to conduct their own entrepreneurial activity, they are deprived of the opportunity to receive funds on the basis of sell of their own goods, publications or rendering of services.

5.8. Deprivation of CSOs of the registered organization status leads to difficulties in receipt of funds for its activity. For example, on October 24, 2011 Ales Bialiatski, head of the Human Rights Center “Viasna” (deprived of registration by the court’s decision in 2003), was sentenced to imprisonment for the term of 4,5 years for non-payment of taxes from donations, which were used on human rights activity of Human Rights Center “Viasna”¹⁹. Ales Bialiatski released on amnesty on 21 June 2014²⁰.

6. Conditions for CSO participation in public dialogue

6.1. In the period after the UPR first round opportunities for CSO participation in public dialogue worsened. In September 2011 the public consultative council under the President Administration, which representatives of human rights and other CSOs participated in, was dissolved²¹.

6.2. There is a big number of public councils, established under various bodies of state authorities, in Belarus. At the same time, there is a lack of uniformity and systematization of the legal regulation²²: almost in every case regulation of each newly-established council is newly-created, without connection with the previous practice of work of this kind of bodies, there are no single standards for functioning of councils of various levels and under various state bodies, only few councils have their activity regulations. In the majority of cases members of councils are appointed by a state body.

6.3. Legislation doesn’t further CSO participation in development and discussion of normative legal acts drafts. Despite the fact that the procedure for preparation of the national plan of legislative activity foresees submission of proposals on initiation of adoption of laws by public associations (but not by other forms of CSOs), this procedure is in general closed and in practice doesn’t work due to the absence of access to information and general undemocratic political system. The procedure of public discussion of draft laws is initiated by the state very rarely. Despite the guaranteed by the Constitution access to information, only several CSOs are invited to participate in discussions of draft laws. Even the invited to discussions CSOs usually don’t receive the information, if their recommendations were taken into consideration.

¹⁹ Human Rights Council Working Group on Arbitrary Detention Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012 No. 39/2012 (Belarus)

<http://www.fidh.org/IMG/pdf/g1218314.pdf>

²⁰ See more at: <http://www.frontlinedefenders.org/AlesBialiatskireleased#sthash.itydUbgV.dpuf>

²¹ Makey dissolves Public Advisory Council http://naviny.by/rubrics/english/2011/09/23/ic_articles_259_175213/

²² Public Councils in Belarus: Analysis of Legal Regulations. Authors: Volha Smalianka, Yury Chavusau (in Russian). Supplements to this article contain the list of legislative acts, which regulate the mechanisms of holding of consultations in Belarus. <http://lawtrend.org/ru/content/nko/communitycouncils/OSRespublikaBelarus/>

6.4. Nonpublic character of discussions of draft laws, affecting CSOs, has remained. Despite the fact that the draft law of 2013 “On introduction of additions and amendments to certain laws of the Republic of Belarus on the issues of activity of political parties and other public associations” directly targeted non-commercial organizations, its development was conducted without broad discussions with them. Proposals on this draft law, which were submitted to the Parliament by the Legal Transformation Center, were recognized as unreasonable. The proposed on July 16, 2013 initiative of 25 CSOs about holding of special parliamentary hearings on the issues of improving legislation on CSOs was also declined²³.

6.5. In autumn 2013 the amendments to the Electoral Code, which significantly changed the election procedure, were adopted without preliminary publishing of the draft law and without discussions with political parties and CSOs²⁴.

6.6. Belarusian legislation stipulates a range of restrictions, relating to CSO advocacy activity. In particular, foundations can't have statutory purposes, connected with detection or expression of citizens' political will. Public associations' (unions') activity, directed at furthering of provision of benefits and privileges to Belarusian citizens due to their political or religious convictions or nationality by foreign states, violating the legislation, is forbidden.

6.7. Belarusian legislation stipulates opportunity for public participation (including CSOs) in public dialogue through participation in public hearings on certain issues. This institution has especially developed in the environmental field and in the field of making decisions on the issues of urban planning and deployment of new enterprises due to implementation of the Aarhus Convention's provisions by Belarus.

7. Legal Transformation Center and Assembly of Pro-Democratic NGOs of Belarus' recommendations on the UN Human Rights Council Universal Periodic Review of Belarus (second cycle)

Belarus should align its legislation and practices in the field of freedom of associations and legal regulation of civil society organizations with international standards, including the following:

7.1. Abolish criminal responsibility for organization and participation in the activity of non-registered organizations (exclude Article 193.1 from the Criminal Code), as well as lift the ban on activity of non-registered organizations.

²³ Parliament overlooks proposals by NGOs <http://spring96.org/en/news/61930>

²⁴ Report of the Special Rapporteur on the situation of human rights in Belarus (A/68/276), point 35 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/420/01/PDF/N1342001.pdf?OpenElement>

7.2. Simplify the procedure for registration of political parties, other public associations and foundations, cut down the list of grounds for decisions on refusals in their registration.

7.3. Legislate the possibility to register non-commercial organizations, including public associations and their branches, in premises in the buildings of their founders' (members') residence.

7.4. Reduce the number of founders, which is required for establishment and activity of public associations, provide equal opportunities to conduct activities on the whole territory of the country for all public associations (abolish division of public associations as to local, republican and international ones).

7.5. Abolish the requirement for preliminary registration of foreign donations in state bodies, as well as abolish restrictive lists of purposes, which foreign donations and donations from Belarusian businesses can be received for.

7.6. Broaden opportunities for civil society organizations to attract donations, including exclusion of anonymous donations from the notion of "foreign gratuitous aid" and provide of tax benefits for donations from Belarusian businesses.

7.7. Develop non-discriminatory and open system of civil society financing from the state budget on the basis of competitive bidding, which will also stipulate publication of the data on the volumes of state support, as well as public reports from recipient organizations on its usage.

7.8. Legislate mechanisms of consultations and partnership between state bodies and civil society organizations, as well as extend the practice of discussing draft laws and other legal acts with the affected civil society organizations.

7.9. Stop the practice of persecutions in respect of civil society organizations participants, including members of human rights organizations.

7.10. Implement the UN Human Rights Committee recommendations, including those issued under individual appeals from victims of violations of the right to freedom of associations; submit periodic reports to the UN bodies in accordance with all the undertaken international obligations.