



## FREEDOM NOW

### **FREEDOM NOW – SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

#### **UNIVERSAL PERIODIC REVIEW (UPR): REPUBLIC OF BELARUS 22<sup>ND</sup> SESSION HUMAN RIGHTS COUNCIL – UPR WORKING GROUP**

**September 12, 2014**

#### **Introduction**

1. Freedom Now individually submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Republic of Belarus (Belarus). Freedom Now is a non-partisan, non-governmental organization that works to free prisoners of conscience around the world through focused legal, political, and public relations advocacy.<sup>1</sup>

2. This report documents the Belarusian government's use of arbitrary detention and politically motivated prosecutions in violation of international law.<sup>2</sup> As outlined in detail below, Belarus continues to silence political opposition leaders, civil society activists, human rights defenders, and journalists through wrongful criminal and administrative detention. Such a practice violates the government's freely undertaken obligations under the International Covenant on Civil and Political Rights – a pattern documented by numerous human rights organizations and international institutions, including the UN Human Rights Council, UN Special Rapporteur on the Situation of Human Rights in Belarus, the UN Working Group on Arbitrary Detention, and the UN High Commissioner for Human Rights.

#### **History of Arbitrary Detention in Belarus**

3. The Government of Belarus has a long and well-documented history of detaining its citizens for exercising their fundamental human rights, including the right to freedom of expression, the right to freedom of association, and the right political participation. In the context of such politically motivated prosecutions, the government has also repeatedly failed to meet minimum international due process standards and violated detainees' rights to be free from torture and other forms of mistreatment.

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<sup>1</sup> Freedom Now has served as international *pro bono* counsel to a number of Belarusian prisoners of conscience, including current detainee Mikalai Statkevich, and former prisoners Andrei Sannikov, Zmister Bandarenka, and Iryna Khalip.

<sup>2</sup> While this report highlights violations of the rights to freedom of expression, opinion, and political participation – the analysis is limited to a discussion of arbitrary detention. As such, it does not cover wrongful limitations on those rights that occur outside the context of imprisonment. For example, it does not address the government's monopoly over media broadcasting or restrictions on the registration and activities of political parties.

4. In 2004, the UN Working Group on Arbitrary Detention (UN Working Group)—a panel of five independent experts from across the globe—conducted a fact-finding mission to Belarus and documented a number of systemic violations related to wrongful detention. In particular, the UN Working Group highlighted the lack of judicial independence in general, the excessive authority granted to prosecutors during pre-trial detention, the pressure exerted on lawyers who defend the rights of activists and oppositionists, harsh conditions in pre-trial detention (especially in KGB facilities), and the use of criminal and administrative charges as a means to repress freedom of expression and association.<sup>3</sup>

5. Concern regarding arbitrary detention figured prominently in the first UPR of Belarus, which took place on May 12, 2010.<sup>4</sup> During that review, the Belarusian government did accept a number of broad recommendations related to human rights and engagement with UN bodies. For example, the government acknowledged that it should “increase cooperation with the United Nations treaty bodies and special procedures, in particular in implementing their recommendations and decisions;” “guarantee freedom of association and expression for all citizens, including the press, human rights defenders, political parties, civic organizations, and trade unions;” and “ensure that all prisoners or detainees have access to legal counsel and relatives.”<sup>5</sup>

6. However, the government also failed to embrace a number of more detailed recommendations that, in particular, urged it to reexamine the protection of fundamental freedoms under the domestic law and address the imprisonment and mistreatment of critical voices.<sup>6</sup> Despite its claim that it “had no intention of ignoring the challenges and shortcomings in the protection of human rights,”<sup>7</sup> the government then repeatedly failed to squarely address its record on wrongful imprisonment. For example, when urged to investigate cases of arbitrary detention and mistreatment of activists, the government merely responded – without elaboration or documentation – that “there is no factual basis for the allegations that persons are detained and brought to trial on political grounds in Belarus.”<sup>8</sup> Similarly, the government dismissed a number of specific concerns by making broad claims about the protection afforded under the country’s law – but without addressing the law’s implementation.<sup>9</sup> In light of such inadequate responses, the crackdown in Belarus just months after the UPR procedures was unsurprising.

## **2010 Election Crackdown and Expanded Use of Arbitrary Detention**

7. While arbitrary detention was a serious problem prior to Belarus’ first UPR, the targeting of oppositionists, journalists, and activists on politically motivated charges worsened dramatically following contested national elections in December 2010. The ensuing crackdown has continued until this time and has had a devastating impact on civil society in Belarus.

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<sup>3</sup> *Report of the Working Group on Arbitrary Detention: Mission to Belarus* (Nov. 25, 2004) [U.N.Doc. E/CN.4/2005/6/Add.3](#) at §§ IV(A) – IV (E).

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review, UN Human Rights Council* (June 21, 2010) [U.N. Doc. A/HRC/15/16](#) [hereinafter UPR Report].

<sup>5</sup> UPR Report at ¶¶ 97.12, 97.39, and 97.31.

<sup>6</sup> See e.g. UPR Report at ¶¶ 98.9 and 98.23

<sup>7</sup> UPR Report at ¶ 5.

<sup>8</sup> UPR Report at Annex ¶ 64. See also UPR Report at Annex ¶ 100.

<sup>9</sup> See e.g. UPR Report at Annex ¶ 71 and 96.

8. The protests following the 2010 election and the government's response have been comprehensively documented by human rights groups and international organizations.<sup>10</sup> As the polls closed on the evening of December 19, 2010, the opposition candidates and their supporters gathered in downtown Minsk to demonstrate in support of their democratic rights and in opposition to the official results. Police used the pretext of a disturbance at a government building to attack the peaceful protesters – even though the candidates remained non-violent and repeatedly urged the demonstrators to do the same. During the ensuing onslaught, police arrested hundreds of peaceful demonstrators and severely beat many of them with batons. In all, over 600 protesters, including seven opposition candidates, were arrested.

9. Among those arrested on the night of December 19, 2010 were the former deputy foreign minister and opposition presidential candidate Andrei Sannikov, and his wife, the independent journalist Iryna Khalip. Police pinned Mr. Sannikov to the ground with a riot shield and then jumped on it, injuring his legs. Mikalai Statkevich, the social democratic candidate for president was also arrested near the protests when police beat him as they pulled him from a taxi.<sup>11</sup> Police also rounded-up opposition supporters like Mr. Sannikov's campaign coordinator, Zmitser Bandarenka, who was arrested at his home the following day.

10. Although most of the hundreds of detainees were subjected to administrative detention and released within two weeks, the prominent activists faced much longer periods of imprisonment. Once in the KGB pretrial facility, the detainees were held without access to family or the assistance of legal counsel – in some cases for months. Detainees later reported that during this time they were beaten, repeatedly threatened and interrogated without a lawyer present, deprived of sleep, subjected to extreme cold, forced to remain in stress positions for prolonged periods despite injuries suffered during arrest, and denied access to adequate medical treatment. The courts failed to investigate this mistreatment and lawyers who publicly expressed concern about the torture were disbarred.<sup>12</sup>

11. Ultimately, a number of the candidates and activists received sentences of up to six years in prison on charges of organizing mass disorder under Article 293(1) of the Criminal Code, even though the government failed to produce any evidence that the detainees participated in or encouraged any acts of violence. The international community widely condemned the Belarusian government's crackdown in general – and the imprisonment of peaceful oppositionists and activists in particular. The UN Working Group twice held that the government's imprisonment of opposition leaders following the election violated international law.<sup>13</sup> Specifically, the UN

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<sup>10</sup> *Security, Peace and Order?: Violations in the Wake of Elections in Belarus*, Amnesty International (2011) [AI Reference No. EUR 49/003/2011](#); *Shattering Hopes: Post-Election Crackdown in Belarus*, Human Rights Watch (March 2011) [ISBN: 1-56432-751-5](#); *OSCE/ODIHR Election Observation Mission Final Report*, Organization for Security and Cooperation in Europe (Feb. 22, 2011) available at <http://www.osce.org/odihr/elections/80387/>. *Report of the UN High Commissioner for Human Rights on the Situation in Belarus*, UN High Commissioner for Human Rights (Apr. 10, 2011) [A/HRC/20/8](#).

<sup>11</sup> In addition to Andrei Sannikov and Mikalai Statkevich, the opposition candidates subjected to detention included: Vladimir Nekliaev, Grigoriy Kostusev, Vitaliy Rimashevskiy, Ales Michalevich, and Dmitry Uss.

<sup>12</sup> For a detailed account of the arrest, mistreatment, and prosecution of the detainees, see *Andrei Sannikov v. Belarus*, Freedom Now, [Petition to the UN Working Group on Arbitrary Detention](#) (Sep. 15, 2011) and *Mikalai Statkevich v. Belarus*, Freedom Now, [Petition to the UN Human Rights Committee](#) (Nov. 15, 2013).

<sup>13</sup> *Andrei Sannikov v. Belarus*, UN Working Group on Arbitrary Detention, [Opinion No. 14/2012](#) (May 4, 2012); *Mikalai Statkevich v. Belarus*, UN Working Group on Arbitrary Detention, [Opinion No. 13/2011](#) (May 4, 2011).

Working Group held that the government failed to observe minimum international due process standards and that the prosecutions resulted from the exercise of fundamental rights, including expression, association, assembly, and political participation.

12. Even years after the events of 2010, the government continued to persecute those who peacefully participated in the Minsk demonstrations. Former presidential candidate Mikalai Statkevich remains in prison – and has been repeatedly pressured to sign a confession. As a result of alleged violations of prison rules, such as possessing “unregistered” handkerchiefs, Mr. Statkevich has been transferred to a strict regime facility.<sup>14</sup> Even those who were released faced – and continue to face – restrictions on their liberty. Individuals who were given suspended sentences, such as independent journalist Iryna Khalip, faced house arrest and other restrictions during the suspension period. Others, like Andrei Sannikov, continue to be deprived of their political rights as a result of the conviction and may not hold public office. Further, when Messrs. Sannikov and Bandarenka held a post-release press conference to describe the conditions of their confinement, President Lukashenka responded by publicly threatening them with imprisonment if they continued to exercise their free expression rights.<sup>15</sup>

### **Continued Use of Arbitrary Detention**

13. In addition to the use of arbitrary detention against those who took part in the 2010 elections and post-election protests, the Belarusian government has continued to wrongly imprison human rights and democracy activists on criminal and administrative charges. For example, the government detained Ales Bialiatski – the head of the prominent Viasna Human Rights Center of Belarus and vice-president of rights group FIDH – for nearly three years on fabricated charges of tax evasion. Mr. Bialiatski was released on June 21, 2014 after an international outcry over his imprisonment. However, activists continue to face the prospect of criminal prosecution. For example, in December 2013 the government sentenced Vasil Parfiankou to one year in prison under Article 421 of the Criminal Code for alleged violations of “preventative supervision,” which was imposed after he participated in a series of demonstrations supporting prisoners in Belarus.<sup>16</sup>

14. As the UN Special Rapporteur on the Situation of Human Rights in Belarus noted in his most recent report, “[t]he rights to freedom of opinion and expression, association, peaceful assembly and cultural rights continue to be severely restricted in law and practice... [and] [a]dministrative arrests and short-term detention continue to be used systematically and arbitrarily in reprisal against citizens who seek to exercise” these fundamental rights.<sup>17</sup> The use of administrative detention is not new in Belarus – indeed it was used to justify the detention of hundreds of protesters in 2010 – but it remains one of the government’s primary tools for detaining those who engage in any kind of dissent.

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<sup>14</sup> *FIDH and the Human Rights Center “Viasna” Demand the Immediate and Unconditional Release of Mikola Statekevich and Other Political Prisoners*, Viasna (Dec. 19, 2013) available at <http://spring96.org/en/news/67962>.

<sup>15</sup> *Belarus Leader Says Will Jail Freed Foe If He Blabbers*, Reuters (Apr. 21, 2012) available at [http://articles.chicagotribune.com/2012-04-21/news/sns-rt-belarus-presidentopposition16e8f10on-20120421\\_1\\_prisons-on-political-grounds-number-of-belarusian-officials-belarusian-prisons](http://articles.chicagotribune.com/2012-04-21/news/sns-rt-belarus-presidentopposition16e8f10on-20120421_1_prisons-on-political-grounds-number-of-belarusian-officials-belarusian-prisons).

<sup>16</sup> *Statement of the Human Rights Center “Viasna” and the Belarusian Helsinki Committee on the Sentence to Vasil Parfiankou*, Viasna (Dec. 6, 2013) available at <http://spring96.org/en/news/49539>.

<sup>17</sup> *Report of the Special Rapporteur on the Situation of Human Rights in Belarus*, UN Doc [A/HRC/26/44](#) (Apr. 22, 2014) at ¶¶ 7, 11.

15. Although each administrative detention is relatively short, there are often few procedural protections for detainees and activists can be detained repeatedly – in some cases leading to significant periods of imprisonment.<sup>18</sup> For example, Maxim Vinyarski, a well known activist and coordinator for the “European Belarus” campaign, has been repeatedly subjected to periods of administrative detention on charges such as “insubordination to a policeman.” As a result of such charges, Mr. Vinyarski – who was most recently detained in April during a widespread crackdown leading up to the International Ice Hockey Championships in Minsk – has spent over 300 days in detention.<sup>19</sup>

## Conclusion and Recommendations

16. As a party to the International Covenant on Civil and Political Rights, the Government of Belarus is obliged to respect its citizens’ rights to freedom of expression, association, and political participation. By systematically imprisoning peaceful activists and opposition leaders for exercising these fundamental human rights, the government clearly violates its freely undertaken obligations under international law. As such, Freedom Now recommends that the Government of Belarus:

- Immediately and unconditionally release and rehabilitate the civil and political rights of all individuals who have been detained under criminal or administrative charges for exercising their fundamental human rights, including the right to freedom of expression, the right to freedom of association, and the right to political participation.
- Thoroughly investigate all cases of arbitrary detention, torture, and other rights abuses directed against activists, human rights defenders, and opposition leaders and provide compensation for such violations.
- Ensure that all detainees have immediate access to legal counsel of their own choosing and that all procedural rights are fully respected.
- Fully cooperate with, respond to, and follow the recommendations of all UN Human Rights Council special procedure mandate holders – including the UN Working Group on Arbitrary Detention and the UN Special Rapporteur on the Situation of Human Rights in Belarus.

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<sup>18</sup> The decision to detain an individual is left to the discretion of the prosecutor – with only limited judicial oversight – and procedural protections such as the right to the assistance of legal counsel are frequently denied. See generally *Situation of Human Rights in Belarus in 2013*, Viasna (2014), available at [http://spring96.org/files/reviews/en/2013\\_review\\_en.pdf/](http://spring96.org/files/reviews/en/2013_review_en.pdf/). The Belarusian government also uses the Code of Administrative Violations to impose fines against individuals for exercising fundamental rights or protesting arbitrary detention. For Example, in 2013 three activists were fined for organizing a mass demonstration after the trio photographed themselves holding pictures of then imprisoned human rights defender Ales Bialiatski. *Belarus: Administrative Harassment Against Three Human Rights Defenders*, FIDH (January 10, 2010), available at <http://www.fidh.org/en/eastern-europe-central-asia/belarus/BELARUS-Administrative-harassment-12700>.

<sup>19</sup> *To Save Mazim Vinyarski*, Charter 97 (Apr. 4, 2014) available at <http://charter97.org/en/news/2014/4/22/95774/>.