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Republic of Belarus

Submission to the UN Universal Periodic Review Eighth Session of the UPR Working Group,

Submitted 9 November 2009

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NGO in General Consultative Status with ECOSOC***

1. (A) Introduction

1.1. CIVICUS: World Alliance for Citizen Participation is an international movement with members and partners in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened. CIVICUS seeks to amplify the voices and opinions of ordinary people. For effective and sustainable civic participation to occur, citizens must enjoy rights of free association and be able to engage all sectors of society. CIVICUS is an accredited NGO member of UN ECOSOC.

1.2. In this document CIVICUS: World Alliance for Citizen Participation outlines key concerns related to the freedoms of expression, association and assembly in Belarus.

- Under section B, CIVICUS focuses on impediments to the exercise of the freedom of association in Belarus with regard to Article 193.1 of the Criminal Code and subjective denial of registration to several civil society organisations.
- In section C, CIVICUS focuses on impediments to the exercise of the freedom of peaceful assembly in Belarus with regard to use of force by law enforcement agencies to disperse peaceful assemblies.
- In section D, CIVICUS focuses on impediments to the exercise of the freedom of expression with regard to denial of access to independent newspapers to the state distribution network; restrictions on the foreign media; and restrictive libel provisions in the Criminal Code that inhibit legitimate criticism of official policies.
- In section E, CIVICUS makes recommendations in respect of the concerns listed.

2. (B) Concerns regarding freedom of association

2.1. Constitutional provisions in relation to the freedom of association

2.1.1. The Constitution of the Republic of Belarus, under Article 36 guarantees everyone the right to freedom of association. The Constitution, in line with international law provisions specifies in Article 26 that restriction on personal rights and liberties shall be permitted only in the instances specified in law, in the interests of national security, public order, the protection of morals and health of the population, as well as rights and liberties of other persons.

2.1.2 Nevertheless, Article 193.1 of the Criminal Code breaches constitutional guarantees as well as Belarus' commitments under the International Covenant on Civil and Political Rights.

2.2. Criminalisation of participation in unregistered associations

Article 193.1 prescribes imprisonment from six months to two years for participation in the activities of an unregistered political party, foundation, civil or religious organisation. This provision is a serious impediment to the freedom of association and development of civil society in Belarus as it criminalises citizens' freedom to associate without prior permission from the governmentLa.

2.3. Questionable denial of registration to civil society organisations

A number of civil society organisations involved in the protection and promotion of human rights have been persistently denied registration by the authorities thereby making their legitimate activities illegal. For instance, on 28 May 2009, Nasha Viasna was denied registration for the third time by the Ministry of Justice. On 9 April 2009, the Belarusian Assembly of Pro-Democratic NGOs was denied registration for the second time. Other organisations that have been refused registration are Berascejskaya Viasna, the youth group "MODES", the cultural group Spadchyna, the Party of Freedom and Progress, Belarusian Christian Democracy Party, the Belarusian Party of the Working People and the Youth Christian Social Union.

3. (C) Concerns regarding freedom of assembly

3.1. Constitutional provisions in relation to freedom of peaceful assembly

3.1.1 Article 35 of the Constitution of Belarus guarantees the freedom to hold assemblies, rallies, street marches, demonstrations, and pickets that do not disturb law and order or violate the rights of other citizens.

3.1.2 In practice, it appears that the constitutional guarantee to protect the freedom of peaceful assembly is not being upheld.

3.2. Use of force by law enforcement agencies to disperse peaceful assemblies

Law enforcement agencies regularly use force against citizens, civil society groups and members of the political opposition exercising their right of democratic dissent. For instance, two recent incidents of excess use of force against demonstrators include meetings to commemorate the 10th anniversary of the disappearance of opposition members Viktor Hanchar and Anatol Krasowski on 16 September and 16 October 2009. Both these events witnessed police brutality against peaceful protestors and arrests of prominent political and civil society figures.

4. (D) Concerns regarding freedom of expression

4.1 Constitutional provisions in relation to freedom of expression

4.1.1 Article 33 of the Constitution of Belarus mandates that everyone is guaranteed freedom of thought and belief and their free expression; no one shall be forced to express their beliefs or deny them; monopolisation of the mass media by the State, public associations or citizens is prohibited; and there shall be no censorship.

4.2 Denial of access to independent publications to the state distribution network

Despite the constitutional guarantee of non-monopolisation of the media, independent publications focusing on political and social issues have been denied access to the state run press distribution monopoly *Belsojuzpechat*.

4.3 Restrictions on the foreign media

All foreign journalists must obtain accreditation from the government before being allowed to operate in the country. Permission is often denied on subjective grounds. For instance, the Ministry of Foreign Affairs has denied accreditation to journalists working with the European Radio for Belarus, Bel Sat and Radio Racyja among others.

4.4 Restrictive libel provisions impacting on freedom of expression

Media freedom and civil society's right to critically analyse and evaluate official policies is restricted by libel provisions in the Criminal Code such as Article 367 (Slander in relation to the President of the Republic), Article 368 (Insult in relation to the President of the Republic), Article 369 (Insult of representatives of the authorities) and Article 369.1 (Discrediting the Republic of Belarus).

5. (E) Recommendations to the Government of the Republic of Belarus

5.1. CIVICUS urges the Government of the Republic of Belarus to protect civil society space and freedoms of association, assembly and expression in the spirit of the ICCPR to which Belarus is a party and to its own Constitution which guarantees these freedoms. In light of this, the following recommendations are made:

Regarding the freedom of association

- Article 193.1 of the Criminal Code be repealed
- The procedures for legal registration of civil society organisations be revamped to lean in favour of registration
- Grounds to refuse legal registration to civil society organisations be clearly specified and followed in accordance with international law provisions
- Legislation and practice governing civil society organisations be suitably altered to reflect international best practice principles developed by the World Movement for Democracy and the International Center for Not for Profit Law which include (i) the right to entry (freedom of association), (ii) the right to operate free from unwarranted state interference, (iii) right to free expression, (iv) right to communication and cooperation, (v) right to seek and secure resources, (vi) state duty to protect

Regarding the freedom of assembly

- Law enforcement agencies be instructed not to interfere with peaceful assemblies
- Training be provided for law enforcement agencies in accordance with UN Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms
- Strict accountability be enforced for excess use of force and arbitrary detentions by law enforcement agencies

Regarding the freedom of expression

- Access of independent publications be enabled under the state distribution network
- Access of foreign media persons to work in Belarus be enabled
- Articles 367, 368, 369, 369.1 of the Criminal Code be repealed