

## **ANNEX: Questions on best practices that promote and protect the rights to freedom of peaceful assembly and of association**

It would be deeply appreciated if responses were brief. Responses in bullet-points are encouraged.

For non-governmental organizations (NGOs), should they so wish, their identity will remain confidential (only the country where they operate will be disclosed).

### **Right to freedom of peaceful assembly:**

1. *Please a) describe positive legislative/institutional measures taken to facilitate the exercise of the right to freedom of peaceful assembly in your country; and b) provide one or more recent examples where the right to freedom of peaceful assembly in your country has been adequately enjoyed and the reasons for citing this example(s).*

During 2011 there were no examples of positive steps taken by the government towards observing national and international legal standards relating freedom of peaceful assembly. Moreover legislation and law enforcement practices leave no possibilities to enjoy this right in Belarus.

2. *Please a) describe positive legislative/institutional measures taken to protect peaceful protesters, including against agents provocateurs and/or counter-demonstrators; and b) provide one or more examples where peaceful protesters were effectively protected.*

Since December 19, 2010 and during 2011 each public action of protest has been facing strong resistance by Government. The only public actions not prohibited are those organized by state bodies. Although Belarusian law prohibit more than one public action in the same time and place (solution against counter-demonstrators), it is hard to imagine even one allowed by the state authorities.

3. *Please describe measures taken to ensure that any restrictions on the free exercise of the right to freedom of peaceful assembly are in accordance with your obligations under*

*international human rights law (proportionality test and due process guarantees). Please explain the legal status of spontaneous assemblies.*

Belarusian and international human rights NGO's report that freedom of assembly is restricted systematically in the Republic of Belarus. The legislation regulating freedom of assembly is not in correspondence with international standards. Law enforcement bodies allow massive violations of human rights, as well as administrative and criminal prosecution of the participants and organizers of peaceful assembly. The Monitoring of judicial proceedings (more than 300 cases) after peaceful demonstration in Minsk, 19<sup>th</sup> December 2010, reveals that judicial authorities do not provide adequate judicial protection in cases involving the organization and participation in peaceful assemblies.

Spontaneous assemblies: Belarusian law does not draw any difference between regular and spontaneous assemblies. It allows us to say that spontaneous assemblies are prohibited by Belarusian law. Organizers of the public action must apply for permission of the action to the local authorities no later than 15 days before the planned action.

4. Please a) describe positive legislative/institutional measures taken to ensure accountability for i) arbitrary restrictions to hold assemblies; ii) arbitrary or excessive use of force by law enforcement officials against peaceful demonstrators; and iii) violence by agents provocateurs and/or counter-demonstrators; and b) provide one or more examples for each of these situations where such measures have been implemented.

There are no sign of positive measures taken to ensure any of the issues mentioned. Vivid examples:

1) Demonstration 19<sup>th</sup> December 2010, which officials reported as “mass riots” [[http://hrwatch-by.org/sites/default/files/Final\\_HRights\\_Assessment\\_of\\_19-12-2010\\_in\\_Minsk-eng\\_final.pdf](http://hrwatch-by.org/sites/default/files/Final_HRights_Assessment_of_19-12-2010_in_Minsk-eng_final.pdf)]. Violence by *agents provocateurs* was not effectively eliminated, though large number of special police forces and the policemen in civil clothes were on duty in the area. Later all the participants regardless their involvement in violent actions were suddenly dispersed with the use of force. The excessive use of force by police has not been investigated yet.

2) A number of flash mobs and spontaneous actions of protest in Belarusian cities in summer 2011, so called “clapping protests”. The participants of the actions did not wear any symbols and don't chant any slogans at it. The idea was gathering in the city center (each

Wednesday, 7:00 PM) and walking around. Such actions were not considered to be regulated as assemblies. Some actions in the beginning were not stopped by police, but then police began to detain the participants using policemen in the civilian clothes, accusing the detainees of hooliganism.

5. *In this context, please describe positive legislative/institutional measures taken to build and strengthen the human rights capacity of administrative and law enforcement officials in your country.*

Due to the general situation with human rights in Belarus, and with freedom of assembly in particular, we cannot find any positive measures taken in respect of this issue. In Belarus complex measures are not being taken to train the officials on the issue of human rights, as well as to promote the concept of human rights in their activity.

6. *Please describe one or more recent examples where the right to freedom of peaceful assembly may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the promotion and protection of the right to freedom of peaceful assembly in your country. Please provide details of any lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of peaceful assembly in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk.*

We cannot notice any positive dynamics in the regulation of freedom of assembly in Belarus, as all the legislative changes in recent years were aimed at limiting freedom of assembly. November 27, 2011 the amendments to several laws regulating assemblies, as well as the responsibility for violations of said regulation came into force. The law of mass actions significantly restricts freedom of assembly in Belarus:

- Organizers of flash-mobs and of any other kind of organized or spontaneous assembly must receive from the executive permission for the rally;
- Before obtaining a permission it is prohibited to disseminate information (including online) about the date, time and location of the planned action;

- The person violated the law of mass events cannot be the organizer of any public action within one year after the imposition of administrative penalties;
- Organizers of public events, except those held by state bodies, now have to pay for maintenance of public order during public action;
- The rights of law-enforcement bodies were significantly expanded.

**General conclusions:** i) In 2011 Belarus had fairly negative dynamic in law enforcement practice and by the end of the year such practice was fixed in the legislation. The new legislation became a subject to consideration by the European Commission for Democracy through Law, better known as the Venice Commission. ii) Since Belarus violates the basic principles of freedom of assembly, it is impossible to distinguish the social groups most affected by the restrictions imposed by legislation, executive and law-enforcing bodies. iii) 2012 is the year of Parliament elections in Belarus, thus the pressure on civil society will strengthen and the freedom of assembly will be affected to a greater extent.

### **Right to freedom of association:**

7. *Please a) describe positive legislative/institutional measures taken to facilitate the exercise of the right to freedom of association by national and international organizations (e.g. are associations free to decide on their objectives, activities and board composition?); and b) provide one or more recent examples where the right to freedom of association has been adequately enjoyed in your country and the reasons for citing this example(s).*

One cannot speak about positive changes concerning freedom of association in the Republic of Belarus. Starting since 1999 the process of registration of public associations has been getting more and more complicated. The law and its practice does not foster the development of NGOs and essentially limits the freedom of association, as compared with the Constitution of the Republic of Belarus and the international obligations of the state.

There is a law which bans activities of unregistered associations and provides criminal liability for organizing and participating in such activities (Article 193.1 of the Criminal Code).

The legal practice in this sphere shows that the decision about registration of a public association depends on not fulfilling all requirements while preparing the necessary documents, but on the political will of the authorities. The registering bodies, while making decision about registration, directly intervene into activities of public associations, modifying their aims,

management structure etc. There is a wide list of reasons to refuse registration or to close a public association.

The Belarusian legislation prevents effective work of public associations by limiting their financing. Not a single conclusion of the UN Committee on Human Rights concerning violations of Article 22 of the ICCPR have been fulfilled or made public by the authorities. In autumn 2011 another package of amendments to the law was adopted which, in particular, provides criminal responsibility for violating the order of receiving gratuitous foreign aid.

The head of the Belarusian human rights centre Viasna Ales Bialiatski was sentenced to 4 ½ imprisonment in a high security colony, with property confiscation and deprivation of the right to engage in public activities.

There are some singular positive legal changes which the authorities always refer to as a fact of liberalization in the law concerning NGOs (for example, at the beginning of 2012 there has been cancelled the necessity to get permission from the registering body to make a seal by public associations and funds). However, such improvements do not anyhow influence the overall situation of the freedom of associations in the country.

8. *Please detail the procedures to be followed to establish an association in your country, including the legal grounds upon which an application for registration can be rejected, where applicable. Please a) describe positive legislative/institutional measures taken to ensure a non-discriminatory, expeditious, easily accessible and inexpensive registration process; and b) provide one or more examples where such measures have been implemented. Are there effective remedies in case the registration is denied or delayed? Please indicate, if available, how many people have pursued these remedies, and the result thereof. Please specify the legal status of unregistered or de facto associations.*

At present the process of setting up and registering public associations in Belarus is complicated, long-lasting and expensive. The Belarusian legislation sets out strict requirements for the number of founders of public associations. To set up a republican association, there must be not less than 50 founders, 10 of whom must live in Minsk, and 10 in each of four regions of the country. The decision to register an association is made by a body of justice, based on the provided documents (in practice the positive decision depends on the founders and the aims which every particular organization indicates; for instance in 2011 there hasn't been registered a single human rights or pro-democracy organization).

The indicator of the registering process intricacy can be a comparison of registration of

public associations and commercial organizations. A commercial registration must provide around three documents and is registered on a declarative principle on the same day of filing the documents. The reason for refusal can be either lack of documents or wrong drawing up of an application or filing documents to a wrong state body. In contrast, public associations prepare a large package of documents and can be registered on a permitting principle within a month. The registering bodies are empowered to check documents, sending them to different kinds of examinations. Besides, a PA can be refused registration because of minor mistakes in its charter, or providing some documents and facts not meeting legislation requirements, including false, fraudulent or invalid documents. The legislation sets specifies even font size, and also data about place of work, phone and work number of each of the founders, in some cases PA get refusals because of mistakes in this information. The tax for registering PA is the same as for commercial organizations; however, for republican and international organization the tax is twice higher.

In case of getting a rejection, the board of the PA can appeal it in court. However, since 2011 all appeals have had negative results. Besides, republican and international organizations cannot appeal the decision of the court of the first instance, as the court of the first instance for them is the Higher Court.

Activities of unregistered PAs are forbidden. Article 193.1 stipulates that “the organization of activities or participation in the activities of a political party, other public association, religious organization or foundation in respect of which a decision of the public authority on its liquidation or suspension of its activities has entered into legal force, as well as the organization of and participation in the activities of political parties, other public associations, religious organizations or foundations which has not obtained state registration is punishable by fine or arrest for up to 6 months, or imprisonment for a term not exceeding 2 years”.

9. *Please explain the procedure available to suspend or dissolve an association in your country. Are there effective remedies in case an association suspended or dissolved? Please indicate, if available, how many people have pursued these remedies and the result thereof.*

The Belarusian legislation provides a possibility to suspend activities of a PA or liquidate it. Activities of a PA can be suspended for a term of up to 1 ½ years by a court’s ruling on the request of a state body when it previously has issued a warning to the PA and the latter has not removed the mentioned violations or failed to inform the state body of the violations having been removed. When activities of a PA are suspended, the only actions it can undertake are the ones

aimed at eliminating the violations which have become the reason for its suspension. In practice registering bodies seldom use the suspension procedures.

A PA can be liquidated by a court's ruling, when:

- it advocates for war or extremist activities;
- it violates law and/or the charter during one year after a written warning;
- if during the process of state registration founders have made law violations of irremovable character;
- if the number and the structure of a PA does not meet the legal requirements depending on their status or character of their activities;
- failure to remove violations during the suspension of its activities within the term defined by court.

A PA can be liquidated because of a single violation of the law on mass events or the legal requirements on the use of gratuitous foreign aid. Also a PA can be liquidated because of performing activities without a license, or activities forbidden by law, or single or blatant violations of legal acts (as a rule, this reason is applied to “undesirable” organizations”.)

As a rule, appeals to liquidate a PA are upheld by court.

*10. Please specify positive measures taken to ensure that any restrictions on the free exercise of the right to freedom of association are in accordance with your obligations under international human rights law (proportionality test and due process guarantees).*

Restrictions on the freedom of association in Belarus are much wider than those stipulated by international obligations undertaken by the state.

*11. Please indicate under which conditions associations can receive domestic and foreign funds or resources in your country. Are there any specific limitations (including in practice) on receiving funds or resources?*

Financing from abroad (foreign gratuitous and international technical aid) must be registered in state bodies, on a permitting principle of registration. The use of foreign gratuitous aid without registration is forbidden. The legislation enumerates a number of aims which can be financed by foreign gratuitous aid; all aims absent from the list must be approved by the President of the Republic of Belarus. The legal practice shows that in order to register foreign gratuitous aid, one needs a letter from a respective Ministry, state authority or a local executive

committee. The procedure of registration of foreign aid is not transparent. Violations of the law lead to an administrative or criminal punishment.

The Belarusian legislation also defines aims of PAs' activities that can be financed by Belarusian legal entities and entrepreneurs. Violations of the established order of granting this aid lead to administrative punishment.

There is no open and transparent scheme of financing NGOs from the state budget, and there is no system of informing citizens about such financing.

There is a law which prohibits having private business by PAs. There are no tax exemptions for donors of NGOs.

*12. Please a) describe positive specific legislative/institutional measures taken to promote and ensure the participation of associations in the decision-making process in your country; and b) provide one or more recent examples where such measures have been implemented.*

There are no legislative mechanisms of regulation of interaction between state bodies of different level and NGOs. PAs are mainly excluded from the process of decision-making and practically cannot influence state policy and legislative process.

The positive legal norm is the presidential directory No4 dated December 31, 2010 which stipulates public discussion of drafts of laws concerning conditions of private business, by means of setting up public consultancy and expert councils with the participation of businesspeople, their associations. They can be set up in state organizations, subordinate to the government of Belarus, regional executive committees and Minsk City Executive Committee and also publishing the drafts of the websites and/or in mass media.

Another possibility of interaction between PAs and state bodies is provided by a number of specific legal acts, such as law against people trafficking. Many state authorities have set up public associations, with the participation of representatives of PAs, some of them work effectively (for example, the Public Coordination Ecological Council, the Council on Ecotourism). At the same time the law on public councils and practice of their setting up needs serious revising.

*13. In this context, please a) describe positive specific legislative/institutional taken to build and strengthen the human rights capacity of administrative officials in charge of implementing the law in your country; and b) provide one or more recent examples where such*

*measures have been implemented.*

In Belarus complex measures are not being taken to train the officials on the issue of human rights, as well as to promote the concept of human rights in their activity.

*14. Please describe one or more recent examples where the right to freedom of association may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the promotion and protection of the right to freedom of association in your country. Please provide lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of association in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk.*

As it has been mentioned above, the freedom of association in Belarus is unreasonably restricted (the restrictions do not correspond to international standards) in both legislation and the law enforcement practices.

The problem of arbitrary refusals to register PAs continues to be a burning issue for Belarus. For example, in 2011 this problem was faced by the Belarusian associations of Litvins, association of the Ukrainians in Baranavichy city “Kabzar” (an organization of national and ethnic minorities), Cultural and Educational NGO “Zalaty Leu”, Youth PA “Young Democrats”, PA “Mahilou Centre for Strategic Development “Impulse”, Republican youth PA “Human rights centre “Alternative-plus” (protecting sexual minorities’ rights), International cultural and educational NGO “Volunteer Development Centre” and others. The statistics on refusal to registration are unavailable.

#### **Cooperation with UN and regional human rights mechanisms:**

*15. Please indicate any cooperation your country has with the United Nations and regional human rights mechanisms aimed at maximizing the promotion and protection of the rights to freedom of peaceful assembly and of association.*

The Republic of Belarus does not carry out sufficient cooperation with the UN and

regional mechanisms to improve protection of the freedom of peaceful assembly and association. Moreover, it has been many times reminded of violations of these freedoms by the Council on Human Rights in the Universal Periodic Review. A violation of freedom of association is indicated also in the conclusion of the European Commission for Democracy through Law (Venice Commission), adopted on October 14-15, 2011, in respect of correspondence of Article 193.1 of Criminal Code with international standards of human rights concerning the rights of unregistered associations.