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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Note verbale dated 3 December 2012 from the Permanent Mission of Belarus to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council

The Permanent Mission of the Republic of Belarus to the United Nations Office and other international organizations in Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to enclose herewith the comment of the Government of Belarus on the opinion adopted by the Working Group on Arbitrary Detention on case No. 39/2012 (A/HRC/WGAD/2012/39) (see annex).

The Permanent Mission refers to rule 14 [47] of the rules of procedure of the Human Rights Council, and requests that the information provided by the Government be published as a document of the twenty-second session of the Council under agenda item 3, in all official languages of the United Nations.

Annex

[Original: Russian]

Comments of the Republic of Belarus on the opinion of the Working Group on Arbitrary Detention

The Republic of Belarus would like to make the following comments in connection with the opinion adopted by the Working Group on Arbitrary Detention at its sixty-fourth session (27–31 August 2012) concerning Mr. A. Bialatski.

The Constitution of Belarus guarantees all citizens equality before the law; this is consistent with the standards set forth in article 26 of the International Covenant on Civil and Political Rights and article 7 of the Universal Declaration of Human Rights.

The information submitted by the competent bodies of Belarus to the Working Group compellingly shows that the penal sanction applied to Mr. Bialatski is not discriminatory, as it may be duly applied to any person who has committed a similar illegal act, regardless of the person's activities or political or other opinions. As is the case with any other citizen, Mr. Bialatski's activities do not endow him with the right to immunity from current law; this clearly demonstrates the absence of bias in national legislation and the Republic's full compliance with the principles of non-discrimination and equality of citizens before the law, in the framework of the relevant international obligations.

In view of the fact that Mr. Bialatski's detention and arrest were based on provisions of the Criminal Code and the Code of Criminal Procedure, they cannot be seen as arbitrary in the sense of article 9 of the International Covenant on Civil and Political Rights and article 9 of the Universal Declaration of Human Rights. In this connection, consideration of the case under the special procedure is not justified. The Working Group is manifestly exceeding its authority, attempting to structure its opinion on the basis not of article 9 of the International Covenant on Civil and Political Rights (arbitrary detention), but of article 22 of that Covenant (freedom of association).

The sentence imposed on Mr. Bialatski for committing a serious punishable offence involving tax evasion on a particularly large scale cannot be considered a violation of article 22 of the International Covenant on Civil and Political Rights or of article 20, paragraph 1, of the Universal Declaration of Human Rights. The denial of registration to the organization Viasna, which Mr. Bialatski heads, is unrelated to the serious offence he committed or his punishment. Nevertheless, the Working Group wilfully seeks, in its opinion, to base the claims of Mr. Bialatski's innocence on the fact that registration was denied to the organization Viasna.

In this connection, Belarus considers that the opinion of the Working Group on the Bialatski case is neither objective nor reasonable, as it does not take account of information provided by the Government. The opinion is not based on an impartial and independent assessment of the facts, but has been reached without regard for the adversarial principle in consideration of the case, in violation of the Group's mandate (Commission on Human Rights resolution 1997/50, para. 2 (c)) and articles 3, 6, 7 and 13 of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, approved by Human Rights Council resolution 5/2.

Furthermore, the Working Group attempts to suggest that non-governmental organizations which position themselves at national level as human rights defenders are, unlike other non-governmental organizations, entitled to receive funding from abroad,

including from foreign States, and not to pay taxes. It attempts to justify such a clearly discriminatory approach toward other organizations by reference to the obligations assumed under article 22 of the International Covenant on Civil and Political Rights (freedom of association). In the view of Belarus, it is thus deliberately promoting discrimination (International Covenant on Civil and Political Rights, art. 26, Universal Declaration of Human Rights, art. 20), upholding the right to perform acts aimed at the destruction of the rights and freedoms of citizens of another State (Universal Declaration of Human Rights, art. 30), and actually inviting the violation of a fundamental principle of international law – that of non-interference in the internal affairs of sovereign States (Charter of the United Nations, Art. 2, para. 7).

Belarus draws attention to the fact that the Working Group has, on the one hand, taken a negligent and irresponsible approach to implementing its mandate and, on the other, exceeded the powers it was given under resolutions 1991/42 and 1997/50 of the Commission on Human Rights and resolution 15/18 of the Human Rights Council.

The Republic of Belarus considers the opinion of the Working Group to be non-authoritative, politically motivated and outside the bounds of the Group's mandate; in this regard, it will make use of its legal right not to take cognizance of this opinion.

The actions of the Working Group and its chair, which flagrantly violate its mandate and the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, and which discredit the activities of the special procedures and Human Rights Council, should be made publicly known and be scrutinized by the Human Rights Council, the Coordination Committee of Special Procedures, and the United Nations High Commissioner for Human Rights.
