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الدورة الحادية والستون

البند ١١(أ) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية بما فيها مسألتا التعذيب والاحتجاز

تقرير الفريق العامل المعني بالاحتجاز التعسفي

إضافة*

بعثة إلى بيلاروس

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* يعمـــم ملخّص هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الذي يرد في مرفق هذا الملخّص، فيعمم بالإنكليزية والروسية.

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ملخص

قام الفريق العامل المعني بالاحتجاز التعسفي بزيارة إلى جمهورية بيلاروس في الفترة من ١٦ إلى ٢٦ آب/أغسطس ٢٠٠٤ تلبية لدعوة من حكومة هذا البلد. وزار الفريق العامل العاصمة مينسك ومدن غومل، وغرودنو، وليدا، وموزير، وفيتبسك. وخلال هذه الزيارات إلى العاصمة والمدن الأخرى، أجرى الفريق لقاءات مطوّلة مع مسؤولين في السلطات التنفيذية والتشريعية والقضائية، وكذلك مع ممثلين عن منظمات المجتمع المدني وأفراد. وزار الفريق العامل ١٥ مركز احتجاز، بما فيها الإصلاحيات، والسجون، ومراكز الاحتجاز ما قبل المحاكمة (SIZOs)، ومنشآت العزل المؤقت، ومراكز احتجاز الشباب، ومراكز الاحتجاز الإداري، ومنشآت استقبال ملتمسي اللجوء، ومستشفيات الأمراض النفسية ومراكز الشرطة. ولم يتمّ الإعلان عن بعض هذه الزيارات. كما أجرى الفريق لقاءات فردية خاصّة ومن دون شهود مع ما يزيد على ٢٠٠ محتجز.

يشدد الفريق العامل في تقريره على مدى التعاون الذي أبدته الحكومة والذي تمثّل بتعديل برنامج الزيارات الرسمي يومياً تقريباً بناءً على طلب الفريق العامل. حتى إنّ السلطات اتخذت الترتيبات اللازمة بناءً على طلبات قدّمت في اللحظة الأخيرة. وقد تمكّن الفريق العامل من زيارة جميع مراكز ومنشآت الاحتجاز التي طلب زيارتها، مع استثناء وحيد يؤسف له، هو منشأة احتجاز السجناء الخاضعة لرقابة لجنة أمن الدولة (KGB). وفي كلّ تلك المنشآت تمكّن الفريق من لقاء ومقابلة كلّ الأشخاص الذين رغب برؤيتهم: معتقلون رهن المحاكمة، أشخاص مدانون يقضون عقوبتهم، نساء، قاصرون، وحتى الأشخاص الموجودون في الحبس التأديبي. كما ينوه الفريق العامل بالجهود التي بذلتها السلطات لتحسين النظام القضائي والإطار القانوني الموروث من أيام السوفييت. فقد قلّص القانون الجنائي وقانون الإجراءات الجنائية المعتمد عام ١٩٩١ مدة الاحتجاز ما قبل المحاكمة وأنشأ إمكانية لجوء المحتجز إلى محامٍ بعد احتجازه الأولي بفترة وجيزة. كما أُصدرت مراسيم عفو رئاسية للحدّ من اكتظاظ مراكز الاحتجاز وطُبّقت تدابير أخرى لتحسين شروط الاحتجاز. وفي عام ٢٠٠٣، أُطلق سراح ما يزيد على ٢٠ ٠٠٠ سجين بموجب مراسيم عفو رئاسية. ويبدو أخيراً أنّ وضع المهاجرين غير الشرعيين واللاجئين وملتمسي اللجوء أفضل مما هو عليه في أصقاع أخرى من العالم.

غير أنّ الفريق العامل يلاحظ بقلق السلطة المفرطة الممنوحة للمدعين العامين والمحققين خلال فترة الاحتجاز ما قبل المحاكمة. فقرار إبقاء الشخص قيد الاحتجاز أو تمديد فترة احتجازه لا يتّخذه القاضي بل المدّعي العام، بناءً على اقتراح المحقق. وفي الواقع، يتولّى المحققون والمدعون العامون جميع مراحل التحقيق، من دون مراقبة فعلية من القاضي. هذا، ويعبّر الفريق العامل كذلك عن مخاوفه إزاء إجراءات تعيين القضاة وعزلهم التي لا تضمن استقلالهم عن السلطة التنفيذية، وكذلك إزاء انعدام استقلال المحامين والنقابة الوطنية للمحامين، بالإضافة إلى القيود المفروضة على ممارسة مهنتهم.

ومن دواعي القلق الأخرى الواردة في التقرير اختلال التوازن بين سلطة الادعاء وحقوق الدفاع. ويبدو أنّ هذا الاختلال، في ظلّ نظام تحقيقي، لا يتلاءم مع المعايير الدولية التي تنصّ على إجراء التحقيق بكامله بالاستناد إلى مبدأ وجاهية المحاكمة. ولا يستفيد المحامون بصورة آلية من حقّ الاطلاع على ملف التحقيق، أو من حق حضور عملية جمع الأدلّة، أو الاطلاع على كلّ عناصر الإثبات المتوفرة ضدّ موكلهم إلى أن يرفع المدعي العام القضية رسمياً أمام المحكمة. وحتى أثناء المحاكمة، يصعب على المحامين تقديم أدلّة مضادة لأنّ مكتب المدعي العام يسيطر على كلّ عناصر الخبرة الفنيّة. وقد قيل للفريق العامل مراراً إنّه لا توجد نتيجة لذلك إلا حالات قليلة لا تثبت فيها التهمة على المدعى عليهم في قضايا جنائية.

ويلاحظ التقرير أنّ شروط الاحتجاز ما قبل المحاكمة أسوأ بكثير من شروط حبس الأشخاص المدانين: فالظروف قاسية وترافق مع قيود صارمة على الزيارات واتصال المحتجزين بأسرهم، ومع منع الاتصالات الهاتفية، والحدّ من حق استلام الطرود، وانعدام الأنشطة، وانعدام المنشآت الملائمة. وكلّ هذه الظروف تقوّض بشدّة مبدأ افتراض البراءة الذي يكرّسه الدستور. فمراكز الاحتجاز ما قبل المحاكمة مكتظّة بالمحتجزين. وغالباً ما يخضع المحتجزون منذ بداية احتجازهم لضغوط نفسية قاسية لحملهم على إدانة أنفسهم بالجرائم المتهمين بارتكابها. وتسمح هذه الاعترافات بإجراء محاكمات سريعة وتؤهل الأفراد المعنيين للعفو متى أدينوا، في حين أنّ الشكاوى والطعون قد تبقيهم خاضعين لظروف احتجاز وعزل قاسية لمدة أطول. ويرى الفريق العامل أنّ مثل هذه الممارسات تتنافى ومبدأ القانون الدولي الذي ينصّ على عدم جواز إكراه أيّ شخص على أن يشهد ضد نفسه. ويساور الفريق العامل قلق شديد إزاء وضع المحتجزين في المنشآت التي تقع تحت سيطرة لجنة أمن الدولة. كما أنّ الفريق قلق إزاء انعدام المراقبة في حالات إكراه المتهمين الخاضعين للتحقيق على العلاج أو إيداعهم القسري في مستشفيات الأمراض النفسية.

ويحيط التقرير علماً كذلك بالافتقار إلى إجراءات جنائية خاصّة بالقاصرين المخالفين للقانون. فنظام الاحتجاز ما قبل المحاكمة المطبق على الأحداث هو نفسه المطبّق على الكبار، كما أنهم يُحتجزون في نفس مراكز الاحتجاز ما قبل المحاكمة التي يحتجز فيها الكبار ووفق الإجراءات والشروط القاسية نفسها مما يؤدّي إلى عواقب أسوأ بالنسبة إليهم بسبب هشاشة وضعهم. أما بالنسبة إلى القضاء العسكري، فإنّ الفريق العامل يكرر الإعراب عن قلقه إزاء اختصاص المحاكم العسكرية في محاكمة المدنيين.

ويشير التقرير أخيراً إلى استعمال الاحتجاز الإداري ضد أشخاص يمارسون سلمياً حقوقهم في التجمّع والتظاهر وفي حرية التعبير والرأي ونشر المعلومات. إنّ قانون الجرائم الإدارية يستعمل لقمع المتظاهرين أو المعارضين السياسيين. كما يستعمل الاحتجاز الإداري للحصول على معلومات من الشهود في القضايا قيد النظر أو من أشخاص يمكن أن يدانوا في مرحلة لاحقة.

يوصي الفريق العامل الحكومة بأن تعيد النظر في دور ومكانة جميع الأطراف المعنية في المحاكمات الجنائية بهدف ضمان استقلالهم، وإقامة توازن بين المتداعين، وضمان الحماية الفعّالة لحقوق الأشخاص المحرومين من حريتهم. ويشجّع الفريق الحكومة على متابعة جهودها لتحسين شروط احتجاز المشتبه بهم والحدّ من اكتظاظ مراكز الاحتجاز ما قبل المحاكمة لجعلها تتماشى مع الشروط المفصّلة في القواعد النموذجية الدنيا لمعاملة السجناء. كما يشجّع الفريق العامل الحكومة على المضيّ قدماً في وضع نظام للأحداث يتطابق واتفاقية حقوق الطفل. ويوصي الفريق أيضاً بتعديل أحكام القانون المحلي وفقاً للمعايير الدولية والدستورية بهدف القضاء على إمكانية اعتقال الأشخاص بسبب مشاركتهم في مظاهرات سلمية أو نشر المعلومات أو ممارسة حريتهم في الرأي والتعبير. ويدعو الفريق الحكومة إلى إعادة النظر في الإطار القانوني الخاص بالاحتجاز الإداري لضمان عدم إساءة استعمال هذا النوع من الحرمان من الحرية.

ويدعو الفريق العامل الحكومة إلى إعادة النظر في الإطار القانوني الخاص بتنظيم المحاكم العسكرية ووظيفتها واختصاصها. إذ ينبغي أن يقتصر هذا الاختصاص حصراً على الجرائم العسكرية التي يرتكبها العسكريون. وينبغي أن يكون النظر في الاستئنافات المقدمة ضدّ قرارات المحاكم العسكرية والطعون في شرعيتها من اختصاص المحاكم المدنية. ويوصي الفريق العامل أخيراً بأن يُتّخذ القرار القضائي بإيداع شخص ما قسراً في مستشفى الأمراض النفسية بوجود الشخص المعني وأسرته ومحاميه، وبأن ينصّ القرار على إجراء مراجعة قضائية وجاهية دورية لعملية الإيداع هذه.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS VISIT TO THE REPUBLIC OF BELARUS

(16 TO 26 AUGUST 2004)

CONTENTS

Introduction

1. The Working Group on Arbitrary Detention visited the Republic of Belarus from 16 to 26 August 2004 at the invitation of the Government. The original invitation was communicated on 20 August 1999 before the Sub-Commission on the Promotion and Protection of Human Rights by the former Deputy Permanent Representative of Belarus to the United Nations Office at Geneva, Mr. S. Mikhnevich. A negotiated Chairperson's statement made at the Sub-Commission's fifty-first session indicated the willingness of the Government of Belarus to facilitate a visit by the Working Group. The delegation consisted of Ms. Leïla Zerrougui, Chairperson-Rapporteur of the Working Group and head of the delegation and Ms. Soledad Villagra de Biedermann, a member of the Working Group. The delegation was accompanied by the Secretary of the Working Group, an official from the Office of the United Nations High Commissioner for Human Rights and two interpreters from the United Nations Office at Geneva.

2. The visit included the capital, Minsk, and the cities of Grodno, Gomel, Lida, Mozyr and Vitebsk. During its visit, the delegation met with various officials and with representatives of national and local non-governmental organizations (NGOs), former detainees, relatives of persons in detention and other individuals. It was able to visit 15 detention centres and other facilities, and had meetings, in private and without witnesses, with more than 200 detainees.

3. The Working Group would like to express its gratitude to the Government of the Republic of Belarus, particularly to the Ministries of Internal Affairs and of Foreign Affairs; to the United Nations Development Programme, which helped draw up and carry out the programme of the visit, and to the Belarusian NGOs and individuals concerned.

I. PROGRAMME OF THE VISIT

4. The Working Group was able to visit the following detention centres and facilities: in the capital, the Minsk Pre-Trial Detention Centre No. 1 (Volodarskogo Street); the Correctional Colony-Reformative Settlement No. 1 (Kalvarijskaya Street); the Administrative Reception, Detention and Distribution Centre (B. Okrestina Street) and the State Clinical Mental Hospital. In Lida, the Working Group visited the Special Reception Centre; in the Grodno region, the Investigation Pre-Trial Detention Centre, the Peskavsty Free Settlement and the border guards' facilities; in Gomel, the Investigation Pre-Trial Detention Centre and the Women's Correction Colony-Reformative Settlement No. 4; in Mozyr, the Men's Correctional Colony No. 15/20 and the City Police Station; and in Vitebsk, the Investigation Pre-Trial Detention Centre No. 2, the Educational Colony for Minor Offenders No. 3, and the Migrant Residence Centre.

5. The Working Group met in Minsk with the Minister for Foreign Affairs; the Minister for Internal Affairs and with high officials of both Ministries and of the Ministry of Justice; the Chairman of the Committee on Legislation, Judicial and Legal Issues of the House of Representatives of the National Assembly; the Chairmen of the Supreme Court of Justice and of the Military Court; the Deputy Prosecutor General; members of the State Security Committee (KGB); the chairperson of the National Bar Association; and authorities of the State Police, the penitentiary administration, border guards, and with judges, prosecutors, lawyers and officers working at national, regional and district levels.

6. The Working Group also held meetings with representatives of several NGOs, relatives of persons in detention, former detainees and other persons.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Institutional framework

7. The Republic of Belarus declared its independence from the Soviet Union on 25 August 1991. The Constitution was adopted in 1994 and amended following a referendum held on 24 November 1996, which reinforced the powers of the President of the Republic. Article 1 of the Constitution states that Belarus is a unitary democratic social State based on the rule of law. Article 7 proclaims that the Republic shall be bound by the principle of supremacy of the law.

8. Article 6 of the Constitution states that State power is exercised on the basis of the principle of division of powers between the legislative, the executive and the judiciary. The President of the Republic, who is elected by direct suffrage, is the Head of the State and personifies the unity of the nation (art. 79). Article 101 of the Constitution gives the President of the Republic legislative powers. The executive power is exercised by the Council of Ministers, which is the central body of the State administration (art. 106). The National Assembly (Parliament) consists of two chambers, the House of Representatives, composed of 110 deputies elected by the people, and the Council of the Republic, a chamber of territorial representation composed of 8 counsellors from every oblast (region) and the city of Minsk, whose members are appointed by the President of the Republic (arts. 90 and 91).

1. The courts

9. The courts exercise the judicial power. The Ministry of Justice is responsible for the administrative functioning of the courts. The judicial system consists of the Supreme Courts, oblast courts, the Minsk city court, district/city courts and the Supreme Economic Court, regional economical courts and the Minsk city economical court. There is also a military court with six military inferior courts and a military branch at the Supreme Court. The jurisdiction of military courts extends to civilians in cases of collusion with military personnel, when State security is involved, and in cases of multiple offences, when at least one is under the jurisdiction of the military court. The prosecutors, investigators and judges of military courts are all military personnel.

10. All the above-mentioned courts are included in a single judicial system and governed by one law, namely the 1995 Law on the Judicial System and Status of Judges. The Constitutional Court of the Republic is also part of the judicial system, with a specific status provided by the Constitution.

11. As concerns the appointment of judges, the first selection is made by the local administration of the Ministry of Justice. Once selected, a candidate must then pass a qualifying examination organized by a judges' qualification board and be recommended for appointment by that board. If the Ministry of Justice accepts that recommendation, the candidate is referred to the Presidential administration, which then takes the final decision concerning his/her appointment. Candidates are also subject to confirmation by the Council of the Republic.

12. The President of the Republic has the authority to appoint and dismiss the chairpersons of the Constitutional Court, the Supreme Court and the Higher Economic Court. The President has also the authority to appoint all other judges of the Supreme and Economic Courts, with the consent of the Council of the Republic.

13. Article 84 (11) of the Constitution permits the President of the Republic to dismiss judges of the Constitutional Court, the Supreme Court of Justice and the Economic Court, in accordance with the law. The President has the power to appoint 6 of the 12 members of the Constitutional Court, including its chairperson. There is no requirement in this selection process for the President to engage in consultations to determine the most appropriate candidates. The Council of the Republic appoints the remaining six members.

2. The Prosecutor's Office

14. The General Prosecutor's Office is an independent body under the direct supervision of the President of the Republic (article 127 of the Constitution). This institution is composed of the General Prosecutor, the Deputy General Prosecutor and, like the court system, regional (oblast) and Minsk city prosecutors, and district prosecutors. The General Prosecutor is appointed by the House of Representatives upon the recommendation of the President of the Republic. The President also appoints the Deputy General Prosecutor, as well as regional and Minsk prosecutors and district prosecutors.

15. The Prosecutor's Office acts both as an investigation agency (together with the Ministry of the Interior, the KGB and specialized prosecutors such as military, financial and transport prosecutors), and, in court, as the representative of the State, bringing and justifying charges and requesting sentences against the accused. When acting as an investigator, the Prosecutor's Office limits itself to the most serious crimes, as well as to financial crimes. The Prosecutor's Office also decides after the initial stage of an investigation whether a suspect is to remain in detention until the court hearing. The public prosecutors also support State charges in courts and represent the State's interests. The supervision of places of pre-trial detention with regard to conditions of detention and claims from detainees as well as the execution of sentences also fall within the competence of the Prosecutor's Office.

3. The investigator

16. According to the law, the decision to place a suspect in pre-trial detention until the court hearing on conviction and sentencing lies exclusively with the Prosecutor's Office, on recommendation of the investigative body. The Ministry of the Interior, the General Prosecutor's Office, the Military Prosecutor, the Department of Financial Investigations, as well as the KGB and officers from other State agencies are entitled with powers of investigation. The investigators are in charge of arresting a suspect and placing him/her in a temporary detention facility. In practise, if the investigator wants the suspect to remain in pre-trial detention or to be released under certain conditions, the prosecutor will rubber-stamp the recommendation of the investigator. These bodies, sharing law enforcement and internal security responsibilities, also have the competence to carry out the preliminary investigation and to decide whether there are enough charges to indict a suspect with an offence.

4. Lawyers and Bar Associations

17. The Working Group was informed that there are approximately 2,000 practising barristers in Belarus who are entitled to represent their clients in court proceedings. In order to be able to practise their profession, lawyers are obliged to be members of the official National Bar Association (*Kollegia Advokatov*) controlled by the Ministry of Justice. The Ministry is in charge of issuing and renewing licenses to practising lawyers. In order to get a license, law graduates have to pass a bar examination conducted by a commission headed by the Deputy Minister of Justice and composed of members of the Ministry of Justice and of the Bar Association. Licenses to practise are issued for a five-year period only. Upon the expiry of a license, an application for renewal must be submitted to the Ministry of Justice, accompanied by an attestation from the local Bar Association, stating that the applicant has shown good behaviour and has been complying with the laws governing the legal profession.

18. The National Bar Association encompasses practising lawyers and a network of regional and local Bar Associations. It helps to provide access to a public defender when required by law, such as for certain court proceedings. The State pays the Bar Association the fee for the services rendered by the public defender, but when a person is found guilty, these fees can be claimed by the State from the convicted person. The Bar Association acts as a centralized agency for lawyers in collecting their fees and pension contributions. Lawyers are subjected to the Bar Association's supervision, which includes billing and receipt of client fees, an estimated 25 per cent of which are retained by the Bar Association. When a defendant is sentenced, the court can decide to charge him/her the fees of the court-appointed lawyer.

B. The legal framework of detention

1. Laws governing detention

19. A whole spectrum of human rights and fundamental freedoms is guaranteed in the Constitution and laws as well as in the international treaties that the Republic of Belarus has ratified and is therefore legally bound to observe. Belarus has ratified the main international human rights instruments, including the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. International treaties signed and ratified by Belarus automatically become part of internal law (article 1 of the Criminal Procedure Code lays down this principle).

20. The Criminal Code and the Criminal Procedure Code were adopted in 1999. They entered into force on 1 January 2001. The Administrative Offences Code also covers some aspects of the detention process. The Working Group has been informed that a new administrative offences code has been adopted by Parliament. According to the information received during the visit, when this new code will have entered into force the maximum duration of police custody, presently of 72 hours, will be limited to 48 hours.

2. Detention in the different phases of the criminal procedure

21. Officials of the Ministry of Internal Affairs (police, border guards), the Committee for State Security (KGB), the Military Police and the Presidential Guard may proceed to

apprehensions and arrests. Once a suspect is apprehended, he/she may be detained for a maximum of 72 hours and remain at a police station or at another temporary detention centre under the supervision of the authority responsible for the arrest (Code of Criminal Procedure, articles 108 and 117). The person apprehended has the right to see a lawyer or public defender from the beginning of her/her arrest. Within the first 24 hours of detention, the authorities that arrested and are detaining the suspected person must imperatively inform the Prosecutor's Office. The family or close relatives of this person must also be notified during this period, but there is no provision to allow visits by relatives.

22. According to the Criminal Procedure Code, the police may detain a person for 24 hours without a warrant. Within that period, the public prosecutor is notified and must take a decision within 48 hours. During the first 72 hours of detention in a police station or temporary detention centre, the relevant investigative body that apprehended the person gathers evidence for the investigation. At the end of that period, the Prosecutor must either formally arrest the suspected person or release him. If the Prosecutor decides to arrest the suspect, he/she must be transferred to a pre-trial detention centre, and the investigator continues the inquiry. According to the law, a suspected person can be held for 10 days without being formally charged and pre-trial detention can last up to 18 months.

23. It should be noted that it is the Prosecutor, and not a judge, who is competent to decide on the arrest and the placement in pre-trial detention. However, the Prosecutor's decision may be appealed before a district court. In this case, the court must decide on the appeal within 72 hours. If the ruling of the district court still does not satisfy the detainee, he or she may appeal before the regional court. The regional court must take a decision within 24 hours of the filing of the appeal. Pre-trial detention should normally be limited to 2 months; however, for special crimes (such as manslaughter and financial crimes) or if the investigation is complicated, the period of pre-trial detention can be extended. At the request of the investigator, the Prosecutor may extend the detention for periods of two months, and for a maximum of 18 months. This maximum may be extended solely with the express authorization of the General Prosecutor or of his/her deputy. Once the investigator has completed the inquiry and gathered all the evidence, the suspect is charged with an offence or crime. The correspondent trial should then start within two months. If the person accused is detained, the court is under the obligation to issue its verdict within 12 months. After that period the person deprived of liberty should be released. No fixed time limit is required in cases of appeal or cassation.

24. A suspect is held in pre-trial detention pending investigation, trial, and as the case may be, appeal and cassation. According to the provisions of the Law on Procedure and Conditions of Detention, the regime of detention is decided by the prosecutor. This law does not set any restrictions on receiving parcels and incoming and outgoing correspondence; article 25 provides that the investigating body gives permission for visits subject to the interests of the inquiry. In practise however, the investigator may impose any restriction, in particular with regard to contacts with the outside world. Family visits are severely restricted and no phone calls are allowed. Restrictions are also imposed on receiving parcels and incoming and outgoing correspondence. These conditions are stipulated by the prosecutor issuing the order of arrest and placement in pre-trial detention or extending the pre-trial detention period. When the

investigation is completed and the case is sent to the court, the regime of detention is decided by the judge in charge of the case. In practise, the restrictions of the pre-trial regime continue to be applied until a final judgement enters into force.

25. Trials heavily depend on the results of the preliminary investigation. There is no judicial oversight over the investigation and no checks and balances. Defendants have the right to legal counsel, to attend proceedings, to confront witnesses and present evidence on their own behalf. Courts appoint legal counsel for those who cannot afford the services of a private lawyer.

26. Once a final court decision enters into force, after the exhaustion of all remedies, the convicted person who has been sentenced to a period of deprivation of liberty is sent to a penal colony to serve his/her sentence. For men, there are penal colonies in nearly every oblast, for women and children there is only one of each for the whole country. In penal colonies, convicts are expected to work. The Working Group noted that there were several workshops of craft industries in the penal colonies it visited. Alimony for the detainee's dependants and monetary compensation for the victims or for the State, are deducted from a detainee's salary, if it is so stipulated in his or her sentence.

27. The regime of penal colonies for convicted persons is much milder than the one for persons in pre-trial detention facilities. Inmates live in dormitories, not cells; besides their work, they have access to cultural and sports facilities; family and relatives can visit once a month and visiting hours are longer than for persons in pre-trial detention; there are no serious restrictions on mail, parcels or phone calls (always at the detainee's expense) and they are free to move around their unit.

3. The situation of minors

28. Belarus does not have a specialized system for juvenile offenders. The age of penal responsibility is established at 14 years and penal majority at 18 years. Minors suspected of having committed an offence can be detained in police custody for 72 hours the same way as adult offenders. They can also be held in pre-trial detention for 10 days before charges are brought and detained, for the needs of the pre-trial investigation, for up to a maximum of 18 months.

4. Administrative detention

29. Administrative detention is a distinct procedure not related to the criminal procedure. The Code of Administrative Offences stipulates the cases in which a person can be placed in administrative detention:

(i) A person may be detained for up to 30 days for the purpose of ascertaining his or her address or identity (when a person is found not carrying valid identity papers, or is not registered or is found with no fixed or valid address). After expiring of the time limit, the detainee should be released;

(ii) A person can be sentenced by a court to a maximum of 15 days' imprisonment for minor offences such as hooliganism, alcohol consumption in public places; malicious disobedience to an order by a police agent, illegal or unauthorized assemblies or demonstrations; obstruction of a public thoroughfare or in public means of transportation.

30. The Working Group was informed that in some cases, after completing the period in administrative detention, the person is charged with a criminal offence by decision of the Prosecutor's Office. When a deportation order is issued against a foreigner found illegally in the country, the person may be placed in administrative detention while awaiting deportation. In this case, the detention lasts until the deportation is carried out, without a time limit.

31. The illegal crossing of the State border is an administrative offence. It becomes a criminal offence punishable with up to five years' imprisonment for organized criminal groups or repetition of the offence within the same year. Border guards have the competence to act as investigators in matters relating to illegal crossing of borders and illegal entry into the country. As such, they can open a criminal case against persons who have been caught illegally entering the country more than once. In matters relating to organized trafficking of persons, the competent authority is the KGB.

5. Detention in psychiatric hospitals

32. The Law on Psychiatric Health and Guarantees of Citizens' Rights, adopted in 1999, and the Principles on Providing Psychiatric Aid (Decree No. 337 of 5 November 1999) stipulate three conditions in which a person can be placed in a psychiatric institution: when there is a risk for the person or for others; at his or her own request; and at the request of his or her relatives. The decision to place a person in treatment in those cases or to admit a person into a psychiatric hospital is made by one single psychiatrist. If the patient refuses treatment, a commission of psychiatrists must examine him/her and forced treatment requires an authorization from a court. The court has 10 days to decide whether or not to authorize forced treatment.

33. Article 30 of the above-mentioned law stipulates the conditions in which a person can be forced to undergo psychiatric treatment following the commission of a criminal offence. During the period of pre-trial detention, the Prosecutor's Office controls the placement in psychiatric treatment. If a court orders forced psychiatric treatment, a commission of psychiatrists must decide on the conditions of this treatment, and reviews it on a regular basis (every one to six months). If the commission decides to discharge the patient, the court must approve this decision. If the court decides to stop the treatment or not to place the person in forced treatment, the patient must be immediately released.

III. POSITIVE ASPECTS

34. The Working Group wishes to stress the cooperation of the Government and the official authorities met during this visit. With the only regrettable exception of the inmates and detention facilities under the control of the KGB, the Working Group was able to visit all the other detention centres and facilities it requested, whether prisons, police stations, administrative detention centres, pre-trial detention centres, asylum-seeker facilities and the Minsk State Psychiatric Hospital. The cooperative attitude of the Government was demonstrated by the fact that almost every day, the official programme of the visit was modified at the Working Group's

request. Even for last minute demands, arrangements were made. In all the facilities visited, the Working Group was able to meet with and interview in private whomever it wanted: pre-trial detainees, convicted persons serving their sentence, women, minors, and even persons in discipline quarters.

35. In its interviews with representatives of different institutions, the Working Group has felt a clear willingness and openness to change law and practice. This is the case of judges, who told the Working Group that they would like to be more closely involved in the investigation process. They would also like to see changes to the legislation which would give them a more important role, improve the situation of detainees and create a separate juvenile justice system. At the same time, representatives of the Ministry of Justice said they were prepared to assume tasks in the penitentiary system. This eagerness to introduce positive changes was also reflected in interviews at the Ministry of Internal Affairs and other institutions.

36. The Working Group was informed that the legislation has been amended on several occasions in order to improve the situation of detainees. In particular, the length of pre-trial detention has been reduced, and the possibility of a detainee to have access to a lawyer shortly after his/her initial arrest has been introduced. The presumption of innocence has also been strengthened and the possibility to challenge the lawfulness of the detention before a court has been introduced. The Working Group noticed the intention of the authorities to go further in this reform process, as reflected in the new Administrative Code recently adopted by Parliament, which will soon enter into force, and in the proposed amendments to the Criminal Code.

37. The practice of issuing presidential amnesty decrees reduces the overcrowding of detention facilities, and other measures have been taken to improve the conditions of detention. Alternatives to deprivation of liberty and security measures have also been adopted and are being implemented. Considering the overcrowding observed, particularly in some pre-trial detention centres (SIZOs), the Working Group welcomes the adoption of these measures.

38. With regard to the situation of illegal immigrants, asylum-seekers and applicants for refugees status, the Working Group notes that the legal framework is consistent with international law and considers that the situation in Belarus seems to be better than in other parts of the world. The Working Group visited the Migrant Residence Centre in Vitebsk and has noticed that refugees and asylum-seekers can stay in the centre or freely leave the compound. They are provided with temporary accommodation.

IV. AREAS OF CONCERN

A. The excessive powers given to prosecutors and investigators during the period of pre-trial detention

39. During the whole period of pre-trial detention, persons deprived of their liberty are under the total control of the investigators and prosecutors, who are mandated to establish charges against them. The decision to keep a person in detention or to extend the period of his or her detention is taken not by a judge but by the public prosecutor, acting on proposals by the investigator and in the absence of the person concerned. Although the General Prosecutor's Office is considered an independent institution, the Working Group is of the opinion that it is

still a centralized body of officials belonging to the executive branch. And even assuming it were an independent body, because of its role in the trial, it lacks the impartiality required to comply with article 9 of the International Covenant on Civil and Political Rights, to which Belarus is a party.

40. Although the new Criminal Procedure Code has introduced the possibility to challenge before a court the lawfulness of the prosecutor's decision to detain or to prolong a detention, in practice, arrest and detention depend on the investigator. The court is only allowed to review certain procedural issues; this procedure could not be considered a habeas corpus remedy. It rather constitutes a prima facie control of the lawfulness of the procedure and is carried out in the absence of the accused person, by filing of the case. As a result, it often leads to the confirmation of the prosecutor's decision.

41. The judges met by the Working Group reiterated that they were not competent to decide on the validity of proceedings or to interfere in the investigation. At this stage of the proceedings, they were limited to ensuring the conformity of the restriction of liberty with the applicable provisions of the Code of Penal Procedure. The Working Group is of the opinion that this lack of effective judicial oversight could lead to arbitrary detention.

42. During its visits to the pre-trial detention centres, the Working Group noticed that often the investigators carry out their interviews inside the prison, without the presence of defence lawyers. According to the information gathered, the majority of detainees are not able to retain the services of a private lawyer and many depend on legal aid. The detainees who were interviewed stated that the lawyer provided by the State usually is not effective and that he asks to be paid to visit his/her client in jail and assist him/her.

43. It is also assumed that the decision to place a person in detention, to extend the period of detention or to release the person is, in practice, the sole responsibility of the investigator and that the presence of a lawyer does not change the situation. Also, petitions to the prosecutor, his superior or to the court are of no avail.

B. The lack of independence of the judiciary and the Bar Association

44. The Working Group notes with concern that the procedures relating to tenure, disciplinary matters and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary. The procedure for the appointment of judges has changed considerably after the 1996 referendum. The main responsibility no longer lies with Parliament, but with the President of the Republic. The Working Group is particularly concerned that the judges of the Constitutional Court and the Supreme Court can be dismissed by the President of the Republic without any safeguards.

45. The Working Group is also concerned at the "Measures to improve the operation of the legal and notary professions in the Republic of Belarus" (Presidential decree No. 12 of 3 May 1997), which imply restrictions to access and practice of the legal profession and are not in conformity with the Basic Principles related to the role of Bar Associations. The Working Group is especially concerned at the exorbitant powers attributed to the Minister of Justice to control the exercise of the legal profession.

46. During a meeting with the President of the National Bar Association, the Working Group noticed that Bar Association officials did not express any criticism either of the legal system or of practice. For the President of the Bar Association, neither the prohibition for lawyers to create independent bar associations, nor their delicate situation subject to the renewal of licenses every five years, nor even the limited rights of the defence in criminal proceedings were subjects of concern. She stated to the Working Group that the independence of the Bar Association and the rights of defence are protected by law and that there were no impediments to practice in the profession.

47. This position was not shared by other lawyers the Working Group met, especially those engaged in defending the rights of political opponents and human rights defenders. According to many of them, Bar Association officials do not reflect the position of the majority of practising lawyers. They clearly stated to the Working Group that the procedure of renewing licences to practise is used as a means of pressure, that the executive power often intervenes in the process and that the legal profession does not have a good reputation because of the limited role of lawyers in criminal proceedings. The Working Group has been informed that a prominent lawyer and human rights defender, Mr. Garry Pogonyajlo, has been stripped of his license. According to the Government, Mr. Pohonyajlo was a member of the Minsk city Bar Association since 1994 and practised till September 1997, when he applied to cease his membership in the association of his own will.

C. Concerns raised by the pre-trial detention regime

48. In the Belarusian system, pre-trial detention can last up to 18 months, depending on the complexity of the case. During this period, the regime of detention is decided by the investigator who can impose any restrictions, in particular with regard to contacts with the outside world. The Working Group has been informed by interviewed detainees that visits are not allowed until the preliminary investigation is closed and the case sent to court. The Working Group notes the heavy reliance on pre-trial detention, even for juveniles, and that as applied, it is designed as a repressive and punitive measure.

49. The conditions of pre-trial detention are much worse than those of convicted persons (overcrowding, harsh conditions with severe restrictions of visits and contacts with family, no phone calls, lack of activities, and sometimes, lack of adequate facilities). In certain cases, these restrictions are imposed by law based on the crime charged, and detainees are not given the possibility to effectively challenge these measures.

50. The prison system is not under the authority of the Minister of Justice but of the Interior, involved in the investigation of most cases. This means that those who hold prisoners are not completely separated from those who have an interest in the investigation. The Working Group was under the impression that harsh conditions of pre-trial detention are imposed so as to facilitate the outcome of the investigation, and that the task of those in charge is to actively support the achievement of this goal. Pre-trial detention regime is the same for all detainees, men, women and minors alike.

51. In this context, the whole system is designed to favour self-incrimination. The Working Group gathered information suggesting that, from the very moment of arrest and the beginning of

detention, detainees are often put under strong psychological pressure to incriminate themselves in the crime they are accused of. The conditions in pre-trial detention centres being as harsh as they are, self-incrimination is a safe passport to prison colonies, where living conditions improve. If a person challenges the system or his or her detention, he or she is kept longer in a pre-trial detention centre, and the more complicated a case becomes, the more pre-trial detention is extended. This is why detainees consider that collaborating with the investigators will speed up the proceedings and conclude the preliminary investigation expeditiously.

52. The Working Group stresses that under the law, the pre-trial regime of detention is applied until the final judgement enters into force, including appeal and cassation proceedings. In the regime for convicted persons, detainees benefit from rehabilitation programmes, semi-open regimes, conditional release, and amnesties, and are given more time and facilities for visits.

53. This system, inherited from the Soviet time, is unbroken and continues to lead to severe restrictions of access to the outside world for all detainees who are in pre-trial detention. A person who is supposed to be innocent until convicted is kept in more severe conditions than a person who is serving his sentence after conviction. As such, the presumption of innocence is seriously undermined.

54. The Working Group was told that in many cases the charges brought by investigators do not correspond to the real reasons for a detention, especially when there is a political component to the accusation. This is also due to legislation that is vague and leaves room for abuses, undermining the presumption of innocence. Moreover, it appears that attempts to demonstrate effectiveness in combating crime lead to the fabrication of false cases from the very beginning of the detention. The system of exercising pressure to obtain self-incrimination in pre-trial detention and the over-reliance of judges on the evidence, statements and protocols of the investigator make it impossible to challenge charges in this type of case. Lack of effective internal control, and moreover, external control, such as the one that could be exercised by independent institutions, nullify the possibility of holding those fabricating cases accountable.

55. The Working Group also notes that it could not meet or interview some detainees without an authorization from the authorities in charge of the investigation, and that even when the preliminary investigation was completed, these restrictions were not waived. The Working Group is especially concerned about the situation of persons being held in detention centres under the responsibility of the KGB. The Working Group notes how difficult it was to gain access to these persons and places. Although it had insisted on such a visit, it was not authorized to visit the detention centres under the responsibility of the KGB.

56. The Working Group was thus not authorized to meet Mr. Mikhail Marynich, a former Government Minister and Ambassador and leader of the Business Initiative, detained at the KGB detention centre in Minsk. Mr. Marynich is also a leading opponent who ran against President Lukashenko in 2001. Authorities of the detention centre stated that Mr. Marynich could not receive visitors because he was under investigation on charges of serious crimes against the State.

57. The Working Group was informed that serious crimes (terrorism, organized crime, trafficking of drugs, arms and persons, etc.) and matters affecting politicians are usually entrusted to the KGB, whose agents are required to act under the supervision of the Prosecutor. The Working Group has noticed that in practice no authority of all those involved in the criminal proceeding whether the Ministry of the Interior, prosecutors or judges, exercises any control over the situation of persons held in detention centres of the KGB. The Working Group stresses that for those detainees, the risk of abuse is high and remedies are only hypothetical.

D. Detention as a means to repress freedom of expression

58. The Working Group received extensive information concerning cases of persons who, exercising their right to assembly, demonstration, freedom of opinion and expression or disseminating information in a peaceful manner, were arrested and detained for short periods and charged with administrative offences. Its attention was also drawn to cases of persons who, exercising these rights, were charged with criminal offences and convicted to longer periods of deprivation of liberty.

59. Offences described as "libel against the President of the Republic", "insult to the President" and "libel against an official" in articles 367, 368 and 369 of the Penal Code are defined in wide and imprecise terms and leave room for the criminalization of conduct protected by international law. At least three journalists were convicted in 2001 and 2002 on criminal charges for having allegedly slandered the President of the Republic.

60. The Working Group met with Ms. Oksana Novikova, a pregnant 32-year-old woman. She was found guilty of libel against the President, but benefited from an amnesty in February 2004. On 5 April 2004, she was again arrested after distributing leaflets against the President in a metro station in Minsk. On 9 June, a judge sentenced her to two and a half years forced labour. The Working Group was informed that the sentence will be applied once the baby is born.

E. Serious concerns raised by administrative detention

61. The Working Group has noticed that homeless persons, illegal immigrants and undocumented persons are routinely arrested and can be held in administrative detention centres or in police stations for up to 30 days. Allegations were received that administrative detention is also being used in certain cases to obtain information from witnesses in pending cases or from persons who may be charged at a later stage. The Working Group is concerned that information thus obtained could be used against the persons when investigators open a case.

62. This reportedly happened to Mr. Valery Levonevsky, a trade-union activist and leader of the National Committee of Belarus, whom the Working Group met at the Grodno Pre-Trial Detention Centre. According to the information gathered, Mr. Levonevsky was arrested on 1 May 2004 on the occasion of the rally of the Day of Workers and was held for 15 days in administrative detention because he had planned to distribute leaflets. On 15 May, he was formally charged with insulting the President of the Republic, an offence according to article 368, part II, of the Criminal Code, and was later sentenced to two years' imprisonment. According to Mr. Levonevsky, he was arrested and charged in order to prevent him from running in the next parliamentary elections.

63. The Working Group is therefore concerned that administrative detention could be misused to circumvent the legal time limit on detention without charges. Another major problem in terms of arrest and detention is that administrative detention does not involve adequate procedures.

64. From the information received during the visit, it appears that detention for administrative offences, although decided by a court, is not preceded by a public and adversarial procedure and does not guarantee a fair trial as defined by article 14 of the International Covenant on Civil and Political Rights. Most of the persons interviewed stated that they did not have a trial and that their sentence was notified to them while in detention. The Working Group noticed that persons detained for administrative offences are convinced that they do not need the assistance of a lawyer because they do not consider themselves implied in the perpetration of a criminal offence.

65. With regard to foreigners, the Working Group is especially concerned at the situation of detainees awaiting deportation. The Working Group notes that in practice, Belarus applies double-sentencing to foreigners condemned to deprivation of liberty for criminal offences, even when they have strong ties within the country. A foreigner who has completed his sentence is directly transferred from prison to an administrative detention centre in order to be deported. The Working Group met an Israeli and a Syrian citizen who had been detained for several months at the Okrestina detention centre in application of this procedure. These two persons had been living in the country for many years before their sentencing, were married to Belarusian citizens and whose children were also Belarusian citizens. According to the Government, the two cases were very specific and did not reflect the existing practice in this field.

F. Jurisdiction of military courts over civilians

66. The Working Group notes with concern the existence, at all levels, as well as at the Supreme Court, of a military court system competent to try civilians. Although the Working Group was informed that military jurisdictions apply the same laws as civilian courts, it remains nonetheless concerned at the fact that the investigators, the prosecutors and the judges are all military personnel.

67. At the Peskavsty Free Settlement, the Working Group was able to meet Mr. Yuri Bandazhevsky, founder of the Gomel Institute of Medicine, known for his study on the impact of small-dose radiation on the human body, who was arrested on 13 June 1999 in Gomel. Mr. Bandazhevsky was told that he had been detained on the basis of Presidential decree No. 21 of 21 October 1997 on “Urgent Measures to Combat Terrorism and Other Particularly Dangerous Violent Crimes”. However, 23 days after his arrest on 5 August, he was charged of bribery along with 18 colleagues, under article 169, part III, of the 1960 Criminal Code then in force. On 18 June 2001, Mr. Bandazhevsky was sentenced by the Military Board of the Supreme Court to eight years of hard labour, the confiscation of all possessions and a suspension from professional practice for an additional five years. Mr. Bandazhevsky was tried before a military jurisdiction because one of his co-defendants had military status.

68. The Working Group reiterates its concern at the competence of military jurisdictions to try civilians. It underlines that the trial of civilians by military or exceptional jurisdictions is one of the most serious causes of arbitrary detention.

G. Unsatisfactory protection of vulnerable detainees

69. Notwithstanding the changes introduced in the penal and procedural legislation, there are still no special proceedings for juveniles in conflict with the law. As judges themselves have told the Working Group, there are many flaws in the legislation which do not take into account the special nature of minors.

70. The Working Group notes with concern that the regime of pre-trial detention for minors is the same as for adults. They are kept in the same pre-trial detention centres (SIZOs) as adults and their detention is submitted to the same regime. The harsh conditions, however, lead to worse consequences for minors because of their vulnerability. When minors are convicted, though conditions have improved, limitations on visits continue to apply.

71. Although Belarus has ratified the Convention on the Rights of Child, it does not seem to comply with the principle that detention should be the last resort in the case of juveniles in conflict with the law. According to what the Working Group was told, detention is the rule and not the exception.

72. The Working Group has also noticed that women are kept in the same pre-trial detention centres as male detainees, albeit in different cells, but under the supervision of male guards. This leads to violations of their right to intimacy and other rights. The incommunicado nature of these centres (except for visits by lawyers, which are unrestricted) creates a breach of family bonds, especially with the children. The situation in female prison colonies, although clearly better in terms of visits and overall general conditions, is still too restrictive in respect of communication with the outside world, including detainees' children, when these are too old to stay in the colonies with their mothers.

H. Lack of safeguards regarding detention in psychiatric hospitals

73. The Working Group has been able to visit the State Clinical Mental Hospital in Minsk. It was informed that all persons in this clinic had been placed there by court decision. In the hospital, patients were free to move around, but the Working Group learned from patients that some of them had been placed in isolation cells in the Evaluation Unit, for periods lasting from three to six months. The Working Group would have liked to visit this unit located nearby, but could not and was told by clinic officials that this Evaluation Unit was under the authority of the Prosecutor's Office and that its prior approval was needed. The Working Group was informed that placement in the Evaluation Unit concerns persons who committed a crime or against whom an investigation has been opened. The persons interviewed asserted that during their detention in the Evaluation Unit they were not brought before a judge or a prosecutor and only had contacts with an investigator. One of the patients confirmed that he was placed in detention by the investigator and that the court decision concerning his detention was taken in absentia.

74. The Working Group is concerned at these statements, which corroborate information received from other sources. Among other information, the Working Group received a complaint from the father of an inmate, who stated that the judicial decision to forcibly place his son in a psychiatric hospital had been taken in his absence, in the absence of his family and of his lawyer, and that none of the petitions he filed was acted upon.

75. The Working Group was also informed that all experts' firms and scientific investigation units, including forensic institutes, are under the supervision of the Prosecutor's Office. This situation is of particular concern.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

76. The Working Group would like to express its gratitude to the Government for its openness and its cooperation. During the entire visit, authorities have shown flexibility and transparency towards the requests of the Working Group and have respected the terms of reference of its methods of work. With the exception of the detention facility under the supervision of the KGB, where access was denied, the delegation was able to act in total independence both in respect of the choice of and access to detention facilities and detainees. The Working Group was able to choose all the persons it wished to interview and meetings took place in private and confidentially.

77. The Working Group notes with satisfaction the efforts undertaken to improve the conditions of persons deprived of liberty. It notes that the legal framework of detention was modified recently and that other reforms are to follow. The Working Group also notes with satisfaction that the legal framework relating to illegal immigrants, asylum-seekers and refugees is in conformity with international norms.

78. The Working Group is nevertheless concerned about the excessive powers granted to the Prosecutor's Office and investigators during the pre-trial detention phase and about the lack of effective proceedings to challenge the legality, opportunity and necessity of such a detention. The Working Group is also concerned about the restrictions imposed during pre-trial detention, when suspects are presumed innocent until proven guilty by a court. The conditions during pre-trial detention are more restrictive than those for persons serving their sentences.

79. The Working Group is further worried about the imbalance between the powers granted to the prosecutor, which are paramount in the criminal process, and the limited ones conferred to defence lawyers, who do not always have access to the evidence and expertise controlled by the Prosecutor's Office. Moreover, the Working Group is concerned at the lack of independence of lawyers and of the Bar Association and the restrictions imposed on the exercise of their profession. It is also concerned about the appointment and revocation procedures of judges, which do not guarantee their independence towards the executive branch of Government. Finally, the Working Group is concerned at the lack of a separate criminal procedure for juvenile offenders.

80. A main concern within the mandate of the Working Group is also the restriction imposed on freedom of expression and association through the arrest of several political opponents and the prohibition of some NGOs. Finally, the Working Group notes with concern the frequent use of administrative detention, which allows for the arrest and detention of a person during a certain period of time without grounds.

B. Recommendations

81. The Working Group invites the Government of Belarus to reconsider the role and place of the actors in a criminal procedure in order to ensure their independence, establish a balance between parties at trial, and ensure an effective protection of the rights of persons deprived of liberty.

82. The State is invited to consider in priority:

(a) Taking all appropriate measures to guarantee in law and in practice the effective independence of judges and lawyers, as formulated in the Fundamental Principles Relating to the Independence of Judges and Lawyers and in the Fundamental Principles Relating to the role of Bar Associations, adopted by the General Assembly, in 1985 and 1990 respectively;

(b) Reconsidering the legal framework relating to pre-trial detention in order to ensure that placement in detention is ordered by a judge and not by the Prosecutor, and to ensure as well that the proceedings to challenge the legality of detention constitutes an authentic habeas corpus petition and that the court decides in the presence of the person concerned and his/her counsel;

(c) Separating the different agencies which may have an interest in an investigation from those in charge of prison supervision and pre-trial detention centres. The Working Group recommends that the prison administration and pre-trial detention centres be placed under the supervision of the Ministry of Justice, and that the regime of pre-trial detention not be answerable exclusively to investigators.

83. The Working Group recommends that legislation be aligned with international law standards in order to ensure the respect for the presumption of innocence, for the principles of opposition and adversarial procedure and equality of means in all phases of the criminal procedure:

(a) The defence lawyer and the accused should have access to all elements of proof and be granted effective means to challenge the accusation at trial;

(b) Experts and laboratories should benefit from a status which ensures their impartiality from all parties at trial.

84. The Working Group encourages the Government to take all appropriate measures to improve the conditions of detention of suspects and to reduce overcrowding in pre-trial detention centres and to comply with the conditions detailed in the Standard Minimum Rules for the Treatment of Prisoners. In this respect, it is especially important to ensure that:

(a) Pre-trial detention is an exceptional measure applied only when alternative measures to detention have proven ineffective;

(b) Restrictions which add to deprivation of liberty are only imposed when they are necessary to maintain discipline in the prison or in order to prevent the obstruction of an investigation. In any event, they should be imposed by a judge or under his or her authority;

(c) Complaints against acts committed by State agents, in particular investigators, are to an external, independent and impartial body.

85. The Working Group encourages the Government to move forward in the establishment of a new juvenile criminal system in conformity with the Convention on the Rights of the Child to which Belarus is a party. In any case, children should not be held in institutions such as SIZO and in quarters with adults. In case of detention, they should, at all stages of their detention, have more open contacts with the outside world, family and friends.

86. The Working Group recommends amendments to the provisions of internal criminal laws in the light of international and constitutional norms, to bring to an end the possibility of arresting persons for peacefully demonstrating, distributing information or exercising their right to freedom of opinion and expression. The Working Group also invites the Government to reconsider the legal framework regarding administrative detention. The State should in priority:

(a) Ensure that administrative detention is not misused to circumvent the legal time limits on detention without charges, or to obtain information from witnesses in pending cases or from persons who may be charged at a later stage;

(b) Ensure that administrative detention is not used to repress peaceful demonstrations, the dissemination of information or the exercise of freedom of opinion and expression;

(c) Provide all persons deprived of their liberty for administrative offences with a public and adversarial procedure that guarantees a fair trial, as defined in article 14 of the International Covenant on Civil and Political Rights;

(d) Provide the homeless, illegal immigrants, undocumented persons and foreigners awaiting deportation an effective judicial procedure that allows them to challenge the lawfulness of their detention.

87. The Working Group invites the Government to adjust the legal framework regarding the organization, functions and competence of the military courts in order to comply with international norms. Competence of military tribunals should be limited to strictly military offences committed by military personnel. Proceedings against decisions of military tribunals, especially regarding challenges to their lawfulness, should be conducted before civilian jurisdictions.

88. The Working Group recommends that the judicial decision of forced placement in a psychiatric hospital should be taken in the presence of the person concerned, or of his or

her family and lawyer, and that an adversarial judicial review should be provided on a periodic basis.

89. Finally, the Working Group strongly recommends that the Government allow outside oversight of prisons and other detention facilities, with a more active role of the civil society. At the same time, the Working Group believes that oversight of trials and proceedings in which human rights are involved, especially when it comes to deprivation of liberty, should be allowed.

90. These are the main recommendations expressed by the Working Group. It wishes that these be taken into account in the ongoing reform process undertaken by the Government.
