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SIHRG's and L4L's Submission on the questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

Solicitors Human Rights Group (SIHRG) and Lawyers for Lawyers (L4L) are submitting these answers to the questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders to the Special Rapporteur on the situation of Human Rights Defenders, in respect to the situation of human rights defenders in Belarus.

SIHRG is an organization of British lawyers based in London. The Group is committed to the independence of the legal profession, the rule of law and human rights throughout the world.

L4L is an independent and non-political Dutch foundation with the status of '*institution for the promotion of the public interest*' which seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. L4L does this by supporting lawyers worldwide who are threatened or suppressed in the execution of their legal profession.

Belarus failed to respond favourably to requests for visit in 2010 and 2011 by the Special Rapporteur on human rights defenders. Many of the answers to the questionnaire are made in connection to the situation of **Mr. Aleh Volchak**. Aleh Volchak was Head of Legal Aid to the Population, an organisation that provided legal assistance until it was liquidated in 2003, and is one of the leading human rights defenders in Belarus.

As requested, only those questions relevant to the SIHRG and L4L will be answered.

Question 4a

Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

Human rights organisations and other NGOs must register and fulfill a number of administrative requirements¹, which could hinder the exercise of freedom of association². NGOs that have successfully registered are nevertheless under strict supervision by the Government, based on the Law of the Republic of Belarus "On Public Associations". Preventing associations from freely carrying out their activities could be a violation of **Article 22 of the International Covenant on Civil and Political Rights**, which states that:

"No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public) the protection of public health or morals or the protection of the rights and freedoms of others".

¹ Law of the Republic of Belarus "On Public Associations", articles 8-19.

² Boris Zvozkov et al. v. Belarus, Communication No.1039/2001, UN Doc. CCPR/C/88/D/1039/2001, 10 November 2006, paras. 7.3-7.4.

Question 5a

Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

Activities of unregistered organisations are banned, according to Article 16 of the Law on Public Association of Belarus. It is a criminal offence to organise or participate in such activities under Article 193-1 of the Criminal Code.

Question 6

Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

During the detention of Mr Volchak in January 2012, the keys to his apartment were confiscated by representatives of the Centre for Isolation of Delinquents (CID) and the passport of Mr Volchak disappeared from his apartment, allegedly to establish his identity. Upon Mr Volchak's release from the detention facility on January 31, 2012, his passport was not returned to him and was unaware of its location.

The retention of Mr Volchak's passport and his detention prevented him from travelling to scheduled meetings at the UN regarding the case of Mr Zakharov on political disappearances and to provide information to the UN bodies about the criminalisation of his and his organisation Legal Aid to the Population. The new passport was eventually issued to Mr Volchak in April 2012 but by that time he was unable to attend the international conference held from 23 February to 25 February 2012 in London "Defending Human Rights Defenders" organised by the Haldane Society.

Above all, the issue of the new passport to Mr Volchak does not change his inability to travel as Belarusian authorities put his name on the list of banned from travel individuals.

That again poses an interference with Mr Volchak's legitimate right to human rights activity and in particular he would be unable to attend the International Caravana of Lawyers on the invitation of the Vice-President of the ACADEHUM – human rights lawyers' organisation in Colombia Mr Edwin Rubio. Mr Rubio met Mr Volchak whilst in the UK, London in November 2011 and immediately invited him to attend an international conference in Bogota to take place in Colombia from 26th August 2012 to 2 September 2012.

This situation contravenes the provisions of **Article 12(2) of the International Covenant on Civil and Political Rights**, which states:

- *'Everyone shall be free to leave any country, including his own'.*

Furthermore it violates **article 5 of the Declaration on Human Rights Defenders**, which states: *"For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:*

- (a) To meet or assemble peacefully;*
- (b) To form, join and participate in non-governmental organizations, associations or groups;*
- (c) To communicate with non-governmental or intergovernmental organizations".*

Question 7a

Please indicate the measures taken, if any, to avoid the use of defamation, slander or

blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

No measures seem to be taken to avoid the unduly restriction the right to freedom of opinion and expression of human rights defenders.

On January 27, 2012, Mr Volchak was arrested in the street in the city centre of Minsk after visiting the local post office. Subsequently Mr Volchak was charged with hooliganism after his trial took place on Monday, 30 January. His arrest was direct result of him publishing the 40 page strong report on the illegality of charges against Ales Belyatski, head of Vyasna in Minsk.

Furthermore, On May 24, 2012, Mr Volchak was arrested by plain-clothed police officers who accused him of swearing in public. He was later brought to the Department of the Ministry of Internal Affairs of Tsentralniy district in Minsk, and sentenced on the same day to nine days' administrative imprisonment by the Minsk Tsentralniy District Court, under Article 17.1 of the Code of Administrative Offences (swearing against the police).

Mr. Aleh Volchak was held in the Centre for the Isolation of Delinquents (CID) at the City Department of Internal Affairs in Minsk. His arrest and detention were probably related to an article published on the Charter 97 website on May 21, in which he denounced the beatings carried out by the police against young demonstrators, whom they labelled as criminals. In the article, Mr Volchak also called on Belarusian politicians to take a stand regarding the violent repression of the rights to freedom of expression and the beating of demonstrators by the police, and called on them to take judicial action.

This violates **article 6 of the Declaration on Human Rights Defenders**, which states: "*Everyone has the right, individually and in association with others:*

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters".

Question 8

Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders.

In particular Belarusian authorities excessively use the charge of petty hooliganism and specifically the use of swearing words in public in the persecution of individual human rights defenders. Though administrative measures could be taken against people charged with this offence, the Belarusian authorities deliberately chose the detention as punitive measure and detain human rights defenders in harsh prison conditions.

SIHRG and L4L thank the Special Rapporteur on the situation of Human Rights Defenders for her attention to this very important matter.

Sincerely,

Lawyers for Lawyers

Solicitors International Human Rights Group



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