The Permanent Mission of the Republic of Belarus to the United Nations Office and other International Organizations at Geneva presents its compliments to the Secretariat of the Human Rights Committee and has the honour to transmit comments of the Republic of Belarus to Draft General Comment on Article 9 (Liberty and Security of Person) of the International Covenant on Civil and Political Rights.

The Permanent Mission avails itself of this opportunity to renew to the Secretariat of the Human Rights Committee the assurances of its highest consideration.

Enclosure: 4 pages

Geneva, 30 May 2014

Secretariat of the Human Rights Committee
Geneva
Belarus’ Comments to Draft General Comment on Article 9 (Liberty and Security of Person) of the International Covenant on Civil and Political Rights
Minsk, 30 May 2014

Belarus considers the General Comments adopted by the UN Treaty Bodies as a useful additional tool for facilitating the implementation of human rights treaties and welcomes therefore the efforts of the Human Rights Committee to provide a fresh look at the promotion and protection of the Right to Liberty and Security of Person, which is defined in Article 9 of the International Covenant on Civil and Political Rights.

Ambiguity in terminology
At the same time, Belarus kindly requests the Committee to take into account that though the Covenant is a universal treaty of the utmost importance in the sphere of human rights protection, it contains several ambiguities based on the differences between specific legal terms in the English and the Russian languages. The problem lies in the fact that several legal notions of the Covenant in the English language reflect approaches particular for the common law legal systems, while their Russian versions represent concepts relating to the continental legal systems, especially the legal system of the USSR as it was in 1966 when the Covenant was adopted.

Taking into account this fact it is reasonable before commenting on specific provisions of the Covenant in the English language, to comprehensively analyze the differences in the meaning of the notions in the Russian, English and other texts of the Covenant. Otherwise, comments provided by the Russian speaking countries, for example, will never be fully understood by the Committee experts working with the English text of the Covenant.

General comments on the process
Belarus once again welcomes an open process of review of the General Comment on Article 9. However, Belarus regrets to mention that this process was not transparent and inclusive enough. In this regard, Belarus draws attention of the Committee to the General Assembly resolution 68/268 adopted on April 9, 2014 «Strengthening and enhancing the effective functioning of the human rights treaty body system» and its Paragraph 14, in which the General Assembly «Encourages the human rights treaty bodies to develop an aligned consultation process for the elaboration of general comments that provides for consultation with States parties in particular and bears in mind the views of other stakeholders during the elaboration of new general comments».

Taking into account «the right of each State party to interact with the treaty bodies in any of the six official languages of the United Nations» reiterated in Article 30 of the aforementioned resolution and with the reference to the General Assembly resolution 67/292 «Multilingualism» Belarus also would like to note, that the demand to provide comments to the draft General Comment on Article 9 of the Covenant in one of the
three languages of the Secretariat and preparation of the draft only in English are inadmissible.

In this regard, Belarus proposes the Committee to organize an aligned consultation process after the official distribution among the States parties of the draft General Comment in all the UN official languages.

Moreover, Belarus refers to Article 7 of the General Assembly resolution 68/268 and proposes to adopt this and following draft General Comments at the meetings of States parties as a separate agenda item.

Comments on the particular paragraphs

Bearing in mind the aforesaid Belarus would like to provide the following comments:

- Belarus has established a legal and regulatory framework that is consistent with the relevant international human rights norms. Belarus has implemented the obligations under Article 9 in the national legislation, namely the Criminal Code and the Code of Criminal Procedure, the Penal Enforcement Code and the Code of Administrative Procedure and Enforcement. Right to liberty and security of person is guaranteed by Article 25 of the Constitution of the Republic of Belarus.

- In Paragraph 5 of the draft General Comment as the examples of deprivation of liberty are given police custody, “arraigo,” remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children, and confinement to a restricted area of an airport, and also involuntary transportation, as well as certain further restrictions on a person who is already detained, for example, solitary confinement or physical restraining devices. This interpretation is too broad. For example in Belarusian legislation deprivation of liberty is considered as a kind of criminal punishment, an instrument of legal pressure, that is applied by a court decision as a result of a criminal trial. In fact, in English it could be considered as imprisonment after conviction. At the same time, other examples of deprivation of liberty, for instance administrative detention, house arrest, signify less restrictive measures and may not be identical to imprisonment. In this view, Belarus suggests to refrain from giving a clear definition of the term «deprivation of liberty».

- Paragraph 12 of the draft General Comment states that the notion of "arbitrariness" should not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality. However, using such criteria, virtually any apprehension can be considered as arbitrary. Arrest and detention made in accordance with the legislation of the State Party, can not be regarded as arbitrary. Setting the grounds for arrest and detention and the relevant procedure is the prerogative of State Party. It is also unclear in the document
who and on the basis of which criteria may decide about injustice, necessity and proportionality, if the court only and in accordance with applicable law has the right to evaluate arbitrariness and lawfulness of the arrest (detention) and detention (imprisonment). Thus, Belarus believes that the proposed wordings are not entirely correct.

- **In Paragraph 13 of the draft General Comment** the term “arrest” refers to any apprehension of a person that commences a deprivation of liberty, and the term “detention” refers to the deprivation of liberty that begins with the arrest, and that continues in time from apprehension until release. **However, in this case the scope of these terms differs in Russian and English texts of the Covenant.** For example, the legislation of Belarus uses terms detention, arrest, administrative detention and imprisonment. **Detention** is a measure of procedural coercion, which consists in the actual arrest, transportation of detainee to the body of criminal prosecution and his/her short-term taking into minimum custody (for the period from 3 to 72 hours, depending on the circumstances of detention). **Arrest** is a kind of criminal punishment, which consists in taking of a convict into maximum custody from 1 to 6 months. **Administrative detention** is a kind of administrative punishment, which consists in taking into medium custody for up to 15 days. **Imprisonment** is a measure of restraint, which applies to the suspect or accused person and consists in taking into custody with respect to the gravity of the alleged crime and other circumstances of the case. **In this regard, Belarus offers to avoid giving clear definitions of these terms.**

- **Paragraph 20 of the draft General Comment** states that denial of early release amounts to continuation of detention. **However, early release in many states, including Belarus, means the possibility to release a convicted prisoner before the expiry of the term of the sentence. It is wrong to amount denial of early release to continuation of detention (imprisonment) because the term for serving the sentence established by the court verdict does not change. In this regard, Belarus offers this wording to be deleted.**

- **Paragraph 32 of the draft General Comment** states that public prosecutors generally lack the institutional objectivity and impartiality necessary to be considered as an officer exercising judicial power under paragraph 3. **However, in Belarus the prosecution as a legal institution is a unified and centralized system of exercising supervision on behalf of the State over the strict and uniform enforcement of legal regulations and is not only an organ of persecution, but also the body responsible for overseeing the protection of the rights and freedoms. The prosecutor is impartial and independent in authorizing imprisonment. At the same time, arbitrariness and lawfulness of the arrest (detention) and detention (imprisonment) have to be verified by the court. In this regard, Belarus suggests deleting this wording from Paragraph 32.**
Paragraph 33 of the draft General Comment states that in the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. However, the Covenant does not set the exact term during which a person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. Committee rightly notes that "promptly" means within a few days. The right to establish specific terms is the prerogative of the State. Thus, in Belarus arbitrariness and lawfulness of the arrest (detention) can be verified by a court in a period not exceeding 24 hours, and detention (imprisonment) - not exceeding 72 hours. In this regard, Belarus proposes to delete this wording from Paragraph 33. Belarus further notes that these terms (48 hours) shall not be taken as absolute. The presence of legally set terms of such verification of the arbitrariness and lawfulness of the arrest and detention to ensure compliance with the requirement is of fundamental importance.