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Committee against Torture

Forty-seventh session

Summary record of the 1039th meeting

Held at the Palais Wilson, Geneva, on Monday, 14 November 2011, at 3 p.m.

Chairperson:Mr. Grossman

Contents

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Fourth periodic report of Belarus (continued) (CAT/C/BLR/4; CAT/C/BLR/Q/4 and Add.1; HRI/CORE/1/Add.70)

1. At the invitation of the Chairperson, the members of the delegation of Belarus took places at the Committee table.

2.**Mr. Khvostov** (Belarus) said that he intended to make a number of preliminary comments before responding to the questions asked during the first meeting devoted to consideration of his country's fourth periodic report (CAT/C/SR.1036). The Government of Belarus did not consider the Committee competent to consider the implementation of the provisions of regional and international instruments other than the Convention. He therefore considered the references by the Country Rapporteur to the report by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) to be inappropriate. It was not the Committee's mandate to judge States parties. Members should therefore refrain from making subjective or politically sensitive comments. The Government of Belarus categorically rejected the statements by the Alternate Country Rapporteur that a culture of impunity prevailed in Belarus. Likewise, the Committee was not competent to determine the lawfulness of a person's detention or to consider the treatment of self-styled human rights defenders who had been arrested for breaking the law. The Convention afforded protection for all, without exception, and drew no distinction between professions. There was therefore no reason for the Committee to pay greater attention to human rights defenders.

3.With regard to the major unrest of 19 December 2010, it should be noted that, contrary to what the Country Rapporteur seemed to believe, the demonstrations in October Square had been peaceful and had degenerated only when the demonstrators had moved to Independence Square. A former presidential candidate had then deliberately misled the demonstrators by announcing that the Government had been overthrown, thereby encouraging demonstrators to storm the Government headquarters. As the authorities had considered the attack to be an attempted coup d'état, the police had intervened and arrested 600 individuals.

4.In general, most of the questions asked by Committee members pertained to specific individuals and events. He wished to recall that consideration of communications from individuals fell under article 22 of the Convention and that Belarus had not made the declaration provided for in that article. The Belarusian Government had not responded to all the questions on the list of issues because it considered that its written replies should not be longer than its periodic report. Moreover, a translation of those replies in one of the Committee's working languages had been provided in order to foster a productive dialogue with the Committee.

5.Committee members had repeatedly cited the urgent appeals addressed to the Government by several special procedures mandate holders of the Human Rights Council, particularly those made at the time of and following the events of December 2010. All those appeals would be closely examined, and detailed written and oral replies would be provided during an interactive dialogue with the mandate holders at a future session of the Human Rights Council. It should be emphasized that the urgency of appeals was not a reflection of the mandate holders' appraisal of the facts brought to their attention. In his March 2011 report to the Human Rights Council (A/HRC/16/52), the Special Rapporteur on the question of torture had stated that, from 19 December 2009 to 30 November 2010, he had sent 64 letters of allegations of torture to 35 States and 137 urgent appeals to 53 States on behalf of persons who might be at risk of torture or other cruel, inhuman or degrading treatment or punishment. The addendum to that report, however, cited only two cases involving Belarus. Concerning the events of 19 December 2010, he invited the Committee to refer to the comments of the Belarusian Government in two notes verbales addressed to the Human Rights Council (A/HRC/17/G/4 and

A/HRC/18/G/7).

6.All the lawyers of the persons arrested during the unrest that occurred on 19 December 2010 in Minsk had been allowed to meet freely with their clients to the extent that physical conditions permitted. Since the Government had not anticipated the scale of the events, there had not been enough rooms in the detention centres for all suspects to meet privately with their lawyers. Measures had subsequently been taken to remedy the situation. The Office of the Procurator-General had launched an investigation into reports by the media that lawyers had not been permitted to see their clients. The investigation had found no violations of the relevant provisions of the Code of Criminal Procedure.

7.Under article 25 of the Detention Procedures and Conditions Act, persons in police custody were entitled to private and confidential meetings with their counsel. Such meetings were held in rooms intended for that purpose where guards could see the detainee and his lawyer without hearing their conversation, and their frequency and duration were not limited. During the period of unrest, the pretrial detention centre (SIZO) of the State Security Committee (KGB) had no facilities suitable for that purpose, which explained why some individuals arrested in December 2010 had not been able to see their lawyers quickly. The law did not permit suspects or defendants to confer with their lawyers by any other means of communication, including by telephone.

8.The Ministry of Internal Affairs regularly conducted scheduled or unannounced visits to temporary holding facilities operating under its regional agencies. A mechanism had been established to determine whether the law was upheld in those facilities. Temporary holding facilities were also placed under the permanent oversight of the procuratorial services (*Prokuratura*). There had never been a case where a person placed in a temporary holding facility had been denied access to lawyers affiliated with the detention centre oversight services of the Ministry of Internal Affairs. Under the Code of Criminal Procedure, lawyers could participate in the process from the moment their client was arrested and as soon as criminal proceedings were brought against him.

9.In accordance with the Detention Procedures and Conditions Act, the Procurator-General and the procurators serving under him ensured that the law was scrupulously and uniformly applied in remand centres. During inspections carried out pursuant to the Procurator's Office Act, procuratorial personnel met with detainees to obtain their views on detention conditions and allow them to report any problems. As of 1 November 2011, some 7,155 individuals were being held in the SIZOs operated by the Ministry of Internal Affairs. From January to September 2011, the procuratorial services had made 117 visits, following which 10 orders were issued recommending measures to remedy the problems encountered. Disciplinary action had been taken against a total of 16 Ministry staff.

10.Under article 21 of the Penal Enforcement Code, civil society organizations could participate in the monitoring of penitentiary operations. In order to implement legislation relating to penitentiary inspections, the Ministry of Internal Affairs had set a minimum of four years and a maximum of two years as the frequency at which establishments operated by the penal enforcement authorities should be inspected. The objectives of such inspections included verification of penitentiaries' compliance with legal standards and monitoring the detention conditions of persons held in those establishments.

11.Following the unrest of 19 December 2010, representatives of the Procurator-General's service had visited the State Security Committee SIZOs on a monthly basis in order to ensure that persons held there were being detained legally. During those visits, they had examined the detainees' files, including their medical files. They had visited all of the cells, asking all of the detainees if they had any complaints about their conditions of detention and if they felt that their rights had been violated. They found that all detainees had access to adequate medical care and could receive packages and money. No complaints regarding their detention conditions, health or access to legal counsel had been filed during the visits by former presidential candidates or their supporters.

12.Pursuant to article 115 of the Code of Criminal Procedure, the body responsible for criminal prosecutions was obliged to contact a member of an arrested person's family within 12 hours of the arrest and inform them of the person's arrest and current location. The person could notify members of his family himself, but that was not mandatory under the law. Family members of those arrested during the events of 19 December 2010 had been duly informed of where those persons were being held, as documents in their personal files showed. The procuratorial services had not found any violations of the relevant legislative provisions.

13.Only investigators had the authority to permit family visitations. The SIZO administrative authorities were not permitted to organize such visits without the approval of the investigator. Under article 15 of the Detention Procedures and Conditions Act, suspects were examined by medical staff assigned to police custody facilities upon being placed in custody and in cases of physical injury. The results of such examinations were duly noted and communicated to the detainee and to his counsel. Medical examinations could also be carried out by staff of facilities operated by the Ministry of Health at the order of the director of the pretrial detention centre or the judge in the case or at the request of the detainee or his counsel. Should such a request be denied, the detainee or his counsel could lodge an appeal with the procurator or the courts.

14.While held in pretrial detention, Andreï Sannikov had submitted 18 requests for medical treatment. He had undergone 10 preventive medical examinations and had been treated following each request, including by specialists. Information relating to his requests for treatment and examinations had been placed in his medical file. To date, Mr. Sannikov had not lodged any complaints regarding his health.

15.While in detention, Vladimir Neklyayev had suffered a minor head injury and had been transported to the emergency room of the Minsk hospital, where all necessary treatment had been provided. Subsequently, as a result of the criminal proceedings brought against him for his participation in the unrest of 19 December 2010, he had been transferred to the KGB SIZO, where he had received specialized treatment free of charge. The doctors who had treated Mr. Neklyayev had not reported any complaint from him or other persons.

16.Regarding habeas corpus, he said that under article 43 of the Code of Criminal Procedure, persons suspected of or indicted for a criminal offence could challenge the legality of their detention. As to indentifying the police officers who had allegedly tortured Mr. Sannikov and Mr. Neklyayev, he noted that, pursuant to article 193 of the Code, investigation reports, which included interrogation

reports, had to be signed by all the participants, including the investigators. During an interrogation, the investigator must disclose personal information (title, first and last names, contact information) to the suspect and his counsel and, if possible, produce identification. Furthermore, the entire investigation team should be introduced to the suspect, who must be informed of his right to request the dismissal of one or more members of the team. Investigators were prohibited from disguising their identity, including by wearing masks. All the interrogations that took place in the wake of the events of December 2010, including those of Mr. Neklyayev and Mr. Sannikov, had been conducted in full compliance with the aforementioned provisions, as demonstrated by the documents in their files.

17.Under title V, chapter 16, of the Code of Criminal Procedure, judicial review of the legality of deprivation of liberty occurred within 24 hours of receipt of the application for habeas corpus in cases of police custody and 72 hours for detention or house arrest orders. Applications had been submitted by the individuals arrested and placed in pretrial detention during the events of 19 December 2010, who had challenged the lawfulness of and grounds for their detention. The courts had duly examined the applications but had not granted any releases. During the period under consideration, the Office of the Procurator-General had not received any reports of violations of the right to seek remedy guaranteed under the Code of Criminal Procedure.

18.Allegations by Andreï Sannikov and Vladimir Neklyayev that they had been prohibited from meeting with their counsel had been checked, and the findings had been duly communicated to the interested parties. The Office of the Procurator-General had received no such complaints from persons detained by the KGB in SIZOs. It had not been established that Mr. Sannikov had in fact been denied legal assistance while in detention.

19.The complaint filed by Daria Korsak, the wife of Aleksandr Otrochtchenkov, had not led to criminal proceedings. The Office of the Military Procurator had examined the facts but no action had been taken. According to Ms. Korsak's statement, her husband had told her during one of her visits to the detention centre that he had been tortured. However, when he had been questioned about his wife's allegations, he had refused to give any information, and his fellow detainees had denied that any unlawful acts had taken place.

20.Concerning the 180 individuals who, according to the Human Rights Watch report, had been beaten, his delegation was unable to comment for lack of concrete detailed data on the matter. While the police had used truncheons when it had intervened during the storming of the Government headquarters, it had acted reasonably and had not used tear gas, rubber bullets or water cannons.

21.The investigation into the disappearance of Y. Zakharenko, V. Gonchar and A. Krasovski had been extended and should conclude by the end of December 2011. Access to the missing persons database, in which their names had been entered, was only permitted to officials of relevant authorities, while family members had to apply to the bodies responsible for investigations. The entry of information into the databases used by investigative bodies was governed by specific rules which stipulated that information should be entered within 24 hours of a decision.

22.The law permitted the media to request information from State bodies on situations of deprivation of liberty. There were no legal limits on such requests, and journalists from both Government and private media had visited detention centres.

23.The report by the OSCE Office for Democratic Institutions and Human Rights had been drafted without prior consultation of Belarus and thus did not take the opinion of national experts into account, although other countries had been given that option during the preparation of similar reports. Civil courts in Minsk had confirmed the legality and validity of the convictions of individuals who had participated in the events of 19 December 2010, and no judge had been pressured to obstruct the exhaustive and unbiased examination of those cases during the trial phase. However, pressure had been exerted on the courts by European Union institutions, which had submitted lists of persons about whom they wished to receive information.

24.The legal provisions regarding lawyers pursuant to which Pavel Sapelka, Tatsiana Aheyeva, Uladzimir Toustsik, Aleh Aleyeu, Tamara Harayeva and Alyaksandr Pylchanka were banned from practising law were in line with current international norms. Allegations that the Ministry of Justice was interfering in the work of lawyers who had defended participants in the December 2010 unrest were unfounded and unsubstantiated. The suspension of the aforementioned lawyers was in fact the result of checks carried out by the Ministry of 400 lawyers in 2010–2011. A total of 89 lawyers had been penalized for infringing the rules of their profession. The decision to revoke P. Sapelka's licence had been taken following his disbarment from the City of Minsk Bar Association for refusal to grant legal assistance. Prior financial offences had also been recorded.

25.The Ministry of Justice was responsible for ensuring that lawyers complied with the law, as set out in Belarusian legislation and the Basic Principles on the Role of Lawyers adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Such monitoring did not constitute interference or intimidation, as a licence to practise could be revoked only in cases of systematic and blatant violations of the law. Moreover, actions could be brought for denying a licence or preventing a candidate from sitting the bar examination.

26.Regarding allegations of intimidation of human rights defenders, it should be noted that the Ministry of Justice had issued a warning to the Belarus Helsinki Committee for having repeatedly used seals or documents bearing a false designation. The court decision imposing the destruction of the seals was proof that the offence had been recognized. Mr. Ales Bialiatski had, for his part, been prosecuted in criminal court for tax evasion. The penalty for that serious offence could amount to 7 years' imprisonment, possibly accompanied by the confiscation of assets. Thus Mr. Bialiatski was not being detained for his activities as a human rights defender but for failing to declare his income, which was sizeable, or paying the tax thereon. He had been found guilty of that charge on 23 September 2011, and legal proceedings were ongoing. Registration of the Nasha Viasna human rights association had been denied because the supporting documents that had been submitted had not met statutory requirements. That decision by the Ministry of Justice had been appealed, but the Supreme Court had upheld it.

27.The process for the appointment of judges was consistent with international norms and the independence of the judiciary was guaranteed under the Constitution, which enshrined the separation of powers, and under article 99 of the Code on the Judicial System and the Status of Judges. Justices of the Supreme Court and the Higher Economic Court were appointed by the President, subject to

approval by Parliament. Under the Code, judges enjoyed immunity in the performance of their duties.

28.Vladimir Russkin, as he himself had confirmed in writing, had been recruited by the Polish special services on Polish territory in 2001. Between 2001 and 2007, he had transmitted classified military intelligence to which he had been privy during his time as an officer in the Belarusian air defence forces. He had been charged with treason on grounds of espionage and organizing espionage activities and placed in detention in a KGB facility. On 14 September 2007, he had been sentenced to 10 years' imprisonment and stripped of his military rank.

29.As to the instances where appeals could be brought, the Detention Procedures and Conditions Act stipulated that appeals, statements and complaints by detainees were transmitted by the detention facility authorities to the judicial bodies. They were not censored and had to be transmitted within 24 hours. Replies were communicated to detainees in writing and placed in their files. Allegations that only the procuratorial services had the authority to bring proceedings against State agents for acts of torture were unfounded. Any reports of such acts resulted in the initiation of criminal proceedings. Many bodies, including those under the Ministry of Internal Affairs, were competent to open investigations.

30.The powers of the National Public Watchdog Commission and its members had been approved by Government decree, as had the Commission's methods of work. The Commission determined its own activities in keeping with its mandate. The Ministry of Justice, which had no authority over the Commission, was responsible only for organizational matters. There were no statutory limits on media coverage of the Commission's work.

31.The case of Maya Abromtchik, who had allegedly suffered serious physical injury during the events of 19 December 2010, had been brought before the procurator of the city of Minsk. It should be noted that all persons who had congregated in Independence Square on that day had been warned and given an opportunity to leave prior to the intervention of the police. Maya Abromtchik had been arrested at around 11 p.m. and taken to hospital at her own request the following day. No official document relating to her state of health had been prepared. The proceedings brought under article 155 of the Criminal Code were ongoing.

32.The investigation into allegations that Mr. Mikhalevich had been the victim of acts of torture and ill-treatment while in detention had failed to yield any corroborative evidence. He had been properly informed of his rights, had been questioned in the presence of his counsel and had made no complaint of ill-treatment at that time; on several occasions and at his request, he had been examined by a doctor and had received the necessary treatment. Given the absence of any violation, the procuratorial services had decided not to file a suit. The criminal proceedings against Mr. Mikhalevich had been suspended as his whereabouts were currently unknown, and Belarusian law did not provide for trials in absentia.

33.The Military Procurator had investigated the complaints filed by Mr. Hulak, president of the Belarus Helsinki Committee, and Ms. Korsak regarding ill-treatment allegedly suffered by Mr. Sannikov and Mr. Atrochtchenkov while in detention, and had decided that there were no grounds for legal action. Mr. Sannikov was serving his sentence at prison camp No. 2 at Moguilev; he had applied to the director of the facility for protection and had been transferred to a safe location. Ms. Radina had not filed any complaint that she had been subjected to psychological pressure while in detention. As to the case of Vladimir Neklyayev, his delegation had already explained that the Office of the Procurator in the city of Minsk had declined to bring proceedings and had nothing to add on the subject.

34.The torture prevention bill was still being drafted, and it was not yet possible to indicate when it might be adopted. In the meantime, existing provisions of the Criminal Code contemplated the punishment of acts of torture as defined in the Convention. In recent years, the Office of the Procurator-General had not received any reports of complaints by female detainees regarding threats, harassment or sexual violence while in detention. Minors were held separately from adults in all detention centres, in keeping with the law. A more detailed explanation of what the Committee meant by procedures, planned or in place, to keep under systematic review interrogation rules, instructions, methods, practices and custody arrangements was needed in order to reply to question 21 of the list of issues.

35.**The Chairperson** recalled that the dialogue with States parties under article 19 of the Convention was an integral part of the Committee's broader mandate to ensure that the Convention was properly implemented. To that end, it was important that the Committee should have, in addition to information on the legal framework for implementing the Convention, information on cases or situations where the Convention had been violated, the causes of such violations and the steps taken to remedy them, in order to get a clear picture of both the legal context and the facts. It was with that purpose in mind that the Committee members had asked so many questions, and not to burden the delegation. He therefore hoped that the information requested would be duly communicated to the Committee.

36.**Ms. Gaer** (Country Rapporteur) said that it was the Committee's role to ask questions to ensure that States parties were fulfilling their obligations under the Convention. The reason for the Committee's many questions was that it had received from various sources a large number of allegations that raised concerns in respect of the Convention. She took it from the delegation's answers that it disagreed with the label "human rights defenders" affixed to certain categories of persons whose rights under the Convention had been violated and whose case had been taken up by the Committee. Article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on human rights defenders) stated that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels". That principle formed the basis for the Committee's interpretation of the concept of human rights defender.

37.The Committee wished to know why the authorities of the detention centre to which those arrested during the demonstrations on 19 December 2010 had been brought had not taken the necessary steps to enable the detainees to meet in private with their counsel, knowing that the centre's two rooms reserved for that purpose would be insufficient. The delegation had stated that administrative measures had been taken against 16 officials of the Ministry of Internal Affairs. Of what breaches had they been found guilty and what penalties had been applied? She would also welcome comments on the allegations that Mr. Sannikov had only been able to

meet in private with his counsel after 3 months' detention; that his request for an examination by an independent doctor had been denied; that he had made a written statement complaining of ill-treatment suffered during his arrest and detention that had not been followed up; and that he had also submitted his complaint to the court, which had likewise failed to address it.

38.Given the lack of response from the delegation, she wished to reiterate her request for information on the number of habeas corpus applications submitted during the period under consideration, how many had been successful and, where appropriate, the nature of the reported violations and the follow-up given to those reports. Regarding the events of 19 December 2010, she noted that the delegation had refuted the allegations that the police had used rubber bullets, tear gas and a water cannon to disperse the demonstrators, but had admitted that the officers had used truncheons. According to witness statements collected by Amnesty International and other organizations, anti-riot police officers had violently and indiscriminately attacked the demonstrators. The medical report on Maya Abromtchik, who had been arrested during the demonstration, described several fractures that could have been caused by a truncheon. She wished to hear what the delegation had to say about that case. She also wished to know how many complaints had been filed against anti-riot police officers and whether they had led to any investigations. Given the reputation of the anti-riot police for brutality, it would be useful to know if, leaving aside the events of 19 December 2010, an in-depth study had been conducted on the excessive use of force by the officers of that squad with a view to resolving that problem.

39.There were numerous allegations that, in addition to the violence suffered when the demonstration was broken up, those arrested had been subjected to ill-treatment while in detention and deprived of their fundamental legal rights. She wished to know whether the State party had launched or intended to launch an impartial investigation into those allegations, and whether it intended to accede to the request by the team of the Office of the High Commissioner for Human Rights and the Special Rapporteur on the independence of judges and lawyers to visit Belarus.

40.Information available to the Committee seemed to indicate that the arrest and detention of the Chairman of the Belarus Helsinki Committee, Aleh Hulak, and the search of his home and the Helsinki Committee offices were direct retaliation for a letter sent to the Special Rapporteur on the independence of judges and lawyers. She wished to know the delegation's views on the matter. She would also welcome comments on the case of Mr. Russkin, who had been sentenced to 10 years' imprisonment for treason and espionage and who claimed that none of his applications to the courts had been followed up and that he had not been permitted to call his own witnesses, cross-examine the prosecution's witnesses or appeal his conviction. Given that the criminal proceedings against Mr. Mikhalevich had been suspended because he could not be found and Belarusian law did not provide for trials in absentia, she wondered whether, in similar circumstances, proceedings against an alleged perpetrator of acts of torture could be suspended or even dropped, thereby breaching the State party's obligations under the Convention.

41.The report by OSCE revealed pervasive interference by the executive branch in the operations of the judicial system and a level of vulnerability of judges that was inconsistent with the Basic Principles on the Independence of the Judiciary. Appointment and dismissal procedures, the application of disciplinary sanctions, and assessment criteria for judges that were based on the number of their decisions that had been challenged, modified or overturned on appeal rather than on the legal soundness of their decisions were of particular concern and warranted comment by the delegation. It was particularly important to know what measures the State party was considering to remedy the structural problems that jeopardized the independence of the judiciary.

42.**Ms. Sveaass** noted that staff of the procuratorial services monitored and conducted visits of detention centres and asked the delegation to specify how those activities were coordinated with those of the watchdog commissions. She also wished to have additional information on the composition of those commissions as well as on the criteria for the appointment of their members, the members' degree of independence, how private meetings with detainees were organized and how their reports were disseminated.

43.She expressed surprise at the State party's claim that it had not received any complaints of sexual violence in prisons, since women had in fact stated that they had been victims of or threatened with such violence. Some clarifications on that point would be desirable. She also sought information on the detention conditions of death row inmates, oversight in psychiatric hospitals and the legal guarantees enjoyed by patients treated in such facilities.

44.The recommendation had been made during the State party's universal periodic review that it should become party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It would be interesting to know whether that recommendation had been considered. It had also been recommended that the State party should include a definition of torture in its legislation. She asked whether the lack of such a definition could explain the fact that the State party was unable to provide the exact number of investigations into acts of torture undertaken by the Office of the Procurator. She likewise invited the delegation to provide information on the legal provisions relating to reparation to which victims of offences covered by the Convention were entitled, on the State party's practice in that regard and on provisions to ensure that all statements that were found to have been extracted under torture were inadmissible as evidence.

45.Turning to the status of human rights defenders, including the charges of tax evasion brought against Mr. Bialiatski, she asked the delegation to explain why so much importance was given to the registration of human rights advocacy organizations and on what basis persons belonging to an unregistered organization were considered to be breaking the law.

46.**Mr. Mariño Menéndez** asked whether, in addition to Russian, Belarusian could be used in criminal proceedings, particularly in human rights cases. With regard to the implementation of article 3 of the Convention, he wished to know whether all applications for asylum or refugee status by persons from countries considered safe were automatically rejected and, if so, how the list of those countries was established. Lastly, he would be grateful if the delegation could say whether the Convention and other international human rights instruments were featured in the curricula of Belarusian law faculties.

47.**Mr. Bruni** asked if the Belarusian authorities were still considering the possibility of making the declarations provided for under articles 21 and 22 of the Convention. The periodic report stated that the National Public Watchdog Commission had made 38 visits to detention centres over the past two years and had brought certain issues to the attention of the Ministry of Internal Affairs. Could the delegation provide further details regarding those issues and any measures taken? Information was also welcome on measures

taken to give effect to the undertaking given in May 2010 before the Human Rights Council to allocate significant resources to improving detention conditions in penitentiaries. It would also be useful to know whether the authorities were considering the possibility of establishing a moratorium on the death penalty.

48.**Ms. Belmir** sought further information on the extent of the powers of the procuratorial services and of investigators with regard to placement in detention and extensions of pretrial detention. She noted that criminal proceedings were frequently held in camera and that the Supreme Court often served as a court of first instance, making it impossible to appeal its decisions. Clarifications on those points would be welcome. She would also welcome the delegation's comments as to whether administrative procedures and administrative detention measures overlapped with criminal procedures and measures.

49.**Mr. Khvostov** (Belarus) said that Belarus had put much thought into becoming party to the Convention and had eventually withdrawn its reservations. The country was continuously evaluating the best way to proceed and endeavoured to implement the provisions of the Convention as the responsible member of the international community that it was. However, it had only been an independent State for 20 years and had yet to gain enough experience to answer all the questions put to it, including questions on the implementation of the Convention. The delegation wished to thank the members of the Committee for their questions and comments.

50.Although Belarusian law did not contain a definition of torture, he recalled that the international instruments to which Belarus was a party, including the Convention, were part of domestic law and were directly applicable. As had been demonstrated in other countries, the mere act of including the concept of torture in domestic law was not in itself enough to change the situation in practice. The determining factor was how genuine the efforts to eliminate torture and ill-treatment were.

51.Turning to the conduct of the police during the demonstrations of 19 December 2010, he stressed that the situation on the ground was generally complex and that police officers, when faced with a person breaking the law, did not seek to know who that person was or differentiate between human rights defenders and other individuals. All States were under the obligation to protect the system chosen by the people. However, the Belarusian authorities had had evidence that the demonstrators of 19 December 2010 had intended to overthrow the Government. Their status as human rights defenders did not legitimate the use of force against the Government, nor were they automatically right simply because they were defending human rights. The police had arrested those individuals who were breaking the law, and it was incumbent on judges to determine the extent of their involvement in the events.

52.His delegation denied the allegation that the authorities had deliberately denied a lawyer permission to meet with Mr. Sannikov. In fact, the Government had no statement from Mr. Sannikov claiming that he had been denied a meeting with his counsel. The hearings in the case had been public and had been attended by many international observers, including representatives from OSCE. His delegation also excluded the possibility that Mr. Sannikov's wife or child could have received any threats.

53.Concerning Mr. Mikhalevich, he pointed out that the law stipulated that criminal proceedings could not be held in the absence of the defendant. If Mr. Mikhalevich returned to Belarus, proceedings would resume, but in the meantime the law prohibited the authorities from prosecuting him. The case against Mr. Bialiatski was a simple matter of tax evasion. The prosecution had never established a link between his activities as a member of an unregistered association (Nasha Viasna) and the fact that he had failed to pay his taxes. No person could be convicted in Belarus for belonging to an unregistered association.

54.Mr. Russkin had been accused of espionage and sentenced by the court to the established penalty for that offence, as he would have been in any other country. It was not the delegation's place to give an opinion on the matter, and it did not know whether or not Mr. Russkin had appealed. The arrest of Mr. Hulak, president of the Belarus Helsinki Committee, was in no way a retaliatory measure against that organization. Certainly, the organization's attitude had been unacceptable for a long time, but all the issues raised regarding that case had been clarified.

55.Belarus did not understand the sudden interest in the OSCE report. As a full member of that organization, Belarus was entitled to request a copy of any document relating to the country, but it had not received one of the reports in question.

56.Victims of ill-treatment were entitled to reparation under Belarusian law, which also provided for penalties against the perpetrators of such acts. Further information on the relevant provisions would be submitted to the Committee. As to threats of sexual violence against female detainees, he observed that such threats might well be made or acted upon among detainees, but it was unthinkable that they should emanate from investigators or their superiors. Any civil servant who conducted himself in such a manner would be immediately punished.

57.As the Belarusian legal system was not based on the common law tradition, it did not provide for the remedy of habeas corpus. However, under article 143 of the Criminal Code, detainees could lodge a complaint before the courts, either during the initial inquiry or the investigation. The procedures and institutions referred to in international human rights instruments tended to be inherited from or inspired by the common law tradition, and domestic legal systems needed to be given time to evolve and adapt.

58.Legal proceedings were conducted in one of the two official languages, Belarusian or Russian, at the defendant's discretion. The study of international human rights instruments was included in many university programmes. The authorities were considering the possibility of making the declarations provided for in articles 21 and 22 of the Convention. The matter of ratifying the Optional Protocol to the Convention against Torture was to be submitted to the legislature. His delegation concurred that prison conditions could be improved. The authorities were tackling that problem, but change could only be gradual.

59.He regretted the fact that lack of time had prevented his delegation from replying more fully to the Committee's questions. Additional and more detailed replies — regarding, inter alia, the independence of judges and the moratorium on capital punishment — would be transmitted to the Committee in writing.

60.**The Chairperson** thanked the Belarusian delegation for its answers and said that the Committee had concluded its consideration of the fourth periodic report of Belarus.

The meeting rose at 6.05 p.m.