

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Andrei Sannikov,**  
Citizen of Belarus

v.

Government of Belarus

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18

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## **BASIS FOR “URGENT ACTION” REQUEST**

As set forth in the attached Petition, the Belarusian government is arbitrarily depriving Petitioner Andrei Sannikov of his liberty. Mr. Sannikov is a leading opposition figure and political activist who was arrested after peacefully participating in a demonstration against the reelection of Belarusian President Alexander Lukashenko.

There is reason to believe that Mr. Sannikov’s health may be in serious danger. During a demonstration on December 19, 2010, a Belarusian Special Police Unit seized Mr. Sannikov, pinned him under a shield, and jumped on his legs, severely injuring him. Thereafter, the police dragged Mr. Sannikov from a car that was rushing him to the hospital and arrested him.

Mr. Sannikov has been held in at least two detention centers since his arrest. Initially, he was held in the KGB pretrial detention center where he was mistreated and tortured by authorities who attempted to extract a confession. His first lawyer was disbarred for describing the severity of Mr. Sannikov’s condition in prison, and he has been systematically denied adequate medical treatment since then. In addition to the injuries Mr. Sannikov sustained on December 19, 2010 and in prison, he has long suffered from a variety of other ailments, such as gout and otitis, which have been exacerbated by his continued abuse. During his trial, Mr. Sannikov asked the court on multiple occasions to pause the proceedings so he could receive medical attention, but the court denied his appeals. After his trial, Mr. Sannikov was transferred to a labor detachment in an isolated prison known for extremely harsh conditions. He remains there today.

This is a case in which continued detention under these conditions represents a grave threat to Mr. Sannikov’s health. Consequently, the Petitioner respectfully requests that the Working Group consider this petition pursuant to the “Urgent Action” procedure.<sup>1</sup> The Petitioner also requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.<sup>2</sup>

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<sup>1</sup>*Report of the Working Group on Arbitrary Detention*, E/CN.4/1998/44, (Dec. 19, 1997), Annex 1 at ¶¶ 22-24.

<sup>2</sup> Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolutions 6/4 and 15/18, also extending the mandate of the Working Group on Arbitrary Detention, were adopted by the Human Rights Council which, in accordance with UN General Assembly Resolution 60/251, has “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . . .”

## QUESTIONNAIRE

### I. *IDENTITY OF THE PERSON ARRESTED OR DETAINED*

1. **Family name:** Sannikov (alternative spellings: Sannikau, Sannikaw)
2. **First name:** Andrei (alternative spelling: Andrey)
3. **Birth date or age (at time of detention):** March 8, 1954
4. **Sex:** Male
5. **Nationality/Nationalities:** Belarus
6. **(a) Identity document (if any):** Passport  
**(b) Issued by:** Belarus  
**(c) On (date):** Unknown  
**(d) No.:** Unknown
7. **Profession or activity (if believed to be relevant to the arrest/detention):** Andrei Sannikov is a Belarusian politician and activist. He was a career diplomat who served as Deputy Foreign Minister, reaching the rank of Ambassador extraordinary and plenipotentiary.<sup>3</sup> In November 1996, Mr. Sannikov resigned from his post in protest of a controversial referendum held that year, which changed Belarus's constitution to limit democratic standards and expanded the powers of the Belarusian executive.<sup>4</sup> Mr. Sannikov then founded Charter '97, a civil rights organization that hosts an opposition news website.<sup>5</sup> In 2010, he ran in the presidential election as an opposition candidate.<sup>6</sup> The government arrested most opposition candidates, including Mr. Sannikov, during the election day crackdown on December 19, 2010, and has since tried and sentenced Mr. Sannikov and other candidates to long prison terms.
8. **Address of usual residence:** Unknown

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<sup>3</sup> See European Belarus: Civil Campaign, *Andrei Sannikov*, <http://europeanbelarus.org/en/page/7/> [hereinafter *Sannikov Biography*].

<sup>4</sup> See AMNESTY INT'L, *BELARUS: "SECURITY, PEACE AND ORDER"? VIOLATIONS IN THE WAKE OF ELECTIONS IN BELARUS*, 9-10, (Feb. 2, 2011), <http://www.amnesty.org/en/library/info/EUR49/003/2011/en> [hereinafter AMNESTY INT'L REPORT].

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.*

## II. ARREST

1. **Date of arrest:** December 19, 2010
2. **Place of arrest (as detailed as possible):** Mr. Sannikov was arrested by Belarus's Special Police Unit after leaving Independence Square in Minsk, as he was being taken to a hospital.
3. **Forces who carried out the arrest or are believed to have carried it out:** The Special Police Unit that forcefully dispersed the December 19 demonstration and arrested Mr. Sannikov was made up of special forces (OMON) police, including police cadets and emergency service troops.<sup>7</sup>
4. **Did they show a warrant or other decision by a public authority?**  
  
(Yes) \_\_\_ (No)  X
5. **Authority who issued the warrant or decision:** N/A
6. **Relevant legislation applied (if known):** Mr. Sannikov was later charged with "organization of mass disorder accompanied by violence against persons, pogroms, arson, destruction of property, or armed resistance of the authority" under Article 293(1) and with "involvement in riots, as expressed in the immediate fulfillment of actions specified in the first part of this article" under Article 293(2) of the Belarus Criminal Code.<sup>8</sup>

## III. DETENTION

1. **Date of detention:** December 19, 2010
2. **Duration of detention (if not known, probable duration):** Mr. Sannikov has now been detained for nine months. On May 14, 2011, the Partizanskii District Court of Minsk sentenced Mr. Sannikov to a five-year prison sentence.
3. **Forces holding the detainee under custody:** Mr. Sannikov is being held by the Belarus State Security Committee (KGB).
4. **Places of detention (include any transfer and present place of detention):**  
Following the arrest and throughout his trial, Mr. Sannikov was imprisoned in the

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<sup>7</sup> *Id.* at 7.

<sup>8</sup> Office for a Democratic Belarus, *Criminal Case on Mass Riot: 36 Accused and 12 Suspects*, (Jan. 27, 2011), <http://democraticbelarus.eu/node/11248>.

KGB pretrial detention center in Minsk, known as Amerikanka.<sup>9</sup> After sentencing, Mr. Sannikov was transferred to Navapolatsk penal colony No. 10, which is known for extremely harsh conditions and poor ecology due to its proximity to chemical plants lacking proper safety mechanisms.<sup>10</sup> Mr. Sannikov was recently transferred to the penal colony's labor detachment.<sup>11</sup>

5. ***Authorities that ordered the detention:*** Belarusian President Alexander Lukashenko and other high-ranking officials in the Belarusian government ordered the Special Police Unit to arrest Mr. Sannikov and other demonstrators. Mr. Sannikov was ultimately convicted and sentenced by the Partizanskii District Court in Minsk.
6. ***Reasons for the detention imputed by the authorities:*** Mr. Sannikov was charged with “organization of mass disorder accompanied by violence against persons, pogroms, arson, destruction of property, or armed resistance of the authority” under Article 293(1) and with “involvement in riots, as expressed in the immediate fulfillment of actions specified in the first part of this article” under Article 293(2) of the Belarus Criminal Code. The charges were pretexts for political suppression: Mr. Lukashenko also stated, “That’s enough of that. There won’t be any more silly democracy, muddle-headed democracy in the country.”<sup>12</sup>
7. ***Relevant legislation applied (if known):*** Mr. Sannikov was charged with organization of or involvement in “mass disorder” under Articles 293(1) and 293(2) of the Belarus Criminal Code.

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<sup>9</sup> Radio Free Europe/Radio Liberty, *Belarus Presidential Candidate marks Birthday in KGB Detention Center*, (Mar. 8, 2011), [http://www.rferl.org/content/belarus\\_presidential\\_candidate\\_birthday\\_kgb\\_detention\\_center/2332013.html](http://www.rferl.org/content/belarus_presidential_candidate_birthday_kgb_detention_center/2332013.html) [hereinafter RFE/RL, *Candidate*].

<sup>10</sup> *Sannikov to be sent to colony with a killer from “death squadron,”* CHARTER '97, (Jun. 6, 2011), <http://charter97.org/en/news/2011/6/6/39291/>; see also Conversations with Irina Bogdanova, Andrei Sannikov's sister (July 2 & Sept. 13, 2011) [hereinafter Bogdanova]. Charter '97 also reported that Andrei Vasilyeu, a former Belarusian military commander said to be a member the “death squadron”—a secret military unit aimed at eliminating political opposition to Mr. Lukashenko—is serving a sentence at the same penal colony for kidnapping an opposition candidate.

<sup>11</sup> *Andrei Sannikov: It's another dirty game of authorities,* CHARTER '97, (Aug. 15, 2011), <http://www.charter97.org/en/news/2011/8/15/41575/> [hereinafter CHARTER '97, *Dirty Game*].

<sup>12</sup> AMNESTY INT'L REPORT, *supra* note 4 at 4.

**IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY**

**Statement of Facts**

Part A of this section discusses the Belarusian political system and its documented history of arbitrary detention and political suppression. Part B presents the case of Petitioner Andrei Sannikov, a Belarusian political candidate who has been arbitrarily detained by Belarusian authorities for nine months, tortured, and denied basic rights during his trial.

**A. Belarus's History of Arbitrary Detention and Suppression of the Freedom of Expression and Assembly**

**1. Belarus's Political System Consolidates Power in an Authoritarian President.**

The Republic of Belarus is an authoritarian State. It gained independence in 1990 after the dissolution of the USSR.<sup>13</sup> The Declaration of the State Sovereignty was signed in 1990, and the Constitution, which has supreme legal force, was adopted in 1994.<sup>14</sup> Governmental power in Belarus is nominally separated into legislative, executive, and judicial branches.<sup>15</sup> Under Article 81 of the Constitution of Belarus, the head of state is the President of the Republic who is supposed to be elected by universal, free, equal, and secret ballot.<sup>16</sup> In November 1996, after a sham referendum opposed by Mr. Sannikov, a new Constitution was adopted, providing for expansion of powers for the President.<sup>17</sup>

Belarus's first and only president, Alexander Lukashenko, exercises complete authority over all three branches of government.<sup>18</sup> His powers as president are among the widest reaching of any head of state in the world: He declares referendums and extraordinary elections and dismisses chambers of Parliament.<sup>19</sup> He nominates the Chairman of the Central Election Commission, the General Prosecutor, the Chairman of the National Bank, and the Chairman of the Committee of State Control.<sup>20</sup> He also appoints Belarusian judges, including the judge who presided over the trial of Mr. Sannikov.<sup>21</sup> Finally, he issues decrees, edicts, orders, and

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<sup>13</sup> Nadia Shalygina, *UPDATE: Guide to Legal Research in Belarus*, GLOBALEX, (Feb. 2008), <http://www.nyulawglobal.org/globalex/Belarus1.htm> [hereinafter Shalygina *UPDATE*].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> FREEDOM HOUSE, *COUNTRY REPORT: BELARUS* (2011),

<http://www.freedomhouse.org/template.cfm?page=363&year=2011&country=7995> [hereinafter FREEDOM HOUSE REPORT].

<sup>19</sup> Shalygina, *UPDATE*, *supra* note 13.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Belarus has Constitutional, Supreme, and Supreme Economical Courts—all the judges are appointed by Mr. Lukashenko.

directives, which have obligatory force.<sup>22</sup> Indeed, presidential decrees carry higher legal force than ordinary legislation, giving Mr. Lukashenko control over the government, courts, and the legislative process.<sup>23</sup>

The executive branch also includes the Council of Ministers, the state administrative body.<sup>24</sup> The Council is led by a Prime Minister who is appointed by the President.<sup>25</sup> The main law enforcement institution in Belarus is the General Prosecutor's Office, which supervises the implementation of Belarusian and local laws. Its head is appointed by Mr. Lukashenko.<sup>26</sup>

Belarus's National Assembly is a bicameral parliament vested with legislative powers.<sup>27</sup> It is made up of the House of Representatives and the Council of the Republic.<sup>28</sup> Although the legislative power ostensibly belongs to the National Assembly, the 1996 Constitution enabled the President to issue decrees, edicts, orders and directives that carry obligatory force in all Belarusian territories, curtailing the legislative process.<sup>29</sup>

The judicial system in Belarus is based on territory and specialization.<sup>30</sup> The general courts consist of regional city courts, provincial courts, and the Supreme Court.<sup>31</sup> The Supreme Court is supposed to administer justice on civil cases, criminal cases, administrative offences, and supervise the judicial activity of the lower general courts.<sup>32</sup> Mr. Lukashenko appoints and has the power to dismiss the judges of these courts.<sup>33</sup>

## **2. Belarus Has a History of Systemic Political Suppression.**

Despite the Belarusian government's republican structure, Belarus is in effect a dictatorship with a history of repression, political violence, and one-party rule. Since Mr. Lukashenko was elected to the presidency in 1994, he has steadily consolidated his power through authoritarian means.<sup>34</sup> There has been no other president. According to the Organization of Security and Cooperation in Europe (OSCE), no presidential election since 1994

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<sup>22</sup> *Id.*

<sup>23</sup> FREEDOM HOUSE REPORT, *supra* note 18.

<sup>24</sup> Shalygina, *UPDATE*, *supra* note 13.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* The judicial system also includes a Constitutional Court, which draws conclusions about the conformity of laws and administrative acts to the Constitution. There are twelve judges who sit on the Constitutional Court: six are appointed by Mr. Lukashenko, and the other six are appointed by the Council of the Republic.

<sup>33</sup> OFFICE FOR DEMOCRATIC INST. AND HUMAN RIGHTS, ORG. FOR SEC. AND COOPERATION IN EUR., REPUBLIC OF BELARUS PRESIDENTIAL ELECTION 19 DECEMBER 2010, *OSCE/ODHIR Election Observation Mission Final Report*, 4, (Feb. 22, 1011), <http://www.osce.org/odihr/elections/75713> [hereinafter OSCE ELECTION REPORT].

<sup>34</sup> FREEDOM HOUSE REPORT, *supra* note 18.

has met the OSCE standards for democratic elections.<sup>35</sup> Opposition parties have no representation in the National Assembly, and the pro-presidential parties serve only to validate Mr. Lukashenko's decisions.<sup>36</sup> The government strictly controls religious, political, and journalistic activity.<sup>37</sup> It also controls nearly all media outlets, which it uses to curtail the opposition.<sup>38</sup> The citizens of Belarus have no real power to effect political change, and those who attempt to do so are typically harassed, arrested, and beaten.<sup>39</sup> For example, in 2009, a group of protesters who had gathered peacefully in Kastychnitskaya Square to oppose the arrival of a Russian military contingent were beaten, insulted, and threatened with rape by riot police.<sup>40</sup>

Belarus is an habitual violator of fundamental human rights. The United Nations, the OSCE, the OSCE Parliamentary Assembly, the Council of Europe, the Parliamentary Assembly of the Council of Europe, the European Council, the European Parliament, the European Commission, and the NATO Parliamentary Assembly have rebuked Belarus for repeated

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<sup>35</sup> While the voting for the 1995 parliamentary elections was found to have been “conducted in a generally adequate manner,” the process leading to the election failed to meet OSCE commitments. OSCE, *ODIHR Activity Report for 1995*, 5, <http://www.osce.org/odihr/20516>. The 2000 parliamentary elections failed to meet international standards. OSCE, *Technical Assessment Mission: Belarus 2000*, 1, <http://www.osce.org/odihr/elections/14704>. The 2001 presidential elections were also found to have fundamental flaws. OSCE, *Republic of Belarus Presidential Election*, 3 (Sept. 9, 2011), <http://www.osce.org/odihr/elections/belarus/14459>. The 2004 parliamentary elections were found to fall “significantly short of OSCE commitments.” OSCE, *Parliamentary Elections: 17 October 2004*, <http://www.osce.org/odihr/elections/belarus/66524>. The OSCE also expressed serious concerns regarding the 2006 presidential elections, involving the harassment and arrest of various opposition campaign workers. OSCE, *Presidential Election: 19 March 2006*, <http://www.osce.org/odihr/elections/belarus/66520>. Despite some improvements in the 2008 parliamentary elections, the OSCE determined that they “ultimately fell short of OSCE commitments for democratic elections. OSCE, *Parliamentary Elections: 28 September 2008*, <http://www.osce.org/odihr/elections/belarus/66516>. Finally, the 2010 presidential elections were heavily criticized and did not meet OSCE standards. OSCE, *Presidential Elections, 19 December 2010*, <http://www.osce.org/odihr/elections/belarus/74657>.

<sup>36</sup> FREEDOM HOUSE REPORT, *supra* note 18.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> U.S. STATE DEP'T, 2010 HUMAN RIGHTS REPORT: BELARUS, (Apr. 8, 2011) at 54, <http://www.state.gov/documents/organization/160449.pdf> [hereinafter U.S. STATE DEP'T 2010 HUMAN RIGHTS REPORT]. At the end of 2010, in addition to Mr. Sannikov and Ms. Khalip, some of those in detention and facing politically motivated criminal charges included: Uladzimir Nyaklyaeu, presidential candidate and leader of the Tell the Truth campaign; Nikalai Statkevich, presidential candidate and leader of the Social Democratic party; Ales Mikhalevich, presidential candidate and leader of the NGO For Modernization; Alyaksandr Atroshchankau, Mr. Sannikov's campaign spokesman; Paval Sevyarynets, leader of the Belarusian Christian Democratic party and aide to presidential candidate Vital Rymasheuski; Zmitser Bandarenka, leader of independent media organization Charter '97 and co-coordinator of the European Belarus coalition; Natallya Radzina, Charter '97 editor; Anatol Lyabedzka, chairman of the United Civic Party; Nasta Palazhanka, deputy chair of the Malady Front opposition youth organization; Alyaksandr Fyaduta, aide to Nyaklyaeu; Alyaksandr Klaskouski, a former police officer; Uladzimir Kobets, Mr. Sannikov's campaign chief; Syarhey Vaznyak, aide to Nyaklyaeu; Alyaksandr Arastovich, aide to Statkevich; Syarhey Martsaleu, aide to Statkevich; Mikita Likhavid, For Freedom movement activist; Dzmitry Novik, Belarusian Popular Front member; Paval Vinahradau, Tell the Truth campaign activist; Illya Vasilevich, youth activist; and Vasil Parfyankou, Tell the Truth campaign activist. *Id.* at 16.

<sup>40</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rep. to the Human Rights Council*, UN Doc. A/HRC/13/39/Add.1, case summary 16, (Feb. 25, 2010) (by Manfred Nowak).

violations of universal norms.<sup>41</sup> For example, the United States has criticized the gross disparities in the rights nominally afforded to citizens by the Constitution and laws of Belarus and the rights actually afforded in practice.<sup>42</sup> While the Constitution provides for separation of powers, an independent judiciary, and impartial courts, Mr. Lukashenko ignores these provisions when it suits his immediate needs.<sup>43</sup> Corruption, inefficiency, and political interference are prevalent in the judiciary.<sup>44</sup> Indeed, as Mr. Sannikov's case shows, the government frequently arrests, charges, and convicts individuals on politically motivated charges.<sup>45</sup> For another example, before and after a fraudulent presidential election in 2006, authorities detained or arrested approximately 1,000 persons throughout the country for political reasons.<sup>46</sup> Many of those detained or arrested were bringing food and clothing to demonstrators in Minsk's October Square.<sup>47</sup>

Neither the judiciary nor the prosecutors are truly independent, and trial outcomes are usually predetermined.<sup>48</sup> The Constitution and laws of Belarus prohibit arbitrary arrest and detention and provide those accused of crimes many rights, such as a presumption of innocence and the right to attend proceedings, confront witnesses, and present evidence on their own behalf.<sup>49</sup> In practice, however, individuals are arrested and detained for political reasons and are denied the opportunity to mount effective defenses.<sup>50</sup> Due process protections are routinely disregarded, and even though the Belarusian Constitution prohibits the use of torture, detainees are routinely tortured and neglected.<sup>51</sup> As the United Nations Human Rights Council succinctly explained, "[t]he [Belarusian] judiciary, like law enforcement and security agencies, is utilized as

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<sup>41</sup> *Id.*

<sup>42</sup> U.S. STATE DEP'T, 2008 HUMAN RIGHTS REPORT: BELARUS, (Feb. 28, 2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119069.htm> [hereinafter U.S. STATE DEP'T: 2008 HUMAN RIGHTS REPORT].

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* On March 27, 2008, KGB officers detained Pavel Levinov, a human rights advocate and lawyer for the Vitebsk-based Belarus Helsinki Committee. On May 23, 2008, a Vitebsk court sentenced Levinov in absentia to 10 days in jail and a BYR 700,000 (\$325) fine for disobeying orders and using obscenities. Authorities have used modified house arrest to curtail opposition. On May 27, 2008, activists Pavel Vinahradaw and Mikhail Subach were sentenced to two years of "restricted freedom" for participating in an entrepreneurs' protest in Minsk. A third person, a minor named Maksim Dashuk, received an 18-month sentence. Between July 7 and 10, 2008, authorities detained more than 15 opposition and human rights activists in connection to a July 4 bombing in central Minsk that injured 50 persons. They were released without charge after 10 days. The human rights NGO "Vyasna" criticized the arrests and accused the KGB of using the incident as a pretext to detain and question activists and intimidate their family members. Interior Ministry officials would not confirm the total number of persons detained or released. On July 26, 2008 police and KGB representatives detained and released approximately 50 youth activists for violating environmental laws while they were camping near a lake in the Borisov district. The youths were participating in a three-day camp organized by the European Belarus coalition.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

an instrument of political repression,” and “[t]he [Belarusian] judicial system is still subservient to the executive branch and there is no genuine independent legislative branch.”<sup>52</sup>

The Working Group recognized these facts when it recently issued an opinion concluding that Belarus had arbitrarily detained Mikalai Statkevich, another opposition candidate who was arrested during the December 19, 2010 demonstration.<sup>53</sup> In addition to concluding that the government’s detention of Mr. Statkevich was connected to his participation in the political process, the Working Group found that “the political process in Belarus has given rise to several reports of human rights violations to UN human rights bodies.”<sup>54</sup> The circumstances of Mr. Statkevich’s arrest and detention were nearly identical to Mr. Sannikov’s, and no different conclusion should be rendered in this case.

## **B. The Arbitrary Detention of Andrei Sannikov**

### **1. Andrei Sannikov Is a Politician and Political Activist.**

Andrei Sannikov is one of the most prominent political figures in Belarus. He was a career diplomat who served as Deputy Foreign Minister, reaching the rank of Ambassador extraordinary and plenipotentiary.<sup>55</sup> In November 1996, Mr. Sannikov resigned from his post in protest of a controversial referendum that changed the Constitution to limit democratic standards and expand Mr. Lukashenko’s powers as president.<sup>56</sup> Mr. Sannikov proceeded to found Charter ’97, a civil rights organization that hosts an opposition news website.<sup>57</sup> In 1998, Mr. Sannikov created the Coordinating Council of Democratic Forces of Belarus, an organization which represents Belarus’s major opposition groups and seeks to promote an open, democratic society, primarily by seeking the release of political prisoners.<sup>58</sup> Since then, he has engaged in peaceful and legal human rights activism. He organized non-violent protests in opposition to the presidential elections of 2001, 2004, 2006, and 2008.<sup>59</sup> In 2003, he was arrested for organizing a peaceful march demanding better living standards. Contrary to law, the local authorities unilaterally changed the authorized location on the eve of the rally, and the demonstrators went to the original site.<sup>60</sup> For his service to the cause of human rights, an international jury awarded Mr. Sannikov the Bruno Kreisky Award in 2005.<sup>61</sup>

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<sup>52</sup> Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, E/CN.4/2006/36, at ¶ 86, (Jan. 16, 2006) (by Adrian Severin); Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, A/HRC/4/16, at ¶ 10, (Jan 15, 2007) (by Adrian Severin) [hereinafter Special Rapporteur Reports].

<sup>53</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 12.

<sup>54</sup> *Id.*

<sup>55</sup> *See Sannikov Biography*, *supra* note 3.

<sup>56</sup> *See* AMNESTY INT’L REPORT, *supra* note 4, at 9-10.

<sup>57</sup> *Id.* at 10.

<sup>58</sup> *Sannikov Biography*, *supra* note 3; Council of Europe Parliamentary Assembly Political Affairs Committee *Situation in Belarus*, ¶ 23, (June 6, 2011), <http://assembly.coe.int/CommitteeDocs/2011/Apdoc18.pdf>; Michael Batiukov, *Call for Urgent release of political prisoners in Belarus*, AMERICAN CHRONICLE, (Jan. 18, 2011), <http://www.americanchronicle.com/articles/view/212207>.

<sup>59</sup> *Sannikov Biography*, *supra* note 3.

<sup>60</sup> *Organizers of People’s March for Better Life complain to Council of Ministers and Prosecution Office*, BELARUS NEWS: DAILY NEWS BRIEFS, (Mar. 11, 2003), 2003 WLNR 16982744; *Organizers of Unauthorized Protest in*

Mr. Sannikov is married to Iryna Khalip, a renowned Belarusian journalist who was arrested with him. Ms. Khalip has reported on government corruption and has been critical of Mr. Lukashenko in the past.<sup>62</sup> In 2005, TIME magazine showcased her in its European Heroes special edition.<sup>63</sup> In 2009, she received the Courage in Journalism Award from the International Women’s Media Foundation.<sup>64</sup> Both Mr. Sannikov and Ms. Khalip have been repeatedly harassed, detained, and beaten by the Belarusian authorities.<sup>65</sup>

Mr. Sannikov ran in the 2010 presidential election as an opposition candidate affiliated with the European Belarus Civil Campaign.<sup>66</sup> Throughout the campaign, opposition candidates were faced with government harassment: as examples, a documentary aired on state television accusing opposition candidate Vladimir Neklyayev’s campaign staff of unfounded and uncharged crimes ranging from forgery to child pornography; “anonymous” leaflets were distributed in Brest falsely stating that Mr. Sannikov favored Belarusian membership in NATO; and on October 10, 2010, a senior lieutenant of the government militia in Minsk searched the apartment of Mr. Sannikov’s campaign chief under false pretenses.<sup>67</sup> Mr. Sannikov’s phones were tapped throughout the campaign.<sup>68</sup>

On Election Day, Mr. Sannikov came in second to Mr. Lukashenko.<sup>69</sup> The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) concluded that the election was plagued by “a lack of independence and impartiality of the election administration, an uneven playing field, and a restrictive media environment, as well as a continuous lack of transparency at key stages of the electoral process.”<sup>70</sup> Most local election commissions were manned by nominees from organizations supporting Mr. Lukashenko, all major nationwide TV stations demonstrated a “clear bias” in favor of the incumbent, and important parts of the electoral procedure, including vote counting procedures, remained “ambiguous,” leading to the

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*Minsk Arrested for 15 Days*, RUSSIA & FSU NEWS BULLETIN: DAILY NEWS BRIEFS, (Mar. 13, 2001), available at 2003 WLNR 16973333; *Diplomat Andrei Sannikov Sentenced to 15 Days of Arrest*, CHARTER ’97, (Mar. 13, 2003), <http://charter97.org/eng/news/2003/03/13/sannikovsud>.

<sup>61</sup> *Id.*

<sup>62</sup> Peggy Simpson, *Belarusian Journalist Works Toward Press Freedom*, IWMF, (2009), <http://www.iwfmf.org/archive/articletype/articleview/articleid/1064/belarusian-journalist-works-toward-press-freedom.aspx> [hereinafter Simpson: *Belarusian Journalist*].

<sup>63</sup> Yuri Zarakhovich, *The Accidental Activist: For Journalist Irina Khalip, Exposing Injustice in Belarus Isn’t Just a Job – It’s Personal*, TIME, (Oct. 10, 2005), <http://www.time.com/time/europe/hero2005/khalip.html> [hereinafter Zarakhovich: *Accidental Activist*].

<sup>64</sup> Simpson: *Belarusian Journalist*, *supra* note 62.

<sup>65</sup> Zarakhovich: *Accidental Activist*, *supra* note 63; *see also* Bogdanova, *supra* note 10.

<sup>66</sup> Bogdanova, *supra* note 10; *Belarusian court jails ex-presidential candidate for 5 years*, RIA NOVOSTI, (May 14, 2011), <http://en.rian.ru/world/20110514/164028615.html>.

<sup>67</sup> *‘Dirty tricks’ taint Belarus vote*, AL JAZEERA, (Dec. 18, 2010), <http://english.aljazeera.net/news/europe/2010/12/20101218142317982604.html> [hereinafter AL JAZEERA: *Dirty Tricks*]; *Search in flat of Andrei Sannikov campaign Minsk headquarters chief*, CHARTER ’97, (Oct. 27, 2010), <http://charter97.org/en/news/2010/10/27/33297/> [hereinafter CHARTER ’97: *Search*].

<sup>68</sup> Bogdanova, *supra* note 10.

<sup>69</sup> *Sannikov Biography*, *supra* note 3.

<sup>70</sup> OSCE ELECTION REPORT, *supra* note 33, at 1.

“inconsistent application of the law by election commissions.”<sup>71</sup> The OSCE report further observed that election night was “marred” by the government’s detention of “hundreds of citizens, among them journalists, human rights activists and other civil society representatives.”<sup>72</sup> Mr. Sannikov and Ms. Khalip were among those arrested.

## 2. Arbitrary Arrest

Before the polls opened on December 19, 2010, Mr. Sannikov and other opposition candidates encouraged supporters to “defend their vote” by peacefully demonstrating in Minsk.<sup>73</sup> That evening, tens of thousands of protesters gathered in Independence Square and listened while Mr. Sannikov and other opposition leaders stood near the Lenin statue and gave speeches advocating new elections.<sup>74</sup> At around 10 p.m., Mr. Sannikov was giving a speech calling for a second round of elections when a group of approximately twenty persons (now widely believed to be government agents) standing at the back of the crowd began breaking windows of the Government House, which houses the National Assembly and the Central Election Commission. Mr. Sannikov told the crowd not to respond to the provocation, to remain peaceful, and to keep away from the doors of the Government House.<sup>75</sup> The Special Police Unit forcibly broke up the crowd and made mass arrests even though most of the demonstrators left the square peacefully within about 20 minutes.<sup>76</sup> The police stormed the square and herded groups of protestors into awaiting trucks, detaining over 700 people, including opposition candidates, peaceful protesters, and bystanders.<sup>77</sup> Police assaulted Mr. Sannikov by pinning him down with a riot shield and repeatedly jumping on it, severely injuring his legs. His friends attempted to shield his head, and with his wife, freed him and attempted to drive him to the hospital. Several miles from the square, the police stopped the car, dragged Mr. Sannikov out, and arrested him. No warrant was shown, and no specific charges were cited.<sup>78</sup>

Ms. Khalip was also arrested with Mr. Sannikov.<sup>79</sup> Pending her trial, she was held in a prison and then transferred to severely restricted house arrest in late January 2011.<sup>80</sup> She received a two-year suspended sentence which included significant travel and journalistic restrictions.<sup>81</sup> A prison sentence can be imposed at any time if Ms. Khalip is convicted of two

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<sup>71</sup> *Id.* at 1-3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 4.

<sup>74</sup> *Id.*; AMNESTY INT’L REPORT, *supra* note 4, at 4.

<sup>75</sup> See AMNESTY INT’L REPORT, *supra* note 4, at 4; Bogdanova, *supra* note 10.

<sup>76</sup> AMNESTY INT’L REPORT, *supra* note 4, at 4.

<sup>77</sup> *Id.* at 4-5; Bogdanova, *supra* note 10.

<sup>78</sup> Bogdanova, *supra* note 10.

<sup>79</sup> *Belarus boy in custody tug-of-war after arrests*, BBC, (Jan 11, 2011), <http://www.bbc.co.uk/news/world-europe-12159763>.

<sup>80</sup> *Belarus: UPDATE-Release and house arrest of human rights journalist Ms Iryna Khalip*, FRONTLINE, (Jan. 31, 2011), <http://www.frontlinedefenders.org/node/14358>; *Irina Khalip handed a suspended two-year prison term*, COMMITTEE TO PROTECT JOURNALISTS, (May 16, 2011), <http://www.cpj.org/2011/05/irina-khalip-handed-a-suspended-two-year-prison-te.php> [hereinafter COMMITTEE TO PROTECT: *Iryna Khalip*].

<sup>81</sup> COMMITTEE TO PROTECT: *Iryna Khalip*, *supra* note 80.

administrative violations, which can be as simple as a speeding ticket or the subjective charge of “insult of a police officer.”<sup>82</sup>

After Mr. Sannikov and Ms. Khalip were arrested, their three-year-old son Daniil was left in the care of his grandparents.<sup>83</sup> The KGB ordered child welfare services to take action concerning the custody of Daniil.<sup>84</sup> On December 27, 2010, employees of the child welfare services visited Daniil at his day care center and unsuccessfully attempted to remove him to an orphanage, a clear violation of the law which permits the family six months to establish guardianship. They then informed his grandmother that she would need to complete various procedures within a month—rather than the permitted six months—to establish her custody over the child.<sup>85</sup> These procedures included a rigorous health examination which she feared she would not pass.<sup>86</sup> Fortunately, on January 19, 2011, child welfare services announced that Daniil would stay with his grandmother.<sup>87</sup> At his trial, Mr. Sannikov testified that during his detention, KGB agents threatened to harm Ms. Khalip and Daniil, in an attempt to coerce him to admit guilt.

### **3. The Arrests of Mr. Sannikov and Other Politicians were Politically Motivated.**

The raid on the December 19, 2010 demonstration and subsequent detention of Mr. Sannikov and other opposition figures were aimed at suppressing democratic opposition. The government arrested seven of the nine opposition candidates, including Mr. Sannikov, and hundreds of other activists. Politically motivated searches and interrogations followed in the days after the raid, under the guise of criminal investigations. Although most of the people initially arrested on election night have since been released from prison after serving 10-15 day administrative detentions, at least 37 people, including opposition candidates, journalists, and activists, have been charged with the criminal offenses of organizing or participating in “mass disturbances.” Those charged with crimes have been convicted and sentenced to prison terms of up to seven years in penal colonies.<sup>88</sup> By far the longest prison sentences have been handed out to opposition candidates, including Mr. Sannikov.<sup>89</sup> Although Belarusian law provides that

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<sup>82</sup> *Id.*

<sup>83</sup> AMNESTY INT’L REPORT, *supra* note 4, at 10.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; Bogdanova, *supra* note 10.

<sup>86</sup> Michael Schwartz, *Belarus Signals It Could Seize Opponent’s Son*, N.Y. TIMES, (Jan. 9, 2011), <http://www.nytimes.com/2011/01/10/world/europe/10belarus.html?pagewanted=all> [hereinafter Schwartz, *Son*].

<sup>87</sup> *Id.*

<sup>88</sup> See OSCE ELECTION REPORT, *supra* note 33, at 1; AMNESTY INT’L REPORT, *supra* note 4, at 5; Kamil Kłysiński, *Belarus: Harsh sentences on participants in December opposition demonstrations*, CENTRE FOR EASTERN STUDIES, (Mar. 16, 2011), <http://www.osw.waw.pl/en/publikacje/eastweek/2011-03-16/belarus-harsh-sentences-participants-december-opposition-demonstratio>. Although Mr. Lukashenko “pardoned” twenty-four of these thirty-seven people on August 11 and September 14, 2011, many have not actually been released. See *Lukashenko pardons nine jailed after December unrest*, KYIVPOST, (Aug. 11, 2011), <http://www.kyivpost.com/news/russia/detail/110641/>. None have been fully rehabilitated to society.

<sup>89</sup> AMNESTY INT’L REPORT, *supra* note 4, at 5. Official statistics indicate that at least 639 people were detained. See also HUMAN RIGHTS WATCH, *Belarus: Survey Shows Massive Abuses of Protesters*, (Feb. 9, 2011), <http://www.hrw.org/en/news/2011/02/09/belarus-survey-shows-massive-abuses-protesters> [hereinafter HRW: *Survey Shows*]; Michael Schwartz, *Belarus Opposition Leader Gets a Five-Year Sentence*, THE NEW YORK

presidential candidates are entitled to legal immunity until the election results are certified, the Chair of the Central Election Commission announced that the immunity would end at 8 p.m. on December 19 regardless of any certification, thereby signaling to the police when they could begin arresting opposition candidates.<sup>90</sup> At a press conference after security forces had put down the opposition, Mr. Lukashenko claimed that he had thwarted attempts by the opposition to stage a revolution and stated that “the main task of a president is to ensure the security of people, peace and order in the country.”<sup>91</sup> He also announced the true basis for the crackdown and arrests: “That’s enough of that. There won’t be any more silly democracy, muddle-headed democracy in the country.”<sup>92</sup> Echoing Mr. Lukashenko, in early January 2011, Belarusian state media aired a television special entitled, “The Square: Metal Against Glass,” which depicted the demonstration as an attempted coup and showed staged photographs of shovels, ice axes, and explosive material allegedly left in the square by the demonstrators.<sup>93</sup> The crackdown has been the most severe of Mr. Lukashenko’s 17-year rule.

Both the United States and the European Union have criticized the crackdown and imposed sanctions against Belarus as a result. The United States’ actions include imposing financial sanctions and “significantly expanding the list of Belarusian officials subject to travel restrictions.”<sup>94</sup> The EU has similarly expanded its sanctions regime against Belarus in response to the December 2010 crackdown, reinstating travel bans suspended two years ago.<sup>95</sup> Russia too has engaged in significant, critical diplomacy on behalf of its involved citizens.<sup>96</sup>

#### **4. Mr. Sannikov was Mistreated and Denied Access to A Lawyer during Detention.**

Mr. Sannikov faced horrific conditions while detained and awaiting trial. He was held at the KGB pretrial detention center in Minsk. There, prison authorities engaged in systematic physical and emotional torture: He was beaten on multiple occasions. He was denied access to the toilet.<sup>97</sup> Each day, Mr. Sannikov was forced to carry all his personal belongings to a cold cellar where he was made to stand naked by the wall with his arms and legs outstretched for long periods and to squat.<sup>98</sup> Despite pain in his injured legs, he was not allowed to change position.

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TIMES, (May 14, 2011), <http://www.nytimes.com/2011/05/15/world/europe/15belarus.html> [hereinafter, Schwartz, *Five-Year*].

<sup>90</sup> Statement of Andrei Sannikov, CHARTER ’97, (May 13, 2011), <http://charter97.org/en/news/2011/5/13/38527/>.

<sup>91</sup> AMNESTY INT’L REPORT, *supra* note 4, at 4.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 11.

<sup>94</sup> Press Statement, Philip J. Crowley, (Jan. 31, 2011), <http://www.state.gov/r/pa/prs/ps/2011/01/155640.htm>.

According to U.S. Senator Dick Durbin, “these sanctions are only the first step. Until all political prisoners are unconditionally released, additional pressure will be brought to bear against [the Lukashenko] regime.” Press Statement, Sen. Richard Durbin, (Feb. 1, 2011), <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=869f6ab2-bfdc-4d49-8c31-3a96e0e327fd>.

<sup>95</sup> *Russia Slams Belarus Sanctions as ‘Counterproductive,’* DEUTSCHE WELLE, (Feb. 1, 2011), <http://www.dw-world.de/dw/article/0,,6424969,00.html>.

<sup>96</sup> Interview with Irina Krasovskaya, President of the We Remember Foundation and witness to the demonstrations at October Square, (Mar. 15, 2011). Two Russian citizens already convicted for their participation in the demonstrations, Artyom Breus and Ivan Gaponov, received only fines after significant pressure from the Russian government.

<sup>97</sup> AMNESTY INT’L, *Four Convicted Over Belarus Protest*, (May 16, 2011), <http://www.amnesty.org/en/news-and-updates/four-convicted-over-belarus-protests-2011-05-16> [hereinafter AMNESTY INT’L: *Four Convicted*].

<sup>98</sup> *Id.*

Conditions in the cell were very cold, and Mr. Sannikov was exposed to inclement weather.<sup>99</sup> Men in masks frequently taunted and kicked him, demanding that he confess to accusations of attempting a coup, armed resistance against representatives of the government, planning pogroms and arson, and the announced charge of organizing mass disorder accompanied by violence.<sup>100</sup> When Mr. Sannikov refused, Vadim Zaitsev, the head of the KGB, threatened more brutal measures against his wife and child if he did not give incriminating testimony.<sup>101</sup> Mr. Sannikov initially wrote a petition to the head of the detention center in an attempt to inform him of the torture and obtain relief, but no relief came, and he was punished for the attempt.<sup>102</sup> He could not send or receive letters for a month, and when his family finally received a letter, the tone, content, and style were out of character for Mr. Sannikov and had clearly been dictated by prison authorities.<sup>103</sup> He was denied family visitation until after his conviction, six months after his arrest.<sup>104</sup>

Mr. Sannikov was also denied access to a lawyer. His first lawyer, Pavel Sapelko, visited Mr. Sannikov on December 20, 2010 and publicly raised concerns about Mr. Sannikov's "horrendous" condition and the mistreatment done to him during his pretrial detention.<sup>105</sup> As a direct result, Mr. Sapelko was subsequently disbarred by the Minsk City Bar Association.<sup>106</sup> Mr. Sannikov was not permitted to see a lawyer in private until March 22, 2010.<sup>107</sup> When announcing the charges against Mr. Sannikov in April, the prosecutors declared his "guilt was proved in full."<sup>108</sup> However, his attorneys were not provided with any of the evidence or the government's official statement of the charges until three weeks before trial, leaving them little

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<sup>99</sup> *Id.*; Bogdanova, *supra* note 10.

<sup>100</sup> AMNESTY INT'L: *Four Convicted*, *supra* note 97; Bogdanova, *supra* note 10; Schwirtz, *Five-Year*, *supra* at note 89.

<sup>101</sup> AMNESTY INT'L: *Four Convicted*, *supra* note 97.

<sup>102</sup> *Andrei Sannikov: KGB Chairman threatened to murder my wife and son*, CHARTER '97, (May 13, 2011), <http://charter97.org/en/news/2011/5/13/38486/>.

<sup>103</sup> Bogdanova, *supra* note 10.

<sup>104</sup> *Id.*

<sup>105</sup> AMNESTY INT'L REPORT, *supra* note 4, at 12.

<sup>106</sup> RFE/RL, *Candidate*, *supra* note 9. In practice the Belarusian bar associations remain subordinate to the Ministry of Justice. Lawyers must be licensed by the ministry, are required to work in regional bar associations, and must renew their licenses every five years. Although no reports tied any revocations to the defense of opposition political candidates at year's end, the U.S. State Department reported:

A number of attorneys representing prominent opposition leaders, civil society activists, and independent journalists arrested on or after December 19 reported that their licenses could be revoked for activities related to the defense of their clients. In a notice posted on its Web site, the Justice Ministry charged that "certain lawyers" who were defending individuals facing criminal charges, including up to seven presidential candidates, were committing "gross violations" of the rules of professional etiquette for lawyers as well as of the country's laws. The ministry accused the lawyers of distorting information about the investigations of their clients, their state of health, and conditions of detention.

U.S. STATE DEP'T, 2010 HUMAN RIGHTS REPORT, at 14. More recently, to further curtail the legal defense of opposition candidates, Belarus has arrested Ales Bialiatski, president of the human rights group Viasna and vice-president of the International Federation of Human Rights (FIDH), due to the role of Viasna in funding legal support for opposition prisoners in recent months, which made them the target of several raids. *Alarm in Europe after top Belarus rights defender arrested*, DEUTSCHE WELLE, (Aug. 5, 2011), <http://www.dw-world.de/dw/article/0,,15298637,00.html>.

<sup>107</sup> *Andrei Sannikov: KGB Chairman threatened to murder my wife and son*, CHARTER '97, (May 13, 2011), <http://charter97.org/en/news/2011/5/13/38486/>.

<sup>108</sup> *See Charges brought against Andrei Sannikov*, CHARTER '97, (Mar. 25, 2011), <http://www.charter97.org/en/news/2011/3/25/37115/>

time to prepare a defense.<sup>109</sup> Attempts by Mr. Sannikov's attorney to have him released on bail in advance of trial were unsuccessful.<sup>110</sup>

## 5. The Government Convicted Mr. Sannikov in a Show Trial and Continues to Detain Him Arbitrarily.

Mr. Sannikov's trial began on April 27, 2011 in the Partizanskii District Court in Minsk.<sup>111</sup> Mr. Sannikov was the first of the opposition candidates to be tried.<sup>112</sup> The nominal charges against him were the "organization of mass disorder accompanied by violence against persons, pogroms, arson, destruction of property, or armed resistance of the authority" under Article 293(1) and "involvement in riots, as expressed in the immediate fulfillment of actions specified in the first part of this article" under Article 293(2) of the Belarus Criminal Code.<sup>113</sup> Mr. Sannikov was tried alongside protesters Ilya Vasilevich (age 19), Alekh Hnedchyk (age 25), Fyodar Mirzayanaw (age 20), and Uladzimir Yeramyanok (age 20), each of whom were sentenced to between three and three and a half years in prison.<sup>114</sup> Prior to the trial, Mr. Sannikov did not know the co-defendants and had no affiliation with them; they were not from his campaign. The trial lasted ten days, and the defendants were forced to sit on a hard bench in a barred cage in the courtroom during the proceedings.<sup>115</sup> In addition to the injuries to his legs incurred during the arrest, Mr. Sannikov has a documented history of medical problems, including gout, and sitting for long periods was very uncomfortable for him.<sup>116</sup> He asked the court on multiple occasions to pause the trial so he could receive medical attention, but his appeals were refused.<sup>117</sup> In testimony, Mr. Sannikov accused prison guards of torturing him and other opposition figures, depriving him of sleep, exposing him to severe cold, and threatening family members in an effort to secure confessions.<sup>118</sup> Mr. Sannikov also testified that some of

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<sup>109</sup> See Bogdanova, *supra* note 10.

<sup>110</sup> *Andrei Sannikov remains in KGB jail till trial*, CHARTER '97, (Apr. 18, 2011), <http://charter97.org/en/news/2011/4/18/37816/>.

<sup>111</sup> Office for a Democratic Belarus, *Criminal Case on Mass Riot: 36 Accused and 12 Suspects*, (Jan. 27, 2011), <http://democraticbelarus.eu/node/11248>.

<sup>112</sup> Tanya Korovensova & Anton Taras, *Trial of Andrey Sannikaw Begins in Minsk*, NAVINY.BY, (Apr. 27, 2011), [http://naviny.by/rubrics/english/2011/04/27/ic\\_articles\\_259\\_173412](http://naviny.by/rubrics/english/2011/04/27/ic_articles_259_173412).

<sup>113</sup> *Id.*

<sup>114</sup> Schwirtz, *Five-Year*, *supra* note 89; *Outrage after Belarus jails Lukashenko rival*, BREITBART, (May 15, 2011), [http://www.breitbart.com/article.php?id=CNG.4432ee42b7b95abed5c3f576194fd62f.691&show\\_article=1](http://www.breitbart.com/article.php?id=CNG.4432ee42b7b95abed5c3f576194fd62f.691&show_article=1); *Five years in a maximum security prison for the father; the prosecutor requests two years for the mother with a deferment of punishment. For Danil, just four - his fourth birthday*, NOVAYA GAZETA, (May 18, 2011), <http://en.novayagazeta.ru/data/2011/051/00.html>.

<sup>115</sup> James Brooke, *Analysis: Belarus Moves from Authoritarian to Totalitarian*, VOICE OF AMERICA, (May 3, 2011), <http://www.voanews.com/english/news/europe/Belarus-Moves-From-Authoritarian-to-Totalitarian-121162964.html>.

<sup>116</sup> Bogdanova, *supra* note 10.

<sup>117</sup> *Id.*

<sup>118</sup> Schwirtz, *Five-Year*, *supra* note 89, ("Mr. Sannikov accused the head of the K.G.B., Vadim Zaitsev, of threatening to harm his wife and young son if he did not agree to give incriminating testimony. 'When I refused to affirm this lie that was offered to me, when I refused to write a petition, Zaitsev literally said the following: 'Then harsh measures will be taken against your wife and child,'" Mr. Sannikov said . . .").

the government's limited evidence was obtained from him under duress.<sup>119</sup> The court did not order an investigation of this torture and mistreatment.

The trial itself was plagued by procedural irregularities. Notably, the defense took witness statements on Mr. Sannikov's behalf and offered photographs of the square on the night of the demonstration, but the court did not accept them into evidence.<sup>120</sup> In juxtaposition, the court permitted the government to enter recorded phone conversations from Mr. Sannikov's phone that the government had tapped during his presidential campaign. Additionally, while twenty-nine prosecution witnesses were announced, only eight showed up to testify, with the rest allegedly on "holiday."<sup>121</sup> In spite of the fact that Mr. Sannikov was charged with "organization of mass disorder accompanied by violence against persons, pogroms, arson, destruction of property, or armed resistance of the authority," the prosecution adduced no evidence that Mr. Sannikov had engaged in or incited any disorder or violence at the demonstration, caused or incited harm to people, or destroyed or incited destruction of property.<sup>122</sup> Although offering testimony against other protesters or defendants, none of the witnesses identified Mr. Sannikov as a person who committed violence or disobeyed police orders.<sup>123</sup> Moreover, the prosecution witnesses presented non-credible statements; for example, one officer testified that he did not know who gave him orders on the night of the arrests.<sup>124</sup> To the contrary, the defense presented numerous witnesses, all of whom testified that the demonstration was peaceful and that Mr. Sannikov did not encourage any rioting or violent acts. Despite the utter lack of proof connecting him to the violence perpetrated by the thugs, the Lukashenko-controlled court sentenced Mr. Sannikov to five years in a penal colony for his role in organizing the demonstration.<sup>125</sup> In its ruling, the court adopted the prosecution's indictment and statement of evidence verbatim, without referencing the defense evidence.<sup>126</sup>

The trial and conviction of Mr. Sannikov were condemned by the United States and the European Union, and the U.S. State Department labeled the decision "clearly politically motivated."<sup>127</sup> On May 27, 2011, President Obama announced new sanctions "against select Belarusian state-owned enterprises,"<sup>128</sup> and the United States more recently reiterated its call for the release of all political prisoners and announced additional economic sanctions against four major Belarusian state-owned enterprises.<sup>129</sup> In May, the European Union added judges and

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<sup>119</sup> *Id.*; AMNESTY INT'L: *Four Convicted*, *supra* note 97.

<sup>120</sup> Bogdanova, *supra* note 10.

<sup>121</sup> Schwirtz, *Five-Year*, *supra* note 89; *Trial against Sannikov: Evidence for defence not attached to case*, CHARTER '97, (Apr. 29, 2011), <http://charter97.org/en/news/2011/4/29/38164/> [hereinafter *Sannikov: Evidence not attached*].

<sup>122</sup> *Sannikov: Evidence not attached*, *supra* note 121.

<sup>123</sup> *Id.*

<sup>124</sup> *E.g.*, *Sannikov Questions Riot Squad Commander*, FREEBELARUSNOW, (May 6, 2001), <http://www.freebelarusnow.org/ru/the-news/141-sannikov-questions-riot-squad-commander>.

<sup>125</sup> Schwirtz, *Five-Year*, *supra* note 89.

<sup>126</sup> Bogdanova, *supra* note 10.

<sup>127</sup> *Id.*

<sup>128</sup> *Obama: U.S. Will Pursue New Sanctions Against Belarusian State-Owned Enterprises*, CHARTER '97, (May 27, 2011), <http://charter97.org/en/news/2011/5/27/39013/>.

<sup>129</sup> *Media Note, New Sanctions Against Belarus*, (Aug. 11, 2011), <http://www.state.gov/r/pa/prs/ps/2011/08/170405.htm>.

prosecutors from the trials of December 19 demonstrators to a list of Belarusians who are barred from the European Union and whose European assets have been frozen.<sup>130</sup> The Council of the European Union specifically stated that the sanctions were adopted “following the recent sentences on the former presidential candidate Sannikaw [alt. sp.] and on a number of members of the political opposition and civil society.”<sup>131</sup> It specifically sanctioned the judge at Mr. Sannikov’s trial, Natalya Chetvertkova.<sup>132</sup> The sanction stated that “[h]er way of conducting the trial is a clear violation of the Code of Penal Procedure,” and “[s]he sustained the use of evidences and testimonies irrelevant to the accused persons against them.”<sup>133</sup> In addressing these sanctions, Swedish Foreign Minister Carl Bildt was quoted as saying, “In Minsk, which is on the continent of Europe, we have ongoing political trials, ongoing political verdicts of a nature that is completely unacceptable. And that means that further measures will have to be taken.”<sup>134</sup> In spite of its status as Belarus’s traditional ally, even Russia has criticized the “harsh” prison sentences that had been handed down to opposition leaders, including Mr. Sannikov.<sup>135</sup>

Mr. Lukashenko subsequently “pardoned” twenty-four participants in the December 19, 2010 demonstration.<sup>136</sup> Mr. Sannikov remains in prison and has not been notified of any pardon.<sup>137</sup> In a recent ten-minute phone call with his wife—his first from the Navapolatsk penal colony—he told her that this was “another dirty game”<sup>138</sup> Presently, he has been sentenced to the labor detachment of third squad of penal colony number 10 in Navapolatsk, where he is forced to work producing corrugated carton boxes.<sup>139</sup>

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<sup>130</sup> Press Statement, Council of the European Union, (May 23, 2011), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/122172.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122172.pdf).

<sup>131</sup> *Id.*

<sup>132</sup> OFFICIAL JOURNAL OF THE EUROPEAN UNION, *Council Implementing Regulation (EU) no 505/2011 of 23 May 2011*, (May 24, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0048:0051:EN:PDF>.

<sup>133</sup> *Id.*

<sup>134</sup> Rikard Jozwiak, *EU Slaps More Sanctions on Belarus over Crackdown*, RADIO FREE EUROPE/RADIO LIBERTY, (May 23, 2011), [http://www.rferl.org/content/eu\\_widens\\_belarus\\_sanctions/24183709.html](http://www.rferl.org/content/eu_widens_belarus_sanctions/24183709.html).

<sup>135</sup> *Belarus sentences Lukashenko challengers*, AL JAZEERA, (May 20, 2011), <http://english.aljazeera.net/news/europe/2011/05/2011520153640406894.html>; Schwirtz, *Five-Year*, *supra* note 89.

<sup>136</sup> *Lukashenko Grants Pardon to Participants in Dec. Protests*, (Aug. 11, 2011), RIA NOVOSTI, <http://en.rian.ru/world/20110811/165718195.html> [hereinafter; RIA, *Pardons*], *Lukashenko Frees Nine Opposition Activists*, (Aug. 12, 2011), <http://rt.com/politics/news-line/2011-08-12/>.

<sup>137</sup> RIA, *Pardons*, *supra* note 136; *Lukashenko pardons four election protesters*, (Sept. 1, 2001), RIA NOVOSTI, <http://en.rian.ru/world/20110901/166361031.html>. Nikolai Statkevich, Dmitry Uss, Andrei Sannikov, Vladimir Neklyayev, Vitaly Rymashevsky, and Ales Mikhalevich were all among those supposedly pardoned. They have not been released or rehabilitated. *See also supra* note 88.

<sup>138</sup> CHARTER '97, *Dirty Game*, *supra* note 11. Navapolatsk is known for extremely harsh conditions and poor ecology due to its proximity to chemical plants lacking proper safety mechanisms. *See supra* note 10 and corresponding text.

<sup>139</sup> *Iryna Khalip: I'll tell everything later, when I come around*, CHARTER '97, (Sept. 13, 2011), <http://www.charter97.org/en/news/2011/9/9/42443/>.

## Analysis

Mr. Sannikov’s arrest, detention, conviction, and lengthy sentence are politically motivated and plainly violate international and domestic human rights protections. Belarus ratified the International Covenant on Civil and Political Rights (“ICCPR”) on November 12, 1973, and this instrument is controlling authority.<sup>140</sup> The Belarus Constitution also states that Belarus must conform to recognized international law.<sup>141</sup> Accordingly, Belarus is obligated to uphold international legal standards—including the Universal Declaration of Human Rights (“UDHR”) and the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (“Body of Principles”). Belarus’s Constitution further imposes domestic obligations and restrictions on the government to protect human rights.<sup>142</sup>

Given these robust obligations, Belarus’s detention of Mr. Sannikov is an arbitrary deprivation of liberty,<sup>143</sup> falling within both Categories II and III of the case defined by the Working Group.<sup>144</sup> Indeed, the Working Group has already found that an indistinguishable arrest and detention associated with the December 19 crackdown falls within Categories II and III. In Opinion No. 13/2011 (Belarus), rendered on May 4, 2011, the Working Group held that Mikalai Statkevich, another Belarusian opposition politician arrested for protesting on December 19 had been arbitrarily deprived of his liberty. In Mr. Statkevich’s case, the Working Group observed: “The source points to the link to the election process. When issues of freedom of

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<sup>140</sup> United Nations High Commissioner for Refugees, *Background Information on the Situation in Belarus in the Context of the “Safe Third Country” Concept*, <http://www.unhcr.org/refworld/country,,COUNTRYPOS,BLR,,3ae6b33210,0.html>; United Nations Treaty Collection, Status of International Convention on Civil and Political Rights, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>141</sup> CONST. OF THE REPUBLIC OF BELARUS 1994, art. 8 (“The Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith.”).

<sup>142</sup> *Id.* art. 2 (“The individual, his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State. The State shall assume responsibility before the citizen to create the conditions for free and dignified development of his personality. . . .”).

<sup>143</sup> An arbitrary deprivation of liberty is defined as any deprivation of liberty that is not “on such grounds and in accordance with such procedure as are established by law.” International Convention on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976 [hereinafter ICCPR], at Art. 9(1). Arbitrary detention is expressly prohibited by international law: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” *Id.*; “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at Art. 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . . .” Body of Principles for the Protection of Persons Under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

<sup>144</sup> A Category II case exists “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B) [hereinafter Fact Sheet 26]. A Category III case exists “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.” *Id.*

political expression and assembly come before this Working Group, it undertakes a particularly intensive review as the use of the freedoms in the political process concern the very core of these fundamental freedoms.”<sup>145</sup> Petitioner seeks the same intensive review of Belarus’s arbitrary detention of Mr. Sannikov, who like Mr. Statkevich was an opposition candidate arrested in the same crackdown for his efforts to advocate democracy and oppose the lack of fairness and transparency in Belarus’s 2010 presidential election.

Mr. Sannikov’s arbitrary detention, like that of Mr. Statkevich, falls within Category II because it resulted directly from his exercise of his fundamental freedoms. Mr. Sannikov was harassed throughout his presidential campaign and ultimately detained because he ran against the incumbent, Mr. Lukashenko, and then peacefully gathered with other opposition leaders and their supporters to protest election results that violated international standards.<sup>146</sup> As statements by Mr. Lukashenko after the crackdown made clear—“There won’t be any more silly democracy, muddle-headed democracy”—Mr. Sannikov’s arrest was linked to his efforts to promote democracy as an opposition presidential candidate and his public advocacy of democracy in Belarus. Belarus’s detention of Mr. Sannikov violated his freedoms of thought and expression embodied in Articles 18 and 19 of the ICCPR and UDHR and Article 33 of the Belarusian Constitution. It violated his fundamental freedoms of peaceful assembly and association embodied in Articles 21 and 22 of the ICCPR, Article 20 of the UDHR, and Articles 35 and 36 of the Belarusian Constitution. And, it violated his fundamental right to participate in the political process as protected by Article 25 of the ICCPR, Article 21 of the UDHR, and Articles 37 and 38 of the Belarusian Constitution.

This case also qualifies under Category III because Belarus failed to observe the minimum standards of a fair trial. Belarus denied Mr. Sannikov a fair hearing by an independent and impartial tribunal and failed to afford him a presumption of innocence, as protected by Articles 14 of the ICCPR, Articles 7, 10, and 11 of the UDHR, Principle 36 of the Body of Principles, and Article 26 of the Belarus Constitution. The government also systematically denied Mr. Sannikov access to counsel for months during pretrial detention, in violation of Article 14 of the ICCPR and Principles 17 and 18 of the Body of Principles. Moreover, governmental officials and prison authorities physically abused Mr. Sannikov and threatened violence against his family if he did not confess, resulting in the admission of coerced information at trial, and violating his freedom from torture or cruel, inhumane, or degrading punishment and his right to be treated with humanity and dignity as guaranteed by Articles 7 and 10 of the ICCPR, Article 5 of the UDHR, and Principle 6 of the Body of Principles. Finally, the government severely restricted his communications with his family, in violation of Principles 19 and 21 of the Body of Principles.

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<sup>145</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 9.

<sup>146</sup> See AL JAZEERA: *Dirty Tricks*; CHARTER ’97: *Search*, *supra* note 67.

**1. Category II: The Detention Resulted from Mr. Sannikov's Exercise of His Rights and Freedoms Guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Belarusian Constitution.**

The Belarusian government's arrest, detention, conviction, and incarceration of Mr. Sannikov fall within Category II of the cases to be considered by the Working Group. A Category II case exists "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights."<sup>147</sup> Mr. Sannikov's arrest, detention and conviction are arbitrary under Category II because they resulted from his exercise of these fundamental freedoms.

The charges brought against Mr. Sannikov were brought as a pretext to punish and silence him for his candidacy, political participation, and public activism. Mr. Sannikov was the top opposition candidate in the election, receiving the highest percentage of votes after Mr. Lukashenko, and he has a long and distinguished history as a human rights advocate.<sup>148</sup> The official charge against Mr. Sannikov was based on breaches of Articles 293(1) and 293(2) of the Belarus Criminal Code relating to organization of or involvement in mass disorder causing harm to people or the destruction of property. Yet, Mr. Sannikov publicly discouraged the protesters from engaging in any violence or destruction.<sup>149</sup> During the demonstration, riot police moved in, under the pretext of responding to an isolated incident in which unknown persons broke the windows of the Government House. The security forces did not stop there—they later arrested over 700 people, including Mr. Sannikov and other opposition candidates, peaceful participants, and bystanders.<sup>150</sup> While most were released, Mr. Sannikov and other opposition candidates received harsh sentences. The application of this law to select organizers and participants under these circumstances is a thinly veiled attempt to infringe upon fundamental rights.

This blatant pretext for the crackdown and Mr. Sannikov's subsequent conviction has earned the condemnation of the world community.<sup>151</sup> The December 19 crackdown on pro-

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<sup>147</sup> Fact Sheet 26, *supra* note 144.

<sup>148</sup> Simon Shuster, *After Bombing, Belarus' Tyrant Cracks Down — on Everybody*, TIME, (Apr. 12, 2011), <http://www.time.com/time/world/article/0,8599,2064921,00.html>.

<sup>149</sup> See Bogdanova, *supra* note 10.

<sup>150</sup> HUMAN RIGHTS WATCH, *Shattering Hopes: Post-Election Crackdown in Belarus*, (Mar. 14, 2011), <http://www.hrw.org/en/reports/2011/03/14/shattering-hopes-0>.

<sup>151</sup> See, e.g., Phil Bronstein, *Iryna Khalip and the Persecuted in Belarus*, SAN FRANCISCO CHRONICLE, (Jan. 10, 2011), [http://articles.sfgate.com/2011-01-10/opinion/27020313\\_1\\_natalya-kolyada-belarussian-andrei-sannikov](http://articles.sfgate.com/2011-01-10/opinion/27020313_1_natalya-kolyada-belarussian-andrei-sannikov); Tom Parfitt & Nicholas Watt, *Belarus presidential candidate denied lawyers in jail*, GUARDIAN, (Dec. 24, 2010), <http://www.guardian.co.uk/world/2010/dec/23/belarus-election-detainee-denied-lawyers>; *Five presidential candidates among those arrested in Minsk*, RUSSIA & CIS PRESIDENTIAL BULLETIN, (Dec. 23, 2010); *Belarus rounds up opposition*, DAILY PAK BANKER (PAKISTAN), (Dec. 22, 2010); *Crowds clash with police after Belarus poll result*, GLASGOW HERALD, (Dec. 21, 2010); *Belarus rounds up opposition: Arrests follow protests*, INTERNATIONAL HERALD TRIBUNE, (Dec. 21, 2010); *Hundreds arrested in election protests in Belarus*, DEUTSCHE WELLE, (Dec. 20, 2010). *The Economist* concluded that the minor provocation justifying the arrests

democracy protesters and Mr. Sannikov's arrest, detention, and show trial are emblematic of the Belarusian government's well-documented pattern and practice of suppressing political activists by charging them with crimes as a means to infringe upon their fundamental rights. Human Rights Watch, Amnesty International, and the U.S. State Department have all reported that the Belarusian police and security forces routinely arrest and prosecute human rights defenders through the application of charges that carry lengthy prison sentences for the purpose of infringing upon their fundamental rights.<sup>152</sup>

The U.S. State Department labeled Mr. Sannikov a political prisoner, and called his detainment "clearly politically motivated."<sup>153</sup> It observed that Mr. Sannikov was arrested for his participation in a non-violent demonstration the night of the election, the results of which are widely acknowledged to have been manipulated.<sup>154</sup> Similarly, the Council of the European Union adopted sanctions "following the recent sentences on the former presidential candidate Sannikaw [alt. sp.] and on a number of members of the political opposition and civil society."<sup>155</sup>

Because Mr. Sannikov's detention was the politically motivated result of his attempt to exercise his human rights and freedoms, his confinement clearly qualifies as a Category II detention.

**a. The Government Arbitrarily Detained Mr. Sannikov Because He Exercised His Freedoms of Opinion and Expression.**

The Government's detention of Mr. Sannikov is arbitrary because it is linked to Mr. Sannikov's exercise of his freedoms of opinion and of expression under international and domestic law. Article 19 of the ICCPR states that "[e]veryone shall have the right to hold opinions without interference," and "[e]veryone shall have the right to freedom of expression [which includes] freedom to seek, receive and impart information and ideas of all kinds,

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was the work of the President's own supporters, "who staged provocations on election night, smashing windows in a government building . . . as a pretext for arrests." *Belarus's crackdown: Show trials again*, ECONOMIST, (May 12, 2011).

<sup>152</sup> See AMNESTY INT'L, *Belarus - Amnesty International Report 2010*, <http://www.amnesty.org/en/region/belarus/report-2010>; HUMAN RIGHTS WATCH, *World Report 2011: Belarus*, <http://www.hrw.org/en/world-report-2011/belarus>; U.S. STATE DEP'T: 2010 HUMAN RIGHTS REPORT, *supra* note 39.

<sup>153</sup> U.S. STATE DEP'T, *Conviction of Belarusian Presidential Candidate Andrey Sannikau*, (May 14, 2011), <http://www.state.gov/r/pa/prs/ps/2011/05/163350.htm>; see also Schwartz, *Five-Year*, *supra* note 89.

<sup>154</sup> U.S. STATE DEP'T, *The Joint US-EU Statement on the Post-Presidential Elections' Situation in Belarus*, (Dec. 23, 2010), <http://www.state.gov/r/pa/prs/ps/2010/12/153661.htm>; KYIVPOST, *United Nations to Belarus: Release Political Prisoners*, <http://www.kyivpost.com/news/russia/detail/94519/#ixzz1A15Dpjpr> (U.N. Secretary General Ban Ki-moon "noted the serious concerns voiced by observer groups regarding the electoral process and post-electoral developments."); Jason Motlagh, *Why Belarus' Dictator Is Not Fond of Applause*, TIME, (July 7, 2011), <http://www.time.com/time/world/article/0,8599,2081858,00.html> (claiming that "Lukashenko clearly hijacked" the 2010 elections); Michael Schwartz, *Authorities tighten grip on Belarus opposition: European leaders admit soft approach was wrong and threaten sanctions*, INTERNATIONAL HERALD TRIBUNE, (Jan. 13, 2011) (noting that "independent observers said the ballot counting was rigged").

<sup>155</sup> Press Statement, Council of the European Union, (May 23, 2011), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/122172.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122172.pdf).

regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Article 19 of the UDHR similarly establishes that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 33 of the Belarusian Constitution also provides that “[e]veryone is guaranteed freedom of thoughts and beliefs and their free expression,” and that “[n]o one may be forced to express his beliefs or to deny them.” Moreover, Belarusian law guarantees legal immunity for presidential candidates until the official election results are announced.<sup>156</sup> Mr. Sannikov relied upon the guarantees provided by these provisions when he embarked on his presidential campaign and took part in a peaceful demonstration to protest the results of the fraudulent election. Thus, Mr. Sannikov’s arrest at the demonstration and lengthy sentence violated his fundamental rights.

On the night of the demonstration, Mr. Sannikov and other opposition candidates spoke out against electoral fraud and called on the government for an electoral run-off under existing Belarusian law.<sup>157</sup> Mr. Sannikov undisputedly discouraged his supporters from using force and did not engage in any violence himself. In response to Mr. Sannikov’s non-violent, pro-democracy statements and actions, and in contravention of his rights under international law, special security forces arrested him, raided his home, beat him, and even tried to seize his three-year-old son.<sup>158</sup> The Belarusian government did this to stifle Mr. Sannikov’s freedoms of opinion and expression, rendering his detention arbitrary. As explained by the Working Group, “[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest.”<sup>159</sup>

Mr. Sannikov’s peaceful political expression does not fall within the limited category of speech that is subject to legal prohibition by the government. The ICCPR recognizes only a narrow circumstance where expression may be curtailed—when the enforced limits on speech are “provided by law” and “necessary” “[f]or respect of the rights or reputations of others” or “[f]or the protection of national security or of public order (ordre public), or of public health or morals.”<sup>160</sup> Interpreting this limited exception, the Committee has noted that such restrictions must not “put in jeopardy the right itself.”<sup>161</sup>

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<sup>156</sup> Office for a Democratic Belarus – Brussels, *Joint Address by the Coalition for a European Continent Undivided by Visa Barriers on the Presidential Election in Belarus*, (Jan. 10, 2011), <http://democraticbelarus.eu/node/10986>. This has been widely recognized by many foreign observers, and the Lithuanian Parliament called for the candidates’ release on these very grounds. *Lithuanian Parliament calls the human rights situation in Belarus a humanitarian disaster*, DEUTSCH-BELARUSSISCHE GESELLSCHAFT, (Jan. 1, 2011), <http://www.dbg-online.org/node/2570>.

<sup>157</sup> See AMNESTY INT’L REPORT, *supra* note 4 at 4.

<sup>158</sup> Roland Oliphant, *Police ‘Threatened to Rape’ Belarus Free Theatre Director After Election Protest*, THE DAILY TELEGRAPH, (Dec. 25, 2010), <http://www.telegraph.co.uk/news/worldnews/europe/belarus/8224956/Police-guard-threatened-to-rape-Belarus-Free-Theatre-director-after-election-protest.html>; *Belarus May Seize Opposition Leader’s Son: Grandmother Faces ‘Worst Nightmare’ as 3-Year-Old Boy Might be Removed*, PITTSBURGH POST-GAZETTE, (Jan. 10, 2011). See also Schwirtz, *Son*, *supra* note 86.

<sup>159</sup> *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 12, E/CN.4/2001/14/Add.1, at 124 (2000).

<sup>160</sup> See ICCPR, *supra* note 143, at art. 19(3)(a)-(b).

<sup>161</sup> U.N. Human Rights Committee, ICCPR, General Comment No. 10, Article 19: Freedom of expression, ¶ 4, (June 29, 1983).

Although Mr. Lukashenko referenced ill-defined national security reasons for the December 19 crackdown, the international community has recognized and the evidence has shown that the protests generally, and Mr. Sannikov's speech particularly, did not threaten Belarusian security. Finding the narrow exception here would indeed put in jeopardy the right itself. The event was organized as a peaceful demonstration to protest electoral fraud and call for renewed elections. At no point did Mr. Sannikov engage in any violent act or advocate for violence. At the demonstration, the single violent incident that occurred, which was likely the doing of government thugs, took place at the back of the crowd in an isolated area.<sup>162</sup> Eyewitnesses reported that the police stood by watching for a long time while the Government House was damaged, further showing that the violent episode was orchestrated by the government as a pretext to arrest the demonstrators.<sup>163</sup> It took some time before those at the front of the crowd, including Mr. Sannikov, even heard that anything was taking place.<sup>164</sup> When Mr. Sannikov and the other speakers finally learned of the destruction, they urged the demonstrators to resist the provocation and to ignore the thugs.<sup>165</sup> It was not until after the thugs were dispersed that Mr. Sannikov and others who engaged in peaceful protest were arrested; in Mr. Sannikov's case, far from the Square. At trial, the government failed to provide any evidence linking Mr. Sannikov's actions to any violence which threatened national security or public order, and as such the restriction on his freedom of expression does not fall within the narrow confines permitted under international law. No witness was able to provide any evidence that Mr. Sannikov personally participated in or incited any violence.<sup>166</sup>

When Mr. Sannikov participated in and spoke at the demonstration, he acted fully within his rights under Article 33 of the Belarusian Constitution, and his arrest contravenes the protections set forth therein and in Article 19 of the ICCPR and Article 19 of the UDHR. Therefore, his case qualifies as a Category II detention as categorized by the Working Group.

**b. The Government Detained Mr. Sannikov Because He Exercised His Freedom of Assembly.**

The Government's detention of Mr. Sannikov as a result of his peaceful participation in the public demonstration on December 19, 2010, violates his fundamental right to freedom of assembly, enshrined in Article 21 of the ICCPR and Article 20(1) of the UDHR.<sup>167</sup> Article 35 of the Belarusian Constitution further protects this fundamental right: "The freedom to hold assemblies, meetings, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State."

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<sup>162</sup> See AMNESTY INT'L REPORT, *supra* note 4, at 4.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Sannikov's trial continues*, BELSAT, (May 10, 2011), <http://www.belsat.eu/en/wiadomosci/a,2789,sannikovs-trial-continues.html>.

<sup>166</sup> *Sannikov: Evidence not attached*, *supra* note 121.

<sup>167</sup> "The right of peaceful assembly shall be recognized." ICCPR, *supra* note 143, at Art. 21. See also UDHR, *supra* note 143, at Art. 20(1) ("Everyone has the right to freedom of peaceful assembly and association.").

Mr. Sannikov's conviction under Articles 293(1) and 293(2) of the Belarusian Criminal Code directly contravened these laws. The sole purpose of the demonstration was for opposition groups to assemble peaceably and protest the falsified election results.<sup>168</sup> As the OSCE Committee of International Control over the Human Rights Situation in Belarus concluded, the demonstration on December 19 was not a mass social unrest.<sup>169</sup> Such participation in a political demonstration should have been protected, not punished, under Belarusian law.

Mr. Sannikov's organization of and participation in the peaceful December 19 demonstration does not fall within the narrow confines of permitted limitations on freedom of assembly permitted under international law. Article 21 of the ICCPR recognizes that restrictions may be placed on the right to freedom of assembly, only as long as they are "in conformity with the law."<sup>170</sup> These may include those "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."<sup>171</sup> Mr. Sannikov's exercise of his freedom of assembly threatened none of these interests. Mr. Sannikov, upon discovering the violence carried out by the thugs, urged demonstrators not to respond. Moreover, Mr. Sannikov was not arrested until he was being rushed to the hospital, miles from the square, after the rally had been dispersed—a situation suggesting no threat to public order. As the government was unable to provide any witnesses at trial to link Mr. Sannikov to any violent activity,<sup>172</sup> the imposition of a five-year prison sentence reveals the political motivation for the detention. Indeed, the Government arrested him precisely because he was promoting a "democratic society." As Mr. Lukashenko stated after the crackdown, "That's enough of that. There won't be any more silly democracy, muddle-headed democracy in the country."<sup>173</sup> Mr. Sannikov's detention and five-year sentence is therefore in direct violation of international and domestic law, qualifying his case as arbitrary under Category II.<sup>174</sup>

### **c. The Government Detained Mr. Sannikov Because He Exercised His Freedom of Association.**

The Government's detention of Mr. Sannikov as a result of his peaceful participation in the December 19 demonstration violates his fundamental right to freedom of association,

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<sup>168</sup> Save for the provocation by a group of men in masks, widely believed to have been staged by the government and publicly rejected by Mr. Sannikov and the other speakers, the demonstration on December 19 was completely peaceful.

<sup>169</sup> OSCE ELECTION REPORT, *supra* note 33, at 1-3, 22-24.

<sup>170</sup> ICCPR, *supra* note 143, at Art. 21.

<sup>171</sup> *Id.* (emphasis added).

<sup>172</sup> *Sannikov's trial continues*, BELSAT, (May 10, 2011), <http://www.belsat.eu/en/wiadomosci/a,2789,sannikovs-trial-continues.html>; *Sannikov: Evidence not attached*, *supra* note 121.

<sup>173</sup> See AMNESTY INT'L REPORT, *supra* note 4 at 4.

<sup>174</sup> See, e.g., *In re Birtukan Mideksa Deme*, Op. No. 28/2009 (Ethiopia), at ¶¶ 14, 34 (finding that Ethiopia's detention of Ms. Birtukan Mideksa Deme because of her status as a prominent political figure was an arbitrary deprivation of liberty in violation of her rights to freedom of assembly and association).

enshrined in Article 22 of the ICCPR and Article 20 of the UDHR.<sup>175</sup> Article 36 of the Belarusian Constitution similarly guarantees that “[e]veryone shall be entitled to freedom of association.”

Mr. Sannikov’s conviction under Articles 293(1) and 293(2) of the Belarusian Criminal Code directly contravened these laws. The sole purpose of the demonstration was for opposition groups to gather and associate with other opposition candidates and their supporters in peaceful protest. The peaceful nature of this association should have been protected under international and domestic law.<sup>176</sup> Again, Mr. Sannikov’s association with other politicians and their supporters does not fall within the narrow confines of permitted limitations on freedom of association under international law, which are similar to those restrictions permissible on freedom of assembly. Article 22 of the ICCPR recognizes that restrictions may be placed on the right to freedom of association, only as long as they are “prescribed by law.”<sup>177</sup> These may include those “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.”<sup>178</sup> As noted above, Mr. Sannikov’s exercise of his freedom of association threatened none of these interests, and the government has been consistently unable to link Mr. Sannikov to any violence whatsoever. Mr. Sannikov’s detention and five-year sentence is therefore in direct violation of international and domestic law, qualifying his case as arbitrary under Category II.

#### **d. The Government Arbitrarily Detained Mr. Sannikov Because He Participated in the Political Process.**

Mr. Sannikov’s candidacy for president and participation in opposition political activity fall squarely within the right protected by international law and the Belarusian Constitution. The right to take part in the conduct of public affairs is protected by Article 25 of the ICCPR and Article 21 of the UDHR.<sup>179</sup> Furthermore, Article 37 of the Belarusian Constitution provides that every Belarusian citizen “shall have the right to participate in settlement of state affairs, both directly and through freely elected representatives,” and Article 38 of the Belarusian Constitution states that Belarusian citizens “shall have the right to vote freely and to be elected to state bodies on the basis of universal, equal, direct or indirect suffrage by secret ballot.” Belarusian law

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<sup>175</sup> “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” ICCPR, *supra* note 143, at Art. 22(1). “Everyone has the right to freedom of peaceful assembly and association.” UDHR, *supra* note 143, at Art. 20(1).

<sup>176</sup> See OSCE ELECTION REPORT, *supra* note 33, at 1-3, 22-24.

<sup>177</sup> ICCPR, *supra* note 143, at Art. 22(2).

<sup>178</sup> *Id.*

<sup>179</sup> “Every citizen shall have the right and the opportunity, without [discrimination] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives [and]; (b) To vote and be elected at genuine periodic elections . . . .” ICCPR, *supra* note 143, at Art. 25. “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” UDHR, *supra* note 143, at Art. 21(1).

nominally fosters political participation by endowing presidential candidates with legal immunity until the election results are certified.<sup>180</sup>

Mr. Sannikov was detained because he exercised his right to engage in the political process. He was the most popular opposition candidate in the 2010 election, which was widely regarded as fraudulent by independent observers. He promoted a peaceful demonstration of the results of that election. During his speech at the demonstration, he advocated a multi-party system and democratic elections precisely so that he and other citizens could participate in the conduct of public affairs in Belarus. And, for Mr. Sannikov’s political acts—and his audacity to challenge Mr. Lukashenko in an ostensibly democratic election—he was harassed, arrested, beaten, tortured, and ultimately sentenced to five years in prison. Although Belarusian law endows presidential candidates with immunity for such political participation, the Chair of the Central Election Commission announced that the immunity would end at 8 p.m. on December 19, thereby signaling to the police that they could begin arresting opposition candidates in the Square at that time.<sup>181</sup> Pyotr Miklashevich, chairman of the Constitutional Court of Belarus, who was appointed by Mr. Lukashenko, inconsistently denied that presidential candidates ever had immunity.<sup>182</sup> Thus, Mr. Sannikov’s imprisonment for his peaceful efforts to take part in the political process in Belarus contravenes his right to participate in the administration of government and the conduct of public affairs. As in Mr. Statkevich’s case, the “link to the election process” is undeniable, and the Working Group should undertake “a particularly intensive review.”<sup>183</sup>

## **2. Category III: The Government’s Detention of Mr. Sannikov is Arbitrary Because He was Denied the Right to a Fair Trial.**

Mr. Sannikov’s case also qualifies as a Category III arbitrary detention under the standards set forth by the Working Group. The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>184</sup> Additionally, the Working Group relies on the Body of Principles as a key source of inviolable norms.<sup>185</sup> Because the trial and detention of Mr. Sannikov failed to observe the minimum international norms relating to a fair trial, as contained in the ICCPR, the UDHR, and the Body of Principles, his sentence and continued detention is arbitrary under Category III.

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<sup>180</sup> *Statement of Andrei Sannikov*, CHARTER ’97, (May 13, 2011), <http://charter97.org/en/news/2011/5/13/38527/>.

<sup>181</sup> *Id.*

<sup>182</sup> *Presidential Candidates are not Immune from Criminal Prosecution, Constitutional Court Chairman Says*, BELARUSIAN TRIBUNAL, (Jan. 27, 2011), <https://beltribunal.nl/en/news/presidential-candidates-are-not-immune-criminal-prosecution-constitutional-court-chairman-says> (stating that “[f]rom a legal standpoint, presidential candidates have no immunity from criminal prosecution for illegal activities”).

<sup>183</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 9.

<sup>184</sup> Fact Sheet No. 26, *supra* note 144, at part IV(B).

<sup>185</sup> *Id.*

**a. The Government Denied Mr. Sannikov an Independent Court and the Presumption of Innocence.**

Mr. Sannikov did not receive a fair trial before an impartial judiciary. Article 14(1) of the ICCPR and Article 10 of the UDHR guarantee the right “to a fair and public hearing by a competent, independent and impartial tribunal.”<sup>186</sup> Article 14(2) of the ICCPR and Article 11 of the UDHR also protect the right to be “presumed innocent until proved guilty.”<sup>187</sup> The Body of Principles similarly provides that individuals “shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all of the guarantees necessary for his defense.”<sup>188</sup> Furthermore, Article 60 of the Belarusian Constitution provides that “[e]veryone shall be guaranteed protection of his rights and liberties by a competent, independent and impartial court of law within time limits specified by law.”

Belarus violated Mr. Sannikov’s right to a trial before an impartial judiciary, resulting in the exclusion of relevant evidence and the failure to hold the prosecution to its burden of proof. The Human Rights Committee has explained that “[t]he notion of a ‘tribunal’ in article 14, paragraph 1, designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature.”<sup>189</sup> The international community has long expressed concerns about Belarus’s executive branch’s exercise of excessive control over the legal system. Although the Belarusian Constitution and international law call for an independent judiciary, Mr. Lukashenko and his appointees do not respect judicial independence in practice.<sup>190</sup> As was set out in Part IV(A)(2) above, reports from both the United States State Department and the United Nations Special Rapporteur on the Situation of Human Rights in Belarus indicate that the Belarusian judiciary is completely subservient to Mr. Lukashenko, and that courts are often used as a political tools to enforce the will of the executive branch.<sup>191</sup> Moreover, in his February 2001 report on “Civil and Political Rights, including questions of: Independence of the Judiciary, Administration of Justice, Impunity,” the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato’ Param Cumaraswamy, concluded that Belarus targeted advocates for human rights related work.<sup>192</sup>

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<sup>186</sup> UDHR, *supra* note 143, at Art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”).

<sup>187</sup> U.N. Human Rights Committee, ICCPR, Article 14(2) (“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”); UDHR, *supra* note 143, at Art. 11(1) (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”).

<sup>188</sup> Body of Principles, *supra* note 143, at Principle 36(1).

<sup>189</sup> U.N. Human Rights Committee, ICCPR, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, ¶ 18, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007).

<sup>190</sup> See U.S. STATE DEP’T: 2010 HUMAN RIGHTS REPORT, *supra* note 39.

<sup>191</sup> *Id.*; see also Special Rapporteur Reports, *supra* note 52.

<sup>192</sup> Special Rapporteur on the Independence of Judges and Lawyers, *Report to the Economic and Social Council*, E/CN.4/2001/65/Add.1, (Feb. 8, 2001) (by Dato’ Param Cumaraswamy).

The proceedings and sentence in Mr. Sannikov's case bespeak the court's lack of impartiality. The trial lasted ten days and was widely regarded as a farce by the United States, the European Union, and other independent observers. David Lidington, the current Minister for Europe of the U.K. foreign office, stated that "[t]he conduct of [Mr. Sannikov's] trial has marked a new low for the rule of law in Belarus," the United States stated that the conviction was "politically motivated," and Guido Westerwelle, the German foreign minister, said that "[i]n this trial, justice has not been served," but instead "[i]t is the political will of Lukashenko that was executed."<sup>193</sup>

The prosecution offered no evidence that Mr. Sannikov engaged in violence or incited others to do so.<sup>194</sup> Although the prosecution claimed that protesters—but not Mr. Sannikov—had beaten twenty-nine riot police, only eight of them showed up to testify, and the court simply accepted the prosecution's explanation that the remainder were on "holiday."<sup>195</sup> Those officers that did testify offered only that they had received general injuries from several "unknown" demonstrators. No medical evidence corroborated their general testimony about their injuries. Not a single witness implicated Mr. Sannikov personally.<sup>196</sup> Nonetheless, Mr. Sannikov was tried alongside four other protesters, Ilya Vasilevich, Alekh Hnedchyk, Fyodar Mirzayanaw, and Uladzimir Yeramyanok, whom were not opposition politicians, not previously associated with Mr. Sannikov, and not arrested with him, which meant that very little individual evidence was offered against any defendant and the prosecution tried the case on a guilt-by-association theory.<sup>197</sup>

On the other hand, numerous defense witnesses testified that the demonstration was peaceful and once Mr. Sannikov and the other opposition candidates learned that a few individuals in the back of the crowd were smashing windows, they repeatedly condemned the violence and urged protesters to resist the provocation.<sup>198</sup> They also testified that Mr. Sannikov did not participate in the isolated violence.<sup>199</sup> Prominent human rights advocates also testified for the defense, offering the report by the OSCE Committee of International Control over the Human Rights Situation in Belarus finding that the demonstration on December 19 should not qualify as a mass social unrest, and that the election results had been falsified.<sup>200</sup> Exacerbating the lack of individualized evidence and the court's admission of evidence unrelated to Mr. Sannikov, it also excluded relevant defense evidence. Judge Natalya Chetvertkova, who was later sanctioned by the EU for her conduct in the trial, refused to admit into evidence witness

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<sup>193</sup> British Embassy in Sofia, *Minister for Europe gravely concerned at sentencing of ex-Presidential candidate Andrei Sannikov in Belarus*, (May 14, 2011), <http://www.fco.gov.uk/en/news/latest-news/?id=596030682&view=News>; *Lukashenko opponent jailed for five years*, AL JAZEERA, (May 14, 2011), <http://english.aljazeera.net/news/europe/2011/05/2011514191719445811.html>.

<sup>194</sup> See Schwirtz, *Five-Year*, *supra* note 89.

<sup>195</sup> See *Sannikov: Evidence not attached*, *supra* note 121.

<sup>196</sup> *Id.*

<sup>197</sup> See Schwirtz, *Five-Year*, *supra* note 89.

<sup>198</sup> *Sannikov's trial continues*, BELSAT, (May 10, 2011), <http://www.belsat.eu/en/wiadomosci/a,2789,sannikovs-trial-continues.html>.

<sup>199</sup> See Bogdanova, *supra* note 10.

<sup>200</sup> *Id.*

statements and cell phone photographs of the square from the night of the demonstration showing that no shovels, axes, or weapons of any kind were left by the protesters.<sup>201</sup> Moreover, due to Mr. Sannikov's deteriorating health, he had requested both pain relief and periodic breaks during the proceedings, but both of these requests were ignored.

The government also infringed upon Mr. Sannikov's presumption of innocence. The right to the presumption of innocence, "which is fundamental to the protection of human rights," ensures that the defendant be given the "benefit of the doubt," and that "all public authorities refrain from prejudging the outcome of the trial."<sup>202</sup> The Working Group has recognized that this includes an obligation of the State party to "abstain[] from making public statements affirming the guilt of the accused."<sup>203</sup> In *Gridin v. Russian Federation*, the Working Group found that "public statements made by high ranking law enforcement officials portraying the author as guilty which were given wide media coverage" violated the authors right to the presumption of innocence. In this case, Belarus government official publicly preordained Mr. Sannikov's guilt. Mr. Lukashenko assigned guilt before trial when he declared that the crackdown was an exercise of national security in the face of a revolution. Echoing Mr. Lukashenko, in early January 2011, Belarusian state media aired a television special entitled "The Square: Metal Against Glass," which depicted the demonstration as an attempted coup and showed staged photographs of shovels, ice axes, and explosive material allegedly left in the square by the demonstrators.<sup>204</sup> Finally, when announcing the charges against Mr. Sannikov in April, the prosecutors declared his "guilt was proved in full."<sup>205</sup> Thus, in light of the documented lack of independence of the judiciary in Belarus and the government's public statements, Mr. Sannikov did not benefit from the presumption of innocence to which he was entitled.

As expected, despite the dearth of evidence, the court convicted Mr. Sannikov and sentenced him to five years in a penal colony. Mr. Sannikov's sentence was unusually long, considering that most demonstrators were released or given suspended sentences.<sup>206</sup> The fact that the former opposition presidential candidates received the longest sentences illustrates the judiciary's adherence to Mr. Lukashenko's positions.

The failure of the Belarusian authorities to furnish Mr. Sannikov with a fair trial in front of an independent judiciary violates Articles 9(1), 14(1), and 14(2) of the ICCPR, Articles 10 and 11 of the UDHR, Principles 10, 15, 17, 18, and 19 of the Body of Principles, and Articles 60 and

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<sup>201</sup> Pyotr Kuchko, a defense witness at the trial, presented cell phone photographs of the square from the night of the demonstration showing that no shovels, axes, or weapons of any kind were left by the protesters, but the court refused to admit the photos into evidence. See *Sannikov: Evidence not attached*, *supra* note 121. This is in stark contrast to the government's public distribution of staged photographs and videos about the December 19, 2010 demonstration. *Sannikov: Evidence not attached*, *supra* note 121.

<sup>202</sup> General Comment 32, ¶ 30.

<sup>203</sup> *Id.*

<sup>204</sup> AMNESTY INT'L REPORT, *supra* note 4 at 11.

<sup>205</sup> See Charges brought against Andrei Sannikov, CHARTER '97, (Mar. 25, 2011), <http://www.charter97.org/en/news/2011/3/25/37115/>.

<sup>206</sup> See OSCE ELECTION REPORT, *supra* note 33, at 1

115 of the Belarusian Constitution. His case thus qualifies as an arbitrary detention under Category III.

**b. The Government Denied Mr. Sannikov Access to Legal Counsel.**

The government denied Mr. Sannikov his right to consult an attorney. Article 14(3)(b) of the ICCPR clearly establishes the right to prepare a defense and to legal counsel of one's own choosing.<sup>207</sup> Principles 17 and 18 of the Body of Principles similarly ensure the right to counsel and to prepare a defense.<sup>208</sup> The Body of Principles further elaborates that "a detained or imprisoned person shall be entitled to communicate and consult with legal counsel."<sup>209</sup> Principle 15 establishes that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days." The Working Group has also previously held that the right to engage a lawyer of one's choosing is essential, and that a violation of this right casts doubt on the fairness of the entire trial.<sup>210</sup>

In this case, Belarus denied Mr. Sannikov the right to mount his defense. Mr. Sannikov's first attorney, Pavel Sapelko was disbarred after voicing concern about Mr. Sannikov's treatment in detention. On the day after Mr. Sannikov's arrest, Mr. Sapelko stated that Mr. Sannikov looked "dramatically beaten" and "could hardly move."<sup>211</sup> Not only was his disbarment a violation of Mr. Sapelko's own fundamental rights, but it also deprived Mr. Sannikov of counsel of his own choosing for a long period of his detention.<sup>212</sup> Thereafter, the Belarusian Government refused to let Mr. Sannikov meet with an attorney in private until March 22, 2011, effectively impeding his ability to seek release before trial and prepare his defense.<sup>213</sup>

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<sup>207</sup> "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . [t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." ICCPR, *supra* note 143, at Art. 14(3)(b). *See id* at Art. 14(3)(d) ("In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.").

<sup>208</sup> "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it." Body of Principles, *supra* note 143, at Principle 17(1). "A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel." *Id.* at Principle 18(1). "A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel." *Id.* at Principle 18(2).

<sup>209</sup> Body of Principles, *supra* note 143, at Principle 18(1).

<sup>210</sup> *See, e.g., Makhbuba Kasymova v. Uzbekistan*, Opinion No. 32/2000, at ¶¶ 8 & 11, E/CN.4/2002/77/Add.1 at 10.

<sup>211</sup> Sarah Morrison & Jerome Taylor, *Dissidents Left Defenceless as Regime Bars Their Lawyers*, THE INDEPENDENT, (Mar. 9, 2011), <http://www.independent.co.uk/news/world/europe/dissidents-left-defenceless-as-regime-bars-their-lawyers-2236288.html>; *see also* Letter from Mark Muller, QC, Chair of the Bar Human Rights Committee of England and Wales, (Mar. 4, 2011), <http://www.barhumanrights.org.uk/latest.php>.

<sup>212</sup> Article 23 of the U.N. Basic Principles on the Role of Lawyers states that "[l]awyers like other citizens entitled to freedom of expression . . . without suffering professional restrictions by reason of their lawful action." Article 16 further provides: "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; . . . and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

<sup>213</sup> *See* AMNESTY INT'L REPORT, *supra* note 4.

In addition, although Mr. Sannikov was arrested on December 19, 2010, the government was not forthcoming with information and materials necessary for the preparation of Mr. Sannikov's defense.<sup>214</sup> His trial counsel was not presented with formal charges or the government's evidence until a few weeks before trial.<sup>215</sup> This left his attorneys with little time to prepare for Mr. Sannikov's trial.<sup>216</sup>

The government's denial of access to counsel in Mr. Sannikov's case, through the disbarment of his original attorney and restriction of access to successor counsels, violated Article 14 of the ICCPR and Principles 17 and 18 of the Body of Principles. Thus, Mr. Sannikov's case qualifies as a Category III arbitrary detention.

**c. The Government Violated Mr. Sannikov's Right to Freedom from Torture or Cruel, Inhuman, or Degrading Punishment and his Right to Life, Liberty, and Security of Person.**

While Mr. Sannikov awaited trial, he was subjected to pervasive emotional and physical abuse in violation of well-established international legal norms. The ICCPR requires that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that defendants cannot be "compelled to confess guilt."<sup>217</sup> As defined in the Body of Principles, "The term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental . . . ."<sup>218</sup>

Belarus deprived Mr. Sannikov of his right to be free from cruel, inhumane, and degrading treatment when it tortured him in an attempt to extract a confession. Prison authorities inflicted beatings and denied him access to toilet facilities, demanding that he confess to the charges they brought against him and a broader array of crimes.<sup>219</sup> He was detained in a freezing cellar and forced to strip naked and squat for extended periods, causing further pain to the injuries to his legs the Special Police Unit inflicted on him during the arrest.<sup>220</sup> Masked security officials taunted and kicked him, and threatened to hurt his family if he refused to incriminate himself.<sup>221</sup> Mr. Sannikov initially wrote a petition to the head of the detention center in an attempt to inform him of the torture and obtain relief, but no relief came, and he was punished

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<sup>214</sup> European Belarus: Civil Campaign, *Andrei Sannikov is Charged*, (Mar. 25, 2011), <http://europeanbelarus.org/en/news/2011/3/25/2332/> [hereinafter European Belarus: *Andrei Sannikov is Charged*].

<sup>215</sup> See Bogdanova, *supra* note 10.

<sup>216</sup> *Belarus Opposition Leader Andrei Sannikov Goes on Trial*, BBC, (Apr. 27, 2011), <http://www.bbc.co.uk/news/world-europe-13216197>.

<sup>217</sup> ICCPR, *supra* note 143, at Arts. 7, 14(f); see also UDHR, *supra* note 143, at Art. 5 ("No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."); Body of Principles, *supra* note 143, at Principle 6 ("No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

<sup>218</sup> Body of Principles, *supra* note 143, Principle 6 n.1.

<sup>219</sup> AMNESTY INT'L: *Four Convicted*, *supra* note 97.

<sup>220</sup> *Id.*; Bogdanova, *supra* note 10.

<sup>221</sup> AMNESTY INT'L: *Four Convicted*, *supra* note 97.

for the attempt.<sup>222</sup> Although he did not confess, he informed the court at trial that the prosecutor was using evidence obtained through torture by his jailers. Nonetheless, the court did not permit Mr. Sannikov to make any requests or complaints regarding his treatment, in violation of Principle 33 of the Body of Principles. The use of such evidence at trial renders his conviction arbitrary and brings this case squarely within the Working Group's mandate.

After his conviction, Mr. Sannikov was transferred to Navapolatsk penal colony No. 10, which is infamous for its harsh confinement conditions.<sup>223</sup> Political prisoners have never before been sent to Navapolatsk, where inmates are disciplined for even minor infractions, and there is little hope for early release.<sup>224</sup>

The Belarusian government's physical and emotional mistreatment of Mr. Sannikov during his detention violated his right to be free from cruel, inhumane, and degrading treatment, and place his continuing detention within Category III of the cases submitted for consideration by the Working Group.

**d. The Government Denied Mr. Sannikov the Right to Correspond with Family.**

The Government also denied Mr. Sannikov access to his family from his arrest through the end of trial. Principle 19 of the Body of Principles provides that “[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Although exceptions to this rule can be made in the event of extenuating circumstances limited to “a matter of days,”<sup>225</sup> Mr. Sannikov's family was not permitted to visit him until after his conviction.<sup>226</sup> He was unable write to or receive letters from his family for weeks on end. When family members finally received a letter purporting to be from Mr. Sannikov, it had clearly been written by prison authorities, as the tone, content, and style of the letter were completely out of character.<sup>227</sup> Mr. Sannikov's detention, therefore, violates Principles 19 and 21 of the Body of Principles, and his case is a Category III detention, in accordance with the standards of the Working Group.

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<sup>222</sup> *Andrei Sannikov: KGB Chairman threatened to murder my wife and son*, CHARTER '97, (May 13, 2011), <http://charter97.org/en/news/2011/5/13/38486/>.

<sup>223</sup> *Sannikov sent to colony with harshest regime*, CHARTER '97, (June 6, 2011), <http://charter97.org/en/news/2011/6/3/39241/>.

<sup>224</sup> *Id.*

<sup>225</sup> Body of Principles, *supra* note 143, at Principle 15.

<sup>226</sup> *See* Bogdanova, *supra* note 10.

<sup>227</sup> *See id.* Mr. Sannikov was permitted one ten-minute phone call with his wife, Iryna Khalip, on August 15, 2011, and Ms. Khalip planned to visit Mr. Sannikov at Navapolatsk.

## **Request for Relief**

Based on the foregoing, Petitioner respectfully requests that the Working Group conclude that Belarus's detention of Andrei Sannikov constitutes an arbitrary deprivation of liberty, falling within Categories II and III of the cases identified by the Working Group. Mr. Sannikov should be immediately released from detention.

**V. *INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.***

Petitioner files this petition before the Working Group after Mr. Sannikov exhausted all internal domestic remedies available to him. On numerous occasions, Mr. Sannikov has attempted to seek relief from detention from domestic authorities, but they have all proven unfruitful. During his pretrial detention, Mr. Sannikov sought an order from a Belarusian court for his release, but the court rejected the request, in violation of ICCPR Article 9.<sup>228</sup> At trial, as described above, Mr. Sannikov provided statements that impeached the prosecution's witnesses, but the court ignored the evidence presented by Mr. Sannikov and credited only the government's evidence. Mr. Sannikov's attorneys also pursued a post-conviction cassation appeal, but this was dismissed by the Minsk City Court on July 15, 2011, at a hearing Mr. Sannikov was not permitted to attend.<sup>229</sup> Mr. Sannikov remains unlawfully detained by the Belarusian government nine months after his initial arrest.

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<sup>228</sup> *Belarusian court rejects appeal to release jailed ex-presidential candidate*, RIA NOVOSTI, (Apr. 27, 2011), <http://en.rian.ru/world/20110427/163733706.html>; *see also* ICCPR, *supra* note 143, at Art. 9 ("It shall not be the general rule that persons awaiting trial shall be detained in custody . . .").

<sup>229</sup> *Andrei Sannikov left in prison*, CHARTER '97, (July 15, 2011), <http://charter97.org/en/news/2011/7/15/40632/>.

**VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).**

This petition is submitted by the following:

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