

INDIVIDUAL COMMUNICATION TO THE UNITED NATIONS HUMAN RIGHTS
COMMITTEE

In the case of

Mikalai STATKEVICH

against

the Republic of Belarus

*submitted for consideration under the First Optional Protocol to the International
Covenant on Civil and Political Rights.*

to

The United Nations Human Rights Committee

c/o Petition Team
Office of the High Commissioner for Human Rights
United Nations Office Geneva
8-14 avenue de la Paix
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¹ See Exhibit 1.

IV. STATE PARTY AFFECTED

The Author submits this communication against the Republic of Belarus. Belarus acceded to the International Covenant on Civil and Political Rights and its First Optional Protocol on 12 November 1973 and 30 September 1992, respectively.²

V. SUMMARY OF THE CLAIM

Mikalai Statkevich, a prominent political activist and opposition presidential candidate, was detained during the widely publicized and criticized crackdown against peaceful political demonstrators on the night of the Belarusian presidential election, 19 December 2010. Special riot control police stormed a post-election political rally in Independence Square, Minsk, Belarus, used disproportionate force against many protesters, detained over 700 people, systematically arrested the candidates opposing President Alexander Lukashenko in the election, and raided their campaign offices. Mr. Statkevich has been detained since that day. On 26 May 2011, the Leninsky District Court convicted Mr. Statkevich for the organization of mass disorders accompanied by violence against persons and destruction of property, in violation of Article 293, paragraph 1, of the Criminal Code of the Republic of Belarus.³ The court sentenced Mr. Statkevich to six years in a medium security penal colony. Mr. Statkevich remains in prison, where he has been denied medical treatment, beaten, pressured to admit his guilt, and forced to engage in hard labor. Belarus's application of Article 293 of the Criminal Code, Mr. Statkevich's arrest, his conviction, his sentence, and the mistreatment he suffered during incarceration violated articles 2, 7, 9, 10, 14 (paragraphs 1 – 2, 3(d), (e), (g), paragraph 5), 17, 19 (paragraphs 1 and 2), 21, 22, and 25 of the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant").

VI. FACTS OF THE CLAIM

A. Belarus has a History of Arbitrary Detention, Suppression of the Freedom of Expression and Assembly, and Unfair Trials.

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

² On 30 September 1992, the Government of Belarus notified the Secretary-General of its decision to withdraw the reservation made upon signature and confirmed upon ratification. International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, 282 [hereinafter ICCPR].

³ See Exhibit 3 - Decision of Leninsky District Court (26 May 2011).

The Republic of Belarus is an authoritarian State. It gained independence in 1990 after the dissolution of the Union of Soviet Socialist Republics (U.S.S.R.).⁴ The Declaration of State Sovereignty was signed in 1990, and the Constitution, which has supreme legal force, was adopted in 1994.⁵ Governmental power in Belarus is nominally separated into legislative, executive, and judicial branches.⁶

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.⁷ The Constitution has been amended twice by referendum: first in 1996, giving the president increased powers; and again in 2004, abolishing a constitutional two-term presidential limit.⁸

Belarus's first and only president, Alexander Lukashenko, exercises complete authority over all three branches of government.⁹ 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.¹⁰ 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.¹¹ He also appoints Belarusian judges, including the judge who presided over the trial of Mr. Statkevich.¹² Finally, he issues decrees, edicts, orders, and directives, which have obligatory force.¹³ Indeed, presidential decrees carry higher legal force than ordinary legislation, effectively giving Mr. Lukashenko control over the government, courts, and the legislative process.¹⁴ In 2004, Mr. Lukashenko forced through a referendum—opposed by Mr. Statkevich—that removed the term limits on presidential office, effectively handing the state apparatus to Mr. Lukashenko indefinitely.

The executive branch also includes the Council of Ministers, the state administrative body.¹⁵ The Council is led by a Prime Minister who is appointed by the President.¹⁶ The main law enforcement institution in Belarus is the General Prosecutor's Office, which supervises the implementation of national laws, decrees, regulations, and other acts, as well as the laws and regulations of local governmental bodies. Its head is appointed by Mr. Lukashenko.¹⁷

Belarus's National Assembly is a bicameral parliament vested with legislative powers.¹⁸ It is made up of the House of Representatives and the Council of the Republic.¹⁹ Although the

⁴ Nadia Shalygina, *UPDATE: Guide to Legal Research in Belarus*, GLOBALEX, (Feb. 2008), <http://www.nyulawglobal.org/globalex/Belarus1.htm> [hereinafter Shalygina *UPDATE*].

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 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, 2011), <http://www.osce.org/odihr/elections/75713> [hereinafter OSCE Election Report].

⁹ Freedom House, *Country Report: Belarus* (2011),

<http://www.freedomhouse.org/template.cfm?page=363&year=2011&country=7995> [hereinafter Freedom House Report].

¹⁰ Shalygina, *UPDATE*, *supra* note 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Freedom House Report, *supra* note 9.

¹⁵ Shalygina, *UPDATE*, *supra* note 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

legislative power ostensibly belongs to the Parliament, the ability of the President to issue obligatory decrees, edicts, orders, and directives curtails the legislative process.²⁰

The judicial system in Belarus is based on territory and specialization.²¹ The general courts consist of regional city courts, provincial courts, and the Supreme Court.²² 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.²³ Mr. Lukashenko has the power to appoint and dismiss the judges of these courts.²⁴

2. Belarus has a History of Systemic Political Suppression.

Despite Belarus's seemingly republican government, it 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.²⁵ According to the Organization of Security and Cooperation in Europe (OSCE), no presidential election since 1994 has met the OSCE standards for democratic elections.²⁶ Opposition parties have no representation in the National Assembly, and the pro-presidential parties serve only to validate Mr. Lukashenko's decisions.²⁷ The government strictly controls religious, political, and journalistic activity,²⁸ and uses its control of nearly all media outlets to curtail the opposition.²⁹ 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.³⁰ For example, in 2009, a group of protesters

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *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.

²⁴ OSCE Election Report, *supra* note 8.

²⁵ Freedom House Report, *supra* note 9.

²⁶ 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*, at 5, <http://www.osce.org/odihr/20516>. The 2000 parliamentary elections failed to meet international standards. OSCE, *Technical Assessment Mission: Belarus 2000*, at 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*, at 3 (Sept. 9, 2001), <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, which involved 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>. The 2010 presidential elections were heavily criticized and did not meet OSCE standards. OSCE Election Report, *supra* note 8. Finally, the 2012 parliamentary elections failed to be impartial or yield reliable results and were conducted while many prominent opposition leaders were still imprisoned. OSCE, *Parliamentary Elections: 23 September 2012*, <http://www.osce.org/odihr/elections/98146>.

²⁷ Freedom House Report, *supra* note 9.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 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].

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.³¹

The United Nations, this Committee, 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 all rebuked Belarus for repeated violations of universal norms.³² While the Belarusian Constitution provides for separation of powers, an independent judiciary, and impartial courts, Mr. Lukashenko ignores these provisions when it suits him.³³ Corruption, inefficiency, and political interference are prevalent in the judiciary.³⁴ Indeed, as Mr. Statkevich's case shows, the government frequently arrests, charges, and convicts individuals on politically motivated charges.³⁵ For example, authorities detained or arrested approximately 1,000 persons throughout the country for political reasons before and after the 2006 presidential election.³⁶ Many of those detained or arrested were bringing food and clothing to demonstrators in Minsk's

³¹ U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rep. to the Human Rights Council*, U.N. Doc. A/HRC/13/39/Add.1, case summary 16, (Feb. 25, 2010).

³² *Id.*; UN expert urges Belarus to cooperate on improving human rights situation (June, 14, 2013), <http://www.un.org/apps/news/story.asp?NewsID=45182&Cr=belarus&Cr1=#.UhJgTdJQEog>; OSCE Election Report, *supra* note 8; www.oscepa.org, OSCE PA Working Group calls for national reconciliation in Belarus (Jan. 11, 2011), <http://www.oscepa.org/about-osce-pa/committees/ad-hoc-committees/belarus/496-osce-pa-working-group-calls-for-national-reconciliation-in-belarus>; Council of Europe, *The situation in Belarus in the aftermath of the presidential election*, Resolution 1790 (2011); Council of the European Union, *Council conclusions on Belarus* (Oct. 15, 2012), http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132836.pdf; European Parliament, *Resolution on the situation in Belarus after the parliamentary elections of 23 September 2012* (Oct. 24, 2012), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2012-0463+0+DOC+XML+V0//EN>; European Commission, *Belarus: reiterating our concerns about the situation of political prisoners* (Dec. 5, 2012), MEMO/12/951(2012), http://europa.eu/rapid/press-release_MEMO-12-951_en.htm; NATO Parliamentary Assembly, *Declaration on Belarus* (Mar. 25, 2006), <http://www.nato-pa.int/default.asp?SHORTCUT=887>. This Committee has ruled on: numerous violations of the rights to freedom of expression and opinion in *Korneenko v. Belarus* (CCPR/C/95/D/1553/2007), *Zalesskaya v. Belarus* (CCPR/C/101/D/1604/2007), *Sudalenko v. Belarus* (CCPR/C/104/D/1750/2008), *Govsha et al. v. Belarus* (CCPR/C/105/D/1790/2008), *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), and *Levinov v. Belarus* (CCPR/C/105/D/1867/2009); violation of the right to a fair trial in *Bandajevsky v. Belarus* (CCPR/C/86/D/1100/2002), *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), *Marinich v. Belarus* (CCPR/C/99/D/1502/2006), *Sudalenko v. Belarus* (CCPR/C/104/D/1750/2008), *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), and *Kovaleva and Kozyar v. Belarus* (CCPR/C/106/D/2120/2011); and violations of the freedom of association in *Zvozkov et al. v. Belarus* (CCPR/C/88/D/1039/2001), *Malakhovsky and Pikul v. Belarus* (CCPR/C/84/D/1207/2003), *Korneenko et al. v. Belarus* (CCPR/C/88/D/1274/2004), *Katsora et al. v. Belarus* (CCPR/C/100/D/1383/2005), and *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003).

³³ 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>.

³⁴ *Id.*

³⁵ *Id.*; U.S. State Dep't, *2010 Human Rights Report: Belarus*, *supra* note 30. Other examples abound. 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 also 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.

³⁶ *Id.*

October Square.³⁷ The later arrests of 19 December 2010 and round-up of opposition politicians were simply continuations of this political repression.³⁸

Neither the judiciary nor the prosecutors are truly independent, and trial outcomes are usually predetermined.³⁹ 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.⁴⁰ In practice, however, individuals are arrested and detained for political reasons and are denied the opportunity to mount effective defenses.⁴¹ Due process protections are routinely disregarded, and even though the Belarusian Constitution prohibits the use of torture, detainees are routinely tortured and neglected.⁴²

Due to systemic concerns over human rights violations, the Commission on Human Rights established a Special Rapporteur on the situation of human rights in Belarus in 2004.⁴³ The earliest reports from the Special Rapporteur concluded that “[t]he [Belarusian] judiciary, like law enforcement and security agencies, is utilized as 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.”⁴⁴ As of 2013, the Special Rapporteur noted that “the fact that widespread human rights violations remain unaddressed is underlined by the centralization of the legislative and executive powers in the office of the President,”⁴⁵ and that there is a “lack of trust in the judiciary, as well as a lack in the belief that rights would be protected by the judiciary over the interests of the authorities.”⁴⁶

B. Mikalai Statkevich is a Belarusian Political Prisoner who Tirelessly Promoted the Covenant’s Core Values.

Mikalai Statkevich is an opposition politician who has been detained by Belarus since December 2010 for no reason other than his participation as a candidate in the Belarusian presidential election.

³⁷ *Id.*

³⁸ Other individuals that were held and charged in the 19 December 2010 demonstration include: Andrei Sannikov, presidential candidate and political activist; Uladzimir Nyaklyaeu, presidential candidate and leader of the Tell the Truth campaign; Ales Mikhalevich, presidential candidate and leader of the NGO For Modernization; Alyaksandr Atroshchankau, Mr. Sannikov’s campaign spokesman; Paval Sevryarnets, leader of the Belarusian Christian Democratic party and aide to presidential candidate Vital Rymasheuski; 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. U.S. State Dep’t, *2010 Human Rights Report: Belarus*, *supra* note 30, at 16.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ U.N. Commission on Human Rights, *Resolution 2004/14: Situation of Human Rights in Belarus*, U.N. Doc. E/CN.4/RES/2004/14.

⁴⁴ Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, U.N. Doc. E/CN.4/2006/36, (Jan. 16, 2006) at ¶ 86;

Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, U.N. Doc. A/HRC/4/16, (Jan 15, 2007) at ¶ 10.

⁴⁵ Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, U.N. Doc. A/HRC/23/52 (Apr 18, 2013) at ¶ 36.

⁴⁶ *Id.* at ¶ 33.

Mr. Statkevich has dedicated his life to the promotion of civil and political rights championed by this Committee. Mr. Statkevich was born on 12 August 1956 to a family of teachers in the village of Lyadno in the Slutsky region of the Minsk oblast. He graduated from the Minsk Higher Engineering School of Air-Defense (MHEASD) in 1978 as a military engineer with a specialty in radio electronics. Following graduation, he performed his compulsory military service for the U.S.S.R. in the Arctic in the Murmansk oblast from 1978 to 1982.⁴⁷

In 1982, following his military service, Mr. Statkevich returned to MHEASD as an adjunct professor and by 1990 was a senior lecturer. While at MHEASD, Mr. Statkevich attained the rank of lieutenant colonel and wrote over 60 scholarly works on various subjects, including management, ergonomics, engineering, and social psychology. Mr. Statkevich worked toward a doctorate in technical sciences from 1990 to 1993 but before he could defend his dissertation, he was dismissed from the army because he protested Belarusian involvement in the Commonwealth of Independent States (CIS) Collective Security Treaty (CST) with Azerbaijan and Armenia, who were at war at the time.⁴⁸

While at MHEASD, Mr. Statkevich promoted democratic values. In February 1991, Mr. Statkevich resigned from the Communist Party of the Soviet Union in protest over the brutal military actions of the U.S.S.R. against the democratic pro-independence opposition in Lithuania and became a member of the Central Rada and the Executive Committee of the Belarusian Social Democratic Party (People's Assembly). At the same time, he founded and led the Belarusian Union of Military Personnel, a pro-independence association of Soviet officers of Belarusian heritage.⁴⁹

In the winter of 1992, Mr. Statkevich authored a written compromise agreement to resolve the political crisis developing in Belarus at the time. In the summer of 1992, after the dissolution of the U.S.S.R., Mr. Statkevich organized an initiative for Belarusian officers to take an oath of loyalty to a new and independent Belarusian state. In support of this initiative, he organized a mass ceremony in Minsk, during which several thousand reserve officers took the new loyalty oath.⁵⁰

1. Mikalai Statkevich has Consistently Exercised his Right to Political Participation under the Covenant.

After leaving MHEASD, Mr. Statkevich committed to developing Belarus's fledgling political parties. In 1994, he founded and headed a public commission for the oversight and management of Belarusian presidential elections. In 1995, he became the Chairman of the People's Assembly. In 1996, Mr. Statkevich assumed the chairmanship of the newly formed Belarusian Social Democratic Party. He was elected the chairman of the Eastern European Social Democratic Forum in February 1999 and stood unsuccessfully for election to the Belarusian parliament in 2000. In 2003, he became the leader of the European Coalition Free Belarus. Mr. Statkevich ran as an opposition candidate in the 2001 and 2006 Belarusian

⁴⁷ Biography, <http://www.sb.by/post/108984/>; Exhibit 8 – Statement of M. Adamovich (28 Aug 2013) at ¶ 1.

⁴⁸ Exhibit 9 – Supplemental Statement of M. Adamovich (28 Aug 2013).

⁴⁹ M. Adamovich Statement, *supra* note 47, at ¶¶ 2-3.

⁵⁰ *Id.* at ¶ 5.

presidential elections. In an attempt to force him out of the elections, state authorities initiated criminal proceedings against him on the eve of both of the presidential elections.⁵¹

Mr. Statkevich gained further prominence as an advocate for democracy. He organized and led over thirty demonstrations of several thousand people to protect democracy against government policies in the 1990s and 2000s. As a result, he was arrested more than thirty times and the government has charged him with crimes on at least three occasions.⁵² For example, on 1 May 1997, he was arrested for demonstrating against President Lukashenko's policies aimed at forging closer ties with the Russian Federation.

In another example, in October 2004, Mr. Statkevich organized a peaceful protest against the results of a referendum that lifted constitutional limits on the number of presidential terms, effectively extending President Lukashenko's term indefinitely, and irregularities in the October 2004 parliamentary elections.⁵³ Mr. Statkevich was arrested, and on 31 May 2005, convicted and sentenced to three years of correctional treatment for his role in the protest. In 2006, Amnesty International recognized him as a prisoner of conscience. In July 2007, he was released on parole.⁵⁴

C. Mikalai Statkevich Ran as an Opposition Candidate in the 2010 Presidential Election, Resulting in his Current Imprisonment.

In 2009, Mr. Statkevich was nominated to stand as the Social Democratic Party's opposition candidate in the 2010 presidential election. Throughout the campaign, state security forces harassed Mr. Statkevich. Printing offices acting under pressure from the KGB refused to print campaign materials for Mr. Statkevich.⁵⁵ Police seized campaign materials already posted by Mr. Statkevich's campaign.⁵⁶ Police wiretapped his phone.⁵⁷ This harassment culminated with police forces raiding the Tell the Truth offices on election day, confiscating an amplifier and speaker system that were going to be delivered to Independence Square for the planned rally, and beating members of the Tell the Truth campaign and Mr. Statkevich.⁵⁸

On 19 December 2010, Belarus held its presidential election. Ten candidates stood for election, including Mr. Statkevich and the incumbent Mr. Lukashenko.⁵⁹ The OSCE and the Council of Europe have documented the systemic and widespread irregularities in the 19 December 2010 election.⁶⁰ Although Belarusian law endows presidential candidates with

⁵¹ *Id.* at ¶ 7.

⁵² See e.g., Amnesty International *Belarus: Opposition cannot be stifled*, 20 Oct. 2004, available at http://www.amnesty.org.uk/news_details.asp?NewsID=15652

⁵³ OSCE Election Report, *supra* note 8, at FN 4.

⁵⁴ IIPDIGITAL.USEMBASSY.GOV, *Conviction of Belarus Opposition Figures "Outrageous," says U.S.* (June 3, 2005), <http://iipdigital.usembassy.gov/st/english/texttrans/2005/06/200506031137501cjsamoht0.9147303.html#axzz2ciOQNBY>; BELARUS NEWS, *Belarusian Helsinki Committee decries conviction of Statkevich, Severinets* (June 1, 2005), <http://charter97.org/eng/news/2005/06/01/bhc>; Amnesty International, *Belarus: Tightening the screws on dissent*, 16 Mar. 2006, available at http://www.amnesty.org.uk/news_details.asp?NewsID=16905. The sentence was immediately reduced to two years under the terms of an amnesty proclaimed in May 2005.

⁵⁵ OSCE Election Report, *supra* note 8.

⁵⁶ *Id.*

⁵⁷ OSCE Report - Trial Monitoring in Belarus (March – July 2011), ¶ 260 [hereinafter OSCE Trial Monitoring Report].

⁵⁸ Charter '97, *Niakliaeu answered Statkevich's questions*, 11 January 2013, available at <http://www.charter97.org/en/news/2013/1/11/63835/>.

⁵⁹ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus, Human Rights Council, U.N. Doc. A/HRC/20/8 (10 April 2012), at ¶ 29 [hereinafter High Commissioner Report].

⁶⁰ *Id.* at ¶ 16.

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 at that time.⁶¹

1. The 19 Dec 2010 Rally

Mr. Statkevich and other opposition candidates called for a peaceful protest in downtown Minsk against the election results.⁶² The rally started in the Oktyabrskaya Square in Minsk at 6.50 p.m., and by 9.20 p.m. had moved towards Independence Square.⁶³ Tens of thousands of people came to the square to join in the protest and express their opposition against the election results.⁶⁴ Mr. Statkevich was one of the opposition candidates who lead the demonstration.

At approximately 10 p.m., a “small isolated group started breaking the windows of a nearby government building.”⁶⁵ The demonstrators allege that they were government provocateurs, while the government claims they were opposition supporters.⁶⁶ The peaceful demonstrators urged these individuals to stop. Andrei Sannikov, who was speaking at the time, urged the vandals to stop and the rest of the crowd to remain peaceful.⁶⁷ Numerous video surveillance recordings and witness reports confirm that Mr. Sannikov, Mr. Statkevich, and the other opposition politicians did not call for violence and in fact called for an exclusively peaceful demonstration.⁶⁸

At 10.37 p.m., law enforcement agents responded to the vandalism incident by attacking peaceful demonstrators.⁶⁹ Many peaceful demonstrators and uninvolved bystanders were assaulted by police forces, beaten with batons, and injured.⁷⁰ Mere presence in the square was cause for arrest.⁷¹ Many participants of the demonstration were severely beaten and loaded into police vans. At the time of the arrest unknown persons wearing masks kidnapped Mr. Statkevich

⁶¹ *Id.* Pyotr Miklashevich, chairman of the Constitutional Court of Belarus, who was appointed by Mr. Lukashenko, inconsistently denied that presidential candidates ever had immunity. *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”).

⁶² High Commissioner Report, *supra* note 59, at ¶ 31.

⁶³ *Id.* at ¶ 30; U.N. Committee against Torture, *Concluding observations of the Committee against Torture: Belarus*, U.N. Doc. CAT/C/BLR/CO/4 (12 July 2011).

⁶⁴ The OSCE mission, while acknowledging certain improvements in the electoral process, noted a lack of independence and impartiality in election administration, a restrictive media environment, a lack of transparency at key stages of the electoral process, and a legislative framework for elections that fell short of providing a basis for genuinely democratic elections. See OSCE Rapporteur’s Report on Belarus, 16 June 2011, available at www.osce.org/odihr/78705.

⁶⁵ High Commissioner Report, *supra* note 59, at ¶ 31. The identity of these persons remains unclear. *Id.*

⁶⁶ *Id.*

⁶⁷ Amnesty International, “*Security, Peace and Order? Violations in the Wake of Elections in Belarus*,” AI Index: EUR 49/003/2011, 2 February 2011, available at www.amnesty.org/en/library/info/EUR49/003/2011/en. [hereinafter Amnesty Int’l “*Security, Peace and Order?*”]

⁶⁸ OSCE Trial Monitoring Report, *supra* note 57, at ¶ 42.

⁶⁹ High Commissioner Report, *supra* note 59, at ¶ 31.

⁷⁰ *Id.* at ¶ 31; Human Rights Watch, *Shattering Hopes: Post-Election Crackdown in Belarus*, 2011, at 9; “Four Belarus opposition leaders arrested following ‘vote-rigging’ riot over President Lukashenko’s landslide victory,” Mail Online, 20 December 2010, available at www.dailymail.co.uk/news/article-1340131/Belarus-presidential-candidate-Neklyayev-seriously-injured-vote-rigging-protest.html.

⁷¹ High Commissioner Report, *supra* note 59, at ¶ 32 (“According to reports, more than 600 people were detained by the end of December 2010, mostly participants in the protest, opposition activists and journalists.”).

outside of the main post office building by dragging him out of a taxi, beating him, and ushering him to a then-unknown location.⁷²

In addition to the mass arrest of protesters, the government went after political opponents.⁷³ Authorities arrested seven candidates for the presidency—namely Mr. Statkevich and Mr. Sannikov, as well as Vladimir Nekliaev, Grigoriy Kostusev, Vitaliy Rimashevskiy, Aleksey Michalevich, and Dmitry Uss. Over the ensuing weeks, police also detained many members of the politicians’ headquarters and raided offices of human rights organizations, political parties, non-government organizations, and mass media.⁷⁴ Police seized computer equipment and photograph and video devices.

Most of the demonstrators who were arrested were charged with administrative charges in accordance with Article 23.34 of the Code of Administrative Offences (violation of the order of organizing and holding mass events)⁷⁵ and sentenced to administrative detention from 5 to 15 days. However, over 40 demonstrators, including Mr. Statkevich, were charged with more serious criminal charges pursuant to article 293 (organization of and participation in mass riots), article 339 (hooliganism), and article 342 (organization and preparation of activities seriously breaching public order, or active participation in such) of the Belarusian Criminal Code.⁷⁶ The courts convicted 43 people, including 28 for participation in mass disorder.⁷⁷

2. Arrest and Pre-Trial Detention

Following his arrest, Mr. Statkevich was placed in a Committee for State Security (KGB) pre-trial prison and later charged under article 293 of the Criminal Code for “organizing mass disorder.”⁷⁸ Statkevich was not informed of the charges against him at the time of his arrest and

⁷² Tom Parfitt, *Belarus cracks down on 600 opposition protesters*, THE GUARDIAN (LONDON) – FINAL EDITION, 22 Dec. 2010; M. Adamovich Statement.

⁷³ High Commissioner Report, *supra* note 59, at ¶ 32 (citing *Behind the scenes of one conspiracy (part 2): some declassified documents on the events of December 19*, Belarus Today, 17 January 2011).

⁷⁴ *Id.* at ¶¶ 32-35. Raids were made on a number of major human rights organizations, such as the Belorussian Helsinki Committee, Vesna, Human Rights Center, Center of Legal Transformation, Human Rights Center OO, central and regional offices of the United Civil Party, non-government organization “For Freedom”, the Belorussian Social Democratic Party (People’s Assembly), the Belorussian People’s Front, Tell the Truth, and Charter ‘97.

⁷⁵ Belarusian law provides for administrative liability for violation of the order of organization or holding mass events. This is a special kind of administrative charge, which is regulated not by the Law on Mass Events but rather the Belarusian Code of Administrative Offences (CAO) from April 21, 2003 № 194 –W. Specifically, Article 23.34 of the Administrative Code - Violation of the order of organizing and holding mass events, says the following:

1. Violation of the rules of organizing convocations, meetings, street processions, demonstrations, picketing, as well as public calls for the organization or holding of convocations, meetings, street processions, demonstrations, picketing in breach of the rules established to govern their organization or conduct, if these acts do not constitute a crime, committed by a participant in such activities - entail a warning or a fine of up to thirty- base units, or administrative detention.

⁷⁶ Yet several other presidential candidates including Rymashevsky, Kostusev, Romanchuk were involved in the same actions as Statkevich, but none of them was charged with an Art. 293 violation. In contrast they were charged with a less serious crime (such as Art. 342) or weren’t charged with any crime at all. See OSCE Trial Monitoring Report, *supra* note 57, at Annex 1: Table of Accused and Sentences.

⁷⁷ The “vast majority [of these convicted persons] did not commit any violent acts.” High Commissioner Report, *supra* note 59, at ¶ 35 (citing CAT/C/BLR/CO/4/Add.1.)

⁷⁸ NAVINY, *Statkevich sentenced to six years in prison, Uss to 5 ½ years* (May 27, 2011), http://naviny.by/rubrics/english/2011/05/27/ic_articles_259_173781; Legal Transformation Center, *Criminal trials in Belarus after December 19*, <http://lawtrend.org/ru/data/752/>.

not promptly brought before a judge for review of whether he should remain detained prior to trial.⁷⁹ The decision that he would remain detained was made by the prosecuting attorney.⁸⁰

During his pre-trial incarceration, Mr. Statkevich was tortured and subjected to cruel, inhuman, and degrading treatment. Officers of the KGB applied psychological pressure in an attempt to get Mr. Statkevich to confess to crimes and testify against himself. When he refused, the officers threatened to arrest his wife.⁸¹ Mr. Statkevich went on a hunger strike, and his detainers retaliated by taking him out of the detention center to an unknown place where officers threatened to knock him unconscious. The officers drove him around in a van for more than two hours and only upon his arrival at the destination did he realize he was taken to the KGB hospital. Once there, the hospital officials continued the threats, including the threat that they would render him unconscious and then “would do with him whatever they were pleased.”⁸²

Mr. Statkevich was forced to undergo interrogations by KGB officers without his attorney present. Officers would pull him out of his cell at night and interrogate him for long hours.⁸³ Mr. Statkevich was deprived of the opportunity to sleep and rest. He was forced to sleep on the floor on a wooden panel. Prison officials kept the light in his cell at all hours, forcing him to sleep with his face to the light. He was deprived of access to restroom facilities and was detained in an extremely cold cell.⁸⁴ At times prisoners with infectious diseases (such as tuberculosis and HIV) were placed in a cell with Mr. Statkevich.⁸⁵ At one point Mr. Statkevich was kept in isolation in a one-man cell with no connection to the world for over a month.⁸⁶

Prison officers would march him around in handcuffs or shackles, including with his wrists behind his back so that the officers could lift him from behind in what they called the “swallow” torture.⁸⁷ Prison officials confiscated and prevented delivery of his in-coming mail and refused to send his outgoing mail to his relatives, friends, and attorneys.⁸⁸ Mr. Statkevich was not permitted to see his family until after the Court pronounced him guilty almost six months after his arrest.⁸⁹

D. The Trial Process.

Before and during the trial, Mr. Lukashenko, a member of the Supreme Court, the Ministry of Justice, other public officials, and the state-run media made public statements condemning Mr. Statkevich’s guilt. Mr. Lukashenko accused the demonstrators of attempting a coup d’etat.⁹⁰ Other statements were made by Mr. Lukashenko,⁹¹ officials in the ministry of justice,⁹² and even a judge of the Supreme Court.⁹³ In early January 2011, Belarusian state

⁷⁹ M. Adamovich Statement, *supra* note 47, at ¶ 22.

⁸⁰ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 66-68.

⁸¹ M. Adamovich Statement, *supra* note 47, at ¶ 9.

⁸² *Id.* at ¶ 10.

⁸³ *Id.* at ¶ 11.

⁸⁴ *Id.* at ¶ 12.

⁸⁵ *Id.* at ¶ 13.

⁸⁶ *Id.* at ¶ 15.

⁸⁷ *Id.* at ¶ 14.

⁸⁸ *Id.* at ¶ 16.

⁸⁹ *Id.* at ¶ 17.

⁹⁰ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 148-154. Annex 3 documents many of the publications impairing the presumption of innocence that Mr. Statkevich should have been afforded.

⁹¹ <http://www.president.gov.by/press104953.html>

⁹² http://www.minjust.by/ru/site_menu/news?id=737

media aired two television specials, entitled “The Square: Metal Against Glass” and “Square-2010, Counterrevolution,” which used staged photographs of shovels, ice axes, and explosive materials allegedly left at the site to falsely suggest that the demonstrators had attempted a coup.⁹⁴ In addition, the president’s office distributed an article from the *Sovetskaya Belarus* regarding the demonstration titled “A conspiracy: Behind the Scenes.”⁹⁵ The government leaked Mr. Statkevich’s statements to the public prior to trial (Mr. Statkevich had been recorded by security forces while standing in Independence Square).⁹⁶

Mr. Statkevich was not allowed to contact his lawyer for several weeks after his arrest.⁹⁷ Mr. Statkevich’s trial began on May 11, 2011. This was the first time Statkevich was brought before a judge—nearly six months after his arrest.⁹⁸

Physical inspections went well beyond routine security checks of those who were willing to enter the trial room. Police copied their identification documents and filmed the audience as they entered the courtroom. A fictional audience consisting of students and officials of the Ministry of Internal Affairs filled in the trial room leaving no free seats for observers, journalists, human rights observers, and other activists.⁹⁹ Mr. Statkevich and his co-defendants were kept in a cage in handcuffs at all times during the proceeding. State security personnel monitored and recorded the proceedings and appeared closely tied to the court’s operations during the trials of the 19 December accused.¹⁰⁰

Mr. Statkevich was tried with five other defendants based on differing theories of criminal culpability. The judge consistently overruled defense motions but granted or sustained every single motion by the prosecution (more than 20).¹⁰¹ The judge openly questioned the trustworthiness of Mr. Statkevich’s testimony and the testimony given by other witnesses for his defense. Video footage was presented showing events out of order or in closer proximity than they actually occurred. Wiretapped evidence was admitted without proper foundation or relevance.¹⁰² The prosecution presented no evidence that Mr. Statkevich sought or participated in any violent action that could form the basis of a violation of Article 293(1) of the Criminal Code.¹⁰³ Mr. Statkevich was denied the opportunity to cross-examine the government’s witnesses.

On 26 May 2011, the district court convicted Mr. Statkevich of organizing a mass riot involving violence and property destruction and sentenced him to serve six years in a medium-security prison.¹⁰⁴ Other defendants in the case were sentenced to various prison terms: Aliaksandr Klaskouvski (five years), Artsiom Hrybkou (four years), Aliaksandr Kviatkevich and

⁹³ <http://www.sb.by/post/114629>

⁹⁴ Amnesty Int’l, “*Security, Peace and Order?*” *supra* note 67, at 11; http://belapan.com/archive/2011/01/21/media_kontrevolution/; <http://www.sb.by/post/111079/363>; <http://www.sb.by/post/111131/365>;

⁹⁵ High Commissioner Report, *supra* note 59, at ¶ 32, FN 16.

⁹⁶ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 159-60.

⁹⁷ High Commissioner Report, *supra* note 59, at ¶ 64; *see also* OSCE Trial Monitoring Report, *supra* note 57, at ¶ 225.

⁹⁸ M. Adamovich Statement, *supra* note 47.

⁹⁹ OSCE Trial Monitoring Report, *supra* note 57, at ¶ 98, ¶192.

¹⁰⁰ *Id.* at ¶¶ 96-100.

¹⁰¹ This is consistent with the evidence of bias found across all trials of the 19 December accused by OSCE monitors. *Id.* at ¶¶ 101-105.

¹⁰² *Id.* at ¶ 260.

¹⁰³ M. Adamovich Statement, *supra* note 47, at ¶ 32.

¹⁰⁴ Exhibit 3 – Decision of Leninsky District Court (26 May 2011).

Dzmitry Bulanau (three years), and Andrei Pazniak (two years of “restricted freedom”).¹⁰⁵ On 19 July 2011, the Minsk City Court of Cassation reviewed and upheld the prison sentences of Messrs. Statkevich, Uss, Klaskouvski, Hrybkou, Kviatkevich, Bulanau and Pazniak.¹⁰⁶ Mr. Statkevich was denied the right to attend the hearing on his appeal. The verdict came into force that day. A supervisory appeal submitted to the Chief of the Supreme Court of the Republic of Belarus and an appeal brought to the Prosecuting Attorney of the City of Minsk were both dismissed.¹⁰⁷

E. Incarceration.

Mr. Statkevich’s incarceration since his conviction has been brutal. At various times during his detention, Mr. Statkevich’s communication with his family has been restricted and he has been threatened with sanctions for violating prison rules.¹⁰⁸ To that end, on 16 December 2011, the administration of the Shklovsk penal colony No. 17 disciplined him for purportedly violating inmate rules, including possession of “unregistered” handkerchiefs that were found among his belongings.¹⁰⁹ Then he was punished three more times for the absence of an individual nameplate during his stay in the penal cell. As a result, on January 12, 2012, the government transferred Mr. Statkevich from Penal Colony No. 17 in Shklou, where he had worked in a sawmill, to the stricter regime of Prison No. 4 in Mahiliou for allegedly being a “malicious offender of prison rules.”¹¹⁰ He was immediately placed in a penal cell, allegedly for the same violations he had committed during his stay in the colony.¹¹¹ The authorities there claimed Mr. Statkevich was inclined towards violence and liable to attempt escape. He is now condemned to serve the remaining three years of his sentence under much harsher conditions in prison in Mogilev.

VII. ADMISSIBILITY.

A. Jurisdiction

Belarus acceded to the International Covenant on Civil and Political Rights and its First Optional Protocol on 12 November 1973 and 30 September 1992, respectively. The competence of the Committee to hear individual cases against State parties to the Covenant relies upon, and is limited by, the Optional Protocol to the Covenant.¹¹² The Optional Protocol entered into force

¹⁰⁵ Naviny, “Statkevich sentenced to six years, Uss to 5 1/2 years,” *supra* note 78; see also OSCE Trial Monitoring Report, *supra* note 57, at Annex 1.

¹⁰⁶ BelaPAN, 19 July 2011 available at <http://belapan.com/archive/2011/07/19/485447/>.

¹⁰⁷ Exhibit 4 – Cassation Determination (19 July 2011); Exhibit 5 – Minsk City Court Appeal (11 Nov 2011); Exhibit 6 – Supreme Court Appeal (17 Feb 2012); Exhibit 7 – Prosecuting Attorney of Minsk (23 Jan 2013).

¹⁰⁸ For example, his contact with his wife has been limited to one phone call per month and one visit per quarter. See M. Adamovich Supplemental Statement, *supra* note 48.

¹⁰⁹ Amnesty International, *What is not Permitted is Prohibited: Silencing civil society in Belarus*, April 2013, 27-28, available at <http://amnesty.org/en/library/info/EUR49/002/2013/en> [hereinafter Amnesty Int’l, *What is not Permitted*].

¹¹⁰ *Id.*

¹¹¹ From 6 July to 16 July 2012 he was put in the punishment cell allegedly for refusing to request a Presidential pardon. *Id.*

¹¹² Article 1 of the Optional Protocol to the Covenant on Civil and Political Rights provides that “[a] State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the

for Belarus on 30 December 1992, and therefore the Committee has jurisdiction over the violations of the Covenant by Belarus described in this individual communication.

B. Other International Proceedings

This communication satisfies the requirement of article 5(2)(a) of the Optional Protocol.¹¹³ In February 2011, Ekaterina Statkevich, daughter of Mr. Statkevich, filed a petition with the U.N. Working Group on Arbitrary Detention showing that Belarus had detained Mr. Statkevich for exercising his fundamental civil and political rights. On 19 June 2011, the Working Group found Belarus had violated Mr. Statkevich's rights and issued the following decision:

The deprivation of liberty of Mr. Mikola [Mikalai] Statkevich is arbitrary, and constitutes a breach of Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applicable to the cases submitted for consideration of the Working Group. The Working Group calls on the government to take the necessary steps to remedy the situation, which should include the immediate release of Mr. Statkevich and an adequate compensation.¹¹⁴

Belarus failed to comply with the Working Group's call that Belarus release and compensate Mr. Statkevich. Since the Working Group's investigation is completed,¹¹⁵ the same matter is not currently being examined under another procedure of international investigation or settlement, and no other international proceedings are pending, the Working Group opinion does not preclude the Committee from reviewing this petition.¹¹⁶

C. Mr. Statkevich has exhausted all domestic remedies in Belarus

rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol." Optional Protocol, at art. 1.

¹¹³Article 5 of the Optional Protocol states " 2) The Committee shall not consider any communication from an individual unless it has ascertained that: a. The same matter is not being examined under another procedure of international investigation or settlement."

¹¹⁴ U.N. Working Group on Arbitrary Detention, Op. No. 13/2011 (BELARUS), ¶ 13.

¹¹⁵ See *Stow v. Portugal*, Comm. No. 1496/2006, U.N. Doc. CPR/C/92/D/1496/2006, ¶ 6.2.:

The Committee does not accept the argument of the State party that the communication is inadmissible because it was already considered by the European Court of Human Rights. On the one hand, article 5, paragraph 2 (a), of the Optional Protocol only applies when the same matter is "being examined" under another procedure of international investigation or settlement; on the other, Portugal has entered no reservation to article 5, paragraph 2 (a), of the Optional Protocol.

¹¹⁶ In addition, the Committee has held that the activities of bodies such as U.N. Working Groups fall under different mandates than the Committee's authority to hear individual petitions under the Covenant. See *Salem Saad Ali Bashasha v. The Libyan Arab Jamahiriya* Comm. No. 1776/2008, U.N. Doc. CCPR/C/100/D/1776/2008, at ¶ 6.2. ("The Committee, however, recalls that extra-conventional procedures or mechanisms established by the United Nations Commission on Human Rights and assumed by the United Nations Human Rights Council or the Economic and Social Council, and whose mandates are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations world wide, do not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol...the study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Protocol.").

Statkevich has exhausted all available domestic remedies as required under the Optional Protocol, article 5, paragraph 2, which provides as follows:

2) The Committee shall not consider any communication from an individual unless it has ascertained that: ... (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

Similarly, article 2 of the Protocol provides as follows:

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the [Covenant] have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Despite the numerous trial violations discussed herein, on 26 May 2011, the Leninsky District Court convicted Mr. Statkevich under article 293(1), of the Criminal Code of the Republic of Belarus. The court sentenced him to six years in prison.¹¹⁷

Mr. Statkevich has taken all available judicial steps. He appealed his conviction to a court of cassation. In a decision dated 19 July 2011, the Judicial Board for Criminal Cases at the Minsk City Court upheld the verdict.¹¹⁸ The Board affirmed the decisions of the Leninsky trial court that violated fair trial standards, including the failure to consider defense evidence and defense motions while allowing all prosecution motions and admitting irrelevant evidence from the prosecution, failure to address the bias of the trial judge, failure to hold the prosecution to its burden of proof, and failure to compel the attendance of witnesses, all amounting to a lack of equality of arms between the two sides. Under Belarusian law, the verdict came into force on the same day and Mr. Statkevich had exhausted domestic remedies.

Mr. Statkevich nonetheless continued to appeal his conviction through supervisory channels, reiterating all the fair trial violations that took place at the trial court.¹¹⁹ Mr. Statkevich brought a supervisory appeal to the Chief of the Minsk City Court, Judge S. F. Khrypach. Judge Khrypach rejected the appeal on 11 Nov 2011.¹²⁰ Mr. Statkevich then brought a second supervisory appeal to the Chief of the Supreme Court of the Republic of Belarus, Judge V. O. Sukalo. The Deputy Chief of the Supreme Court of the Republic of Belarus, Judge V. L. Kalinkovich, rejected this appeal on 17 Feb 2012.¹²¹ Finally, in

¹¹⁷ See Exhibit 3 - Decision of Leninsky District Court.

¹¹⁸ NAVINY *Court upholds prison sentences for Statkevich, Uss* (July 19, 2011), http://naviny.by/rubrics/english/2011/07/19/ic_articles_259_174432/; Exhibit 4 – Cassation Determination (19 July 2011).

¹¹⁹ This Committee has recognized that supervisory appeals that are left to the discretion of the court are not required to exhaust domestic remedies absent a showing that such channels can be successful. *Vladimir Schumilin v. Belarus*, Comm. No. 1784/2008 (23 July 2012), at ¶ 8.3; *Antonina Pivonos v. Belarus*, Comm. No. 1830/2008 (4 Dec 2012), at ¶ 8.3. Regardless, supervisory appeals were not successful in the case of Mr. Statkevich.

¹²⁰ UDF.BY, *Minsk City Court Will Consider Appeal of Ex-candidates Statkevich and Uss* (July 19, 2011), <http://udf.by/english/politics/44421-minsk-city-court-will-consider-the-appeal-of-ex-candidates-statkevich-and-uss-and-also-journalist-khalip.html>; Exhibit 5 – Minsk City Court Appeal (11 Nov 2011). Judge Khrypach has been subjected to EU sanctions for his role in the case. See Council Implementing Regulation (EU), No 1017/2012, at ¶ 88.

¹²¹ Exhibit 6 – Supreme Court Appeal (17 Feb 2012).

November 2012, Mr. Statkevich brought an appeal before the Prosecuting Attorney of the City of Minsk. The Prosecuting Attorney rejected his appeal in letter dated 23 January 2013.¹²²

Accordingly, under Belarusian law, Mr. Statkevich has exhausted the domestic legal remedies available to him to vindicate his rights under the Covenant and Belarusian law.

VIII. VIOLATIONS OF RIGHTS ENSHRINED IN THE COVENANT

Mr. Statkevich's arrest, detention, conviction, and lengthy sentence were politically motivated and plainly violated international and domestic human rights protections. Belarus has violated articles 2, 7, 9, 10, 14 (paragraphs 1 – 2, 3(d), (e), (g), paragraph 5), 17, 19 (paragraphs 1 and 2), 21, 22, and 25 of the Covenant.

Belarus ratified the Covenant on 12 November 1973, and it is binding domestic law.¹²³ The Belarus Constitution also states that Belarus must conform to recognized international law and imposes domestic obligations and restrictions on the government to protect human rights.¹²⁴ Despite these laws, Belarus is a serial violator of freedoms guaranteed by the Covenant, including the freedom of expression and the freedom of assembly. Indeed, the Committee has recommended that provisions of Belarus national laws that in practice lead to regular violations of civil and political rights be brought in line with the Covenant.¹²⁵

In light of these robust obligations, Belarus's detention of Mr. Statkevich violates both international and domestic law. Mr. Statkevich 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.¹²⁶ As statements by Mr. Lukashenko after the crackdown made clear—"There won't be any more silly democracy, muddle-headed democracy"—Mr. Statkevich's arrest was linked to his efforts to promote democracy as an opposition presidential candidate and his public advocacy of democracy in Belarus.¹²⁷

Indeed, the U.N. Working Group on Arbitrary Detention has already found that Statkevich's detention after the 19 December 2010 crackdown was arbitrary and requested that Belarus release him. The Working Group held that Mr. Statkevich had been arbitrarily deprived of his liberty.¹²⁸ The Special Rapporteur on the situation of human rights in Belarus has noted

¹²² Exhibit 7 – Prosecuting Attorney of Minsk (23 Jan 2013).

¹²³ U.N. 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>; U.N. 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.

¹²⁴ CONST. OF THE REPUBLIC OF BELARUS 1994, Arts. 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. . . .") and 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.").

¹²⁵ See *supra* note 32.

¹²⁶ See e.g. OSCE Election Report, *supra* note 8.

¹²⁷ Amnesty Int'l, "Security, Peace and Order?" *supra* note 67.

¹²⁸ This result was echoed by the Working Group's subsequent opinion in the case of Mr. Sannikov, who was also detained for participation as a political candidate. The Working Group determined that:

Mr. Sannikov was deprived of his liberty because of his activities in opposition to the Government and, in particular, the fact that he was an electoral candidate and allegedly took part in the protests of 19 December 2010. These points are well illustrated in statements made by the President of Belarus following Mr. Sannikov's release and the continuous

systematic violations of civil and political rights including the continued deprivation of Belarusian citizens' right to effectively take part in the conduct of public affairs.¹²⁹ After reviewing the events surrounding the 19 December 2010 demonstration and its aftermath, the High Commissioner determined that Belarus had engaged in "a pattern of serious violations of human rights since 19 December 2010" that "were clearly aimed at curtailing the rights to freedoms of association, assembly and expression, and the right to a fair trial."¹³⁰ Even more, the High Commissioner has recommended that Belarus "[i]mmediately and unconditionally release remaining political opponents, activists and journalists who were not involved in any violence in the events of 19 December 2010 and its aftermath."¹³¹ Despite this recommendation, Mr. Statkevich remains in prison.

Belarus violated Mr. Statkevich's fundamental freedoms of peaceful assembly and association embodied in articles 21 and 22 of the Covenant (and Articles 35 and 36 of the Belarusian Constitution); his freedoms of thought and expression embodied in article 19 of the Covenant (and Article 33 of the Belarusian Constitution); and his fundamental right to participate in the political process as protected by article 25 of the Covenant (and Articles 37 and 38 of the Belarusian Constitution). Moreover, governmental officials and prison authorities physically abused Mr. Statkevich and threatened violence against his family, 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, 9, and 10 of the Covenant. Furthermore, Belarus also failed to observe the minimum standards of a fair trial. Belarus denied Mr. Statkevich a fair hearing by an independent and impartial tribunal, denied him access to the courts, and failed to afford him a presumption of innocence, as protected by article 14 of the Covenant (and Article 26 of the Belarus Constitution).

A. The Government Detained Mr. Statkevich because he Exercised his Freedom of Assembly under Article 21 of the Covenant.

The government's detention and subsequent conviction of Mr. Statkevich under Article 293(1) of the Belarusian Criminal Code as a result of his peaceful participation in the public demonstration on 19 December 2010 violates his fundamental right to freedom of assembly, enshrined in article 21 of the Covenant.¹³² Mr. Statkevich's organization of and participation in the 19 December demonstration does not fall within the narrow confines of permitted government limitations on freedom of assembly. Article 21 recognizes that restrictions may be placed on the right to freedom of assembly "in conformity with the law" only if "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

limitations imposed on his fundamental rights and freedoms. The deprivation of Mr. Sannikov's liberty between 20 December 2010 and 21 April 2012 constitutes a breach of his fundamental rights and freedoms under articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights

Op. No. 14/2012 (Belarus), at ¶ 40.

¹²⁹ Report of Special Rapporteur on the situation of human rights in Belarus, *supra* note 44, at ¶ 10.

¹³⁰ High Commissioner Report, *supra* note 59, at ¶¶ 73-74.

¹³¹ *Id.*

¹³² "The right of peaceful assembly shall be recognized." ICCPR, *supra* note 2, art. 21. 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."

others.”¹³³ Mr. Statkevich’s exercise of his freedom of assembly threatened none of these interests. Since the freedom of assembly is a “fundamental human right that is essential for public expression of one’s views and opinions and indispensable in a democratic society,”¹³⁴ the burden falls on the government to demonstrate how a peaceful rally by the political opposition would necessarily jeopardize national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The sole purpose of the demonstration was for opposition groups to assemble peaceably and protest the falsified election results.¹³⁵ Mr. Statkevich did nothing more than participate in a peaceful rally by the political opposition. Mr. Statkevich did not organize any mass riot: he organized a rally voicing the opposition political viewpoint that the presidential election was non-democratic and that election laws needed amending. As the OSCE concluded, the demonstration on 19 December was not the instigation of mass social unrest.¹³⁶ Such participation in a political demonstration should have been protected, not punished.

Yet, Belarus acted true to form in cracking down on the peaceful demonstrators, including Mr. Statkevich. Belarusian application of national laws on public gatherings does not comply with international standards. Indeed, the universal periodic review of Belarus at the UN Human Rights Council (May 2010) concluded that Belarus overly restricted the exercise of freedom of assembly. Although the Council also issued recommendations that national laws be revised and amended to comply with the Covenant, Belarus declined to accept these recommendations and claimed its national laws correspond to the Covenant.¹³⁷ Yet, Mr. Statkevich’s case illustrates that Belarus’s application of national law to suppress peaceful political assemblies continues to contradict article 21. The detention, conviction, and sentence of Mr. Statkevich had just one goal—to punish him for exercising his freedoms of assembly, association, opinion, and expression.

Moreover, while Belarus has publicly claimed that Mr. Statkevich and the other politicians who called for the rally did not obtain the necessary permits, Belarus did not detain or try Mr. Statkevich for a failure to obtain an administrative permit; instead, it detained, tried, and convicted him of inciting a violent mass riot under the Criminal Code. Yet no evidence was presented that *Mr. Statkevich* actually engaged in violence. Indeed, the government arrested him precisely because he was promoting a “democratic society.”¹³⁸ Under international standards, assembly organizers and participants should not be held responsible for the violent behavior of others as *agents provocateurs* but rather any individual who commits an offence should be held liable.¹³⁹ The government was unable to provide any witnesses at trial to link Mr. Statkevich to any violent activity¹⁴⁰ and the imposition of a six-year prison sentence reveals the political

¹³³ ICCPR, *supra* note 2, art. 21.

¹³⁴ *Turchenyak et al. v. Belarus*, CCPR/C/108/D/1948/2010, at 7.3-7.5.

¹³⁵ 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 19 December 2010 was completely peaceful.

¹³⁶ OSCE Election Report, *supra* note 8, at 1-3, 22-24.

¹³⁷ U.N. Human Rights Committee, Report of the working group on the Universal Periodic Review - Belarus, U.N. Doc.

A/HRC/15/16, at ¶ 22, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/161/38/PDF/G1016138.pdf?OpenElement>

¹³⁸ See Amnesty Int’l “*Security, Peace and Order?*” *supra* note 67, at 4.

¹³⁹ See Amnesty International, *What is not Permitted*, *supra* note 109, at 27 (citing OSCE Guidelines on Freedom of Peaceful Assembly, Guideline 5.7, available at www.osce.org/odihr/73405?download=true); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 6 October 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.

¹⁴⁰ OSCE Election Report, *supra* note 8.

motivation for the detention. Mr. Statkevich's detention and six-year sentence is therefore in direct violation of international law.¹⁴¹

B. The Government Detained Mr. Statkevich because he Exercised his Freedom of Opinion and Expression under Article 19 of the Covenant.

Belarus violated Mr. Statkevich's right to hold and express his political opinions. Article 19 of the Covenant enshrines the right of persons to hold and freely express opinions. This right is echoed in article 30 of the Constitution of the Republic of Belarus. The Committee has stated in General Comment No. 34 that freedom of opinion and freedom of expression "constitute the foundation stone for every free and democratic society."¹⁴² Any restrictions on exercising of such rights must be adequate and only be introduced where it is absolutely necessary for achievement of goals that they represent and to the extent there is a direct connection between them and these goals. General Comment No. 34 states that the harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19(1) of the Covenant.¹⁴³

Here, Belarus arrested and detained Mr. Statkevich for expressing his opinion that the elections were fraudulent and that new electoral reforms were needed to achieve democracy in Belarus.¹⁴⁴ For expressing these opinions—tied directly to the core of democratic values—Mr. Statkevich was arrested, detained, and convicted.

C. The Government Detained Mr. Statkevich because he Exercised his Freedom of Association under Article 22 of the Covenant.

The government's detention of Mr. Statkevich as a result of his peaceful participation in the 19 December demonstration violates his fundamental right to freedom of association enshrined in article 22 of the Covenant.¹⁴⁵ Article 36 of the Belarusian Constitution similarly guarantees that "[e]veryone shall be entitled to freedom of association."

Mr. Statkevich's conviction under Article 293 of the Belarusian Criminal Code directly contravened these laws. The rally's sole purpose was for opposition candidates and their supporters to peacefully protest an election that the international community uniformly declared fraudulent. For this the demonstrators were beaten and detained. The peaceful nature of this association should have been protected under international and domestic law.¹⁴⁶

¹⁴¹ 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).

¹⁴² U.N. Human Rights Committee, ICCPR, General Comment No. 34, Article 19: Freedoms of opinion and expression, ¶ 2, U.N. Doc. CCPR/C/GC/34, (12 Sept 2011) [hereinafter General Comment 34].

¹⁴³ *Id.* at ¶ 9.

¹⁴⁴ The Leninsky Court characterized this expression of opinion as "while addressing to the voters, [Statkevich] gave flimsy allegations of undemocratic elections of the President of the Republic of Belarus ... and the falsification of their results by the Central Election Commission of the Republic of Belarus." Exhibit 3 – Decision of Leninsky District Court (26 May 2011), at pp. 2-3.

¹⁴⁵ "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 2, art. 22(1).

¹⁴⁶ See OSCE Election Report, *supra* note 8, at 1-3, 22-24.

Mr. Statkevich's association with other politicians and their supporters does not fall within the narrow confines of permitted government limitations on freedom of association under international law, which are similar to those restrictions permissible on freedom of assembly. The Committee, in interpreting article 22, has held that a State may only restrict an individual's freedom of association if **all** of the following three requirements are met:

- 1) any restriction must be prescribed by law;
- 2) the restriction may only be imposed to protect national security or public safety, public order, public health or morals, or the rights and freedoms of others; and
- 3) the restriction must be "necessary in a democratic society."¹⁴⁷

As noted above, Mr. Statkevich's exercise of his freedom of association threatened none of these interests, and the government has been consistently unable to link Mr. Statkevich to any violence whatsoever. Mr. Statkevich's detention and six-year sentence is therefore in direct violation of article 22.

D. The Government Punished Mr. Statkevich for Exercising his Right to Participate in the Political Process under Article 25 of the Covenant.

Mr. Statkevich'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 Covenant.¹⁴⁸ 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 nominally fosters political participation by endowing presidential candidates with legal immunity until the election results are certified.¹⁴⁹

Mr. Statkevich was detained because he exercised his right to engage in the political process. He was a major opposition candidate in the 2010 election (which was widely regarded as fraudulent by independent observers). Leading up to election day, he called for opposition supporters to peacefully rally in Minsk to protest the controversial election results. During his speech at the demonstration, he advocated a multi-party system and democratic electoral reforms precisely so that he and other citizens could participate in the conduct of public affairs in Belarus. And, for Mr. Statkevich'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 six years in prison.

Belarusian law endows presidential candidates with immunity for political participation. Nonetheless, the Chair of the Central Election Commissions announced that such immunity would end at 8 p.m. on December 19, giving the signal to police to begin arresting opposition

¹⁴⁷ *Korneenko v. Belarus*, Comm No. 1226/2003, U.N. Doc. CCPR/C/105/D/1226/2003, ¶ 10.3 (July 27, 2012).

¹⁴⁸ "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 2, at art. 25.

¹⁴⁹ *See supra* Part VI.C.

candidates at that time.¹⁵⁰ Moreover, Mr. Statkevich's sentence and his imprisonment were unusually long, considering that most demonstrators were released or given suspended sentences.¹⁵¹ The fact that the former opposition presidential candidates and their supporters—including Messrs. Statkevich, Sannikov, Uss, and Bandarenka—received the longest sentences illustrates the judiciary's adherence to Mr. Lukashenko's desires.¹⁵² Thus, Mr. Statkevich'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 the Working Group concluded, the "link to the election process" is undeniable.¹⁵³

E. The Government Treated Mr. Statkevich in a Cruel, Inhumane, and Degrading Manner in Violation of Articles 7, 9, and 10 of the Covenant.

Since 19 December 2010, the government has subjected Mr. Statkevich to emotional and physical abuse in violation of well-established international legal norms.¹⁵⁴ Article 7 of the Covenant 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."¹⁵⁵ The Committee in General Comment No. 20 stated that the "aim of the provisions of article 7 ... is to protect both the dignity and the physical and mental integrity of the individual"¹⁵⁶ and that "[t]he prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim."¹⁵⁷ The government's pretrial detention violated article 7 in a number of ways: The government held him incommunicado for months and denied access to counsel. Officers harassed Mr. Statkevich and threatened to arrest his wife unless he confessed his guilt. The government forced him to sleep on the floor with the lights on,¹⁵⁸ refused him access to a toilet,¹⁵⁹ and kept him in crowded cells with prisoners infected with deadly, communicable diseases, while at another time he was kept in isolation for month-long period.¹⁶⁰ The government transported him away from the detention center to an unknown location, where

¹⁵⁰ *Id.* Pyotr Miklashevich, chairman of the Constitutional Court of Belarus, who was appointed by Mr. Lukashenko, inconsistently denied that presidential candidates ever had immunity. *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").

¹⁵¹ See OSCE Election Report, *supra* note 8, at 1.

¹⁵² *Id.* at Annex 1; Human Rights Watch, *Shattering Hopes: Post-Election Crackdown in Belarus* (2011).

¹⁵³ *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 9.

¹⁵⁴ The Committee should properly consider allegations of mistreatment in this case because the government sought a confession during the mistreatment. As the Working Group has explained: "The Working Group has repeatedly held that investigation of allegations of ill-treatment inflicted upon detainees in violation of the prohibition of torture and the right to physical integrity generally falls within the scope of its mandate only in so far as it is used in order to obtain a confession of guilt of the pretrial detainee or otherwise impairs his or her exercise of the right to a proper defence." U.N. Working Group on Arbitrary Detention, Op. No. 16/2008 (Turkey) at ¶ 41.

¹⁵⁵ ICCPR, *supra* note 2, arts. 7 and 14(f).

¹⁵⁶ U.N. Human Rights Committee, General Comment No. 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), at ¶ 2.

¹⁵⁷ *Id.* at ¶ 5.

¹⁵⁸ M. Adamovich Statement, *supra* note 47, at ¶ 12.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at ¶¶ 13-15.

the officers threatened to render him unconscious. Government agents bound him with handcuffs behind his back, so that the officers could lift him in a form of “swallow” torture.¹⁶¹

The Belarusian government’s physical and emotional mistreatment of Mr. Statkevich prior to and after his conviction also violated his right to be free from cruel, inhumane, and degrading treatment under article 10. General Comment No. 21 states that “Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty[.]” and “[N]ot only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, [...] but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.”¹⁶² During the December 19, 2010, crackdown by police special forces, Mr. Statkevich was physically beaten. He was then transported to a KGB prison where he was held without access to an attorney and without being able to see his family. He was held in isolation, in the cold, and forced to sleep with the lights on. As a result, Mr. Statkevich’s health condition deteriorated dramatically. In particular, he developed an atrial fibrillation and his eyesight deteriorated significantly.¹⁶³

Finally, in contravention of Article 9, paragraphs 2 and 3, of the Covenant, Mr. Statkevich was not informed of the reasons of the arrest, nor was he promptly informed of any charges against him. He was not promptly brought before a judge or other officer authorized by law to order his detention. No court ordered his continued detention; rather, the prosecuting attorney who was adversarial to Mr. Statkevich ordered his initial pre-trial detention. But the prosecuting attorney is not an “officer authorized by law to exercise judicial power,” as article 9 of the Covenant requires. A naked suspicion that Mr. Statkevich might have committed a crime was not a valid reason for keeping him detained during the investigation and pre-trial preparations: it is not legal, necessary or reasonable.¹⁶⁴ Finally, review of Mr. Statkevich’s detention by a court as to whether it was a legal and justified measure was not timely or efficient. He was not brought to court when the hearing on his detention finally took place. The first time he was brought before a judge was more than five months after his arrest, on May 11, 2011, when the trial began. Therefore, Belarus violated his right to be promptly brought before a judge and the right to trial within a reasonable time under article 9, paragraphs 3 and 4 of the Covenant.

Due to its mistreatment of Mr. Statkevich, Belarus has violated articles 7, 9 and 10 of the Covenant.

F. The Government Denied Mr. Statkevich an Open and Fair Trial Before an Independent and Impartial Judge in Violation of Article 14 (1) of the Covenant.

¹⁶¹ *Id.*

¹⁶² U.N. Human Rights Committee, ICCPR, General Comment No. 21, Article 10 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 33 (1994) at ¶ 3.

¹⁶³ Even though other suspects testified about the detention conditions and torture by the KGB officers, authorities refused to review the testimonies and to open an investigation. Article 12 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 U.N.T.S. 85, says the state “shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.” The state did not comply with this obligation in Mr. Statkevich’s case.

¹⁶⁴ See Report of the Working Group on Arbitrary Detention, Addendum, Mission to Armenia., U.N. Doc. A/HRC/16/47/Add.3, 17 February 2011, at ¶76. See also <http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf> pages 173 and 192.

Mr. Statkevich did not receive a fair trial before an impartial judiciary. Article 14(1) of the Covenant guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal.”¹⁶⁵ 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. Statkevich’s right to a trial before an impartial judiciary, resulting in the exclusion of relevant evidence, inclusion of prejudicial irrelevant evidence, the failure to hold the prosecution to its burden of proof, and the failure to compel attendance of witnesses. The Committee has explained that “[t]he notion of a ‘tribunal’ in article 14, paragraph 1, designates a body . . . [that] 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.”¹⁶⁶ The international community has long criticized Belarus’s executive branch’s excessive control over the legal system.¹⁶⁷

The proceedings and sentence in Mr. Statkevich’s case bespeak the court’s lack of independence and lack of impartiality. In connection with the events of the 19 December 2010, long before the verdicts in the cases on criminal charges pursuant to article 293(1) of the Belarusian Criminal Code were delivered, numerous government officials spoke publicly about the case and prejudged Mr. Statkevich’s guilt.¹⁶⁸ Mr. Lukashenko, a member of the Supreme Court, the Ministry of Justice, other public officials, and the state-run media made public statements condemning Mr. Statkevich and accused him of attempting a coup d’etat.¹⁶⁹ These statements “leave little doubt as to the position of the state apparatus” with respect to Mr. Statkevich’s guilt.¹⁷⁰ The government exposed Mr. Statkevich’s statements to the public before trial, which OSCE concluded “served to provoke negative public reaction and will have undermined [Statkevich’s] right to a presumption of innocence.”¹⁷¹

At trial, no evidence was presented linking Mr. Statkevich to the single isolated incident of violence that was the basis for the mass riot charge under article 293(1).¹⁷² This dearth evidences the bias and lack of impartiality demonstrated by the court. The court indulged in criticism and expressed doubt about the trustworthiness of Mr. Statkevich’s testimony. While addressing Mr. Statkevich, the judge also employed an accusatory tone. The judge overruled defense motions while sustaining prosecution motions.

The court’s partiality and bias resulted in the inability of Mr. Statkevich to mount a fair defense. Every motion related to the evidence made by Mr. Statkevich’s attorney was denied and every one made by the prosecution was sustained. Indeed, his attorneys were not permitted to confront the prosecution’s key witnesses. The prosecution read the testimony given during the investigation by a number of other witnesses that did not appear court. The motion by Mr. Statkevich’s counsel to compel their appearance or have their testimony stricken was overruled

¹⁶⁵ ICCPR art. 14(1).

¹⁶⁶ 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) [hereinafter General Comment 32].

¹⁶⁷ High Commissioner Report, *supra* note 59; *see also* U.S. State Dep’t 2010 Human Rights Report, *supra* note 30; OSCE Trial Monitoring Report, *supra* note 57 at ¶ 70; Special Rapporteur Reports, *supra* note 44.

¹⁶⁸ OSCE Trial Monitoring Report, *supra* note 57, at Annex 3.

¹⁶⁹ <http://charter97.org/ru/news/2010/12/30/34950/>

¹⁷⁰ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 148-154. Annex 3 to the OSCE report documents many of the publications impairing the presumption of innocence that Mr. Statkevich should have been afforded.

¹⁷¹ *Id.* at ¶¶ 159-60.

¹⁷² M. Adamovich Statement, *supra* note 47, at ¶ 32.

even though the witnesses did not provide a reasonable excuse for their absences: the court accepted the testimony as evidence without cross-examination. Further still, the court overruled a motion made by Mr. Statkevich's attorney asking for Mr. Martselov whose correspondence was made public at the trial to take the stand as a witness. Another witness, Mr. Karziuk, Chief of the Traffic Police of Minsk, was called as a witness by Mr. Statkevich but not made to appear due to a "busy schedule."¹⁷³ In another example, Mr. Statkevich's attorney made a motion to enter into the record a petition created by the candidates for the presidency and addressed to the president of the Republic of Belarus regarding the demonstration with the postal receipt confirming its delivery. OSCE Monitors also noted that Mr. Statkevich's defense attorneys were allowed to see only the video evidence that was presented at the trial of their client. There were requests and motions made during some trials as to whether more video was available than that which was shown, however, these motions were also consistently denied.¹⁷⁴ Yet, the court allowed the prosecutors to present video footage that mixed several clips, making it difficult to determine the sequence of events and their causal ties. For example, a clip might show a presidential candidate speaking to the assembly on Oktyabrskaya/ Kastychnitskaya Square with the subsequent clip showing the individuals at the House of Government breaking windows – thus creating the incorrect impression that the two events were closely connected in both time and space when they were in fact not.¹⁷⁵

The Court's decisions to admit patently irrelevant government evidence and not admit relevant defense evidence further illustrates the Court's lack of independence and violation of equality of arms between the prosecution and the defense. The prosecution was permitted to enter multiple types of irrelevant evidence, including: information about trips abroad made by Mr. Statkevich and other candidates, their assets, records of misdemeanors, violation of traffic rules, health condition, information on their bank accounts, items stored at their homes and offices, data stored on their computers and other devices, contents of files and envelopes at their desks.¹⁷⁶ The court also viewed several hours of speeches, media events, and interviews in which the candidates presented their election platform, but also called upon the citizens of Belarus to come to the square on the night of 19 December 2010 in peaceful protest. None of those videos indicated that the candidates were asking the listeners to perpetrate violence or similar behavior prohibited under Article 293. Such speeches and statements would therefore be irrelevant to a charge of organizing a violent mass riot. The objections of Mr. Statkevich's attorneys to the admission of this evidence were overruled. The court also neglected evidence favorable to the defense. In particular, the court did not consider the testimony of witnesses S. N. Kien, A. V. Lebedko, and A. V. Makaev about Mr. Statkevich's electoral campaign and the demonstration on 19 December 2010, including its duration and that protesters were not carrying any dangerous items.¹⁷⁷ Yet, according to the verdict: "*other participants in the riots , [brought] to the House of the Government of the Republic of Belarus at 11 Sovetskaya Street, Minsk, Molotov cocktails, specially adapted for body injury and property destruction, sharpened*

¹⁷³ OSCE Trial Monitoring Report, *supra* note 57, at ¶ 281, FNs 346-47.

¹⁷⁴ *Id.* at ¶ 129, FN 161

¹⁷⁵ *Id.* at ¶ 127, FN 160.

¹⁷⁶ M. Adamovich Statement, *supra* note 47, at ¶ 33.

¹⁷⁷ *Id.* at ¶ 35; Exhibit 3 – Decision of Leninsky District Court (26 May 2011) at page 52 (The court stated that "The defendants' arguments and testimony of witnesses Lebedko and Makaev that the persons having attacked the House of Government, had no relation to their peaceful demonstration that these were "provocateurs" are unfounded and there is nothing confirming this information.").

wooden sticks, shovels, ice axes, axes, iron bars and other items, used for armed resistance to police officers and violence against the person.”¹⁷⁸ These other participants have remained unidentified as well as those who were engaged in breaking glasses and violently resisting the police. Therefore, the defense did not have a chance to examine and assess the evidence. Under these circumstances, the defense was deprived of a chance to mount a defense before an impartial and independent tribunal.

G. The Government Denied Mr. Statkevich the Presumption of Innocence under Article 14(2) of the Covenant

The government also infringed on Mr. Statkevich’s presumption of innocence. Article 14(2) of the Covenant establishes that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” The right to the presumption of innocence “is fundamental to the protection of human rights” and ensures that the defendant is given the “benefit of doubt” and that “all public authorities [] refrain from prejudging the outcome of a trial.”¹⁷⁹

In this case, Belarusian authorities did not refrain from public accusations and instead repeatedly proclaimed Mr. Statkevich’s guilt before the trial. Mr. Lukashenko assigned guilt before trial when he declared that the crackdown was a response to a coup d’etat. Echoing Mr. Lukashenko, in early January 2011, Belarusian state media aired television specials entitled “The Square: Metal Against Glass,” and “Square-2010, Counterrevolution,” filmed by the state-owned channel of *Belteleradiocompania*, that falsely depicted the demonstration as an attempted coup and showed staged photographs of shovels, ice axes, and explosive materials allegedly left in the square by the demonstrators.¹⁸⁰ Other statements were made by Mr. Lukashenko, officials in the ministry of justice, and even a judge of the Supreme Court.¹⁸¹ The president’s office even disseminated the article “A conspiracy: Behind the Scenes,” which was published in *Sovetskaya Belarus*. These public announcements and broadcasts after the events of 19 December 2010 preordained the guilt of Mr. Statkevich and other candidates for the presidency as criminals aiming to overthrow the president through violent mass riots. In light of the documented lack of independence of the judiciary in Belarus and the government’s public statements, Mr. Statkevich did not benefit from the presumption of innocence to which he was entitled.¹⁸² This was reflected in the court’s accusatory—rather than impartial—handling of Mr. Statkevich’s trial. Quite simply, Mr. Statkevich and the others who were arrested following the 19 December 2010

¹⁷⁸ Exhibit 3 – Decision of Leninsky District Court (26 May 2011) at page 53.

¹⁷⁹ General Comment 32, *supra* note 166, at ¶ 30. 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.” *Id.* In *Gridin v. Russian Federation*, the Committee 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. *Gridin v Russian Federation*, Comm. No. 770/1997, U.N. Doc. CCPR/C/69/D/770/1997 (2000), §8.3. *See also Mwamba v Zambia*, Comm. No. 1520/2006, U.N. Doc CCPR/C/98/D/1520/2006 (2010), §6.5; and *Kulov v Kyrgyzstan*, Comm. No. 1369/2005, U.N. Doc CCPR/C//99/D/1369/2005 (2010), §8.7.

¹⁸⁰ Amnesty Int’l Report, “*Security, Peace and Order?*” *supra* note 67, at 11; http://belapan.com/archive/2011/01/21/media_kontrrrevolution/; <http://www.sb.by/post/111079/363>; <http://www.sb.by/post/111131/365>.

¹⁸¹ *See supra* Part VI.D.

¹⁸² OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 147-162; *Marinich v Belarus*, Comm. No. 1502/2006, U.N. Doc. CCPR/C/99/D/1502/2006 (2010), §10.6.

demonstration had been proclaimed guilty before it was found so in court, violating the principle of presumption of innocence established by article 14(2) of the Covenant.

Furthermore, the Committee in General Comment No. 32 has stated that “Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”¹⁸³ Belarus violated this rule by handcuffing Mr. Statkevich throughout the duration of his trial and placing him in a cell behind bars with the other defendants, creating the appearance of guilt without regard to the evidence presented in Court. OSCE criticized these prejudicial tactics as a violation of the presumption of innocence.¹⁸⁴

The Court also denied Mr. Statkevich’s presumption of innocence by trying others with Mr. Statkevich on a guilt-by-association basis while splitting off other portions of the trial that were then used to convict Mr. Statkevich without his participation.¹⁸⁵ This led to a significant limitation on the defense against accusations related to the actions of the other persons that were mentioned in the verdict. The dynamic created in merger-of-defendants trials was one in which the defence counsel appeared to be at a practical disadvantage. With seven attorneys questioning the same witnesses, making motions and objections, presenting evidence, and giving opening and closing arguments, it was easy for an individual point to be lost.¹⁸⁶ In the closing hours of the trial, for example, every defendant and every lawyer made a speech. It was extremely difficult by the end of that process to keep separate which arguments were made by which person related to which defendant.¹⁸⁷ OSCE deplored these maneuvers as resulting in an improper merger-of-defendants.¹⁸⁸

H. The Government Denied Mr. Statkevich the Right to Consult with Counsel for Extended Periods During his Pretrial Detention in Violation of Article 14(3)(b) of the Covenant.

The government denied Mr. Statkevich the right to consult an attorney. Article 14(3)(b) of the Covenant unequivocally establishes the right to prepare a defense and to legal counsel of one’s own choosing.¹⁸⁹ In this case, Belarus denied Mr. Statkevich the right to properly prepare his defense. Mr Statkevich was held incommunicado and denied access to and communication with his lawyer until three months after his initial arrest. Even then, the government severely restricted his counsel’s access to him in KGB prison, and effectively muted counsels’ representation while he was detained.¹⁹⁰ The government’s denial of Mr. Statkevich’s right to access counsel thus violated article 14 of the Covenant.

¹⁸³ General Comment 32, *supra* note 166, at ¶ 30.

¹⁸⁴ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 155-56.

¹⁸⁵ *Id.* at ¶¶ 134-35.

¹⁸⁶ M. Adamovich Statement, *supra* note 47.

¹⁸⁷ OSCE Trial Monitoring Report, *supra* note 57, at ¶ 135.

¹⁸⁸ *Id.* at ¶ 135.

¹⁸⁹ “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 2, at art. 14(3)(b) and 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.”).

¹⁹⁰ OSCE Trial Monitoring Report, *supra* note 57, at ¶¶ 135-36.

I. The Government Denied Mr. Statkevich’s Right to Appeal under Article 14(5) of the Covenant.

Belarus denied Mr. Statkevich the right to appeal guaranteed by article 14(5) of the Covenant. Section 5 provides for an accused’s right to have his conviction and sentence reviewed by a higher tribunal according to law. In accordance with this article the state must procure a review of the verdict and all material circumstances of the case by a higher court.

Here, the court of cassation did not examine the substantive deficiencies of Mr. Statkevich’s conviction, it only reviewed procedural issues.¹⁹¹ In any case, because Mr. Lukashenko controls the Court of Cassation, Mr. Statkevich was denied an impartial appeal, and the entire cassation review was nothing but a mere formality. The court of cassation did not give an explanation as to why the appeal brought by the defense was rejected.¹⁹² Moreover, Mr. Statkevich was denied the right to appear in person at the appeal. This contradicted article 14, section 3(d), which guarantees the right to be tried in one’s presence.

J. The Government Interfered with Mr. Statkevich’s Right to Privacy under Article 17 of the Covenant.

Belarus also violated article 17 of the Covenant. Article 17 provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.” Article 28 of the Constitution of the Republic of Belarus similarly guarantees to everyone the right to private life, correspondence privacy, phone privacy and privacy of other messages, as well as the right to dignity and honor. The government may only infringe on privacy where it is allowed by law and limited to the extent necessary to achieve a legitimate government interest. The Committee’s General Comment No.16 on article 17 also considers interference arbitrary even if provided for by law if it does not conform to the “provisions, aims and objectives of the Covenant.” In any event, such interference should be “reasonable in the particular circumstances.”¹⁹³

The government publicly released unlawfully wiretapped records from Mr. Statkevich’s phone obtained during the presidential campaign as well discussions between Mr. Statkevich and another person on 19 December 2010. At the trial, the prosecution submitted a transcript of a wiretapped telephone conversation. According to the evidence at trial, the acquaintance encouraged Mr. Statkevich to enter the House of Government. This phone intercept recording was recorded by state authorities who then deliberately placed it in the public arena. Irrespective of whether Mr. Statkevich committed the crime charged this leaked phone call served to provoke a negative public reaction. At one point the judge asked Mr. Statkevich whether he wanted the wiretapped evidence to be read out in camera or during the public session. Mr. Statkevich responded by saying, “It’s funny you ask that now – after the conversation has been aired on TV

¹⁹¹ Exhibit 4 – Cassation Determination (19 July 2011).

¹⁹² *Id.*

¹⁹³ U.N. Human Rights Committee, ICCPR, General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, (April 8, 1988) U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), at ¶ 4.

so many times.”¹⁹⁴ The prosecution did not provide any reason as to why the taping was “necessary” and justified, and whether the police had a reasonable ground for suspicion of a “serious criminal offense.”

IX. CONCLUSION AND REQUEST

Given the above, in accordance with articles 1 and 2 of the Optional Protocol to the Covenant:

The Author, hereby, asks the Committee to:

1. Accept the present Individual Communication as admissible and consider Mr. Statkevich’s case;
2. Recognize violations by the Republic of Belarus of Mr. Statkevich’s rights enshrined in articles 7, 9, 10, 14 (paragraphs 1 – 2, 3(d), (e), (g), paragraph 5), 17, 19 (paragraphs 1 and 2), 21, 22, and 25 of the Covenant;
3. Recommend that the Republic of Belarus remedy the violations committed and grant enforceable rights to legal protection:
 - To immediately release Mr. Statkevich, cease any further political repression against Mr. Statkevich, and officially establish his innocence;
 - Pay Mr. Statkevich monetary compensation; and
4. Recommend again that the Republic of Belarus bring its national Law on Mass Events in the Republic of Belarus and its application in line with its international obligations.

X. ENCLOSURES

Exhibit 1 – Engagement Letters

Exhibit 2 – OSCE Trial Monitoring Report

Exhibit 3 – Decision of Leninsky District Court (26 May 2011)

Exhibit 4 – Cassation Determination (19 July 2011)

Exhibit 5 – Minsk City Court Appeal (11 Nov 2011)

Exhibit 6 – Supreme Court Appeal (17 Feb 2012)

Exhibit 7 – Prosecuting Attorney of Minsk (23 Jan 2013)

Exhibit 8 – Statement of M. Adamovich (28 Aug 2013)

Exhibit 9 – Supplemental Statement of M. Adamovich (28 Aug 2013)

¹⁹⁴ OSCE Trial Monitoring Report, *supra* note 57, at ¶ 161.