

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

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

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

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Zmitser Bandarenka,**

Citizen of Belarus

v.

Government of Belarus

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**URGENT ACTION REQUESTED**

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

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

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

There is reason to believe that Mr. Bandarenka’s health may be in serious danger. Mr. Bandarenka was arrested at his home in the early morning hours of December 20, 2010. He was subsequently placed in a KGB prison for several months pending trial. Prior to his detention, Mr. Bandarenka was already suffering from a myriad of health problems, such as ulcers, gout, and spinal problems, including herniated intervertebral disks, spinal nerve entrapments, and paresis in his right leg. His health has further deteriorated in prison.

The government has repeatedly denied Mr. Bandarenka adequate medical care in prison. Prior to his detention, Mr. Bandarenka suffered from serious medical conditions, such as gastric ulcers and gout, as well as significant spinal conditions, including herniated intervertebral disks, spinal nerve entrapments, and leg paresis. He first made an official demand for medical assistance in January 2011, but the government did not provide any care until June 22, 2011. Instead, when he first asked for medical treatment, the government punished him by sending him to solitary confinement for ten days. During his detention in the KGB prison, the conditions in the jail were deplorable, and only served to exacerbate Mr. Bandarenka’s spinal condition and other medical problems: There was no bed, and he was forced to sleep on the floor. There was no toilet in the cell. He was often kept in crowded cells with persons with infectious diseases, such as Hepatitis C. At times he was even restrained within the cell by a chain.

When he was finally given the opportunity to receive medical treatment in June, the government denied him access to a neurosurgeon despite his complicated neurological problems and forced him to decide between either going straight to a penal colony with no treatment at all or consenting to a surgical procedure without seeing the specialists his condition required. Recognizing that he would surely die if he went to the prison colony without any medical intervention, and given that he was unable to walk at the time, Mr. Bandarenka reluctantly consented to the surgery. After surgery, the government prematurely sent him from the hospital back to the detention facility and shortly thereafter to a penal colony.

At the penal colony, the government has continued to deny him adequate follow-up care and has further mistreated him, causing his physical state to worsen. Although the surgeon prescribed ongoing treatment, including medicine, frequent massages, and physical therapy, and informed Mr. Bandarenka that he would have to limit his time on his feet, the government has denied him these treatments. It has instead mistreated him and forced him to be on his feet for 16 hours each day. The prison authorities also made him perform physical activities, such as bending and turning, which aggravate his

condition. Now, when he moves, he must use a crutch. Under these conditions, Mr. Bandarenka faces permanent disability.

On May 26, 2011, the legal advocacy organization Freedom Now submitted an Urgent Action request to the UN Special Rapporteur on Torture and asked that the Working Group coordinate with the Special Rapporteur's office regarding the request. Due to the grave threat to Mr. Bandarenka's health arising from the conditions of his continued and arbitrary detention, the Petitioner now respectfully requests that the Working Group consider this petition pursuant to its "Urgent Action" procedure.<sup>1</sup> The Petitioner also requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.<sup>2</sup>

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

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

## QUESTIONNAIRE

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

1. ***Family name:*** Bandarenka (alternative spelling: Bondarenko)
2. ***First name:*** Zmitser (alternative spellings: Dzmitry or Dmitry)
3. ***Birth date or age (at time of detention):*** 48 years old
4. ***Sex:*** Male
5. ***Nationality/Nationalities:*** Belarus
6. ***(a) Identity document (if any):*** Passport  
***(b) Issued by:*** Belarus  
***(c) On (date):*** Unknown  
***(d) No.:*** Unknown
7. ***Profession or activity (if believed to be relevant to the arrest/detention):*** Zmitser Bandarenka is a Belarusian political activist and journalist. He served as the coordinator of the citizens' campaign "European Belarus" and as coordinator of the 2010 presidential campaign of opposition candidate Andrei Sannikov.
8. ***Address of usual residence:*** Unknown

### ***II. ARREST***

1. ***Date of arrest:*** Mr. Bandarenka was arrested in the earlier hours of December 20, 2010, a few hours after the December 19 demonstrations.
2. ***Place of arrest (as detailed as possible):*** Mr. Bandarenka was arrested at his home.
3. ***Forces who carried out the arrest or are believed to have carried it out:*** Mr. Bandarenka was arrested by state police forces.
4. ***Did they show a warrant or other decision by a public authority?***

(Yes) \_\_\_ (No)  X  No warrant was shown for his arrest on December 20, 2010.

5. **Authority who issued the warrant or decision:** N/A
6. **Relevant legislation applied (if known):** Mr. Bandarenka was later charged with and convicted of “[o]rganizing group actions that breach public order and that are connected with clear disobedience to lawful demands of representatives of the authorities or that hinder public transport operations or the work of enterprises, institutions or organizations, or taking active part in these actions,” under Article 342(1) of the Belarus Criminal Code.

### III. DETENTION

1. **Date of detention:** December 20, 2010
2. **Duration of detention (if not known, probable duration):** Mr. Bandarenka has now been detained for nearly one year.
3. **Forces holding the detainee under custody:** Mr. Bandarenka is being held by Belarusian state security forces.
4. **Places of detention (include any transfer and present place of detention):** Pending trial, the government imprisoned Mr. Bandarenka in a Belarus KGB jail commonly referred as “Amerikanka.” Afterwards, the government moved him to the detention facility in Valadarski Street, except when he was in surgery at the prison hospital. A few weeks after his surgery, the government again moved him to the Mahilyou (alternative spellings: “Mahilyow” or “Mogilev”) penal colony, where he is now detained.
5. **Authorities that ordered the detention:** Mr. Bandarenka was ultimately convicted and sentenced by the Pershamaiski District Court of Minsk.
6. **Reasons for the detention imputed by the authorities:** Mr. Bandarenka was charged with and convicted of “[o]rganizing group actions that breach public order and that are connected with clear disobedience to lawful demands of representatives of the authorities or that hinder public transport operations or the work of enterprises, institutions or organizations, or taking active part in these actions,” under Article 342(1).
7. **Relevant legislation applied (if known):** Mr. Bandarenka was charged with organization of “group actions that breach public order” under Article 342(1) of the Criminal Code.

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

**Statement of Facts**

Part A of this section discusses the Belarusian political system and its documented history of arbitrary detention and political suppression. Part B presents the case of Petitioner Zmitser Bandarenka, a Belarusian political activist who was arbitrarily detained by Belarusian authorities for over one year, mistreated, and denied basic rights during his trial.

**A. Belarus Has a History of Arbitrary Detention and Suppression of the Freedom of Expression and Assembly**

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

The Republic of Belarus is an authoritarian State. It gained independence in 1990 after the dissolution of the USSR.<sup>3</sup> The Declaration of the State Sovereignty was signed in 1990, and the Constitution, which has supreme legal force, was adopted in 1994.<sup>4</sup> Governmental power in Belarus is nominally separated into legislative, executive, and judicial branches.<sup>5</sup> Under Article 81 of the Constitution of Belarus, the head of state is the President of the Republic who is supposed to be elected by universal, free, equal, and secret ballot.<sup>6</sup> In November 1996, after a sham referendum, a new Constitution was adopted, providing for expansion of powers for the President.<sup>7</sup>

Belarus's first and only president, Alexander Lukashenko, exercises complete authority over all three branches of government.<sup>8</sup> His powers as president are among the widest reaching of any head of state in the world: He declares referendums and extraordinary elections and dismisses chambers of Parliament.<sup>9</sup> He nominates the Chairman of the Central Election Commission, the General Prosecutor, the Chairman of the National Bank, and the Chairman of the Committee of State Control.<sup>10</sup> He also appoints Belarusian judges, including the judge who

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<sup>3</sup> Nadia Shalygina, *UPDATE: Guide to Legal Research in Belarus*, GLOBALEX, (Feb. 2008), <http://www.nyulawglobal.org/globalex/Belarus1.htm> [hereinafter Shalygina *UPDATE*].

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

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

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

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

<sup>8</sup> FREEDOM HOUSE, *COUNTRY REPORT: BELARUS* (2011), <http://www.freedomhouse.org/template.cfm?page=363&year=2011&country=7995> [hereinafter FREEDOM HOUSE REPORT].

<sup>9</sup> Shalygina, *UPDATE*, *supra* note 3.

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

presided over the trial of Mr. Bandarenka.<sup>11</sup> Finally, he issues decrees, edicts, orders, and directives, which have obligatory force.<sup>12</sup> Indeed, presidential decrees carry higher legal force than ordinary legislation, effectively giving Mr. Lukashenko control over the government, courts, and the legislative process.<sup>13</sup>

The executive branch also includes the Council of Ministers, the state administrative body.<sup>14</sup> The Council is led by a Prime Minister who is appointed by the President.<sup>15</sup> The main law enforcement institution in Belarus is the General Prosecutor's Office, which supervises the implementation of the laws, decrees, regulations, and other acts, as well as the laws and regulations of local governmental bodies. Its head is appointed by Mr. Lukashenko.<sup>16</sup>

Belarus's National Assembly is a bicameral parliament vested with legislative powers.<sup>17</sup> It is made up of the House of Representatives and the Council of the Republic.<sup>18</sup> Although the legislative power ostensibly belongs to the Parliament, the 1996 Constitution enabled the president to issue decrees, edicts, orders and directives that carry obligatory force in all Belarusian territories, curtailing the legislative process.<sup>19</sup>

The judicial system in Belarus is based on territory and specialization.<sup>20</sup> The general courts consist of regional city courts, provincial courts, and the Supreme Court.<sup>21</sup> The Supreme Court is supposed to administer justice on civil cases, criminal cases, administrative offences, and supervise the judicial activity of the lower general courts.<sup>22</sup> Mr. Lukashenko appoints and has the power to dismiss the judges of these courts.<sup>23</sup>

## **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

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<sup>11</sup> *Id.* Belarus has Constitutional, Supreme, and Supreme Economical Courts—all the judges are appointed by Mr. Lukashenko.

<sup>12</sup> *Id.*

<sup>13</sup> FREEDOM HOUSE REPORT, *supra* note 8.

<sup>14</sup> Shalygina, *UPDATE*, *supra* note 3.

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

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

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

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The judicial system also includes a Constitutional Court, which draws conclusions about the conformity of laws and administrative acts to the Constitution. There are twelve judges who sit on the Constitutional Court: six are appointed by Mr. Lukashenko, and the other six are appointed by the Council of the Republic.

<sup>23</sup> OFFICE FOR DEMOCRATIC INST. AND HUMAN RIGHTS, ORG. FOR SEC. AND COOPERATION IN EUR., REPUBLIC OF BELARUS PRESIDENTIAL ELECTION 19 DECEMBER 2010, *OSCE/ODHIR Election Observation Mission Final Report*, 4, (Feb. 22, 1011), <http://www.osce.org/odihr/elections/75713> [hereinafter OSCE ELECTION REPORT].

to the presidency in 1994, he has steadily consolidated his power through authoritarian means.<sup>24</sup> There has been no other president. According to the Organization of Security and Cooperation in Europe (OSCE), no presidential election since 1994 has met the OSCE standards for democratic elections.<sup>25</sup> Opposition parties have no representation in the National Assembly, and the pro-presidential parties serve only to validate Mr. Lukashenko's decisions.<sup>26</sup> The government strictly controls religious, political, and journalistic activity.<sup>27</sup> It also controls nearly all media outlets, which it uses to curtail the opposition.<sup>28</sup> The citizens of Belarus have no real power to effect political change, and those who attempt to do so are typically harassed, arrested, and beaten.<sup>29</sup> For example, in 2009, a group of protesters who had gathered peacefully in Kastychnitskaya Square to oppose the arrival of a Russian military contingent were beaten, insulted, and threatened with rape by riot police.<sup>30</sup>

Belarus is an habitual violator of fundamental human rights. The United Nations, OSCE, the OSCE Parliamentary Assembly, the Council of Europe, the Parliamentary Assembly of the

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<sup>24</sup> FREEDOM HOUSE REPORT, *supra* note 8.

<sup>25</sup> While the voting for the 1995 parliamentary elections was found to have been “conducted in a generally adequate manner,” the process leading to the election failed to meet OSCE commitments. OSCE, *ODIHR Activity Report for 1995*, 5, <http://www.osce.org/odihr/20516>. The 2000 parliamentary elections failed to meet international standards. OSCE, *Technical Assessment Mission: Belarus 2000*, 1, <http://www.osce.org/odihr/elections/14704>. The 2001 presidential elections were also found to have fundamental flaws. OSCE, *Republic of Belarus Presidential Election*, 3 (Sept. 9, 2011), <http://www.osce.org/odihr/elections/belarus/14459>. The 2004 parliamentary elections were found to fall “significantly short of OSCE commitments.” OSCE, *Parliamentary Elections: 17 October 2004*, <http://www.osce.org/odihr/elections/belarus/66524>. The OSCE also expressed serious concerns regarding the 2006 presidential elections, involving the harassment and arrest of various opposition campaign workers. OSCE, *Presidential Election: 19 March 2006*, <http://www.osce.org/odihr/elections/belarus/66520>. Despite some improvements in the 2008 parliamentary elections, the OSCE determined that they “ultimately fell short of OSCE commitments for democratic elections. OSCE, *Parliamentary Elections: 28 September 2008*, <http://www.osce.org/odihr/elections/belarus/66516>. Finally, the 2010 presidential elections were heavily criticized and did not meet OSCE standards. OSCE, *Presidential Elections, 19 December 2010*, <http://www.osce.org/odihr/elections/belarus/74657>.

<sup>26</sup> FREEDOM HOUSE REPORT, *supra* note 8.

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

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

<sup>29</sup> U.S. STATE DEP'T, 2010 HUMAN RIGHTS REPORT: BELARUS, (Apr. 8, 2011) at 54, <http://www.state.gov/documents/organization/160449.pdf> [hereinafter U.S. STATE DEP'T 2010 HUMAN RIGHTS REPORT]. At the end of 2010, some of those in detention and facing politically motivated criminal charges included: Andrei Sannikov, presidential candidate and political activist; Uladzimir Nyaklyaeu, presidential candidate and leader of the Tell the Truth campaign; Nikalai Statkevich, presidential candidate and leader of the Social Democratic party; Ales Mikhalevich, presidential candidate and leader of the NGO For Modernization; Alyaksandr Atroshchankau, Mr. Sannikov's campaign spokesman; Paval Sevyarynets, leader of the Belarusian Christian Democratic party and aide to presidential candidate Vital Rymasheuski; Natallya Radzina, Charter '97 editor; Anatol Lyabedzka, chairman of the United Civic Party; Nasta Palazhanka, deputy chair of the Malady Front opposition youth organization; Alyaksandr Fyaduta, aide to Nyaklyaeu; Alyaksandr Klaskouski, a former police officer; Uladzimir Kobets, Mr. Sannikov's campaign chief; Syarhey Vaznyak, aide to Nyaklyaeu; Alyaksandr Arastovich, aide to Statkevich; Syarhey Martsaleu, aide to Statkevich; Mikita Likhavid, For Freedom movement activist; Dzmitry Novik, Belarusian Popular Front member; Paval Vinahradau, Tell the Truth campaign activist; Illya Vasilevich, youth activist; and Vasil Parfyankou, Tell the Truth campaign activist. *Id.* at 16.

<sup>30</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Rep. to the Human Rights Council*, UN Doc. A/HRC/13/39/Add.1, case summary 16, (Feb. 25, 2010) (by Manfred Nowak).

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.<sup>31</sup> For example, the United States has criticized the gross disparities in the rights nominally afforded to citizens by the Constitution and laws of Belarus and the rights actually afforded in practice.<sup>32</sup> While the Constitution provides for separation of powers, an independent judiciary, and impartial courts, Mr. Lukashenko ignores these provisions where it suits his immediate needs.<sup>33</sup> Corruption, inefficiency, and political interference are prevalent in the judiciary.<sup>34</sup> Indeed, as Mr. Bandarenka's case shows, the government frequently arrests, charges, and convicts individuals on politically motivated charges.<sup>35</sup> For example, in 2006, authorities detained or arrested approximately 1,000 persons throughout the country for political reasons before and after a fraudulent presidential election.<sup>36</sup> Many of those detained or arrested were bringing food and clothing to demonstrators in Minsk's October Square.<sup>37</sup>

Neither the judiciary nor the prosecutors are truly independent, and trial outcomes are usually predetermined.<sup>38</sup> The Constitution and laws of Belarus prohibit arbitrary arrest and detention and provide those accused of crimes many rights, such as a presumption of innocence and the right to attend proceedings, confront witnesses, and present evidence on their own behalf.<sup>39</sup> In practice, however, individuals are arrested and detained for political reasons and are denied the opportunity to mount effective defenses.<sup>40</sup> Due process protections are routinely disregarded, and even though the Belarusian Constitution prohibits the use of torture, detainees are routinely tortured and neglected.<sup>41</sup> As the United Nations Human Rights Council succinctly explained, "[t]he [Belarusian] judiciary, like law enforcement and security agencies, is utilized as

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

<sup>32</sup> U.S. STATE DEP'T, 2008 HUMAN RIGHTS REPORT: BELARUS, (Feb. 28, 2009), <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119069.htm>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* On March 27, 2008, KGB officers detained Pavel Levinov, a human rights advocate and lawyer for the Vitebsk-based Belarus Helsinki Committee. On May 23, 2008, a Vitebsk court sentenced Levinov in absentia to 10 days in jail and a BYR 700,000 (\$325) fine for disobeying orders and using obscenities. Authorities have used modified house arrest to curtail opposition. On May 27, 2008, activists Pavel Vinahradaw and Mikhail Subach were sentenced to two years of "restricted freedom" for participating in an entrepreneurs' protest in Minsk. A third person, a minor named Maksim Dashuk, received an 18-month sentence. Between July 7 and 10, 2008, authorities detained more than 15 opposition and human rights activists in connection to a July 4 bombing in central Minsk that injured 50 persons. They were released without charge after 10 days. The human rights NGO "Vyasna" criticized the arrests and accused the KGB of using the incident as a pretext to detain and question activists and intimidate their family members. Interior Ministry officials would not confirm the total number of persons detained or released. On July 26, 2008 police and KGB representatives detained and released approximately 50 youth activists for violating environmental laws while they were camping near a lake in the Borisov district. The youths were participating in a three-day camp organized by the European Belarus coalition.

<sup>36</sup> *Id.*

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

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

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

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

an instrument of political repression,” and “[t]he [Belarusian] judicial system is still subservient to the executive branch and there is no genuine independent legislative branch.”<sup>42</sup>

The Working Group recognized these facts when it recently issued an opinion concluding that Belarus had arbitrarily detained Mikalai Statkevich, another opposition candidate who was arrested during the December 19, 2010 demonstration.<sup>43</sup> In addition to concluding the government’s detention of Mr. Statkevich was connected to his participation in the political process, the Working Group found that “the political process in Belarus has given rise to several reports of human rights violations to UN human rights bodies.”<sup>44</sup> The circumstances of Mr. Statkevich’s arrest and detention were nearly identical to Mr. Bandarenka’s, and no different conclusion should be rendered in this case.

## **B. The Arbitrary Detention of Zmitser Bandarenka and Continuing Deprivations**

### **1. Zmitser Bandarenka Is Political Activist and Journalist.**

Zmitser Bandarenka is a Belarusian political activist and journalist who has long sought peaceful, democratic reform in Belarus and the wider region. He is a member of the Belarusian Association of Journalists and a co-founder of the Charter ’97 citizens’ human rights organization, a non-partisan group that maintains an opposition news site, organizes rallies, and acts as a springboard for other democratic movements in the country.<sup>45</sup> He is also the coordinator of the European Belarus Civil Campaign, which seeks democratic reform and solidarity with other European democracies.<sup>46</sup> The government has frequently persecuted him for his journalism and involvement with peaceful democratic opposition movements. For example, in 1995-1996 he worked for independent radio station Radio 101.2 FM, which was eventually closed by the authorities.<sup>47</sup> In 2004, he was arrested and beaten while returning from a peaceful rally in Kiev in support of the then opposition candidate Viktor Andriyovich Yushchenko.<sup>48</sup> Again in 2009, the government authorities beat and detained Mr. Bandarenka after he participated in a peaceful rally against bringing Russian troops into the country.<sup>49</sup> For

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<sup>42</sup> Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, E/CN.4/2006/36, at ¶ 86, (Jan. 16, 2006) (by Adrian Severin); Special Rapporteur on the Situation of Human Rights in Belarus, *Report*, A/HRC/4/16, at ¶ 10, (Jan 15, 2007) (by Adrian Severin) [hereinafter Special Rapporteur Reports].

<sup>43</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 12.

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

<sup>45</sup> *Zmitser Bandarenka nominated for Sakharov Prize*, CHARTER ’97, (Sept. 9, 2011), <http://charter97.org/en/news/2011/9/8/42399/> [hereinafter *Bandarenka: Sakharov Prize*].

<sup>46</sup> *Id.*; *European Belarus Civil Campaign Official Website*, <http://europeanbelarus.org/>.

<sup>47</sup> *Bandarenka: Sakharov Prize*, *supra* note 45.

<sup>48</sup> *Zmitser Bandarenka: “It was Kuchma’s Administration Order to Seize Us”*, CHARTER ’97, (Nov. 26, 2004), <http://charter97.org/eng/news/2004/11/26/bondarenko>.

<sup>49</sup> *Zmitser Bandarenka: They treated arrested like animals – some were beaten*, CHARTER ’97, (Sept. 9, 2009), <http://c97.x2.cz/en/news/2009/9/9/21825/>.

his contributions to the struggle for human rights and democracy, Mr. Bandarenka was recently nominated for the Sakharov Prize.<sup>50</sup>

## 2. Zmitser Bandarenka's Arrest Was Arbitrary

Mr. Bandarenka served as one of the election agents and campaign coordinators for Mr. Sannikov, one of the primary opposition candidates in the 2010 Belarusian presidential election.<sup>51</sup> Throughout the campaign, the government harassed opposition candidates in various ways: for example, a documentary aired on state television accusing opposition candidate Vladimir Neklyayev's campaign staff of unfounded and uncharged crimes ranging from forgery to child pornography; "anonymous" leaflets were distributed in Brest falsely stating that Mr. Sannikov favored Belarusian membership in NATO; and on October 10, 2010, a senior lieutenant of the government militia in Minsk searched the apartment of Mr. Sannikov's campaign chief under false pretenses.<sup>52</sup>

On Election Day, Mr. Sannikov came in second to Mr. Lukashenko.<sup>53</sup> The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODHIR) concluded that there was "a lack of independence and impartiality of the election administration, an uneven playing field, and a restrictive media environment, as well as a continuous lack of transparency at key stages of the electoral process."<sup>54</sup> Most local election commissions were manned by nominees from organizations supporting Mr. Lukashenko, all major nationwide TV stations demonstrated a "clear bias" in favor of the incumbent, and important parts of the electoral procedure, including vote counting procedures, remained "ambiguous," leading to the "inconsistent application of the law by election commissions."<sup>55</sup> The OSCE report further observed that election night was "marred" by the government's detention of "hundreds of citizens, among them journalists, human rights activists and other civil society representatives."<sup>56</sup> Messrs. Sannikov and Bandarenka were among those arrested.

Before the polls opened on December 19, 2010, Mr. Sannikov and other opposition candidates encouraged supporters to "defend their vote" by peacefully demonstrating in Minsk.<sup>57</sup> That evening, tens of thousands of protesters gathered in Independence Square and listened while Mr. Sannikov and other opposition leaders stood near the Lenin statue and gave speeches

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<sup>50</sup> *Bandarenka: Sakharov Prize*, *supra* note 45.

<sup>51</sup> *KGB tried to recruit Zmitser Bandarenka's wife*, CHARTER '97, Jan 6, 2011, <http://charter97.org/en/news/2011/1/6/35077/> [hereinafter *Zmitser Bandarenka's wife*].

<sup>52</sup> *'Dirty tricks' taint Belarus vote*, AL JAZEERA, (Dec. 18, 2010), <http://english.aljazeera.net/news/europe/2010/12/20101218142317982604>.; *Search in flat of Andrei Sannikov campaign Minsk headquarters chief*, CHARTER '97, (Oct. 27, 2010), <http://charter97.org/en/news/2010/10/27/33297/>.

<sup>53</sup> *European Belarus: Civil Campaign, Andrei Sannikov*, <http://europeanbelarus.org/en/page/7/>.

<sup>54</sup> OSCE ELECTION REPORT, *supra* note 23, at 1.

<sup>55</sup> *Id.* at 1-3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 4.

advocating new elections.<sup>58</sup> Although Mr. Bandarenka himself did not give a speech at the rally, he was present with Mr. Sannikov, and he joined in the crowd's chants for democratic change.<sup>59</sup> At around 10 p.m., Mr. Sannikov was giving a speech calling for a second round of elections when a group of approximately twenty persons (now widely believed to be government agents) standing at the back of the crowd began breaking windows of the Government House, which houses the National Assembly and the Central Election Commission. Mr. Sannikov told the crowd not to respond to the provocation, to remain peaceful, and to keep away from the doors of the Government House.<sup>60</sup> The Special Police Unit forcibly broke up the crowd and made mass arrests even though most of the demonstrators left the square peacefully within about 20 minutes.<sup>61</sup> The police stormed the square and herded groups of protestors into awaiting trucks, detaining over 700 people, including opposition candidates, peaceful protesters, and bystanders.<sup>62</sup> During the protests, police assaulted Mr. Sannikov and other demonstrators. Mr. Bandarenka himself was not detained at the site of the rally, but government agents later appeared at his home in the early morning hours of December 20 and arrested him.<sup>63</sup> No warrant or charging document was shown, and he was taken immediately to a KGB jail.<sup>64</sup> His apartment was ransacked by authorities a few days later.<sup>65</sup>

### **3. The Arrests of Mr. Bandarenka and Other Political Activists were Politically Motivated.**

The raid on the December 19, 2010 demonstration and subsequent detention of Mr. Bandarenka and other opposition figures were aimed at suppressing democratic opposition. As a result of the demonstration, the government arrested seven of the nine opposition candidates and hundreds of other activists. Politically motivated searches and interrogations followed in the days after the raid, under the guise of criminal investigations. Although most of the people initially arrested on election night were released from prison after serving 10-15 day administrative detentions, the government charged at least 37 people, including opposition candidates, journalists, and activists, with the criminal offense of organizing or participating in "mass disturbances." The government then convicted and sentenced those charged with crimes

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<sup>58</sup> *Id.*; AMNESTY INT'L, *BELARUS: "SECURITY, PEACE AND ORDER"? VIOLATIONS IN THE WAKE OF ELECTIONS IN BELARUS*, 4, (Feb. 2, 2011), <http://www.amnesty.org/en/library/info/EUR49/003/2011/en> [hereinafter AMNESTY INT'L REPORT].

<sup>59</sup> *Zmitser Bandarenka sentenced to two years in penal colony*, CIVIL INITIATIVE WE REMEMBER, (Apr. 29, 2011), [http://www.ciwr.org/article\\_en/2011/04/29\\_bondarenko.html](http://www.ciwr.org/article_en/2011/04/29_bondarenko.html) [hereinafter *Zmitser Bandarenka sentenced*].

<sup>60</sup> See AMNESTY INT'L REPORT, *supra* note 58, at 4; Conversations with Irina Bogdanova, Andrei Sannikov's sister (July 2 & Sept. 13, 2011) [hereinafter Bogdanova].

<sup>61</sup> AMNESTY INT'L REPORT, *supra* note 58, at 4.

<sup>62</sup> *Id.* at 4-5; Bogdanova, *supra* note 60.

<sup>63</sup> *Accusation against Zmitser Bandarenka changed*, CHARTER '97, (Apr. 4, 2011), <http://charter97.org/en/news/2011/4/4/37377/> [hereinafter *Accusation changed*].

<sup>64</sup> *Id.*; *Арестован Дмитрий Бондаренко (Обновлено)*, EUROPEAN BELARUS: CIVIL CAMPAIGN, <http://europeanbelarus.org/en/page/7/>.

<sup>65</sup> *Search at Zmitser Bandarenka's place*, CHARTER '97, (Dec. 27, 2010), <http://charter97.org/en/news/2010/12/27/34889/> [hereinafter *Search at Zmitser Bandarenka's place*].

to prison terms of up to seven years in penal colonies.<sup>66</sup> By far the longest prison sentences have been handed out to opposition candidates and their supporters.<sup>67</sup> At a press conference after security forces had put down the opposition, Mr. Lukashenko claimed that he had thwarted attempts by the opposition to stage a revolution and stated that “the main task of a president is to ensure the security of people, peace and order in the country.”<sup>68</sup> He also announced the true basis for the crackdown and arrests: “That’s enough of that. There won’t be any more silly democracy, muddle-headed democracy in the country.”<sup>69</sup> Echoing Mr. Lukashenko, in early January 2011, Belarusian state media aired a television special entitled, “The Square: Metal Against Glass,” which depicted the demonstration as an attempted coup and showed staged photographs of shovels, ice axes, and explosive material allegedly left in the square by the demonstrators.<sup>70</sup> The crackdown has been the most severe of Mr. Lukashenko’s 17-year rule.

Both the United States and the European Union criticized the crackdown and imposed sanctions against Belarus as a result. The United States imposed financial sanctions and “significantly expand[ed] the list of Belarusian officials subject to travel restrictions.”<sup>71</sup> The EU has similarly expanded its sanctions regime against Belarus in response to the December 2010 crackdown, reinstating travel bans suspended two years ago.<sup>72</sup> Russia too has engaged in significant, critical diplomacy on behalf of its involved citizens.<sup>73</sup>

#### **4. Mr. Bandarenka’s detention, trial, and sentencing.**

Mr. Bandarenka’s arbitrary arrest, illegal detention, and show trial exemplify the government of Belarus’s failures to honor the standards required by Belarus’s Constitution and

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<sup>66</sup> See OSCE ELECTION REPORT, *supra* note 23, at 1; AMNESTY INT’L REPORT, *supra* note 58, at 5; Kamil Kłysiński, *Belarus: Harsh sentences on participants in December opposition demonstrations*, CENTRE FOR EASTERN STUDIES, (Mar. 16, 2011), <http://www.osw.waw.pl/en/publikacje/eastweek/2011-03-16/belarus-harsh-sentences-participants-december-opposition-demonstratio>. Although Mr. Lukashenko “pardoned” twenty-four of these thirty-seven people on August 11 and September 14, 2011, many have not actually been released. See *Lukashenko pardons nine jailed after December unrest*, KYIVPOST, (Aug. 11, 2011), <http://www.kyivpost.com/news/russia/detail/110641/>. None have been fully rehabilitated to society.

<sup>67</sup> AMNESTY INT’L REPORT, *supra* note 58, at 5. Official statistics indicate that at least 639 people were detained. See also HUMAN RIGHTS WATCH, *Belarus: Survey Shows Massive Abuses of Protesters*, (Feb. 9, 2011), <http://www.hrw.org/en/news/2011/02/09/belarus-survey-shows-massive-abuses-protesters> [hereinafter HRW: *Survey Shows*]; Michael Schwartz, *Belarus Opposition Leader Gets a Five-Year Sentence*, THE NEW YORK TIMES, (May 14, 2011), <http://www.nytimes.com/2011/05/15/world/europe/15belarus.html> [hereinafter, Schwartz, *Five-Year*].

<sup>68</sup> AMNESTY INT’L REPORT, *supra* note 58, at 4.

<sup>69</sup> *Id.*

<sup>70</sup> AMNESTY INT’L REPORT, *supra* note 58, at 11.

<sup>71</sup> Press Statement, Philip J. Crowley, (Jan. 31, 2011), <http://www.state.gov/r/pa/prs/ps/2011/01/155640.htm>. According to U.S. Senator Dick Durbin, “these sanctions are only the first step. Until all political prisoners are unconditionally released, additional pressure will be brought to bear against [the Lukashenko] regime.” Press Statement, Sen. Richard Durbin, (Feb. 1, 2011), <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=869f6ab2-bfdc-4d49-8c31-3a96e0e327fd>.

<sup>72</sup> *Russia Slams Belarus Sanctions as ‘Counterproductive,’* DEUTSCHE WELLE, (Feb. 1, 2011), <http://www.dw-world.de/dw/article/0,,6424969,00.html>.

<sup>73</sup> Interview with Irina Krasovskaya, President of the We Remember Foundation and witness to the demonstrations at October Square, (Mar. 15, 2011). Two Russian citizens already convicted for their participation in the demonstrations, Artyom Breus and Ivan Gaponov, received only fines after significant pressure from the Russian government.

by international law. After arresting Mr. Bandarenka on December 20, 2010, the government held him incommunicado: He was refused access to his lawyer until March 26, 2011, and he was not permitted to see his wife until April.<sup>74</sup> During this time, the KGB repeatedly harassed Mr. Bandarenka's wife, attempting to coerce her to influence her husband into cooperating with authorities in exchange for a lighter sentence.<sup>75</sup>

During his incommunicado detention, Mr. Bandarenka was detained in the KGB jail commonly referred to as "Amerikanka."<sup>76</sup> Prior to his detention, Mr. Bandarenka already suffered from a myriad of serious medical conditions, such as gastric ulcers and gout, as well as significant spinal conditions, including herniated intervertebral disks, spinal nerve entrapments, and leg paresis.<sup>77</sup> Mr. Bandarenka requested medical assistance in January, but he was denied any treatment for several months, and did not receive any medical help until June 22, 2011.<sup>78</sup> Indeed, when he first asked for medical treatment, the government authorities punished him by sending him to solitary confinement for ten days.<sup>79</sup> Furthermore, the conditions in the jail were deplorable, and only served to exacerbate Mr. Bandarenka's medical conditions: There was no bed, and he was forced to sleep on the floor. There was no toilet in the cell. He was often kept in crowded cells with persons with infectious diseases, such as Hepatitis C.<sup>80</sup> At times he was even restrained within the cell by a chain.<sup>81</sup>

Although there is some indication that authorities were planning to charge Mr. Bandarenka under the same "mass riot" statute as the presidential candidates, the official charges against him were eventually changed to "[o]rganizing group actions that breach public order and that are connected with clear disobedience to lawful demands of representatives of the authorities or that hinder public transport operations or the work of enterprises, institutions or organizations, or taking active part in these actions," under Article 342(1) of the Belarusian Criminal Code.<sup>82</sup>

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<sup>74</sup> *Lawyers cannot visit KGB prisoners for 12 days*, CHARTER '97, (Jan. 10, 2011), <http://charter97.org/en/news/2011/1/10/35109/> [hereinafter *Cannot visit*]; *First letter from KGB jail prisoner Andrei Sannikov received*, CHARTER '97, (Jan. 15, 2011), <http://charter97.org/en/news/2011/1/15/35263/>; *Prosecutor's office sees no problem in preventing lawyers from visiting their clients*, CHARTER '97, (Jan. 15, 2011), <http://charter97.org/en/news/2011/1/15/35257/> [hereinafter *Preventing lawyers*]; *Appeal to International Red Cross to Save Zmitser Bandarenka*, <http://www.freebelarusnow.org/ru/the-news/215-appeal-to-international-red-cross-to-save-zmitser-bandarenka> [hereinafter *Appeal*].

<sup>75</sup> *Zmitser Bandarenka's wife*, *supra* note 51.

<sup>76</sup> *Search at Zmitser Bandarenka's place*, *supra* note 65.

<sup>77</sup> *Zmitser Bandarenka put before a hard choice*, VIASNA, (July 13, 2011), <http://spring96.org/en/news/44555> [hereinafter *Hard choice*].

<sup>78</sup> Marek Migalski: *Zmitser Bandarenka may face disability*, Charter '97, (July 25, 2011), <http://charter97.org/en/news/2011/7/25/40913/> [hereinafter *Zmitser Bandarenka may face disability*]; *Zmitser Bandarenka: "Europe's greed is killing us"*, THE EASTERN CORRESPONDENT, (July 19, 2011), <http://www.korespondent-wschodni.org/en-gb/news/zmitser-bandarenka-europes-greed-killing-us> [hereinafter *Europe's greed is killing us*].

<sup>79</sup> *Zmitser Bandarenka may face disability*, *supra* note 78.

<sup>80</sup> *Europe's greed is killing us*, *supra* note 78.

<sup>81</sup> *Zmitser Bandarenka may face disability*, *supra* note 78.

<sup>82</sup> *Accusation changed*, *supra* note 63.

Mr. Bandarenka was tried on April 26, 2011, over four months after his arrest.<sup>83</sup> The trial occurred in the Pershamaiski district of Minsk, and was presided over by Judge Tatstsyana Ravinskaya.<sup>84</sup> The government permitted a pro-government youth organization, “Belarusian Republican Youth Union,”<sup>85</sup> to occupy the courtroom. During the proceedings, Mr. Bandarenka readily admitted that he was physically present at the rally, and the evidence showed that it was peaceful. He stated that he did not play a “main part,” but was instead merely “standing next to [Mr. Sannikov].”<sup>86</sup> The government’s sole allegation of damage against Mr. Bandarenka was the loss of business suffered by McDonalds, a currency exchange office, and a few other shops on the square that were forced to close during the rally.<sup>87</sup> Of the 13 witnesses interrogated, only one police officer could personally state that he saw anyone who even looked like Mr. Bandarenka at the event.<sup>88</sup> There was, however, a video that showed Mr. Bandarenka standing next to Mr. Sannikov and others chanting, “It’s time to change the bald tire!”, referring to Mr. Lukashenko.<sup>89</sup> Nevertheless, no evidence of violence was presented, and one police officer (Mr. Dubrousky) even went so far as to say that all of the demonstrators acted in a peaceful manner.<sup>90</sup> Another officer (Mr. Babaryka) noted that although the policemen did not use loudspeakers to issue warnings to the demonstrators, the protestors showed self-restraint and did not try to physically break a living chain of traffic officers.<sup>91</sup> Other than his physical presence at the square, no significant proof against Mr. Bandarenka’s part was presented in the court.<sup>92</sup>

The trial lasted only one day.<sup>93</sup> The judge refused to entertain or investigate Mr. Bandarenka’s allegations that his telephone lines and the lines of the opposition candidates’ electoral headquarters had been illegally tapped, and she ignored Mr. Bandarenka’s allegations that his health had significantly deteriorated due to the harsh conditions in the KGB jail.<sup>94</sup> The public prosecutor asked for the maximum term under the statute (three years), and after a short recess, Judge Tatstsyana Ravinskaya announced that she found Mr. Bandarenka guilty and sentenced him to two years in a minimum security colony.<sup>95</sup>

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<sup>83</sup> *Zmitser Bandarenka’s sentence – two years in colony*, EURORADIO.FM, (Apr. 26, 2011), <http://euroradio.fm/en/report/zmitser-bandarenka-stand-trial-today> [hereinafter *Bandarenka’s sentence*].

<sup>84</sup> *Id.*; *Zmitser Bandarenka to stand trial April 26*, CHARTER ’97, (Apr. 20, 2011), <http://charter97.org/en/news/2011/4/20/37890/>.

<sup>85</sup> *Bandarenka’s sentence*, *supra* note 83.

<sup>86</sup> *Id.*

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

<sup>88</sup> *Id.*

<sup>89</sup> *Zmitser Bandarenka sentenced*, *supra* note 59.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

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

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

<sup>94</sup> *Bandarenka’s sentence*, *supra* note 83.

<sup>95</sup> *Id.*

After the trial ended, Mr. Bandarenka was initially held at the detention facility in Valadarski Street and later transferred to the prison hospital due to his worsening medical conditions.<sup>96</sup> Although he suffered from complicated neurological problems, the government denied his request to consult with a neurosurgeon; instead, it gave him the impossible choice of either being sent to the prison colony without treatment or consenting immediately to surgery.<sup>97</sup> Recognizing that he would surely die if he went to the prison colony without any medical intervention, and given that he was unable to even walk at the time, Mr. Bandarenka reluctantly consented to the surgery, which took place in July.<sup>98</sup> Member of the European Parliament Marek Migalski, who took over “godparenthood” for Mr. Bandarenka, noted that “Zmitser Bandarenka has faced a difficult choice. The state of health of Zmitser Bandarenka is very serious[, yet] an unsuccessful operation can lead to disability.”<sup>99</sup> After making the decision, Mr. Bandarenka wrote a letter to his wife: “Everything is in the hands of God.”<sup>100</sup>

The courts refused to revise Mr. Bandarenka’s sentence in light of his medical condition, and on July 15, 2011, the Minsk City Court dismissed a cassation appeal.<sup>101</sup> In the meantime, Mr. Bandarenka’s physical state has continued to worsen, and the government has denied him adequate medical treatment. His wife noted that “[a]ll requests to provide specialised medical assistance of a neurologist to him were futile, both in the KGB jail and here [at Valadarski Street]. Zmitser’s foot is literally hanging immovably. This can result in a wheelchair.”<sup>102</sup> Just two weeks after Mr. Bandarenka’s emergency operation, the government returned him to the prison at Valadarski Street and then transferred him to a penal colony.<sup>103</sup> The final transfer to penal colony No. 15 in Mahilou was done in secret, and none of Mr. Bandarenka’s relatives were informed.<sup>104</sup> Mr. Bandarenka was transported to the penal colony in a stretcher.<sup>105</sup>

Since his transfer, Mr. Bandarenka’s condition has further deteriorated. After the surgery, the government doctors prescribed various ongoing treatments, such as physical exercises while

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<sup>96</sup> *Hard choice*, *supra* note 77.

<sup>97</sup> *Id.*

<sup>98</sup> *Bandarenka’s rehabilitation cut short*, BELSAT, (Oct. 24, 2011), <http://www.belsat.eu/en/wiadomosci/a,5438,bandarenkas-rehabilitation-cut-short.html> [hereinafter *Cut short*].

<sup>99</sup> *Zmitser Bandarenka’s verdict upheld*, CHARTER ’97, (July 15, 2011), <http://charter97.org/en/news/2011/7/15/40625/> [hereinafter *Verdict upheld*].

<sup>100</sup> *Hard choice*, *supra* note 77.

<sup>101</sup> *Verdict upheld*, *supra* note 99.

<sup>102</sup> *Zmitser Bandarenka may become disabled in prison*, FREE BELARUS NOW, <http://freebelarusnow.org/en/the-news/166-zmitser-bandarenka-may-become-disabled-in-prison-> [hereinafter *Bandarenka may become disabled*].

<sup>103</sup> *Red Cross denies aid to Zmitser Bandarenka*, CHARTER ’97, (Sept. 5, 2011), <http://charter97.org/en/news/2011/9/5/42261/> [hereinafter *Red Cross*].

<sup>104</sup> *Zmitser Bandarenka transferred to penal colony*, CHARTER ’97, (Sept. 9, 2011), <http://charter97.org/en/news/2011/9/1/42177/> [hereinafter *Transferred*].

<sup>105</sup> *Zmitser Bandarenka sent from medical unit to colony*, UDF.BY, (Oct. 24, 2011), <http://udf.by/english/politics/48996-zmitser-bandarenka-sent-from-medical-unit-to-colony.html> [hereinafter *Bandarenka sent*].

lying down, leg massages, and magnet therapy.<sup>106</sup> Mr. Bandarenka's wife notes that these were "minimal recommendations," but the government refused to implement them.<sup>107</sup> To the contrary, at the penal colony, the authorities forced Mr. Bandarenka to stand for 16 hours a day, from 6 a.m. to 10 p.m. every day.<sup>108</sup> They also forced him to perform physical activities, such as bending and turning which aggravate his condition. Now, when he moves about, he must use a crutch.<sup>109</sup>

Throughout all of this, the authorities have applied continuous pressure to force him to apply for a "pardon" from Mr. Lukashenko as a condition for his release. Authorities have threatened to remove medical care, place him in a dangerous part of the prison, and even harm his family.<sup>110</sup> As late as October 5, 2011, Mr. Bandarenka wrote that further blood tests have confirmed that he is also suffering from liver problems, and that he will be "lucky" if he stays alive long enough to be released in December of 2012.<sup>111</sup> In spite of his painful condition, Mr. Bandarenka refused to write a letter seeking pardon and expressing "remorse" for his actions, knowing that such a request would undoubtedly be used by the regime for propaganda purposes.<sup>112</sup> Without immediate intervention, there is a high probability that Mr. Bandarenka will be disabled for the rest of his life.

## Analysis

Mr. Bandarenka's arrest, detention, conviction, and sentence were politically motivated and plainly violated international and domestic human rights protections. Belarus ratified the International Covenant on Civil and Political Rights ("ICCPR") on November 12, 1973, and this instrument remains controlling authority.<sup>113</sup> The Belarus Constitution also states that Belarus must conform to recognized international law.<sup>114</sup> Accordingly, Belarus is obligated to uphold international legal standards—including the Universal Declaration of Human Rights ("UDHR") and the Body of Principles for the Protection of Persons under Any Form of Detention or

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<sup>106</sup> *Red Cross*, *supra* note 103.

<sup>107</sup> *Id.*

<sup>108</sup> *Transferred*, *supra* note 104.

<sup>109</sup> *In penal colony Zmitser Bandarenka walks with crutch*, CHARTER '97, (Oct. 25, 2011), <http://www.charter97.org/en/news/2011/10/25/43994/>.

<sup>110</sup> *Health of Zmitser Bandarenka deteriorated*, VIASNA, (Sept. 16, 2011), <http://spring96.org/en/news/45692>.

<sup>111</sup> *Zmitser Bandarenka: "People, defend your leaders!"*, CHARTER '97, (Oct. 5, 2011), <http://charter97.eu/en/news/2011/10/5/43304/>.

<sup>112</sup> *Cut short*, *supra* note 98.

<sup>113</sup> United Nations High Commissioner for Refugees, *Background Information on the Situation in Belarus in the Context of the "Safe Third Country" Concept*, <http://www.unhcr.org/refworld/country,,COUNTRYPOS,BLR,,3ae6b33210,0.html>; United Nations Treaty Collection, Status of International Convention on Civil and Political Rights, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>114</sup> CONST. OF THE REPUBLIC OF BELARUS 1994, art. 8 ("The Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of laws therewith.").

Imprisonment (“Body of Principles”). Belarus’s Constitution further imposes domestic obligations and restrictions on the government to protect human rights.<sup>115</sup>

Given these robust obligations, Belarus’s detention of Mr. Bandarenka is an arbitrary deprivation of liberty,<sup>116</sup> qualifying under both Categories II and III of the cases defined by the Working Group.<sup>117</sup> Indeed, the Working Group has already found that an indistinguishable arrest and detention associated with the December 19 crackdown falls within Categories II and III. In Opinion No. 13/2011 (Belarus), rendered on May 4, 2011, the Working Group held that Mikalai Statkevich, another Belarusian opposition politician arrested for protesting on December 19, had been arbitrarily deprived of his liberty. In Mr. Statkevich’s case, the Working Group observed: “The source points to the link to the election process. When issues of freedom of political expression and assembly come before this Working Group, it undertakes a particularly intensive review as the use of the freedoms in the political process concern the very core of these fundamental freedoms.”<sup>118</sup> Petitioner seeks the same intensive review of Belarus’s arbitrary detention of Mr. Bandarenka, who like Mr. Statkevich was an opposition figure arrested in the same crackdown and tried in a similar show trial for his efforts to advocate democracy and oppose the lack of fairness and transparency in Belarus’s 2010 presidential election.

Mr. Bandarenka’s arbitrary detention, like that of Mr. Statkevich, falls within Category II because it resulted directly from his exercise of his fundamental freedoms. Mr. Bandarenka was detained because of his political activism in supporting opposition presidential candidate Andrei Sannikov, and then in peacefully gathering with other opposition leaders and their supporters to protest the results of an election that failed to meet international standards. As statements by Mr.

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<sup>115</sup> *Id.* art. 2 (“The individual, his rights, freedoms and guarantees to secure them are the supreme value and goal of the society and the State. The State shall assume responsibility before the citizen to create the conditions for free and dignified development of his personality. . . .”).

<sup>116</sup> An arbitrary deprivation of liberty is defined as any deprivation of liberty that is not “on such grounds and in accordance with such procedure as are established by law.” International Convention on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976 [hereinafter ICCPR], at Art. 9(1). Arbitrary detention is expressly prohibited by international law: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” *Id.*; “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at Art. 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . . .” Body of Principles for the Protection of Persons Under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [hereinafter Body of Principles].

<sup>117</sup> A Category II case exists “ [w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” Office of the High Comm’r for Human Rights, United Nations, Revised methods of work of the Working Group, Report of the Working Group on Arbitrary Detention (2010) [hereinafter Revised Methods]. A Category III case exists “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.” *Id.*

<sup>118</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 9.

Lukashenko after the crackdown made clear—“There won’t be any more silly democracy, muddle-headed democracy”—Mr. Bandarenka’s arrest was linked to his efforts to promote democracy as a supporter of the opposition presidential candidate Andrei Sannikov and his public advocacy of democracy in Belarus. Belarus’s detention of Mr. Bandarenka violated his freedoms of thought and expression embodied in Articles 18 and 19 of the ICCPR and UDHR and Article 33 of the Belarusian Constitution. It violated his fundamental freedoms of peaceful assembly and association embodied in Articles 21 and 22 of the ICCPR, Article 20 of the UDHR, and Articles 35 and 36 of the Belarusian Constitution. And, it violated his fundamental right to participate in the political process as protected by Article 25 of the ICCPR, Article 21 of the UDHR, and Articles 37 and 38 of the Belarusian Constitution.

This case also qualifies under Category III because Belarus failed to observe the minimum international standards for a fair trial. Belarus denied Mr. Bandarenka a fair hearing by an independent and impartial tribunal and failed to afford him a presumption of innocence, as required by Articles 14 of the ICCPR, Articles 7, 10, and 11 of the UDHR, Principle 36 of the Body of Principles, and Article 26 of the Belarus Constitution. Moreover, prison authorities have subjected Mr. Bandarenka to extreme conditions in confinement and government authorities have pressured Mr. Bandarenka’s family and withheld vital medical assistance in attempts to extract a confession in violation of his freedom from torture or cruel, inhumane, or degrading punishment and his right to be treated with humanity and dignity as guaranteed by Articles 7 and 10 of the ICCPR, Article 5 of the UDHR, and Principle 6 of the Body of Principles. Finally, the government restricted Mr. Bandarenka’s communications with his family, in violation of Principles 19 and 21 of the Body of Principles.

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

The Belarusian government’s arrest, detention, conviction, and incarceration of Mr. Bandarenka fall within Category II of the cases to be considered by the Working Group. A Category II case exists “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.”<sup>119</sup> Mr. Bandarenka’s arrest, detention, and conviction were arbitrary under Category II because they resulted from his exercise of these fundamental freedoms.

The charges brought against Mr. Bandarenka were brought as a pretext to punish and silence him for his political participation and public activism. Mr. Bandarenka was a well-known political activist who served as campaign coordinator for opposition candidate Andrei

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<sup>119</sup> Revised Methods, *supra* note 117.

Sannikov in the December 2010 presidential election.<sup>120</sup> The official charge against Mr. Bandarenka was based on Article 342(1) of the Belarus Criminal Code, relating to “[o]rganizing group actions that breach public order and that are connected with clear disobedience to lawful demands of representatives of the authorities or that hinder public transport operations or the work of enterprises, institutions or organizations, or taking active part in these actions.”<sup>121</sup> Yet, there is no evidence Mr. Bandarenka organized the rally. Although he was present and took part in some of the chanting, his main role was to “stand[] next to” Mr. Sannikov as his campaign coordinator.<sup>122</sup> Furthermore, the protestors were not violent, and the presidential candidates who were speaking at the event publicly discouraged the crowd from engaging in any violence or destruction.<sup>123</sup> During the demonstration, riot police moved in, under the pretext of responding to an isolated incident in which unknown persons broke the windows of the Government House. The security forces did not stop there—they later arrested over 700 people, including several opposition candidates, peaceful participants, and bystanders.<sup>124</sup> Although Mr. Bandarenka himself was not arrested in the square, officers came to his house early in the morning and placed him under arrest.<sup>125</sup> While most protestors were released or given short or suspended sentences, Mr. Bandarenka and many opposition candidates received harsh and long sentences. The application of this law to opposition politicians and their campaign staffers under these circumstances is a thinly veiled attempt to infringe upon fundamental rights.

The December 19 crackdown on pro-democracy protesters and Mr. Bandarenka’s arrest, detention, and show trial are emblematic of the Belarusian government’s well-documented pattern and practice of suppressing political activists by charging them with crimes as a means to infringe upon their fundamental rights. Human Rights Watch, Amnesty International, the U.S. State Department, and others have all reported that the Belarusian police and security forces routinely arrest and prosecute human rights defenders through the application of charges that carry lengthy prison sentences for the purpose of infringing upon their fundamental rights.<sup>126</sup>

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<sup>120</sup> *Zmitser Bandarenka’s wife*, *supra* note 51.

<sup>121</sup> *Charges against presidential candidates*, CHARTER ’97 (Apr. 25, 2011), <http://charter97.org/en/news/2011/4/25/38009/> (contains a copy of the complete charging document) [hereinafter CHARTER ’97: *Charges*].

<sup>122</sup> *Bandarenka’s sentence*, *supra* note 83.

<sup>123</sup> *See Bogdanova*, *supra* note 60.

<sup>124</sup> HUMAN RIGHTS WATCH, *Shattering Hopes: Post-Election Crackdown in Belarus*, (Mar. 14, 2011), <http://www.hrw.org/en/reports/2011/03/14/shattering-hopes-0>.

<sup>125</sup> *Accusation changed*, *supra* note 63.

<sup>126</sup> *See, e.g.*, AMNESTY INT’L, *Belarus - Amnesty International Report 2010*, <http://www.amnesty.org/en/region/belarus/report-2010>; HUMAN RIGHTS WATCH, *World Report 2011: Belarus*, <http://www.hrw.org/en/world-report-2011/belarus>; U.S. STATE DEP’T: 2010 HUMAN RIGHTS REPORT, *supra* note 29; Phil Bronstein, *Iryna Khalip and the Persecuted in Belarus*, SAN FRANCISCO CHRONICLE, (Jan. 10, 2011), [http://articles.sfgate.com/2011-01-10/opinion/27020313\\_1\\_natalya-kolyada-belarussian-andrei-sannikov](http://articles.sfgate.com/2011-01-10/opinion/27020313_1_natalya-kolyada-belarussian-andrei-sannikov); Tom Parfitt & Nicholas Watt, *Belarus presidential candidate denied lawyers in jail*, GUARDIAN, (Dec. 24, 2010), <http://www.guardian.co.uk/world/2010/dec/23/belarus-election-detainee-denied-lawyers>; *Five presidential candidates among those arrested in Minsk*, RUSSIA & CIS PRESIDENTIAL BULLETIN, (Dec. 23, 2010); *Belarus rounds up opposition*, DAILY PAK BANKER (PAKISTAN), (Dec. 22, 2010); *Crowds clash with police after Belarus poll result*, GLASGOW HERALD, (Dec. 21, 2010); *Belarus rounds up opposition: Arrests follow protests*, INTERNATIONAL HERALD TRIBUNE, (Dec. 21, 2010); *Hundreds arrested in election protests in Belarus*,

Many have condemned the arrest and detention of opposition candidates and supporters as “clearly politically motivated.”<sup>127</sup> The U.K. Foreign Minister recognized that opposition members were arrested for participation in a non-violent “protest against the flawed elections of 19 December,” the results of which are widely acknowledged to have been manipulated.<sup>128</sup> In May, the European Union added judges and prosecutors from these recent trials to a list of Belarusians who are barred from the European Union and whose European assets have been frozen.<sup>129</sup> The Council of the European Union specifically stated that the sanctions were adopted “following the recent sentences on the former presidential candidate Sannikaw [alt. sp.] and on a number of members of the political opposition and civil society.”<sup>130</sup> The public prosecutor at Mr. Bandarenka’s trial, Simanouski Dmitri Valerevich, was specifically sanctioned because “[t]he accusation presented by him has a clear and imminent political motivation and it is a clear violation of the Code of Penal Procedure. It is based on wrong classification of the events of 19th December 2010, not sustained by evidences, proofs and testimonies of witnesses.”<sup>131</sup>

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

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DEUTSCHE WELLE, (Dec. 20, 2010). *The Economist* concluded that the minor provocation justifying the arrests was the work of the President’s own supporters, “who staged provocations on election night, smashing windows in a government building . . . as a pretext for arrests.” *Belarus’s crackdown: Show trials again*, ECONOMIST, (May 12, 2011); *Verdicts against Belarusian opposition presidential candidates*, EUROPEAN PARLIAMENT PRESS RELEASE, (May 26, 2011), [http://www.europarl.europa.eu/president/de-en/press/press\\_release/2011/2011-May/press\\_release-2011-May-33.html;jsessionid=AF842570051956BCEA6A93108E18C96F](http://www.europarl.europa.eu/president/de-en/press/press_release/2011/2011-May/press_release-2011-May-33.html;jsessionid=AF842570051956BCEA6A93108E18C96F); *Written Ministerial Statements for 17 June 2011: Statement of U.K. Foreign Secretary William Hague*, <http://www.publications.parliament.uk/pa/cm/cmtoday/cmwms/archive/110617.htm> [hereinafter *Statement of U.K. Foreign Secretary*]; *Obama slams Belarus sentences, vows sanctions*, ALTERNET, [http://www.alternet.org/rss/breaking\\_news/600279/obama\\_slams\\_belarus\\_\\_sentences,\\_vows\\_sanctions/](http://www.alternet.org/rss/breaking_news/600279/obama_slams_belarus__sentences,_vows_sanctions/) [hereinafter *Obama: Sanctions*].

<sup>127</sup> See *Obama: Sanctions*, supra note 126.

<sup>128</sup> *Written Ministerial Statements for 17 June 2011: Statement of U.K. Foreign Secretary*, supra note 126; U.S. STATE DEP’T, *The Joint US-EU Statement on the Post-Presidential Elections’ Situation in Belarus*, (Dec. 23, 2010), <http://www.state.gov/r/pa/prs/ps/2010/12/153661.htm>; KYIVPOST, *United Nations to Belarus: Release Political Prisoners*, <http://www.kyivpost.com/news/russia/detail/94519/#ixzz1A15Dpjpr> (U.N. Secretary General Ban Ki-moon “noted the serious concerns voiced by observer groups regarding the electoral process and post-electoral developments.”); Jason Motlagh, *Why Belarus’ Dictator Is Not Fond of Applause*, TIME, (July 7, 2011), <http://www.time.com/time/world/article/0,8599,2081858,00.html> (claiming that “Lukashenko clearly hijacked” the 2010 elections); Michael Schwirtz, *Authorities tighten grip on Belarus opposition: European leaders admit soft approach was wrong and threaten sanctions*, INTERNATIONAL HERALD TRIBUNE, (Jan. 13, 2011) (noting that “independent observers said the ballot counting was rigged”).

<sup>129</sup> *Press Statement*, COUNCIL OF THE EUROPEAN UNION, (May 23, 2011), [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/122172.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122172.pdf).

<sup>130</sup> *Id.*

<sup>131</sup> OFFICIAL JOURNAL OF THE EUROPEAN UNION, *Council Implementing Regulation (EU) no 505/2011 of 23 May 2011*, (May 24, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0048:0051:EN:PDF>.

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

The Government's detention of Mr. Bandarenka was arbitrary because it was linked to Mr. Bandarenka's exercise of his freedoms of opinion and of expression under international and domestic law. Article 19 of the ICCPR states that "[e]veryone shall have the right to hold opinions without interference," and "[e]veryone shall have the right to freedom of expression [which includes] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Article 19 of the UDHR similarly establishes that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 33 of the Belarusian Constitution also provides that "[e]veryone is guaranteed freedom of thoughts and beliefs and their free expression," and that "[n]o one may be forced to express his beliefs or to deny them." Mr. Bandarenka relied upon the guarantees provided by these provisions both when he agreed to serve as Mr. Sannikov's campaign coordinator, and when he took part in a peaceful demonstration to protest the results of the fraudulent election. Thus, Mr. Bandarenka's arrest as a result of the demonstration and his lengthy sentence violated his fundamental rights.

On the night of the demonstration, various opposition candidates spoke out against electoral fraud and called on the government for an electoral run-off under existing Belarusian law.<sup>132</sup> The candidates undisputedly discouraged their supporters from using force and did not engage in any violence themselves. Mr. Bandarenka and others in the crowd responded to the speeches by chanting slogans for peaceful democratic change.<sup>133</sup> In response to Mr. Bandarenka's presence at the demonstration and his pro-democracy chanting, state police forces arrested him, later raided his home, and sentenced him to a lengthy prison term.<sup>134</sup> The Belarusian government did this to stifle Mr. Bandarenka's freedoms of opinion and expression, rendering his detention arbitrary. According to the Working Group, such "[p]eaceful expression of opposition to any regime cannot give rise to arbitrary arrest."<sup>135</sup>

Mr. Bandarenka's peaceful political expression does not fall within the limited category of speech that is subject to legal prohibition by the government. The ICCPR recognizes only a narrow circumstance where expression may be curtailed—when the enforced limits on speech are "provided by law" and "necessary" "[f]or respect of the rights or reputations of others" or "[f]or the protection of national security or of public order (ordre public), or of public health or morals."<sup>136</sup> Interpreting this limited exception, the Human Rights Committee—the body tasked

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<sup>132</sup> See AMNESTY INT'L REPORT, *supra* note 58 at 4.

<sup>133</sup> *Zmitser Bandarenka sentenced*, *supra* note 59.

<sup>134</sup> *Search at Zmitser Bandarenka's place*, *supra* note 65; *Zmitser Bandarenka sentenced*, *supra* note 5989.

<sup>135</sup> *James Mawdsley v. Myanmar*, Opinion No. 25/2000, at ¶ 12, E/CN.4/2001/14/Add.1, at 124 (2000).

<sup>136</sup> See ICCPR, *supra* note 116, at art. 19(3)(a)-(b).

with interpreting the ICCPR—has noted that such restrictions must not “put in jeopardy the right itself.”<sup>137</sup>

Although Mr. Lukashenko also referenced ill-defined national security reasons for the December 19 crackdown, the international community has recognized and the evidence has shown that the protests generally, and Mr. Bandarenka’s ideas and expression particularly, did not threaten Belarusian security. Finding the narrow exception here would place the right itself in jeopardy. Indeed, the Government arrested Mr. Bandarenka precisely because he was exercising his peaceful right to freedom of expression. The event was organized as a peaceful demonstration to protest electoral fraud and call for renewed elections. No evidence suggests that Mr. Bandarenka engaged in any violent act or advocated for violence, let alone organized the rally. At the demonstration, the single violent incident that occurred, which was likely the doing of government thugs, took place at the back of the crowd in an isolated area.<sup>138</sup> Mr. Bandarenka was not arrested until early the next morning, at his home, after the rally had been dispersed—a situation suggesting no threat to public order. Even more, eyewitnesses at the demonstration reported that the police stood by watching for a long time while the Government House was damaged, further showing that the violent episode was orchestrated by the government as a pretext to arrest the demonstrators.<sup>139</sup> When the candidates who were still present finally learned of the destruction, they urged the demonstrators to resist the provocation and to ignore the thugs.<sup>140</sup> It was not until after the thugs were dispersed that the candidates and others who remained in peaceful protest were arrested. Of course, Mr. Bandarenka was not among them and was not arrested until many hours later. At trial, the government failed to provide adequate evidence of any rioting, let alone any evidence linking Mr. Bandarenka’s actions to any violence which threatened national security or public order, and as such the restriction on his freedom of expression does not fall within the narrow confines permitted under international law.<sup>141</sup>

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

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

The Government’s detention of Mr. Bandarenka as a result of his peaceful participation in the public demonstration on December 19, 2010, violated his fundamental right to freedom of

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<sup>137</sup> U.N. Human Rights Committee, ICCPR, General Comment No. 10, Article 19: Freedom of expression, ¶ 4, (June 29, 1983).

<sup>138</sup> See AMNESTY INT’L REPORT, *supra* note 58, at 4.

<sup>139</sup> *Id.*

<sup>140</sup> *Sannikov’s trial continues*, BELSAT, (May 10, 2011), <http://www.belsat.eu/en/wiadomosci/a,2789,sannikovs-trial-continues.html>.

<sup>141</sup> See *Zmitser Bandarenka sentenced*, *supra* note 5989.

assembly, established in Article 21 of the ICCPR and Article 20(1) of the UDHR.<sup>142</sup> Article 35 of the Belarusian Constitution further protects this fundamental right: “The freedom to hold assemblies, meetings, street marches, demonstrations and pickets that do not disturb law and order or violate the rights of other citizens of the Republic of Belarus, shall be guaranteed by the State.”

Mr. Bandarenka’s conviction under Article 342(1) of the Belarusian Criminal Code directly contravened these laws. The sole purpose of the demonstration was for opposition groups to assemble peaceably and protest the election results.<sup>143</sup> Such participation in a political demonstration should have been protected, not punished, under Belarusian law.

Mr. Bandarenka’s presence at the peaceful December 19 demonstration did not fall within the narrow confines of permitted limitations on the fundamental right to freedom of assembly. Article 21 of the ICCPR recognizes that restrictions may be placed on the right to freedom of assembly, only as long as they are “in conformity with the law.”<sup>144</sup> The few permitted justifications include only those “necessary in a *democratic* society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>145</sup> For the same reasons set out above in relation to freedom of expression, Mr. Bandarenka’s exercise of his freedom of assembly threatened none of these interests. On the contrary, his arrest was due to his promotion of the very “democratic” society promoted by the ICCPR. As the OSCE Committee of International Control over the Human Rights Situation in Belarus concluded, the demonstration on December 19 was not a mass social unrest.<sup>146</sup> The opposition candidates present during the rally urged demonstrators not to respond to the provocation carried out by the government thugs. Mr. Bandarenka’s detention and two-year sentence is therefore in direct violation of international and domestic law, qualifying his case as arbitrary under Category II.<sup>147</sup>

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

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

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<sup>142</sup> “The right of peaceful assembly shall be recognized.” ICCPR, *supra* note 116, at Art. 21. *See also* UDHR, *supra* note 116, at Art. 20(1) (“Everyone has the right to freedom of peaceful assembly and association.”).

<sup>143</sup> Save for the provocation by a group of men in masks, widely believed to have been staged by the government and publicly rejected by the speakers at the rally, the demonstration on December 19 was completely peaceful.

<sup>144</sup> ICCPR, *supra* note 116, at Art. 21.

<sup>145</sup> *Id.* (emphasis added).

<sup>146</sup> OSCE ELECTION REPORT, *supra* note 23, at 1-3, 22-24.

<sup>147</sup> *See, e.g., In re Birtukan Mideksa Deme*, Op. No. 28/2009 (Ethiopia), at ¶¶ 14, 34 (finding that Ethiopia’s detention of Ms. Birtukan Mideksa Deme because of her status as a prominent political figure was an arbitrary deprivation of liberty in violation of her rights to freedom of assembly and association).

enshrined in Article 22 of the ICCPR and Article 20 of the UDHR.<sup>148</sup> Article 36 of the Belarusian Constitution similarly guarantees that “[e]veryone shall be entitled to freedom of association.”

Mr. Bandarenka’s conviction under Article 342(1) of the Belarusian Criminal Code again directly contravened these laws. The sole purpose of the demonstration was for opposition groups to gather and associate with other opposition candidates and their supporters in peaceful protest. The peaceful nature of this association should have been protected under international and domestic law.<sup>149</sup> Again, Mr. Bandarenka’s association with other politicians and their supporters does not qualify within the narrow confines of permitted limitations on freedom of association under international law, which are similar to those restrictions permissible on freedom of assembly and expression. Article 22 of the ICCPR recognizes that restrictions may be placed on the right to freedom of association, as “prescribed by law” and “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”<sup>150</sup> As noted above, Mr. Bandarenka’s exercise of his freedom of association threatened none of these interests, and the government has been consistently unable to link Mr. Bandarenka to any violence whatsoever. Mr. Bandarenka’s detention is therefore in direct violation of international and domestic law, qualifying his case as arbitrary under Category II.

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

Mr. Bandarenka’s participation in opposition political activity and support of opposition candidate Andrei Sannikov fall squarely within the right protected by international law and the Belarusian Constitution. The right to take part in the conduct of public affairs is protected by Article 25 of the ICCPR and Article 21 of the UDHR.<sup>151</sup> Furthermore, Article 37 of the Belarusian Constitution provides that every Belarusian citizen “shall have the right to participate in settlement of state affairs, both directly and through freely elected representatives,” and Article 38 of the Belarusian Constitution states that Belarusian citizens “shall have the right to vote freely and to be elected to state bodies on the basis of universal, equal, direct or indirect suffrage by secret ballot.”

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<sup>148</sup> “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” ICCPR, *supra* note 116, at Art. 22(1). “Everyone has the right to freedom of peaceful assembly and association.” UDHR, *supra* note 116, at Art. 20(1).

<sup>149</sup> See OSCE ELECTION REPORT, *supra* note 23, at 1-3, 22-24.

<sup>150</sup> ICCPR, *supra* note 116, at Art. 22(2).

<sup>151</sup> “Every citizen shall have the right and the opportunity, without [discrimination] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives [and]; (b) To vote and be elected at genuine periodic elections . . .” ICCPR, *supra* note 116, at Art. 25. “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” UDHR, *supra* note 116, at Art. 21(1).

The government detained Mr. Bandarenka because he exercised his right to engage in the political process. He was the campaign coordinator for Mr. Sannikov in the 2010 election, which was widely regarded as fraudulent by independent observers. For Mr. Bandarenka's political activity, the government harassed, arrested, and ultimately sentenced him to two years in prison. Thus, Mr. Bandarenka'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 with Mr. Statkevich, who was tried for his participation in the same demonstration, the "link to the election process" is self-evident, and the Working Group should undertake "a particularly intensive review."<sup>152</sup>

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

Mr. Bandarenka's case also qualifies as a Category III arbitrary detention under the standards set forth by the Working Group. The Working Group considers a deprivation of liberty to be a Category III arbitrary detention "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."<sup>153</sup> Additionally, the Working Group relies on the Body of Principles as a key source of inviolable norms.<sup>154</sup> Because the trial and detention of Mr. Bandarenka failed to observe the minimum international norms relating to a fair trial, as contained in the ICCPR, the UDHR, and the Body of Principles, his sentence and detention are arbitrary under Category III.

### **a. The Government Denied Mr. Bandarenka a Trial before an Independent Court.**

Mr. Bandarenka did not receive a fair trial before an impartial judiciary. Article 14(1) of the ICCPR and Article 10 of the UDHR guarantee the right "to a fair and public hearing by a competent, independent and impartial tribunal."<sup>155</sup> Article 14(2) of the ICCPR and Article 11 of the UDHR also protect the right to be "presumed innocent until proved guilty."<sup>156</sup> The Body of Principles similarly provides that individuals "shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all of the guarantees necessary for his defense."<sup>157</sup> Furthermore, Article 60 of the Belarusian Constitution

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<sup>152</sup> *In re M. Statkevich*, Op. No. 13/2011 (Belarus), at ¶ 9.

<sup>153</sup> Fact Sheet No. 26, *supra* note 117, at part IV(B).

<sup>154</sup> *Id.*

<sup>155</sup> UDHR, *supra* note 116, at Art. 10 ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.").

<sup>156</sup> U.N. Human Rights Committee, ICCPR, Article 14(2) ("Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."); UDHR, *supra* note 116, at Art. 11(1) ("Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.").

<sup>157</sup> Body of Principles, *supra* note 116, at Principle 36(1).

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. Bandarenka’s right to a trial before an impartial judiciary, resulting in the exclusion of relevant evidence and the failure to hold the prosecution to its burden of proof. The Human Rights Committee has explained that “[t]he notion of a ‘tribunal’ in article 14, paragraph 1, designates a body . . . [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.”<sup>158</sup> The international community has long expressed concerns about Belarus’s executive branch’s exercise of excessive control over the legal system. Although the Belarusian Constitution and international law call for an independent judiciary, Mr. Lukashenko and his appointees do not respect judicial independence in practice.<sup>159</sup> As was set out in Part IV(A)(2) above, reports from both the United States State Department and the United Nations Special Rapporteur on the Situation of Human Rights in Belarus indicate that the Belarusian judiciary is completely subservient to Mr. Lukashenko, and that courts are often used as political tools to enforce the will of the executive branch.<sup>160</sup> Moreover, in his February 2001 report on “Civil and Political Rights, including questions of: Independence of the Judiciary, Administration of Justice, Impunity,” the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato’ Param Cumaraswamy, concluded that Belarus targeted advocates for human rights related work.<sup>161</sup>

The proceedings and sentence in Mr. Bandarenka’s case bespeak the court’s lack of impartiality. At trial, no evidence was presented linking Mr. Bandarenka to the single isolated incident of violence.<sup>162</sup> Further, the trial lasted only one day, the courtroom was filled with government supporters, and the court ignored Mr. Bandarenka’s allegations of mistreatment and rights violations on the part of the authorities.<sup>163</sup> Nevertheless, Judge Tatstsyana Ravinskaya of the Pershamaiski District Court of Minsk found Mr. Bandarenka guilty and sentenced him to two years in a penal colony.<sup>164</sup>

#### **b. The Government Denied Mr. Bandarenka the Presumption of Innocence.**

The government also infringed Mr. Bandarenka’s presumption of innocence. The right to the presumption of innocence, “which is fundamental to the protection of human rights,” ensures that the defendant is given the “benefit of doubt” and that “all public authorities [] refrain from

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<sup>158</sup> U.N. Human Rights Committee, ICCPR, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, ¶ 18, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007) [hereinafter General Comment 32].

<sup>159</sup> See U.S. STATE DEP’T: 2010 HUMAN RIGHTS REPORT, *supra* note 29.

<sup>160</sup> *Id.*; see also Special Rapporteur Reports, *supra* note 4242.

<sup>161</sup> Special Rapporteur on the Independence of Judges and Lawyers, *Report to the Economic and Social Council*, E/CN.4/2001/65/Add.1, (Feb. 8, 2001) (by Dato’ Param Cumaraswamy).

<sup>162</sup> *Zmitser Bandarenka sentenced*, *supra* note 59.

<sup>163</sup> *Id.*; *Bandarenka’s sentence*, *supra* note 83.

<sup>164</sup> *Bandarenka’s sentence*, *supra* note 83.

prejudging the outcome of a trial.”<sup>165</sup> The Working Group has recognized that this includes an obligation of the State party to “abstain[] from making public statements affirming the guilt of the accused.”<sup>166</sup> In *Gridin v. Russian Federation*, the Working Group found that “public statements made by high ranking law enforcement officials portraying the author as guilty which were given wide media coverage” violated the authors right to the presumption of innocence. In this case, Belarusian government officials publicly preordained Mr. Bandarenka’s guilt. Mr. Lukashenko assigned guilt before trial when he declared that the crackdown was a response to revolution. Echoing Mr. Lukashenko, in early January 2011, Belarusian state media aired a television special entitled “The Square: Metal Against Glass,” which 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.<sup>167</sup> In light of the documented lack of independence of the judiciary in Belarus and the government’s public statements, Mr. Bandarenka did not benefit from the presumption of innocence to which he was entitled.

As expected, despite the dearth of evidence, the court convicted Mr. Bandarenka and sentenced him to two years in a penal colony. Mr. Bandarenka’s sentence and his imprisonment were unusually long, considering that most demonstrators were released or given suspended sentences.<sup>168</sup> 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.

The failure of the Belarusian authorities to provide Mr. Bandarenka with a fair trial before an independent judiciary violates Articles 9(1), 14(1), and 14(2) of the ICCPR, Articles 10 and 11 of the UDHR, Principles 10, 15, 17, 18, and 19 of the Body of Principles, and Articles 60 and 115 of the Belarusian Constitution. His case thus qualifies as an arbitrary detention under Category III.

### **c. The Government Denied Mr. Bandarenka Access to Legal Counsel.**

The government denied Mr. Bandarenka the right to consult an attorney. Article 14(3)(b) of the ICCPR unequivocally establishes the right to prepare a defense and to legal counsel of one’s own choosing.<sup>169</sup> Principles 17 and 18 of the Body of Principles similarly ensure the right

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<sup>165</sup> General Comment 32, *supra* note 158, at ¶ 30.

<sup>166</sup> *Id.*

<sup>167</sup> AMNESTY INT’L REPORT, *supra* note 58, at 11.

<sup>168</sup> See OSCE ELECTION REPORT, *supra* note 23, at 1

<sup>169</sup> “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . [t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.” ICCPR, *supra* note 116, at Art. 14(3)(b). See *id.* at Art. 14(3)(d) (“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to

to counsel and to prepare a defense.<sup>170</sup> The Body of Principles further elaborates that “a detained or imprisoned person shall be entitled to communicate and consult with legal counsel.”<sup>171</sup> Principle 15 establishes that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.” The Working Group has also previously held that the right to engage a lawyer of one’s choosing is essential, and that a violation of this right casts doubt on the fairness of the entire trial.<sup>172</sup>

In this case, Belarus denied Mr. Bandarenka the right to properly prepare his defense. Mr. Bandarenka was held incommunicado and denied access to and communication with his lawyer until March 26, 2011, over three months after his initial arrest.<sup>173</sup> The government’s denial of Mr. Bandarenka’s right to access counsel thus violated Article 14 of the ICCPR and Principles 17 and 18 of the Body of Principles. Thus, Mr. Bandarenka’s case qualifies as a Category III arbitrary detention.

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

Throughout the ordeal that began after the protests on December 19, 2010, the government subjected Mr. Bandarenka to emotional and physical abuse in violation of well-established international legal norms.<sup>174</sup> The ICCPR requires that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and that defendants cannot be “compelled to confess guilt.”<sup>175</sup> As defined in the Body of Principles, “[t]he term ‘cruel,

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have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”)

<sup>170</sup> “A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” Body of Principles, *supra* note 116, at Principle 17(1). “A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.” *Id.* at Principle 18(1). “A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.” *Id.* at Principle 18(2).

<sup>171</sup> Body of Principles, *supra* note 116, at Principle 18(1).

<sup>172</sup> See, e.g., *Makhbuba Kasymova v. Uzbekistan*, Opinion No. 32/2000, at ¶¶ 8 & 11, E/CN.4/2002/77/Add.1 at 10.

<sup>173</sup> *Preventing lawyers*, *supra* note 74; *Cannot visit*, *supra* note 74; *Appeal*, *supra* note 75.

<sup>174</sup> The Working Group 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.” Communication 16/2008.

<sup>175</sup> ICCPR, *supra* note 116, at Arts. 7, 14(f); see also UDHR, *supra* note 116, at Art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”); Body of Principles, *supra* note 116, at Principle 6 (“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental . . . .”<sup>176</sup>

After the protests on December 19, 2011, officers appeared in the early morning at Mr. Bandarenka’s home to arrest him.<sup>177</sup> Mr. Bandarenka was escorted to a KGB jail where he was questioned by the authorities, who tried to get him to confess.<sup>178</sup> The government subsequently held him incommunicado for months and denied access to counsel.<sup>179</sup> KGB officers also repeatedly harassed Mr. Bandarenka’s wife in vain attempts to get her on their side so that she would exert influence over her husband when they eventually let her visit him.<sup>180</sup> In spite of Mr. Bandarenka’s severe medical conditions, the government held him in incredibly harsh conditions that exacerbated his ailments, as explained in Part IV(B)(4) above: He was given no bed and was forced to sleep on the floor in spite of his spinal problems.<sup>181</sup> He was refused access to a toilet.<sup>182</sup> He was often kept in crowded cells with prisoners infected with deadly, communicable diseases.<sup>183</sup> At times, he was even chained to the wall in his cell.<sup>184</sup> When he asked for medical help, he was placed in solitary confinement.<sup>185</sup> He was thereafter denied medical help for months on end.<sup>186</sup> When he finally did receive help, it was in the form of a mandatory surgery without expert consultation.<sup>187</sup> After that surgery, he was almost immediately (and secretly) moved to a penal colony on a stretcher, where he was not given the prescribed follow-up treatment, and was forced to be on his feet for sixteen hours a day, contrary to the doctor’s orders.<sup>188</sup> In the face of such treatment, Mr. Bandarenka’s health has consistently deteriorated, and his wife fears that if his situation is not changed soon, he will be permanently disabled.<sup>189</sup>

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

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<sup>176</sup> Body of Principles, *supra* note 116, Principle 6 n.1.

<sup>177</sup> *Accusation changed*, *supra* note 63.

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

<sup>179</sup> *Preventing lawyers*, *supra* note 74; *Cannot visit*, *supra* note 74.

<sup>180</sup> *Zmitser Bandarenka’s wife*, *supra* note 51.

<sup>181</sup> *Europe’s greed is killing us*, *supra* note 78.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Zmitser Bandarenka may face disability*, *supra* note 78.

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

<sup>186</sup> *Id.*; *Europe’s greed is killing us*, *supra* note 78

<sup>187</sup> *Hard choice*, *supra* note 77.

<sup>188</sup> *Transferred*, *supra* note 104; *Bandarenka sent*, *supra* note 105; *Red Cross*, *supra* note 103.

<sup>189</sup> *Bandarenka may become disabled*, *supra* note 102.

**e. The Government Denied Mr. Bandarenka the Right to Correspond with Family.**

The Government also denied Mr. Bandarenka access to his family before and after his conviction. Principle 19 of the Body of Principles provides that “[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.” After Mr. Bandarenka was transported to the KGB prison, he was held incommunicado for months on end.<sup>190</sup> Mr. Bandarenka’s detention, therefore, violates Principles 19 and 21 of the Body of Principles, and his case is a Category III detention, in accordance with the standards of the Working Group.

**Request for Relief**

Based on the foregoing, Petitioner respectfully requests that the Working Group conclude that Belarus’s detention of Zmister Bandarenka constituted an arbitrary deprivation of liberty within Categories II and III of the cases identified by the Working Group.

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

Petitioner files this Petition after Mr. Bandarenka exhausted all internal domestic remedies available to him. Mr. Bandarenka was convicted on April 27, 2011. Mr. Bandarenka immediately appealed his sentence, but it was upheld by the Minsk City Court on July 15, 2011. Mr. Bandarenka currently remains in detention at the Mahilyou penal colony.

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<sup>190</sup> *Cannot visit, supra* note 74.

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

This petition is submitted by the following:

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