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BELARUS:

Corridor of Truncheons

How popular demonstrations are met with massive police violence and denial of justice

OMCT
SOS-Torture Network



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EXECUTIVE SUMMARY

Our methodology: This study is built on primary evidence collected through a unique methodology called ‘public investigation’, a technique used in adverse environments to build legal support and ensure legally solid documentation of torture. It includes the collection and testing of a wide range of information, testimonies, public records and collection of other, including medical evidence. These were collected in a series of onsite investigations, following the presidential election in Belarus in August 2020.

The mission took place in answer to an invitation to the Russian non-governmental organisation “Committee Against Torture” from the Legal Initiative, a human rights organisation based in Belarus, to join the International Committee for Investigation of Torture in Belarus, a coalition of civil society actors seeking to document allegations of post-election torture of peaceful protesters and to support efforts to ensure victim rights and legal accountability. As part of this joint mission with the OMCT, 13 cases representative of the some 200 initial complaints at the time of the mission were selected for in-depth investigation. The objective of this approach is to support the right of the victims to legal remedy and reparation. It also allows to identify, through a first sample of cases, systemic failures in carrying out investigations into allegations of torture and providing remedies. Four of these 13 select cases concern torture and ill-treatment during or after arrest, five concern torture and ill-treatment at district police stations, and four cases involve torture and ill-treatment at the Okrestina detention Facility. Twelve cases concern events in Minsk, while one case occurred in Vitebsk. Although it is not material for the responsibility for the crime of torture, we note that most torture victims who are part of these 13 cases denied participation in any protest action at the time of their arrest. In most instances, this was firmly corroborated by other evidence collected during our inquiry.

Our 10 findings: Based on our analysis of these cases we can identify the following 10 patterns of torture and ill-treatment committed by law enforcement officials in Belarus between August 9 and 13, 2020, and a systematic frustration of legal remedies and effective investigations.

1. **Right to Protest:** The August 9-13 protests are qualified domestically as «illegal mass events» whose participants were supposedly breaking the law. The country’s law then allows the Ministry of Interior agencies to suppress administrative offences. Thus, “participation in unauthorised mass events» was the most common ground for initial arrests and subsequent administrative charges faced by citizens in

Belarus. This disregards applicable international standards that guarantee the right to peaceful assembly, including spontaneous gatherings in response to social or political events.¹ This illegal practice remains today a deterrent and a threat of reprisals for victims of torture seeking legal relief.

2. Summary Trials of people facing administrative liability for participation in «illegal mass events» were accompanied by serious violations of fair trial rights, such as the right to defense. Most ‘judicial proceedings’ between August 10-14, 2020, were formalistic, «conveyor-belt» trials in which no evidence was examined, and no attempts were made by the judges to really understand the circumstances of the cases or the lawfulness of the protest. In addition, in a good number of cases, evidence such as CCTV footage, witness testimony and mobile network operators’ data on phone location was available to prove that the defendant was not involved in a protest they were charged with. Such information was not collected and discarded.

3. Disproportionate force: The overall nature of the protests is admirably peaceful and does not justify the violent response by law enforcement. To the extent that there were isolated incidents of violence (some videos shared by mass media show episodes of violent confrontation between law enforcement agents and protesters), there are serious concerns about the appropriateness, proportionality and choice of means and methods employed by the State authorities, which require an investigation and further scrutiny. A close review of all arrests in this study shows that law enforcement agents disregarded the principles of proportionality and necessity of the use of violence in apprehending citizens, whether the actual participants in peaceful protests or random bystanders. Law enforcement agents consistently used force against detainees who were already under arrest and did not pose any danger or offer any resistance. This is evidenced by the most common types of injuries sustained by detainees as well as by credible victims’ and witnesses’ accounts of police violence, including about the time, place, methods and tools used.

4. Intentional abuse (of power) and torture: The review of our cases shows that they constitute an intentional infliction of harm by State agents with the purpose to intimidate and punish, and of an intensity that qualifies them as torture and cruel, inhuman or degrading treatment as defined under international law. The unwarranted use of force by police was intended to intimidate, humiliate and punish protesters – whether real or perceived – and «teach them a lesson». This abuse was not random but followed common patterns and structures. All types of violence perpetrated

1 See Section 7.3 of this Report for details

ed against detainees, such as beating them in prisoner transport vehicles, forcing them to walk through «truncheon corridors» and subjecting them to ill-treatment at district police stations and detention facilities, contravene the Law of July 17, 2007, No. 263-3 on the Internal Affairs Bodies of the Republic of Belarus, in particular its provisions concerning the grounds for the use of force and crowd control equipment, and should therefore be qualified as abuse of authority, but also as torture and ill-treatment.

5. Ill-treatment in detention: Law enforcement officials consistently subjected detainees to a series of cruel and degrading treatment from arrest to the end of detention, such as:

- forcing them to stay for long periods in uncomfortable positions;
- depriving them of water, food, sleep and access to toilet;
- transporting them in overcrowded vehicles;
- cramming them in overcrowded exercise yards and cells in detention facilities;
- being rude, making threats and offensive remarks.

While some of the above practices were perhaps caused by the unprecedented number of detainees, this fact does not justify the extremely contemptuous attitudes towards detainees and treating them in a way which was cruel, inhuman and degrading. The treatment in transport and upon arrival, including the beatings, also shows the intentional infliction of harm, and constitutes in its combined effect torture as defined under international law.

6. Sexual abuse: Some law enforcement officials sexually abused detainees, which included rape and sexual assault or threats to commit such acts. These threats were not only verbal but were accompanied by actions such as tearing up the victims' clothes. It is not possible to even roughly estimate the number of such incidents, in particular due to the specific nature and high latency of this type of abuse. However, its occurrence is more than just 'occasional', and should be further investigated also under the absolute prohibition of torture.

7. Access to medical assistance: Law enforcement officials consistently denied detainees access to medical assistance, both by failing to engage in-house medics where available in helping the detainees who required medical attention and by limiting access to detention facilities for ambulance teams. Ambulances were usually called only for those detainees who experienced particularly serious emergencies – but not for everyone who needed medical attention.

8. Scale of torture: Human rights violations occurred between August 9-13, 2020, on a widespread and systematic scale. According to the official Minis-

try of Interior data^{2,3,4,5}, a total of some 7000 people were arrested for participation in unauthorized rallies on August 9-13. According to the Belarus Investigative Committee's report, as of August 17, 2020, "more than 600 citizens complained about torture and ill-treatment, including injuries they suffered during their arrest, and about 100 people reported having been injured while in detention"⁶. According to the human rights organisation Viasna^{7,8} there are at least 500 documented cases of police violence and torture that took place in August 2020. On September 9, 2020, Vitaly Kapilevich, chief of the Leninsky District Police, said at a meeting with the district residents that "more than 1800 reports alleging bodily injuries have been filed with the Investigative Committee as of today"⁹. Based on the available information, we find it reasonable to assume that at least 1000 to 1500 citizens were affected by violence including torture by law enforcement agents between August 9-13, 2020, and that the number of victims will be much higher if we include, as a separate violation, inhuman detention conditions at the Okrestina Facility and other places of detention. While not being the focus of this report, torture has been used widespread and systematic.

9. Zero accountability: as this report shows, there has been neither any recognition that torture took place, nor accountability, nor any form of support for victims. The authorities are using a series of administrative practices and techniques with the effect to practically delay, deceive and frustrate any effective independent investigation and the right of victims to remedy and reparation, including rehabilitation. These practices suggest an unwillingness on the part of the authorities to treat torture allegations. This is underlined by the ongoing criminalization of human rights defenders, the disbarment and threats to lawyers, and active threats and reprisals to victims seeking to pursue legal cases.

10. International accountability mechanism: Taken the lack of willingness to secure victim' rights and to conduct independent, prompt and effective investigations into torture and other forms of police violence, there is no alternative to an international body can independently investigate the large-scale violations of human rights in Belarus.

2 <https://t.me/pressmvd/1890>

3 <https://t.me/pressmvd/1892>

4 <https://t.me/pressmvd/1895>

5 <https://t.me/pressmvd/1905>

6 <https://t.me/skgovby/2945>

7 <https://spring96.org/ru/news/99226>

8 <http://spring96.org/ru/news/99334>

9 <https://news.tut.by/society/700109.html>

INTRODUCTION: OBJECTIVES & METHODOLOGY

On 16 August 2020, the Russian non-governmental organisation “Committee Against Torture” received an invitation from the Legal Initiative, a human rights organisation based in Belarus, to join jointly with the World Organisation Against Torture (OMCT) the International Committee for Investigation of Torture in Belarus. This invitation followed the 9-13 August 2020 events in Belarus which involved massive use of violence by law enforcement officials against peaceful civilians. Other members of the International Committee include the Legal Initiative, Zvyano, Human Constanta, and other human rights groups based in Belarus and in other countries.¹ Similarly, the OMCT had received credible information suggesting the systematic and widespread use of torture in the days following the election.

The Russian Committee Against Torture, a member of the global SOS Torture Network of the OMCT, is an inter-regional (subnational) non-governmental organisation with expertise in conducting citizens’ inquiries into complaints of torture and other types of cruel and degrading treatment (public investigations). Our method consists of independently collecting and testing evidence of torture and other forms of ill-treatment and providing legal support to victims during official investigations of their complaints.

In addition to this, our organisation has longstanding experience of field missions as part of Joint Mobile Groups formed in response to allegations of torture and other serious human rights violations. This type of mission involves a group of human rights defenders travelling to the scene of alleged massive human rights violations (usually outside of the area where the group’s members are normally based) to promptly collect evidence and ensure follow-up legal assistance to the victims. Such missions can be either short-term (one to two weeks) or long-term, such as a Joint Mobile Group set up by the Committee Against Torture to work in Chechnya for several years.

Before August 2020, this format of human rights work had only been used in Russia.

This time, the organisation’s leaders and the OMCT decided to send a group of three people to the Republic of Belarus on a citizens’ inquiry mission in response to complaints of massive police violence which took place between August 9 and 13, 2020.

1 <http://torture.tilda.ws/>

The inquiry group had the following objectives:

- to collect and review first-hand information on the use of violence and allegations of torture;
- to select testimonies which could best characterise the most common patterns of abuse;
- to gather evidence in the selected cases;
- to provide legal support in the selected cases;
- to assess the authorities' response to reports of illegal violence.

The initial assumption was that the above objectives could be completed within two weeks. However, it became clear during the implementation that the allocated time was far too short due to a number of factors. Thus, the entire duration of the group's mission in the Republic of Belarus was extended to almost three months (from August 22 to November 12, 2020).

CONTEXT OF THIS REPORT (DESCRIPTION OF THE SITUATION)

To make it clear from the start, it was not the mission's purpose to examine the actual protests in Belarus. However, it would have been impossible to investigate the events taking place in the country (including the massive use of violence and ill-treatment by law enforcement officials in August 2020) without learning more about the protests per se.

It should be noted that all presidential election campaigns in Belarus have been marked by increased protest activity such as mass street action – and each time, arbitrary arrests and disproportionate use of force by police breaking up the protests have been reported.

However, the scale, duration and intensity of the protests that started in the summer of 2020 and continue to this day (as of December 31, 2020) are unprecedented.

Arguably, a major contributing factor to protest intensity was an equally massive – an equally unprecedented – law enforcement violence in August 2020. The use of torture and ill-treatment became an integral and central part of the suppression of the right to protest.

The rise in protest activity was first observed during the summer 2020 presidential campaign, while arrests and violent suppression of protesters (alongside random people who were not part of the street actions) continued during the entire run-up period to the presidential elections on August 9, 2020.

However, the main events of international resonance, which were marked by massive and disproportionate use of force by law enforcement officials, soon followed by alarming news of torture and ill-treatment, occurred from August 9 to 13.

Further increase in protest activity, with further police violence and arrests, have continued after 13 August 2020.² The dynamics of this process, which goes on to this day (as of December 31, 2020), merits a separate study.

The events of August 9-13, 2020, stand out in terms of the scale of police violence, including torture, which was unprecedented at that time.³

From the outset, we decided that the Committee Against Torture's and OMCT's fact-finding group would focus exclusively on cases which occurred between August 9 and 13, 2020.

² <https://drive.google.com/file/d/1SNKbex93cWSocrXInQS9JUXf2tGMKDmX/view>

³ See Section 5 of this Report for details

SELECTION OF LEAD TORTURE CASES FOR 'PUBLIC INVESTIGATION'

At the initial stage of the inquiry, the fact-finding group received primary information from our colleagues at the International Committee for Investigation of Torture in Belarus and the Viasna Human Rights Centre on more than 200 complaints of violence. Further on, we obtained information on 28 more victims from the lawyers with whom we engaged in the field.

Our analysis of this information allowed us to categorise all cases into three broad groups, based on the circumstances and location of the alleged excessive use of force by police and security officials.

The first category includes cases which involved violence during or immediately following the arrest, during transportation in police vehicles (“special transport”) to local police stations or places of detention, as well as cases in which the victims were affected by crowd control devices and equipment (flash grenades, firearms, etc.) used by law enforcement officials to disperse protesters.

As a disclaimer, none of the cases referred to us involved persons affected by the use of crowd control weapons during the street protests. There is a reason for their absence.

Even before the group started its work in Minsk, the Belarus Ministry of Interior and Investigative Committee had reported a number of criminal cases initiated into what was described as riots and alleged violent attacks against law enforcement officials. The Belarus authorities invoked the urgency of suppressing riots to justify the use of crowd control equipment and weapons.

However, not a single criminal case was opened into the disproportionate use of force by law enforcement officials.

Not unexpectedly, even those victims who had at first reported the police violence and were prepared to press charges eventually refused our assistance, because they were afraid – not without reason – to be themselves prosecuted for attacking officials.

The second category of victims includes those subjected to violence or cruel and degrading treatment at district police stations (RUVd).

The third category includes people who suffered from abuse and inadequate conditions in places of detention. The largest number of cases available to us in this category concern victims of ill-treatment at the Centre for Isolation of Offenders and the Temporary Detention Centre, both located at 1st Okrestina Lane in Minsk and referred to collectively as the Okrestina Detention Facility, which has acquired a grim reputation both in the public mind and in the information space.

It is important to note that the Okrestina Facility is certainly not the only place of detention whose detainees have complained about inadequate conditions. However, complaints of torture and ill-treatment at the Okrestina Facility, including abuse during transportation to the place, are the most numerous of those available to us.

It is also worth noting that our classification of all cases into these three categories is not clear-cut, because many victims suffered torture and ill-treatment during arrest, at police stations and in detention facilities and thus technically fall under all three categories. In such cases, we assigned them to a category based on where and at which stage of their ordeal the ill-treatment was particularly serious and intense.

The lawyers of the Committee Against Torture first started working on ten cases, and added three cases later. There had been four more cases, in which the applicants at some point refused to cooperate with us for various reasons.

Thus, by the end of the group's mission in Belarus, we had collected evidence in 13 cases.

CASE DESCRIPTIONS OF OUR APPLICANTS

Four of the 13 cases concern torture and violence during or after arrest, five concern torture and ill-treatment at district police stations, and four cases involve violence and ill-treatment at the Okrestina Facility.

Twelve cases concern events which occurred in Minsk, while one case occurred in Vitebsk.

Most applicants denied participation in any protest action at the time of the arrest, which was in most cases corroborated by other evidence collected during our inquiry.

Case summaries:

1

A man, born in 1990, arrested on August 9 in Vitebsk. He had been driving his car around the city, blocking the movement of buses that carried police officers to locations where they arrested protesters.

He was stopped by traffic police officers who handed him over to the police riding in one of the buses the man had blocked. The applicant was immediately assaulted, punched, kicked and beaten with truncheons. He had his injuries documented.

He faced administrative charges for refusing to comply with a police officer's orders.

2

A man, arrested on August 11, 2020, in Minsk at the intersection of Masherov Avenue and Pobediteley Avenue. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time. Following his arrest, the man was put in a bus, where he was punched, kicked, beaten with truncheons and sexually violated.

Then he was transported to a district police station in Minsk and subjected to ill-treatment – in particular, he was forced to stay in uncomfortable positions for a long time and denied food and water.

Later, he was delivered to the Central police station in Minsk, where he was forced to pass through a “truncheon corridor” (a method used for loading or unloading detainees into/from police vehicles, when law enforcement officers line up and form a human corridor through which detainees are forced to walk, while the police hit them with truncheons).

He had to be taken to hospital in an ambulance. His injuries were documented.

3

An applicant, born in 1999, was arrested by riot police (OMON) on August 11, 2020, in Minsk. He attempted to run away from the police but was apprehended. He did not resist the arrest, but the officers hit him a few times with a truncheon and fractured two of his fingers.

He was then put in a van where he suffered further ill-treatment (police officers sat on top of him while he was lying on the floor and punched him on the head). As he was transferred to a police wagon, he was forced to walk through a “truncheon corridor”.

Delivered to the Okrestina Facility, he was then forced to stay in uncomfortable positions for a long time, kept with many other prisoners in an overcrowded cell, and denied medical assistance and water.

His injuries were documented.

4

An applicant, born in 1980, was arrested on August 10, 2020, in Minsk. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

The apprehending officers hit him five or seven times on the back, legs and head with a truncheon, although he was not resisting arrest. Immediately afterward, he was put in a bus, where an electric shock device was used on him.

Delivered to the Leninsky district police station in Minsk, he had to walk through a truncheon corridor and suffered further ill-treatment such as being forced to stay in an uncomfortable position for a long time.

He later became ill at the police station, was given first aid by a medic present at the scene, and then taken to hospital in an ambulance.

He was diagnosed with a condition caused by electrical injury. While no visible traces of electrical damage to the skin were documented, it may be due to the fact that he was not specifically examined for this kind of damage.

5

A woman, born in 1989, was arrested on August 12, 2020, around midnight in Independence Square in Minsk. She was not participating in any protest but was returning home after meeting with her friends.

Once apprehended, she was put in a bus, where she was kicked and beaten with truncheons.

Then she was taken to the Moskovskoe district police station, where she was again beaten with truncheons and subjected to humiliating treatment.

Later on, she was delivered to the Centre for Isolation of Offenders at the Okrestina Facility and subjected to further ill-treatment, such as being forced to stay in uncomfortable positions for a long time, kept with many other prisoners in an overcrowded cell, and denied food.

Her injuries were documented.

6

A man, born in 2002, was arrested on August 11, 2010, together with his two friends, not far from a building where the families of certain law enforcement officials reportedly live. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

The young men were told to lie face down on the ground, while their belongings were examined. At the same time, the police were hitting them, and the applicant was hit several times on the legs. After that, the applicant and his friends were placed lying down on top of one another in a service bus. On the bus, all three had their shorts cut open in the buttock area and were threatened with sexual assault. One of the officers cut off the applicant's hair with a knife.

The applicant was later transferred from the bus to a police wagon, where he was also punched and kicked several times. This beating reportedly caused a fracture in his upper jaw (an anterior wall maxillary sinus fracture on the right side).

Then the applicant was delivered to the Frunzenskiy district police station in Minsk, where he was repeatedly beaten with a truncheon and electroshocked by police.

On August 12, 2020, the applicant was transferred to the Centre for Isolation of Offenders at the Okrestina Facility, where he was subjected to further ill-treatment, e.g., forced to stay for many hours in uncomfortable positions, held outdoors for a long time, and denied food and water.

His injuries were documented.

7

A man, born in 2001, was arrested together with his brother on August 11, 2020, near the Central district police station in Minsk on his way home. A riot police officer called out to them. The applicant and his brother ran away but were soon overtaken by a bus full of riot police. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

Once apprehended, the applicant was put in a van and taken to the Central district police station, where the officers, holding the applicant by his arms and legs, threw him out of the bus, causing him to fall face down on the asphalt and break his nose (resulting in a displaced nasal bone fracture).

At the district police station, the applicant was repeatedly beaten with a truncheon and subjected to other ill-treatment (e. g. forced to stay in uncomfortable positions for many hours).

On 12 August 2020, the applicant and his brother were transferred to the Temporary Detention Centre at the Okrestina Facility and held for several hours in an overcrowded cell, before being taken to hospital in an ambulance.

His injuries were documented.

8

A man, born in 2001, was arrested together with his brother on August 11, 2020, near the Central district police station in Minsk on his way home. A riot police officer called out to them. The applicant and his brother ran away but were soon overtaken by a bus full of riot police. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

Once apprehended, the applicant was put in a van and taken to the Central district police station. While in the van, the applicant was punched several times in the face and head, reportedly causing a ruptured eardrum, which later required surgery.

At the district police station, the applicant was repeatedly beaten with a truncheon and forced to stay for hours in uncomfortable positions.

On 12 August 2020, the applicant and his brother were transferred to the Temporary Detention Centre at the Okrestina Facility and held for several hours in an overcrowded cell. Before his release from the Okrestina Facility, the applicant was beaten with truncheons on the buttocks and thighs. His injuries were documented.

9

A man, born in 1976, was arrested on August 11, 2020, near the Moskovskiy police station in Minsk. While he was not participating in any protest or carrying protest symbols, the man was arrested for taking pictures of a bus full of police officers.

During his arrest, the applicant hit his face on the asphalt as he dropped face down following orders from the police who were holding him by the arms behind his back.

Then the applicant was taken to the Moskovsky district police station, where he was repeatedly beaten with truncheons, mainly on his thighs, legs and buttocks. The applicant was forced to kneel touching the floor with his forehead, hands tied behind his back, and hit about 50 times on the buttocks with rubber truncheons. The police kept pulling the ties even tighter, so that his wrists turned numb, and hit the applicant every time he tried to stretch his hands. They also punched him several times to his face and head.

On August 12, 2020, the applicant was transferred to the Temporary Detention Centre at the Okrestina Facility and subjected to ill-treatment, such as being forced to stay for hours in uncomfortable positions.

His injuries were documented.

10

A man, born in 1994, was cycling home from work on August 11, 2020, when law enforcement officers apprehended him at the intersection of Masherov Avenue and Pobediteley Avenue in Minsk. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

The arresting officers put the applicant in a bus, where they punched and kicked him on the body and face and threatened him with sexual assault.

Then the applicant was delivered to the Frunzenskiy district police station in Minsk, where he was again beaten repeatedly with truncheons on his thighs and lower back. The applicant was subjected to other types of ill-treatment at the police station: in particular, he was forced to kneel with his face to a wall and his wrists tied or handcuffed behind his back for many hours and was beaten every time he lost his balance.

On August 13, the applicant was transferred to the Okrestina Facility, forced to walk through a truncheon corridor and subjected to further

ill-treatment, such as staying for a long time in an uncomfortable position and being crammed in an overcrowded cell.

After his release, the applicant was diagnosed with a spinal injury (a transverse process fracture of two vertebrae) and a mild craniocerebral injury resulting from the beatings.

11

A man, born 1987, was arrested together with a friend on August 11, 2020, on his way home. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

He was then delivered to the Okrestina Facility, forced to walk through a truncheon corridor and severely beaten for at least 30 minutes. Later, the police separated the man from other detainees and beat him once again, aiming at the scars he had from older injuries.

Among other things, the applicant was subjected to ill-treatment such as being held outdoors for many hours, at night and in cold weather, without food and with a minimum amount of water, as well as being crammed into an overcrowded cell.

His injuries were documented.

12

A man, born in 1983, was arrested on the night of August 10, 2020, at the intersection of Independence Avenue and Yanka Kupala Street in Minsk. According to the applicant, he was not participating in any protest or carrying any protest symbols at the time.

During his transportation to the Temporary Detention Centre at the Okrestina Facility, police officers sprayed pepper gas in the small, isolated compartment (“stakan”) of the police wagon where the detainee was confined. At the Okrestina Facility, he was forced to walk through a truncheon corridor and subjected to further ill-treatment, such as staying for a long time in an uncomfortable position and being crammed in an overcrowded cell.

On August 12, 2020, the applicant was transferred to a pre-trial facility (SIZO) in Zhodino outside Minsk. While being loaded onto the vehicle carrying him to Zhodino, the applicant was severely hit with a knee in his stomach three to five times.

He was later diagnosed with bruises to the abdominal soft tissue, hematoma on the right thigh and gallbladder deformation.

13

An applicant, born 1979, was arrested on August 9, 2020, together with his brother and a friend outside a polling station where they were waiting for the announcement of the presidential election results.

He was taken to the Leninsky district police station and then, after a couple of hours, transferred to the Centre for Isolation of Offenders at the Okrestina Facility, where he was held for several days with 37 other detainees in a four-person cell. One day during his detention, law enforcement officers escorted the applicant out of the cell and then hit him multiple times with truncheons and kicked him on the body and on the head.

His injuries were documented.

PATTERNS OF TORTURE AND OTHER HUMAN RIGHTS VIOLATIONS

Based on our analysis of the findings, we can identify a few common patterns of human rights violations committed by law enforcement officials in Belarus between August 9 and 13, 2020.

1. According to the country's legislation and its current interpretation, **the August 9-13 protests were qualified as “illegal mass events” whose participants were breaking the law and could face charges.**

The law authorizes the Ministry of Interior agencies to suppress administrative offences.

Thus, “participation in unauthorised mass events” was the most common ground for arrests and subsequent administrative charges faced by citizens in Belarus.

The law enforcement authorities acted in total disregard of the international standards on the right to peaceful assembly.⁴ This violation of the right to peaceful assembly also functions as key deterrent to right to complain and is used actively as a threat of reprisal for doing so.

The Belarusian legislation and practice effectively prohibits any spontaneous gathering of citizens wishing to express their opinion on social, political or any other issues.

2. The trials of people facing administrative liability for participation in “illegal mass events” **were accompanied by massive violations of fair trial rights, such as the right to defence.**

Most judicial proceedings taking place between August 10 and 14, 2020, were formalistic, “conveyor-belt” trials, in which no evidence was examined and no attempts were made by the judges to really understand the circumstances of the cases before them.

Meanwhile, evidence such as CCTV footage, witness testimony and mobile network operators' data on phone location were available in many cases to prove that the defendant was not involved in the protest they were charged with.

4 See Section 7.3 of this Report for details

3. The overall nature of the protest was and remains peaceful and is protected by international human rights law. The confrontation through state violence is unjustified and grossly disproportionate. However, not all protests on August 9-13, 2020, were entirely peaceful. Some of the videos published by mass media show episodes of violent confrontation between law enforcement agents and protesters. To the extent that this is the case, the Ministry of Interior forces may be legally allowed to use crowd control devices, firearms and equipment but in strict limits of human rights law. However, the appropriateness, proportionality and choice of means and methods used to control protesters in each particular case raise questions and require careful scrutiny and investigation.

4. Law enforcement agents massively disregarded the principles of proportionality and necessity of the use of force in apprehending citizens, including both actual participants in peaceful protests and bystanders.

5. Law enforcement agents consistently used force against detainees who were already arrested and did not pose any danger or offer any resistance.

This is evidenced by the most common types of injuries sustained by detainees as well as victims' and witnesses' accounts of police violence, including the time, place, methods and tools used.

It clearly transcends from the cases that the unwarranted use of force by police was intended to intimidate, humiliate and punish protesters – whether real or perceived – and “teach them a lesson”, thus qualifying as torture and ill-treatment under international law.

All types of violence perpetrated against detainees, such as beating them in prisoner transport vehicles, forcing them to walk through “truncheon corridors” and subjecting them to ill-treatment at district police stations and detention facilities, contravene Law No. 263-3 of July 17, 2007 on the Internal Affairs Bodies of the Republic of Belarus, in particular its provisions concerning the grounds for the use of force and crowd control equipment, and should therefore be qualified as abuse of authority. But they also constitute prohibited treatment under article 7 and 10 of the ICCPR, that is torture and cruel and inhuman or degrading treatment and ought to be qualified legally as such.

6. Law enforcement officials consistently **subjected detainees to cruel and degrading treatment**, such as:

- forcing them to stay for long periods in uncomfortable positions;
- depriving them of water, food, sleep and access to toilets;
- transporting them in overcrowded vehicles;
- cramming them in overcrowded exercise yards and cells in detention facilities;
- being rude, making threats and offensive remarks.

While some of the above practices were perhaps caused by the unprecedented number of detainees, this fact does not justify the extremely contemptuous attitudes towards detainees and treating them in a way which was cruel, inhuman and degrading. It is also evident, that the combined effect of various forms of abuse and humiliation from arrest until the end of detention contributes to its qualification as a crime of torture.

7. Some law enforcement officials **sexually abused** detainees, which included rape and sexual assault or threats to commit such acts. These threats were not only verbal but were accompanied by actions such as tearing up the victims' clothes. We are not aware of any attempt to stop such violations from taking place, suggesting that these abuses were an accepted part of 'teaching a lesson'.

It is not possible to even roughly estimate the number of such incidents, in particular due to the specific nature and high sensitivity of this type of abuse. The information, however, clearly shows for a full investigation into those practices to ensure accountability over sexual abuse as a form of torture and ill-treatment within the context of police violence.

8. Law enforcement officials consistently **denied detainees access to medical assistance**, both by failing to engage in-house medics where available in helping the detainees who required medical attention and by limiting access to detention facilities for ambulance teams. Ambulances were usually called only for those detainees who experienced particularly serious emergencies – but not for everyone who needed medical attention.

9. **Human rights violations and torture occurred on a massive scale** between August 9 and 13, 2020.

According to the official Ministry of Interior data,^{5,6,7,8} a total of some 7000 people were arrested for participation in unauthorized rallies between August 9-13.

According to the Belarus Investigative Committee's report, as of August 17, 2020, "more than 600 citizens complained about injuries they suffered during their arrest, and about 100 people reported having been injured while in detention"⁹.

According to the Viasna human rights organisation,^{10,11} there are at least 500 documented cases of police violence that took place in August 2020.

On September 9, 2020, Vitaly Kapilevich, chief of the Leninsky District Police, said at a meeting with the district residents that "more than 1800 reports alleging bodily injuries have been filed with the Investigative Committee as of today"¹².

Based on the available information, we find it reasonable to assume that at least 1000 to 1500 citizens were affected by violence at the hands of law enforcement agents on August 9-13, 2020, and that the number of victims will be much higher if we include, as a separate violation, the inhuman detention conditions at the Okrestina Facility and other places of detention.

10. **Zero accountability:** as this report shows there has been neither accountability nor any recognition that torture took place or any form of support to victims. The authorities are using a series of administrative and procedural practices and techniques with the effect to practically delay, deceive and frustrate any effective independent investigation and the right of victims to remedy and reparation, including rehabilitation. These tactics are combined with threats to victims of prosecution or other forms of reprisals. All these suggest the political influence over the investigations and an unwillingness of the authorities to treat torture allegations seriously. In its consequence it renders an international investigation necessary.

5 <https://t.me/pressmvd/1890>

6 <https://t.me/pressmvd/1892>

7 <https://t.me/pressmvd/1895>

8 <https://t.me/pressmvd/1905>

9 <https://t.me/skgovby/2945>

10 <https://spring96.org/ru/news/99226>

11 <http://spring96.org/ru/news/99334>

12 <https://news.tut.by/society/700109.html>

AVAILABLE EVIDENCE ON TORTURE

It is relevant to note that due to several factors, authorities had sufficient time and opportunities for collecting evidence of human rights violations committed in the Republic of Belarus between August 9-13, 2020.

1. **Many people were prepared to give testimony** despite the serious threats of reprisals to themselves or closed family and friends. In the first days following the events in question, a significant number of victims reported the abuse both to the law enforcement authorities and to human rights organisations collecting this information.

Human rights organisations and the legal community have thus built a body of primary evidence (i.e. first-hand statements) of human rights violations, most notably credible accounts of torture and other forms of cruel and inhuman or degrading treatment or punishment. Recently, dedicated web pages have been set up to post victim testimonies and stories. A considerable body of information, witnesses and victims are available today that allow the corroboration of evidence and to establish clear lines of accountability for those who are genuinely interested in investigating and in ensuring accountability in the state crime of torture.

Understandably, not everyone is prepared to testify as a witness before government authorities and courts. Moreover, the initial determination of some victims to demand their rights and seek an effective investigation has faded over time. Many of those who filed a crime report in the first few days after the incidents lost much of their enthusiasm over the next few weeks and months. There remains also a very serious threat of reprisal to the victim, witnesses, families and friends and there is a general believe – confirmed by the persistent impunity over torture in Belarus – that remedies will not deliver relief.

A major reason for this change is the authorities' explicit message to society that they intend to protect the law enforcement officials and to prosecute (real or perceived) protesters, while civilian victims of police abuse, including torture, should not expect protection or effective investigation of their complaints. This is opposite to the clear legal obligation under international law, freely accepted by Belarus, to conduct ex officio independent, prompt and effective investigation into torture.

Simply put, people have been made to believe that should they actively seek justice, chances are they would themselves face charges. This is a real and not only abstract prospect and constituting a permanent threat of reprisal contrary to Belarus obligation under the UN Torture Convention.

But even in this situation, people who have given up trying to bring their own abusers to justice are still willing to testify as witnesses on behalf of other victims.

2. **Documentation of injuries.**

Many victims took pictures and made videos of their injuries and contacted medical professionals for assessment and proper documentation of the damage to their health.

This was largely made possible by volunteers who waited outside places of detention to help newly released detainees with getting to a medical facility to be seen by a doctor and set up a pro bono legal assistance and counselling network; a number of online resources were created to provide advice on the first steps, such as having one's injuries documented.

3. **Availability of relevant multimedia content in the public domain.** Plenty of photo, video and audio materials documenting the events in question are available.

These include journalists' reports from the scene; interviews with victims; photographs, video and audio recordings made by the victims as well as by eyewitnesses to the events.

In addition to presenting the overall picture, these materials can be used as evidence in individual victims' cases.

As an example, an accidentally recorded video available in one of our cases captures the moment when a number of detainees, including our applicant, were leaving the Okrestina Facility.

4. Availability of CCTV footage from the scene and data from mobile network operators indicating the nearest cell tower location at the time of phone calls.

The availability of objective evidence is critical in situations where the applicant and the government's representative differ on matters such as time, location and circumstances of arrest and detention, and the State's version of events is used to bring administrative charges against the applicant. Such objective evidence includes, inter alia, CCTV footage and data from mobile network operators on specific telephone connections with reference to the nearest cell tower.

Massive police violence against peaceful citizens has understandably caused many people in Belarus to sympathise with the victims. This, among other things, may explain why the owners and managers of various businesses and (mainly non-governmental) institutions have agreed to make available their CCTV camera footage to victims and their representatives.

Likewise, mobile network operators readily and promptly provide details of telephone connections with reference to cell towers which allow tracing the cell phone user's movement.

Combined with witness statements, this data (CCTV footage and details of cell phone connections), has more than once enabled applicants to challenge and quash court decisions regarding administrative liability for participating in unauthorised rallies.

This section describes our methods of collecting information as part of the independent citizens' inquiry into complaints of law enforcement violence ('public investigation'). This type of inquiry does not require any special powers other than being an interested and legally capable citizen acting jointly with the applicant or with the applicant's representative.

The evidence we have been able to collect in Belarus is sufficient in most cases to inform a reasonable finding of human rights violations by State agents – and certainly more than sufficient for opening criminal proceedings and proper official investigations. In many instances it gives clear evidence on the crime of torture, and/or other forms of cruel, inhuman or degrading treatment or punishment.

A comprehensive inquiry, whether performed by citizens or by the State, requires an (often substantial) investment in human resources and time, especially when there are hundreds of victims.

The Belarus Investigative Committee has such resources available to it both nominally and effectively and holds a mandate to collect evidence and pursue proper investigations.

In the next section of this Report, we discuss the way in which the State represented by its authorised bodies deals with its obligation to effectively investigate complaints of massive human rights violations.

STATUS OF THE LEGAL CASES

1. POSITION OF THE STATE

The official comments on the August 2020 events made by various authorities such as the Investigative Committee, the Prosecutor General's Office, the Ministry of Interior, and the President of Belarus, are particularly interesting and revealing.

From the first days of the protests onwards, the Investigative Committee's reactions reflected an extremely one-sided perspective.

On August 10, 2020, the Investigative Committee's official channel on Telegram posted information about 21 criminal cases opened into riots and violent attacks on police officers.¹³

According to another post on August 13, 2020, investigators were working to establish the identities of those who coordinated the riots in Minsk.¹⁴

A post on August 17, 2020, said that the Investigative Committee was still working to establish the circumstances of unlawful act committed during the riots.¹⁵ The same post mentions in passing that "more than 600 citizens have filed complaints about injuries sustained during their arrest by law enforcement officials, and some 100 people reported physical injuries inflicted to them at temporary detention facilities".

Since then, as far as the August 9-13, 2020, events are concerned, the Belarus Investigative Committee has only posted updates on the progress of their investigation, such as having established new suspects to be charged with involvement in the riots and with physical assaults, threats and verbal insults against law enforcement officers.

On August 26, 2020, the Belarus Prosecutor General's Office posted on its Telegram channel that an Interdepartmental Commission had been set up with representatives from the Prosecutor General's Office, the Investigative Committee, the Ministry of Interior, and the State Committee for Forensic Examinations.¹⁶

13 <https://t.me/skgovby/2934>

14 <https://t.me/skgovby/2941>

15 <https://t.me/skgovby/2945>

16 <https://t.me/prokuraturabelarus/343>

The purpose of the new Commission was to coordinate and support an inquiry into the circumstances described in citizens' complaints about excessive use of force and crowd control devices by police during the street actions.

Since then, however, no official updates have been published as to the progress and results of the Interdepartmental Commission's efforts.

On September 17, 2020, the Deputy Prosecutor General Alexander Lashin met with undergraduates of the Belarus State University Law School and of other departments. When asked about the Interdepartmental Commission and its work, the Deputy Prosecutor General responded that "the Commission's role is to ensure coordination, not to conduct investigations" and that "based on the results of its work, the Commission will make an authoritative statement"¹⁷. Lashin added that he was not part the Commission, was not informed of the objectives set before it, and therefore was "not in a position to comment on its work".

In late October 2020, Andrei Serbun, a staff member of the Prosecutor General's Office, was interviewed by the Belarus One TV channel.¹⁸ According to Serbun, at the time of the interview, "more than 500 criminal investigations have been opened in connection with the protests", and inquiries were underway into all complaints of excessive use of force by police. Notably, Serbun stressed that "in addition to verifying the applicants' allegations of unlawful actions by law enforcement officers, investigators will also examine whether the applicants themselves were acting lawfully in those situations".

The following is just one example of how non-transparent the State's main oversight authority, i.e. the Prosecutor's office, is, and how clear it expresses its intent to use prosecution for participation in protests as a form or reprisals.

In late September 2020, the International Committee for the Investigation of Torture in Belarus, represented by a number of human rights organisations, filed an inquiry with the Minsk City Prosecutor's Office, requesting information on any steps taken by prosecutors to examine the conditions of detention at the Okrestina Facility in August 2020 and on any supervisory actions based on their findings.¹⁹

The Deputy Prosecutor of Minsk denied the request, stating that this information was classified, therefore the human rights defenders' inquiry "could not be satisfied".²⁰

17 <https://news.tut.by/society/701026.html>

18 <https://kyky.org/news/chto-naschyot-ugolovnyh-del-za-nasilie-nad-demonstrantami-so-storony-silovikov-otvechaet-genprokuratura>

19 <http://www.legin.by/posts/pravozaschitniki-potrebovali-prokuraturu-gorod-minska-otchitatsyaa>

20 <http://www.legin.by/posts/283>

On August 13, 2020, the Minister of Interior Yuri Karaev, during an interview²¹ with the ONT TV channel, admitted his Ministry's responsibility and apologised to "random bystanders" who had suffered violence at the hands of law enforcement agents. However, Minister Karaev tried to justify the police officers, explaining that they were reacting to threats against themselves and their families.

On September 9, 2020, President Lukashenko, interviewed by the Russian media, effectively confirmed the use of excessive force by law enforcement officials against citizens. He added that the riot police units only used force to defend themselves from assaults and to "save their country from a blitzkrieg", while at the Okrestina Facility, physical force was only used against "previously convicted individuals" when they allegedly "rushed" at the prison officials.²²

The above examples illustrate the non-transparency of government authorities in Belarus as well as their attitude towards reports alleging excessive use of force, torture and ill-treatment, by law enforcement agents in August 2020.

One can state with certainty that the positions of the authorities - such as attempts to justify the excessive use force, empty promises to conduct a full and impartial investigation, withholding information on the progress and results of the inquiries into complaints about violence and conduct constituting torture, actively publicising the fact that many citizens are facing charges for attacking police officers – have had an extremely negative effect on public trust in the government.

2. DOMESTIC LEGISLATION

The criminal and criminal procedural laws in Belarus are very similar to their Russian equivalents, making it easy for us to apply our experience of working in Russia to the local context.

That said, the law regulating criminal proceedings in Belarus has a number of distinctive features affecting the investigation of complaints about massive police violence in August 2020.

While a comprehensive review of Belarus law and enforcement practices pertaining to investigations of torture and ill-treatment lie outside the scope of this report, some explanations are necessary for a better understanding of the situation with such investigations.

21 <https://www.youtube.com/watch?v=UKg-SrGvDes&feature=youtu.be>

22 <https://www.youtube.com/watch?v=xH9SzfHu8yE&t=5123s>

1. Pre-investigative verification

Once a crime is reported to the investigating authorities, they must verify the report, and if they discover enough information indicating that a crime may have occurred, criminal proceedings are initiated.

According to the Criminal Procedure Code of the Republic of Belarus (hereinafter, the CPC), pre-investigation verification may take up to three months; for comparison, just one month is allowed for crime report verification in Russia.

Moreover, the Belarus CPC allows investigators to suspend the verification process for up to three more months, e. g. pending the results of a forensic examination.

Thus, it could legally take up to six months for the investigating authorities to make a procedural decision on whether or not to initiate a criminal investigation.

2. Additional verification

If the authorities refuse to open a criminal case, but the refusal is challenged and quashed, they can take up to ten more days to conduct additional verifications of the crime report.

Theoretically, refusals to prosecute, followed by a decision to cancel the refusal as unlawful, followed by additional verification and a new refusal to prosecute can be repeated an indefinite number of times within the statute of limitations for a particular offence.

3. Consideration of petition

The law does not limit the types of participants in criminal proceedings who are allowed to file petitions requesting certain procedural steps on their own behalf or on behalf of the party they represent.

The Belarus CPC further specifies that such petitions may be filed at any stage of criminal proceedings.

However, the wording of the law suggests that petitions may only be filed after the criminal proceedings have been opened but not during the pre-investigative verification phase.

A similar problem exists in the Russian criminal procedure law.

Another problem specific to the Belarus CPC is that the authorities are only obligated to notify a party if their petition has been fully or partially denied. Interpreted literally, this means that the authorities are under no obligation to notify a party that their petition has been satisfied, even though this clearly contravenes the principles and rights set out in the country's Constitution and in the General Provisions of its CPC.

4. Appealing against illegal actions and decisions

The Belarus CPC makes it possible to appeal against actions or decisions of the authority in charge of criminal proceedings.

The parties to criminal proceedings and any other individual or legal entity have the right to appeal if any procedural actions or decisions affect their interests.

The CPC explicitly prohibits referring such appeals to be considered by the same officials whose actions and decisions are challenged in the appeal.

Another law regulating appeals – the Law of July 18, 2011, No. 300-3 on Appeals from Citizens and Legal Entities – does not apply to appeals filed in criminal proceedings.

Generally speaking, actions and decisions of officials in charge of criminal proceedings can be appealed to a prosecutor, to the chief of investigative division, or to a court. Each of these options comes with specific considerations.

A) Appeal to a prosecutor

Any actions or decisions made by investigators at the stage of pre-investigative verification can be appealed to a prosecutor – except actions and decisions of the chief of investigative division.

B) Appeal to a court

Judicial review at the pre-investigative verification stage is limited to examining complaints against refusals to initiate criminal proceedings (not to mention judicial review of the legality and grounds of detention, which is not relevant here).

This means that one cannot challenge in court the actions of an investigator who fails to properly consider a petition – or the refusal of the investigative unit chief to accept and respond to a complaint.

C) Appeal to the investigative unit chief

The investigative unit chief is the main official to whom one can complain about an investigator's actions or decisions at the pre-investigative verification stage.

However, the investigative unit chief's actions and decisions taken as part of procedural supervision can only be appealed to their supervising authority at the Investigative Committee.

This effectively means that one cannot appeal to a prosecutor or to a court the investigating authorities' legal position during the pre-investigative verification.

5. Scope of the prosecutor's authority

At the pre-trial stage, the prosecutor, among other roles, supervises the investigating authorities for compliance with the law.

It is noteworthy that unlike their Russian counterparts, prosecutors in Belarus have the power to initiate criminal proceedings.

6. Victim representation and applicant status

Failure to properly regulate the status of an applicant in criminal proceedings is a shared problem within Russian and Belarusian Criminal Procedure Codes. In Russia, the absence of such regulation is partly compensated by the Constitutional Court's binding interpretative rulings which fill the gaps in the law.

In contrast, the Belarusian Constitutional Court's jurisprudence, as far as the applicant of victim's status in the proceedings is concerned, is rather limited.

As a consequence of this absence of applicant/victim's status regulation, the Belarusian CPC does not explicitly indicate how applicants/victims can be represented, other than a broad provision that everyone shall be entitled to legal assistance in criminal proceedings to ensure the exercise and protection of their rights and freedoms.

In addition to this, according to the CPC, an applicant/victim may appoint someone (not necessarily with the formal status of a lawyer) to represent them, with the investigator's permission.

The Belarusian CPC has a very progressive provision on the legal representation of witnesses, which was introduced following the Belarusian Constitutional Court's ruling on the right to legal assistance for all participants in criminal proceedings.

However, the CPC fails to specify who can represent the applicant/victim in criminal proceedings and how this representative can be admitted to the proceedings.

3. BELARUS' INTERNATIONAL OBLIGATIONS

The Belarusian authorities have primary responsibility to put an end to serious human rights violations, notably torture and ill-treatment, taking place in the country and have a positive pro-active obligation to restore the rights of all victims. This is their obligation under several international instruments.

1. Prohibition of torture

Belarus is a party to most treaties in the UN human rights treaty system, including those which guarantee protection from torture, such as the International Covenant on Civil and Political Rights and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

According to these treaties, torture can never be justified under any circumstances. The prohibition of torture and ill-treatment is absolute and peremptory in nature and imposes a number of specific obligations on all States, including Belarus. Exceptional circumstances such as internal political instability and any other public emergency may not be invoked to practice, tolerate or justify torture and ill-treatment.

The prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment includes a positive obligation to conduct prompt, independent and effective investigations into torture to hold all those responsible for acts of torture along the chain of command and including all those participated, aided or abetted. It equally obliges the state to provide effective remedies, reparation including access to rehabilitation for victims of torture.

Nevertheless, Belarus systematically violates the prohibition of torture, as evidenced by the large number of views adopted by the UN treaty bodies in favour of Belarus citizens following consideration of their individual complaints. In particular, serious violations of the ban on torture marred earlier elections in the country.

In October 2010, Andrei Sannikov registered as a candidate for the presidential elections scheduled for 19 December 2010, along with nine other candidates, including the incumbent President of Belarus Aleksandr Lukashenko.

During his electoral campaign, Mr Sannikov made numerous statements to the media and to voters referring to the illegitimacy of the incumbent President's powers and criticising the regime and the undemocratic nature of the electoral process. In particular, he encouraged his supporters to join a peaceful demonstration in support of the opposition during the evening of election day.

Subsequently, he was beaten and kicked while being arrested after the demonstration and subjected to torture, ill-treatment, and psychological and physical pressure to force a confession. Despite numerous injuries, Sannikov was not provided with medical assistance and his requests for a medical examination were denied.

Views adopted by the UN Human Rights Committee on April 6, 2018, concerning communication No.2212/2012, found the Belarusian authorities responsible for the ill-treatment of Sannikov and for other violations of the Covenant.

The provisions of these treaties are directly applicable to the current situation with protest activity in the country.

2. Peaceful assembly

In addition to their obligation to comply with the prohibition of torture, States also have a positive obligation to ensure that peaceful assemblies can be safely held even if they have not been formally authorised. This obligation stems from international standards on the right to freedom of peaceful assembly guaranteed by Article 21 of the aforementioned Covenant. The right to peaceful assembly includes the right to spontaneous protest in response to social, political or other developments.

Use of force in the policing of protests is an extreme measure which is possible only in exceptional circumstances. Occasional violent acts by some protesters should not be used to consider the entire gathering non-peaceful and automatically authorise the use of force. The use of violence and force amounting to torture or cruel, inhuman or degrading treatment is absolutely prohibited under international law.

3. Investigations into torture allegations

In its Concluding observations on the fifth periodic report of Belarus²³ of October 25, 2018, the Human Rights Committee notes, inter alia, that allegations of torture and ill-treatment are often not investigated, and that the Investigative Committee lacks the required independence to conduct effective investigations into such allegations.

Likewise, the Concluding Observations²⁴ adopted by the UN Committee against Torture on May 10 and 14, 2018, note with concern that “the practice of torture and ill-treatment is widespread and that the State party’s authorities are presently failing to conduct prompt, impartial and full investigations into such allegations and to prosecute the alleged perpetrators, as reflected in the information provided by the State party”.

The Committee further notes that “of the 614 reports of acts constituting torture or ill-treatment received by the State party’s Investigative Committee and other relevant officials between 2012 and 2015, only 10 were subject to criminal investigation under article 426 (3) of the Criminal Code, none of which had reportedly resulted in a criminal conviction as of 2018” (*para 13 of the Concluding Observations*).

The UN Committee is concerned at reports that the Investigative Committee lacks independence from the Executive branch and does not have specialized units tasked

23 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBLR%2fCO%2f5&Lang=ru

24 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBLR%2fCO%2f5&Lang=ru

with investigating allegations of torture and ill-treatment. while officials accused of torture are not suspended from duty pending an investigation, which is contrary to the principle of independence.

The UN Committee also notes “the numerous allegations about the lack of proper identification of the officers who have carried out arrests in plain clothes, in particular during the peaceful demonstrations in March 2017” (*para 17 of the Concluding Observations*).

According to the December 4, 2020, Statement²⁵ by Michelle Bachelet, UN High Commissioner for Human Rights, “masked men, without insignia or identification, have frequently taken part in the dispersal of protests, alongside riot police. Unmarked vehicles are reportedly often used to transport people who have been seized or arrested. This heightens a climate of fear and atmosphere of lawlessness and impunity”.

In addition to this, the UN Committee against Torture is concerned at the State party’s lack of capacity to provide rehabilitation to victims of torture (*para 58 of the Concluding Observations*).

Meanwhile, in accordance with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), rehabilitation must be provided to victims.

More generally, the international community, including the Council of Europe, could play an important role in putting an end to human rights violations and impunity in Belarus. While Belarus is not a member of the Council of Europe, its government cooperates with the Council of Europe in a number of areas, such as the Action Plan for Belarus 2019-2021, which aims to bring Belarus’ legislation, institutions and practices further into line with European standards in the areas of human rights, the rule of law and democracy.

Seventeen OSCE participating States invoked the so-called Moscow Mechanism in response to events in Belarus. The Moscow Mechanism makes it possible to bring perpetrators of violence to justice in other jurisdictions if such perpetrators go unpunished in the country where the crimes are committed, i. e. in Belarus.

4. THE ROLE OF LAWYERS

As part of the group’s mission in Belarus, we planned to engage with local lawyers to help us with the legal aspects of our fact-finding work.

As mentioned above, the Belarus CPC allows lay persons as well as licensed lawyers to represent victims in criminal proceedings.

25 <https://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=26564&LangID=R>

As we know from our Belarusian colleagues, human rights defenders have been using this legally provided opportunity to represent victims once criminal proceedings are ongoing, in particular during hearings on compensation for the harm caused by the crime.

But at the stage of pre-investigative verification of complaints alleging excessive use of force by State agents, only licensed lawyers have been involved in a vast majority of cases.

With some exceptions, the law in Belarus supports lawyers' monopoly on "professional defence of clients' rights and interests in criminal and civil cases, commercial (business) disputes and administrative proceedings before courts and bodies conducting criminal or administrative proceedings" (*Law No. 334-3 on the Bar and Legal Profession in the Republic of Belarus*).

This role makes it particularly important for the legal community to maintain a sufficient degree of independence allowing them to practice in good faith, including in cases involving citizens' disputes with government authorities and officials, without regard to the risk of arbitrary and politically motivated withdrawal of their licences.

But this kind of independence is lacking in the Belarusian legal community, both nominally and in practice.

The Ministry of Justice issues licences to practice law and also supervises lawyers for compliance with the licence requirements and makes decisions on whether to extend, suspend, renew, terminate or revoke their licences.

The events of August 2020 did not leave the country's legal profession indifferent.²⁶ In the context of massive police violence, many lawyers offered pro bono assistance to victims by providing advice, helping draft procedural documents, and representing citizens before courts and investigative bodies.

Also noteworthy is the role of Belarusian lawyers in defending prominent opposition members facing trumped-up, politically motivated charges. This work had started before the August 2020 presidential elections and continues to this day.

The Belarusian government reacted to the rise in civic engagement after the August 2020 events by escalating the repression and this also affected the legal profession.

Several prominent lawyers in Belarus lost their licences²⁷ and even faced criminal charges²⁸. This is a violation of the principle of legal representation and the UN Minimum Standards on lawyers, that prohibits states to prosecute lawyers for the cause of their clients they represent.

Thus, we needed to find local lawyers willing to work on our cases in a situation where the risk of ruining one's professional career as a result of defending a "dangerous" case

26 <https://rka.by/news/advokaty-protiv-nasiliya/>

27 <https://www.currenttime.tv/a/belarus-persecutions-lawyers/30894785.html>

28 <https://tass.ru/mezhdunarodnaya-panorama/9410605>

– such as that of a victim of arbitrary detention and violence by law enforcement officials in August 2020 – was particularly high.

There were a couple of important aspects in our cooperation with local lawyers.

The first one was our strategy of proactive legal support. As part of working on individual cases, we make every effort to engage with the investigating authorities in order to either encourage an effective investigation or to document their failure to investigate. This strategy involves filing petitions requesting certain procedural steps and challenging unlawful actions (decisions) or inaction. As a separate objective, we needed to process the information collected as part of our inquiry so that it could be presented and used as evidence in official proceedings.

The second aspect was that the Committee's lawyers were tasked with preparing drafts of procedural documents on cases as part of the above strategy.

These prerequisites made our search for eligible local lawyers a challenging task that took us much longer than we had planned.

But as a result, we engaged with highly qualified, motivated and proactive professionals whose input helped us adjust our strategy in line with the current realities of the legal regulation and law enforcement in Belarus.

Thanks to our cooperation with the local lawyers, we added two new cases to our inquiry and found a number of witnesses in other cases we were working on.

5. STATUS AND TREATMENT OF THE SELECTED CASES

1. Having collected evidence in 13 reported cases of torture and other types of cruel and degrading treatment, we facilitated comprehensive legal support for 11 cases jointly with our lawyers, while the applicants in two other cases chose to use their own lawyers.

When assessing the progress and results of the official investigation, we rely both on the materials of the cases we are working on and on some other case materials available to us.

2. When our mission started at the end of August 2020, formal pre-investigative verification was ongoing in almost all cases, triggered by complaints from the victims and/or reports from healthcare providers about patients admitted with injuries.

All complaints from victims in which at least some basic evidence is provided (documented injuries, witness testimony) should be considered potentially well-founded and

merit a proper investigation by the authorised body, in accordance with the country's international obligations.

Although pre-investigative verification was launched into all reports of torture and other types of cruel and degrading treatment filed with the Investigative Committee, none resulted in criminal proceedings against the perpetrators.

3. When we began our work, most applicants had already been interviewed by criminal investigators. The way the Belarusian Investigative Committee operates, once they receive a crime report (here we refer to complaints about police violence), the applicant is immediately interviewed by the investigator and referred to a forensic medical examination.

This is certainly an advantage – first, because promptness is crucial for documenting injuries, and second, because the victim's testimony allows the investigator to plan and start the verification process without delay.

However, this advantage only makes sense if the initial fact-checking is followed by a full and impartial investigation.

4. A number of complaints alleging torture and ill-treatment at the hands of law enforcement officials were combined into a single package and referred for verification to a large team of investigators formed at the Investigative Committee's Central Office. It is not quite clear by what criteria the complaints were selected, but it is known that these complaints concerned violence against detainees at the Okrestina Facility, including six cases which we were working on. The remaining seven of our cases were sent for verification to district-level investigative divisions (six in Minsk and one in Vitebsk).

5. We started working on most of our cases by filing two types of petitions which requested criminal investigators to add the findings of our inquiry to the case file and to perform certain steps as part of verifying the complaint in question.

In almost all cases, the authorities considered our petitions within the time frame prescribed by the criminal procedure law, but there were serious issues with how they responded.

No formal procedural decisions were issued indicating whether our petition was granted or denied, fully or partially.

The investigators' responses to our requests to add our findings to the case file were more meaningful, generally saying that the materials we had provided were added to the case verification file.

In contrast, the investigators' replies to our requests for certain steps to be taken usually said "inquiries have been sent to relevant institutions and government bodies" or "it is up to the investigator to decide which steps to take" or "all necessary steps are being taken". In a number of cases, the replies only confirmed that they had received our petition and added it to the case verification file.

All these responses have one thing in common: they fail to indicate clearly, in a comprehensible and reasoned manner, whether the request to take certain steps as part of the verification procedure was granted or denied.

It is worth reminding that by requesting certain steps as part of the complaint verification process and obtaining clear and specific information about any decision taken on this request, applicants exercise their right to access justice and participate in the investigation.

Requiring investigators to inform the victim of the intent to perform certain steps – or explain why such steps will not be taken – makes it possible for the victim to monitor the progress and quality of the investigation.

While the investigators of the Investigative Committee's Central Office indicated in their responses to our petitions that they had added the materials to the verification file and would examine them, they also mentioned that our petitions would be treated as simple requests rather than procedural submissions under the CPC, because "the lawyer who was present during the testimony was not party to the criminal proceedings". The same wording was used in all responses, even where no lawyer had been present during the interview with the victim.

Obviously, this position stems from the shortcomings of legislative regulation of the stage of pre-investigation verification and a narrow interpretation of the law by the authorities (see para 7 of this section for details).

6. In only one of the 13 cases did we receive a proper response to our petitions. First, our petitions concerning the case were examined in full compliance with the CPC and a decision was issued based on the results.

Second, although only one decision was issued in response to both petitions, it nevertheless provided full information as to which petition was granted in which part, as well as the reasons for the decision.

Third, the investigator did not limit access to the proceeding for the applicant's representative and thus fully respected the victim's right to legal assistance.

But it was the only case in which the investigator upheld the victim's right to access the investigation.

7. Our next step was to appeal the responses to our petitions, but the appeals brought no results.

Our appeals filed with the chiefs of district investigative divisions were treated as simple complaints rather than formal submissions under the CPC.

In one case, the complaint was sent for review to the same official whose decision we were challenging.

Senior officers at one district investigative division insisted that the victim's lawyer was not a party to the proceedings since the victim had not filed a formal petition to this effect – an arbitrary requirement which is not based on either the CPC or any other regulatory act.

Our subsequent appeal to the Investigative Committee's Main Directorate for Investigating Organised Crime and Corruption brought no result either, because the authority failed to find any irregularities with the way the investigating team had handled our petitions or with the position that the lawyer representing the victim at the pre-investigative verification phase is not party to the criminal proceedings.

This position stems from the absence of procedural norms in Belarus governing the status of the applicant's representative and the manner in which they become party to the proceedings. The officials assume that since the CPC does not explicitly make it possible for a lawyer to represent the applicant and to act on the applicant's behalf, it is not legally possible, despite the fact that both the Belarusian Constitution and the CPC guarantee all participants at any stage of criminal proceedings the right to qualified legal assistance.

However, the Investigative Committee officials limit the lawyer's role during the pre-investigative verification to that of a "person providing legal advice" who is not allowed to file complaints on behalf of their client.

8. We began our work on one case with challenging an arbitrary decision to suspend the verification process.

We filed our first appeal with the chief of the district investigative division who treated it as a simple request rather than as a formal submission under the CPC and insisted that the victim's lawyer was not a party to the proceedings until the victim filed a formal petition to the effect – an arbitrary requirement, as explained above.

Then we filed a similar complaint with the prosecutor's office, challenging the investigator's decision to suspend the verification. Eventually, the prosecutor's office responded that the verification process was resumed.

9. While verifying the complaint from a resident of Vitebsk alleging arbitrary use of force against him, the investigators had available to them a witness testimony, the victim's medical records and video footage from the scene, and also the findings from a forensic medical examination appointed as part of the proceedings.

Thus, the investigators in charge of the verification had sufficient information at their disposal to open a criminal case.

They completed the investigation within one month but notified the victim with a month delay.

It followed from their letter to the applicant that the police officers had indeed used physical force and crowd control equipment against him, but the investigators failed to find abuse of authority by the officers.

Why the investigators arrived at this conclusion is not clear, but the letter further explained that the fact check did not find sufficient signs of a crime, so there was no reason even to begin verification proceedings under the CPC, let alone open a criminal case.

In other words, the investigator and the division chief did not treat the victim's submission in accordance with the CPC as a report of a grave crime committed by police, but simply as a complaint pursuant to the Law on Appeals from Citizens and Legal Entities.

The law prescribes a special verification procedure which must always follow the receipt of a crime report. Governed by the CPC, this procedure is mandatory, rather than optional, for the relevant authorities, and grants them the powers needed for such verification.

Instead, the investigating authority deliberately used an entirely different and irrelevant procedure, thus denying the victim the right to have the crime against him investigated.

The applicant's representative appealed to the prosecutor, who accepted the arguments and ruled that the victim's report should be examined in the manner prescribed by the CPC.

10. On November 11, 2020, the investigators at the Investigative Committee's Central Office informed the applicants whose reports had been combined in one package for verification purposes that the verification had been suspended, allegedly pending the receipt of results from more than 200 expert examinations appointed previously.

First, this information per se does not indicate whether and why the results of such expert examinations (of an undisclosed type and purpose) are essential for a decision to open criminal proceedings into alleged abuse of power by police.

Second, it is unlikely that the results of such unfinished expert examinations are equally and without exception important to all individual cases in the package and that the investigators are somehow prevented from making procedural decisions in each individual case and then allocating the cases to separate proceedings.

Apparently, the only purpose of the procedural manoeuvre described above is to delay making decisions on the complaints.

11. As of December 31, 2020, not a single criminal case has been opened into alleged abuse of power by law enforcement officials during the events in Belarus.

But we know of several instances in which the authorities refused to initiate a criminal case.

We have available to us a copy of the decision not to open a criminal case in connection with a complaint filed with a district investigative division in Minsk.

The verification of this complaint took three months – the longest legally permitted time – and resulted in a decision not to initiate criminal proceedings.

The reasoning behind the decision can be summarised as follows:

- since August 9, 2020, mobile units of the Ministry of Interior and Ministry of Defence have been deployed in Minsk to suppress spontaneous breaches of public order by groups of people;
- the investigator did not identify nor question the law enforcement officers deployed in specific locations at the material time, because the senior officials of the Minsk Municipal Department of Interior refused to disclose their employees' identities;
- crowd control devices were used on the applicant;
- the applicant was at a location where riots were taking place at the time, and the law enforcement officers were using physical force, crowd control devices and weapons in accordance with the law;
- the applicant sustained injuries at a location of a mass gathering and “potential occurrence of public order disruptions”.

Usually, a comprehensive and reasoned assessment of the quality of the investigation requires a review of the verification findings and criminal case materials. But in this case, the procedural decision summarised above is sufficient per se to argue that no effective investigation of the complaint has taken place, in particular:

- the investigator failed to identify or question the law enforcement officers who used force and crowd control devices on the applicant;

- the investigator failed to establish the specific circumstances in which physical force and crowd control devices were used on the applicant;
- the investigator failed to assess whether the use of force and crowd control devices was appropriate and proportional.
- the investigator failed to assess the case under the crime of torture as defined by Belarus international obligation.

Taken together, this makes it possible to assert that the investigation was ineffective, because the investigator failed to comply with the principles of thoroughness and impartiality.

The next section will present some early conclusions concerning the quality of official investigation into complaints of torture and other types of cruel and degrading treatment.

6. FINDINGS ON THE LEGAL PROCESS IN OUR SAMPLE CASES

As of this writing, the Belarus Investigative Committee has not yet finished its work on complaints alleging massive human rights violations, including torture, between August 9-13, 2020. Likewise, we have not yet finished working on the cases as part of our citizens' inquiry.

There is still a possibility that the competent government body will start to change course and demonstrate proper standards of effective investigation into complaints of torture and other types of cruel and degrading treatment.

As of December 31, 2020, however, the investigating bodies' performance can be described as follows:

1. The Belarus Investigative Committee and its officials take advantage of every loophole in the law to prolong the pre-investigative verification stage and to delay making a procedural decision, regardless of the evidence available.

It can be argued that in most cases, the verification stage was prolonged artificially, without objective need or legal requirement.

2. The Investigative Committee's officials deny victims the right to legal assistance by creating artificial barriers and inventing pretexts that have no basis in the law to prevent lawyers from entering the proceedings on behalf of the victims.

3. The Investigative Committee officials interfere with the right of crime victims to access the investigation by failing to process and resolve their petitions and appeals as

prescribed by the law and by failing to properly notify applicants of the progress made in the investigation.

4. The observed difference in responses to similar situations by the Investigative Committee's subdivisions in different locations demonstrates a lack of uniform legal positions or consistent law enforcement practices. Nonetheless, the overall trend is to limit, to the maximum extent possible, the rights of the participants in the proceedings, in particular the victim and his/her representative.

5. The Belarusian authorities demonstrate an extreme lack of transparency, such as the absence of any published official position concerning the investigation of complaints alleging torture and other types of cruel and degrading treatment or any information on the progress of such investigations and on the Interdepartmental Commission's work.

6. For the most part, the Prosecutor's Office failed to live up to their role as the authority responsible for overseeing the performance of investigative bodies at the pre-trial phase. Prosecutors have refused to respond to inappropriate delays of pre-investigative checks or to use their legally stipulated power to open criminal proceedings on their own initiative.

7. To date, it is not possible to assess the completeness and thoroughness of the official investigation, as it requires access to information about the progress made, any steps taken so far and their results in each individual case.

8. To date, no criminal investigations is undertaken under the specific angle of establishing possible acts of torture, cruel, inhuman or degrading treatment as opposed to mere 'abuse of authority'.

It appears evident, that as of December 31, 2020, the State has not properly fulfilled its obligation to conduct an effective investigation into complaints of torture and other types of cruel and degrading treatment. To the contrary, it provides evidence that investigations and complaints are actively protracted, and victims and witnesses discouraged or intimidated from pursuing their legal rights, an indication that justice is neither provided nor wanted.

An important disclaimer: any opinions expressed in this section do not intend to deny that some employees of the Belarusian investigative bodies are highly qualified and conscientious professionals who perform their responsibilities in good faith and in accordance with the law. Instead, the above is intended to reveal the overall pattern of ineffective investigation into complaints of torture and other types of cruel and degrading treatment, which is observed by participants in the proceedings on the victim's side.

CONCLUSIONS

Between August 9 and 13, 2020, the law enforcement officials in the Republic of Belarus committed unprecedented and massive violations of human rights, in particular of the prohibition of torture and other types of cruel and degrading treatment.

The Belarusian authorities have ostensibly failed to observe their international obligations to conduct an effective investigation into allegations of torture and other types of cruel and degrading treatment and to effectively guarantee their citizens to be protected from crime and to access justice.

There is a strong evidence that in their actions, the relevant authorities – such as the Investigative Committee and the Prosecutor's Office – are not guided by the law or by their obligation to deliver justice for victims of crime but react to political trends and public statements voiced by senior officials of the State.

This obvious and blatant failure to uphold justice is likely to contribute to social tension and to public distrust of the authorities in general and certain government institutions in particular.

We believe that given the current situation and trends as of December 31, 2020, the only realistic way to ensure the right to effective investigation for all victims is to set up a competent international body with a mandate to investigate massive human rights violations in the Republic of Belarus.

This body should be mandated to investigate not only the August 2020 events, but also the human rights violations that continued in the following months.

We also believe that the official investigations carried out by the competent authorities in Belarus should be closely monitored.

Such monitoring should include not only comprehensive legal assistance to victims and their representation in the official proceedings, but also periodic public assessments of the Belarus authorities' performance concerning the torture investigations in the context of both domestic law and the country's international human rights obligations.

We find it extremely important that the results of such assessments should be voiced by authoritative organisations and/or public figures.

In this context, we call for maximum possible support for Belarus lawyers and human rights defenders who are willing and capable to represent the victims in the proceedings before law enforcement agencies and courts, to expose irregularities in the official investigations, and to collect, compile and publicise information about the State's compliance with its domestic laws and international obligations.

