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Situation of human rights in Belarus in the context of the 2020 presidential election

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted to the Human Rights Council pursuant to resolution 45/1, in which the Council requested the United Nations High Commissioner for Human Rights to submit to the Council, at its forty-sixth session, a report on the situation of human rights in Belarus in the lead-up to, during and after the 2020 presidential election. In the report, the High Commissioner examines the events during the electoral campaign and the situation that unfolded around and following the election. She concludes the report with recommendations on measures that the Government should take to improve the situation.

* The present report was submitted after the deadline in order to conduct consultations with the State concerned.

I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to resolution 45/1, adopted on 18 September 2020 following an urgent debate, in which the Council requested the United Nations High Commissioner for Human Rights to monitor the situation of human rights in Belarus in the context of the 2020 presidential election, and to report to the Council on her findings.

2. The present report covers the period of 1 May, the beginning of the electoral campaign, to 20 December 2020. The High Commissioner examines the events during the electoral campaign and the situation that unfolded around and following the presidential election held of 9 August.

3. On 5 October, the Office of the High Commissioner (OHCHR) addressed a note verbale to the Permanent Mission of Belarus in Geneva in which it requested access to the country. In its reply, on 16 October, the Government of Belarus reiterated the position it expressed during the urgent debate, namely, that it did not recognize Human Rights Council resolution 45/1.

4. Unable to visit Belarus, OHCHR prepared the report on the basis of remote monitoring. It collected information through an open call for submissions issued on 15 October 2020 and from publicly available sources, including official government documents and statements and reports by Belarusian and international civil society groups and media. The Government of Belarus submitted information through its Permanent Mission in Geneva. In accordance with its methodology on human rights monitoring, OHCHR exercised due diligence in assessing the reliability and credibility of sources and when cross-checking the information gathered. It also took all appropriate measures to ensure the confidentiality of some sources.

5. The present report is not intended to be an exhaustive account of all human rights violations committed in Belarus within the context of the 2020 presidential election, but aims at highlighting the main patterns that they followed.

II. Context

6. According to various analysts, after the incumbent President was elected in 1994, he immediately set about to bring all branches of power under the presidential administration and his own personal command, in particular through the constitutional amendments adopted in 1996 and 2004, which transferred the prerogatives of the legislative branch to the President, subordinated the judicial branch to the executive, transferred the authority to appoint members of the Constitutional Court and the Central Election Commission to the President, and eliminated the two-term limit of the presidency. The creation in 2011 of the Investigative Committee, which reports directly to the President and allows the executive branch to stop or launch investigations without independent scrutiny, reinforced the degree of supervision held by the President over investigation authorities. Since 1994, of the elections it observed, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) found that none was free and fair.

7. Over the decades, the events described above led to the development of a system of governance aimed at maintaining the concentration of powers, accompanied by a restrictive environment for the enjoyment of rights and freedoms. Although the Constitution of Belarus provides for the separation of powers and respect for human rights, the executive perceives fundamental freedoms as a threat, while the laws and practices governing those freedoms fall short of international norms and fail to guarantee the realization of the rights contained in the instruments Belarus has ratified. The High Commissioner shares the views of successive holders of the mandate of Special Rapporteurs on the situation of human rights in Belarus that, over the years, the State has been consolidating the systemic restrictions of human rights, which have become deeply entrenched, leading to cyclic periods of serious deteriorations in

the situation of human rights, usually prompted by key political or social events, particularly electoral processes.

8. The significant deterioration in the situation of human rights after the 2010 presidential election, and the ensuing crackdown on opposition leaders, human rights groups and independent media, led the Human Rights Council to adopt resolution 17/24, in which it mandated the High Commissioner to monitor and report on the situation of human rights in Belarus, and in 2012, to the creation of the mandate of Special Rapporteur on the situation of human rights in Belarus.

9. In a subsequent report, the High Commissioner concluded that the actions of the authorities in the context of the December 2010 elections had had the effect of curtailing (or had curtailed) the rights to freedoms of association, peaceful assembly and expression and suggested a pattern of serious human rights violations. She furthermore concluded that the deficiencies pertaining to human rights in Belarus were of a systemic nature and should be addressed through a comprehensive approach, requiring a review of the relevant legislation, policies, strategies and practices (A/HRC/20/8, paras. 73–74).

10. According to article 8 of the Constitution, Belarus recognizes the supremacy of the principles of international law and is to ensure that its laws comply with these principles. As party to the core international human rights treaties, Belarus has consented to be bound by the obligations they contain. The Government of Belarus has, however, failed to take measures to address systemic human rights violations, while the implementation of treaty body recommendations has remained limited, particularly those concerning civil and political rights, including the administration of justice and the prevention of torture (see A/HRC/44/55). Belarus accounts for the highest number of cases filed under the Optional Protocol to the International Covenant on Civil and Political Rights. The majority of views on Belarus adopted by the Human Rights Committee on communications submitted since 2010 concerned violations of articles 19 and 21. The Government has consistently refused to cooperate with two successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus who, since 2012, have made a solid set of recommendations that could support Belarus in addressing human rights concerns, including systemic issues.

11. Besides some recent positive steps, such as the Government's increased engagement with United Nations treaty bodies, and the State's ratification of the Convention on the Rights of Persons with Disabilities, no comprehensive structural, institutional or legislative reforms have been implemented and the situation of human rights has continued to deteriorate, as witnessed in particular during electoral periods and the protests held in February and March 2017, which were characterized by the harassment of opposition leaders and supporters, journalists and other civil society actors, arbitrary detentions and cases of torture.

III. Violations of the right to participate in political and public affairs and of the rights to freedom of expression and peaceful assembly before and during the election

12. Successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus dedicated a total of three reports – in 2013, 2016 and 2019 – to human rights and fundamental freedoms in the context of electoral processes.[1] In successive reports on its observation of elections in Belarus, most recently following the 2019 parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights, made several recommendations relating to the credibility of elections, in particular to ensure the ability of candidates, voters and observers to exercise their civil and political rights, and to protect the rights to freedoms of expression, association and assembly.[2]

13. In 2018, the Human Rights Committee called upon Belarus to bring its electoral regulations and practices into full compliance with the International Covenant on Civil and Political Rights by ensuring full and meaningful enjoyment of electoral rights, including by

[1] See A/68/276, A/71/394 and A/74/196.

[2] www.osce.org/files/f/documents/6/4/447583.pdf.

opposition political candidates, freedom to engage in pluralistic political debate and in peaceful demonstrations, and to refrain from using criminal law provisions to exclude opposition candidates (CCPR/C/BLR/CO/5, para. 57). These recommendations remained largely unimplemented.

14. Three opposition candidates or potential candidates were notably barred from running in the 2020 presidential election. In May, two days before the registration for candidates opened, the blogger Sergei Tikhanovsky, who had announced his intention to run for President, was arrested and sentenced to 15 days of imprisonment for participation in a rally in Minsk, in December 2019. The Central Electoral Commission refused to register his nomination, allegedly because he could not sign the application in person. His wife, Svetlana Tikhanovskaya, consequently decided to run. On 29 May, Mr. Tikhanovsky was re-arrested while collecting signatures for his wife's candidacy, and he and seven people were charged with "organization or preparation for a grave breach of public order". On 30 July, additional criminal charges were brought against him for "preparation of mass riots" and incitement to violence against the police.

15. The Central Electoral Commission denied registration to another candidate, Victor Babaryko, although he had reportedly obtained the required number of signatures. The Commission alleged a violation of provisions of the Electoral Code, after Mr. Babaryko was detained and accused of economic crimes. It also refused to register Valery Tsepkalo, claiming that more than 50 per cent of the signatures collected for his nomination were invalid. A criminal case was opened against him. Mr. Tikhanovsky and Mr. Babaryko remained in pretrial detention, while Mr. Tsepkalo left Belarus.

16. The Human Rights Committee has repeatedly emphasized that the exercise of the freedoms of expression, peaceful assembly and association are essential conditions for the exercise of the right to vote,[3] which depend on the free communication of information and ideas between citizens, candidates and elected representatives, and a free press and media able to comment on public issues and to inform public opinion without censorship or restraint.[4] The free exercise of the right to freedom of association is critical to guaranteeing the possibility of forming political parties and ensuring plurality and political competition, and freedom of peaceful assembly, which allows candidates to meet their supporters and reach out to potential voters.[5]

17. The Central Electoral Commission devolved the procedures regulating campaigning events for the 2020 campaign to local executive authorities. According to independent observers, the latter designated limited premises for such activities, in particular in the last weeks preceding the election, when the rallies in support of Svetlana Tikhanovskaya were attracting large numbers of participants.[6] Campaign events held outside of such designated premises were regarded and punished as violations of the Law on Mass Events.

18. The freedom of expression of opposition candidates was restricted, as witnessed by their unequal access to airtime on State-affiliated radio and television. They received disproportionately less coverage and were presented negatively by State media.[7]

19. The three months preceding the election were marked by repeated dispersals by the police of pickets collecting signatures and of peaceful gatherings in support of opposition candidates, leading to arrests, detentions and fines. On 19 and 20 June, some 200 people were detained,[8] including 14 journalists,[9] when police dispersed rallies across the country to protest against the decision to refuse the registration of Victor Babaryko as a presidential candidate.

[3] General comment No. 25 (1996), para. 12. See also general comments No. 34 (2011), para. 4, and No. 37 (2020), para. 9.

[4] General comment No. 34 (2011), para. 20.

[5] General comment No. 25, (1996) para. 25. See also A/68/299.

[6] Civil Society Forum, EaP CSF Monitoring Mission: Belarus – political and societal developments after the presidential elections, September 2020, p. 33.

[7] Ibid., pp. 30 and 34.

[8] "Over 200 peaceful protesters, journalists, rights defenders detained across Belarus", Viasna, 20 June 2020.

[9] "Police arrests 13 journalists in Belarus", BAJ News Service, 20 June 2020.

On 5 June and 1 July, several special procedure mandate holders called upon the authorities to end the crackdown on peaceful protests and civil society and the attempts to silence critical voices.[10] Journalists and human rights defenders were regularly harassed and detained while exercising their legitimate functions in the context of assemblies, including on the grounds of "participating in unauthorized events" while covering public gatherings. Independent civil society observers, although accredited, were often prevented from entering polling stations.[11] According to estimates, more than 30 observers had their accreditation revoked and some 150 were detained during the pre-electoral period and the election.[12]

20. More than 1,000 people were arrested during the pre-electoral period.[13] Hundreds were fined or sentenced to administrative detention;[14] criminal cases were opened regarding 23 persons,[15] including individuals who intended to run for the elections, bloggers, journalists, and organizers of and participants in signature collections, civic initiatives and other peaceful activities.

IV. Human rights violations after the election

21. On the evening of 9 August, the announcement of the election results triggered mass protests contesting the legitimacy of the outcome. People have since continued to take to the streets peacefully throughout the country on a regular basis, advocating for their right to participate in public affairs. The authorities have systematically cracked down on the overwhelmingly peaceful protests and those voicing criticism, including through arbitrary mass detentions, torture and other ill-treatment.

A. Freedom of peaceful assembly

22. An analysis of the many accounts, reports and footage of the marches consistently shows that, although participants were overwhelmingly peaceful, they were systematically and in many cases violently dispersed by security forces.

23. The use of force during protests should always be exceptional, proportionate and a measure of last resort; even if some participants are held responsible for isolated acts of violence, the entire assembly should not be seen as losing its overall peaceful character. Regardless of relevant international norms and standards, almost all peaceful protests held before and after the election were dispersed in an indiscriminate manner. Security forces used unnecessary or excessive force, including beatings with batons, as well as chemical irritants, water cannon, rubber bullets and stun grenades.

24. The crackdown was particularly violent during the demonstrations held from 9 to 11 August in Minsk, while hundreds of thousands of individuals protested throughout the country. Footage shows security forces beating and kicking peaceful protestors, sometimes even after they had been apprehended and were lying on the ground. Passers-by and bystanders were beaten and detained, and several incidents were reported of police smashing cars that exhibited flags or white ribbons in sign of opposition, dragging out drivers, beating and detaining them. Security forces attacked journalists and confiscated and destroyed their

[10] "UN experts demand end to crackdown on protesters in Belarus ahead of elections", OHCHR, 1 July 2020.

[11] Human Rights Defenders for Free Elections, "2020 Presidential Election: Report on election observation", Viasna, 11 August 2020.

[12] "'Worst election ever': Domestic observers sum up disrupted monitoring", European Platform for Democratic Elections, 11 August 2020.

[13] http://spring96.org/ru/news/98361.

[14] www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists.

[15] http://elections2020.spring96.org/en/news/98942.

material.[16] According to the Ministry of the Interior, at least 6,700 people were arrested in relation to protests held between 9 and 12 August.

25. The violent response to the protests, and the accounts of torture and ill-treatment in detention that emerged after people started to be released from detention on 13 August, sparked outcry and further protests. This led to a long series of weekly demonstrations and a multitude of other marches, human chains and local actions throughout Belarus, involving the participation of citizens of all ages and from all walks of life. Strikes were also declared in several large State-owned enterprises in support of the protests,[17] leading to charges against trade union activists and strike committee members, which prompted the Director-General of the International Labour Organization (ILO) to issue a press statement calling upon the President of Belarus to prevent human rights violations and to ensure full respect for workers' rights and freedoms.[18]

26. On 14 August, women dressed in white took to the streets to condemn police violence. Although these "women's marches", unprecedented in Belarus, initially seemed to be tolerated by the authorities, they were increasingly blocked and dispersed, and participants were arrested, including more than 300 on 19 September alone. The weekly marches that pensioners began to hold in October were also unprecedented. These marches were also blocked or dispersed; senior citizens participating in the marches were arrested, including 90 (many over 70 years of age) on 14 December alone.[19]

27. Although overwhelmingly peaceful, all these gatherings were dispersed, often violently, and hundreds of people were detained each week for demonstrating.[20] Since 9 August 2020, some 30,000 people have reportedly been arrested. Moreover, at least four people lost their lives in the context of protests; according to official sources, more than 2,600 people were injured between 9 August and 23 November.

28. On 11 November, in a courtyard in Minsk dubbed "square of changes", where people came to hang red and white ribbons on a fence that security forces regularly removed, a local resident, Roman Bondarenko, was beaten by unidentified men and detained. He was reportedly taken to a police station and, from there, to a hospital, where he died on 12 November from his injuries. This incident triggered widespread outrage in Belarus. The authorities promptly stated that Mr. Bondarenko had been injured in a fight while drunk, even though a journalist subsequently stated that, according to hospital records, no alcohol was found in the victim's blood. On 14 November, security forces particularly violently dispersed a march in the memory of Mr. Bondarenko, reportedly leaving dozens of people injured, while 700 others were arrested.

29. Following the violent dispersal of the march for Mr. Bondarenko, the large rallies in city centres were replaced with peaceful weekly local rallies held in smaller groups. Security forces continued nonetheless to disperse the gatherings, often violently, in some cases using rubber bullets, stun grenades and water cannon, and detained participants. On 13 December, 120 neighbourhood rallies were peacefully held throughout Belarus, after which 271 people were detained[21] and, reportedly, six were hospitalized.

30. The authorities discredited the protests and minimized the public support for them, persistently claiming that protestors were violent, that many of them were inebriated or on drugs,[22] and that some were even using their small children as "human shields", without care

[16] "Belarus: attacks on journalists mount amid protest crackdown", Amnesty International, 12 August 2020.

[17] https://finance.tut.by/news696621.html.

[18] "ILO calls on Belarus President to respect workers' rights and freedoms amid protests", ILO, 9 September 2020.

[19] http://spring96.org/ru/news/100919.

[20] https://news.tut.by/economics/707002.html.

[21] www.belta.by/incident/view/v-belarusi-13-dekabrja-za-narushenie-zakonodatelstva-o-massovyh-meroprijatijah-zaderzhan-271-chelovek-420070-2020/.

[22] http://president.gov.by/ru/video_ru/getRecord/705324./ www.rferl.org/a/how-lukashenka-demeans-and-insults-his-opponents-in-belarus/30813121.html/.

for their safety.[23] On 13 October, in a public video message, the First Deputy Minister of the Interior threatened to deploy special gear and military weapons against protesters.[24] The authorities repeatedly disseminated messages in the media and on their official channels warning people not to participate in protests, and "to think about the consequences".[25]

31. United Nations human rights mechanisms have repeatedly highlighted the fact that the legal framework governing assemblies in Belarus does not meet international norms and standards, and have made recommendations thereon. International standards are based on the assumptions that all peaceful assemblies are protected; that the State has a positive duty to facilitate peaceful assemblies; that assemblies should not require authorization, but only a notification; and that assemblies are peaceful, and therefore than isolated acts of violence by some participants should not be attributed to the assembly as such. They also lay out permissible grounds for restrictions, which should meet the requirements of necessity, legality and proportionality.[26]

32. Despite the amendments made to the Law on Mass Events in January 2019 introducing a notification procedure, it still falls short of international norms and standards.[27] Notification applies only if assemblies are held in places designated by the authorities, which are reportedly located far from city centres. Assemblies planned to be held elsewhere still require prior authorization, which reportedly is often denied for gatherings organized by the opposition. Restrictions do not meet the above requirements of international law, for example forbidding assemblies to "hamper the movement of transport and pedestrians".[28] Furthermore, the law does not differentiate between peaceful and non-peaceful assemblies and participants.

B. Freedom of expression

33. The Human Rights Committee and other human rights mechanisms have repeatedly highlighted multiple provisions of the Belarus legal framework that are contrary to international norms and standards, and that restrict freedom of expression offline and online. Successive amendments to the Law on Mass Media have extended restrictions on licensing, content monitoring, warning and suspending of media to online resources and outlets, and granted authorities broad discretionary powers to block websites without a court decision.

34. Article 38 of the law contains a broadly formulated definition of information the distribution of which is forbidden and a criminal offence, including information "harming the national interest",[29] criticism of public officials and the President, and discrediting the Republic.[30] The Special Rapporteur on the situation of human rights in Belarus[31] and the OSCE Representative on Freedom of the Media[32] have repeatedly expressed concern about the mandatory accreditation for journalists, except those working for State-registered media organizations (article 1), which bans freelance journalists and those working for unregistered media from practicing journalism and exposes them to sanctions.

[23] https://telegram.me/s/pressmvd.

[24] "Belarusian Police Threatens To Use Lethal Weapons Against Protesters", BelarusFeed, 13 October 2020.

[25] https://grodnonews.by/news/bezopasnost/ofitsialnyy_kommentariy_predstavitelya_uvd_grodnenskogo_oblispolkoma_o_predstoyashchikh_vykhodnykh.html; https://t.me/skgovby/3313.

[26] Human Rights Committee, general comment No. 37 (2020).

[27] CCPR/C/BLR/CO/5, para. 53.

[28] Venice Commission and OSCE Office for Democratic Institutions and Human Rights, Joint Opinion on the Law on Mass Events of the Republic of Belarus, para. 106.

[29] CCPR/C/BLR/CO/5, para. 49.

[30] Criminal Code, arts. 368 and 369.

[31] A/71/394, para. 55. See also A/HRC/20/17, para. 6.

[32] OSCE, "OSCE Media Freedom Representative concludes official visit to Belarus, encourages reform of media freedom environment", 20 March 2019.

35. Between 9 and 12 August, Internet access was blocked for 61 hours throughout Belarus.[33] Since then, Internet shutdowns have been witnessed on a regular basis, including on weekends before and during protests. After the election, access to some 70 websites was restricted inside Belarus, and several remained blocked, including those of human rights organizations and independent news outlets.[34] At the end of the period under review, the authorities had also begun to crack down on the administrators of Telegram (an instant messaging software and application service) suspected of being involved in coordinating the protests and civic actions. Several of them had been arrested and were facing criminal charges.

36. Blocking access to the Internet violates the right to freedom of expression by denying the right to seek, receive and impart information. Restricting media pluralism, cutting off the free flow of information and outlawing differing opinions and ideas are used to curtail other freedoms (A/70/313, para. 8). It also unduly restricts the right to freedom of peaceful assembly.[35] In September, the Ministry of Information filed a lawsuit to deprive the online news site Tut.BY of its media outlet status, formally because it had received previous warnings from the Ministry for publishing "inaccurate information".[36] On 1 October, Tut.BY was suspended for three months, a decision subsequently upheld by the Supreme Court that effectively prevented the outlet from deploying journalists and exposed staff members to criminal and administrative prosecution for reporting without accreditation. On 20 October, a court order ruled that the Telegram-based television channel NEXTA Live and its logo were "extremist".[37] The legislation on extremism contains unclear definitions and imprecise procedures for determining what is considered extremist. Disseminating (including reposting) or the keeping of "extremist materials" is punishable by article 17.11 of the Code of Administrative Offences. Successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus have raised concerns about the inhibiting effect of the use of such legislation on freedom of expression and freedom of the media (A/74/196, para. 54).

37. Journalists have been routinely detained in the context of the protests, even when they clearly identified themselves as such with their press cards, without regard for their protection under international human rights law to exercise their functions of reporting during assemblies.[38] Between 9 August and 20 December, 384 journalists were arrested, 80 were sentenced to administrative detention, several were fined, and 62 reportedly experienced violence and beatings.[39]

38. Some journalists were placed in pretrial detention and faced criminal charges, among them TuT.BY journalist Katyarina Barisevich, for allegedly disclosing confidential medical records while preparing an article about Roman Bondarenko. There have been numerous reports of the authorities revoking the accreditation of journalists, including foreign media correspondents, several of whom were arrested and deported from Belarus following the elections.[40]

C. Arbitrary arrests and detentions

39. The Human Rights Committee has clearly stated that arrest or detention as punishment for the legitimate exercise of the rights to freedoms of opinion and expression, peaceful

[33] Netblocks, "Internet disruption hits Belarus on election day", 9 August 2020.
[34] European Platform for Democratic Elections, Belarus: Human Rights Situation in October 2020, 2 November 2020.
[35] Human Rights Committee, general comment No. 37 (2020), para. 34.
[36] https://news.tut.by/society/702256.html.
[37] Belta, "Telegram channel NEXTA Live, its logo deemed extremist materials in Belarus", 20 October 2020.
[38] See Human Rights Committee, general comment No. 37 (2020), para. 30.
[39] "Repressions against journalists in Belarus, 2020 (chart)", BAJ News Service, 31 December 2020.
[40] Reporters Without Borders (RSF), "Belarus: Many journalists arrested, foreign media stripped of accreditation", 1 September 2020.

assembly and association is arbitrary, noting that "arbitrariness" includes elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity and proportionality.[41] In 2018, the Committee expressed its concern at the disproportionate enforcement of criminal and administrative sanctions against persons organizing or participating in mass events in Belarus, and called for investigations into arbitrary detentions and arrests in that context (CCPR/C/BLR/CO/5, paras. 51–53). Successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus have repeatedly echoed this concern.

40. The above-described restrictive legislation on assemblies provides for punishment for violation of the law. On 6 December, the Ministry of the Interior reported that the protesters who had been arrested were "carrying unregistered symbols and chanting provocative slogans and trying to walk on the road".[42]

41. Charges were overwhelmingly brought against people under article 23.34 of the Code of Administrative Offences for "participation in an unauthorized mass event". While the maximum sentence for such acts is 15 days, several people reportedly received successive sentences, accumulating up to almost 90 days of detention. In several cases, criminal charges were additionally brought against persons serving administrative sentences, leading to further remand in custody. Reportedly, some were detained and released without proceedings or charges, on condition that they pledge to stop taking part in protests.

42. On 10 December, the Minsk department of the Ministry of the Interior reported that hanging red-white-red flags on windows and balconies qualified as an "unauthorized mass event" (picket), exposing people to fines or detention. By then, 20 such cases had been brought against individuals.[43] Reportedly, arrests for hanging flags have since multiplied.

43. Criminal charges were increasingly brought in the context of protests. According to official sources, between 9 August and 30 November, more than 1,000 criminal cases were opened against peaceful protesters, opposition members and supporters, journalists, human rights defenders, lawyers, peaceful protesters and persons critical of the Government. According to reports, criminal charges would be brought against 231 persons who had participated in a march held on 1 November.[44]

44. On 15 October, the General Prosecutor announced that, for criminal cases involving "breaching public order", prosecutors would immediately initiate criminal proceedings and call for the maximum sentence,[45] which added to the perception of disproportionate charges and harsh sentences aimed at punishing and dissuading people from participating in protests.

45. The overwhelming majority of criminal charges against protesters have been brought under article 342 of the Criminal Code ("organization of and active participation in actions that grossly violate public order"), punishable by up to three years in prison; article 293 ("organization of or participation in mass riots"), punishable by up to eight years; article 339.2 ("hooliganism"); and various charges for resistance to and violence against law enforcement officers. Criminal charges were for example brought for "temporarily stopping traffic", even, as described in one case, "for a few minutes".[46] Charges were also brought for "insulting State officials", including by comments posted on social media, and for "insulting the flag and national symbols".

46. Throughout the last quarter of 2020, individuals were arrested during protests, particularly those who had already taken part in earlier protests or had voiced dissent. According to the United Nations Standard Minimum Rules for Non-custodial Measures,

[41] Human Rights Committee, general comment No. 35 (2014), paras. 12 and 17.

[42] https://telegram.me/s/pressmvd.

[43] www.belta.by/incident/view/za-vyveshivanie-nezaregistrirovannoj-simvoliki-predusmotrena-administrativnaja-otvetstvennost-guvd-419609-2020/.

[44] https://t.me/skgovby/3313.

[45] www.belta.by/society/view/bolee-400-ugolovnyh-del-za-narushenie-obschestvennogo-porjadka-vozbuzhdeno-v-belarusi-s-9-avgusta-411160-2020.

[46] https://sk.gov.by/ru/news-usk-minsk-ru/view/perekrytie-dorogi-v-molodechno-vozbuzhdeno-ugolovnoe-delo-9437/.

pretrial detention should be used as a measure of last resort; the systematic placing of persons in custody or of keeping them in pretrial detention, in overcrowded facilities with poor conditions of detention, is therefore of particular concern at a time when the number of coronavirus disease (COVID-19) cases is surging.[47] International agencies advocated wherever possible to refrain from pretrial detentions as a measure to reduce the risk of spreading COVID-19 in prisons.[48]

D. Rights to due process and to a fair trial

47. International human rights norms require that persons are informed at the time of their arrest of the reason for the arrest, and are promptly informed of the charges brought against them. From all information available, OHCHR notes that none of these safeguards was respected for persons arrested in relation to the protests. It received numerous reports of persons who had been kept in detention centres for several days and subsequently released without any explanation of why they had been detained.

48. Administrative proceedings against arrested protesters reportedly failed to comply with international fair trial standards. In particular, in the period immediately after the election, court hearings were hastily convened behind closed doors inside detention facilities, where lawyers were not admitted.[49]

49. Disregard for due process and fair trial guarantees was underpinned by the lack of independence of the judiciary and other long-standing systemic flaws in the judicial system, as identified by international human rights mechanisms (see A/75/173 and CCPR/C/BLR/CO/5).

E. Enforced disappearances

50. According to the Declaration on the Protection of all Persons from Enforced Disappearance, the constitutive elements of an enforced disappearance are deprivation of liberty by State actors or private individuals, or organized groups acting on behalf of, or with the support (direct or indirect), consent or acquiescence of the Government, followed by the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, which places the person outside the protection of the law. Regarding short-term enforced disappearance, the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances concur that "there is no time limit, no matter how short, for an enforced disappearance to occur".[50]

51. Cases of enforced disappearances in Belarus were reported, mostly in the context of mass arrests in the days that followed the election. Numerous reports were received of persons, including minors, who for days went missing during the protests, and of relatives facing the denial of authorities when they attempted to locate them and to obtain information about their fate and whereabouts.[51] This includes cases of abductions by masked men in plainclothes, presumed to be security officers, such as in the case of Coordination Council member Maria Kolesnikova, who was abducted from the centre of Minsk on 7 September. Her associates and relatives were denied information on her whereabouts for three days,, until it was made known that she was in pretrial detention in Minsk. During that time, she had

[47] International Committee for the Investigation of Torture in Belarus, Mass Torture in Belarus 2020, second interim report: detention, conditions of detention and treatment of detainees in September – November 2020.

[48] World Health Organization, "UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings", 13 May 2020.

[49] European Platform for Democratic Elections, "Belarus: post-election detainees deprived of the right to a fair trial", 14 December 2020.

[50] OHCHR, "'Every minute counts' – UN experts raise alarm over short-term enforced disappearances International Day of the Victims of Enforced Disappearances", 26 August 2016.

[51] International Partnership for Human Rights, "Belarus on Hold: Crackdown on Post-election Protests", Findings of the Fact-finding Mission to Belarus, September 2020.

been driven to the Ukrainian border in an attempt to expel her from Belarus, together with two other members of the Coordination Council who were effectively deported to Ukraine.[52]

F. Torture and ill-treatment

52. International human rights mechanisms, particularly the Human Rights Committee, the Committee against Torture and the successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus, have repeatedly raised concerns about the prevalence of torture and ill-treatment in the country and the persistent lack of investigations and accountability. In 2018, the Committee against Torture expressed its concern at reports that torture and ill-treatment were widespread, and called upon Belarus to include torture as a separate and specific crime in its legislation, and to adopt a definition of torture covering all the elements of article 1 of the Convention against Torture (CAT/C/BLR/CO/5, paras. 13 and 51). In the context of the mass arrests of peaceful protestors, hundreds of reports were received of systematic and brutal beatings by the security forces and of acts that could amount to torture and other ill-treatment. According to the reports, cases of torture and ill-treatment were particularly numerous in the days immediately following the election.[53] The reports included accounts that some arrested people, even when injured, were held for hours in overcrowded police vans and paddy wagons, handcuffed with plastic ties and threatened, kicked and beaten on their way to detention centres and police stations. People reported being held in overcrowded cells without adequate ventilation, having slept on the ground, taking turns to sleep, and being denied food, water and access to toilet facilities and medical treatment. Some reported that their cells were occasionally doused with cold water or pepper spray.

53. Reports of witnesses and survivors, supported by photographs, describe widespread, regular and indiscriminate beatings with rubber batons, mostly on the back, buttocks, thighs and head, during arrest but also in detention centres. People were reportedly also forced to stand, kneel, lie in stress positions, walk squatting or run through the corridors of detention centres. Detainees also suffered psychological violence. Besides threats, insults and sexist, homophobic and obscene language, victims reported that they had been forced to strip naked, kneel and sing the national anthem, or pray. Others said they had had to watch or listen to others being tortured, including their friends or partners.

54. While reports indicate that many of the described cases were committed in the Okrestina Detention Centre in Minsk, accounts of persons detained in other places suggest that similar levels of violence and methods were used in district police departments in Minsk and in detention facilities in other cities.

55. Reports were also received of sexual violence against men and women, including threats of rape. While some sources referred to cases of rape,[54] alleged victims were reluctant to speak up owing to the sensitivity of the issue and out of fear of reprisal.

56. Victims and witnesses referred to special police forces and riot police (OMON), but also repeatedly referred to officers wearing balaclavas, without uniforms or identification, making arrests and involved in beatings and the ill-treatment of protesters, which raises concerns about accountability.

57. Protesters who were detained reported that, during the administrative proceedings, held in the basement of detention facilities, none of the judges reacted to the obvious signs of torture or to the allegations voiced by detainees during the trials.[55] The deputy Head of the

[52] OHCHR, “UN human rights experts: Belarus must release opposition leader Maria Kalesnikava”, 25 September 2020.

[53] Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”, 15 September 2020. See also https://spring96.org/files/misc/belarus_after_election_report_2020_en.pdf..

[54] Human Rights Watch, “Belarus: Systematic Beatings, Torture of Protesters”; International Partnership for Human Rights, “Belarus on Hold”.

[55] European Platform for Democratic Elections, “Belarus: post-election detainees deprived of the right to a fair trial”.

Ministry of the Interior visited Okrestina on 14 August and declared that there had been no abuse in the detention centre.[56] The authorities denied any incidence of torture, claiming that any use of force was justified by the aggressive behaviour of the protesters, even in detention.[57] Torture and ill-treatment reportedly continued in detention in the month following the election.[58]

G. Specific groups

1. Human rights defenders

58. Monitoring and documenting human rights violations and supporting victims are legitimate and core functions of human rights defenders, which they should be able to exercise freely and without fear of reprisals, harassment or criminalization, in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). The role of human rights defenders in monitoring assemblies is recognized and protected under international human rights law.[59] In Belarus, human rights defenders, including many women, have been repeatedly harassed, threatened, arrested and subjected to administrative or criminal sanctions for monitoring and documenting human rights violations in the context of protests. Two human rights defenders, Maria Rabkova and Andrei Chapiuk, were placed in pretrial detention facing charges of "mass riot" (Criminal Code, art. 293), punishable by up to eight years in prison.

2. Lawyers

59. In Belarus, lawyers defending politically sensitive cases or cases involving human rights violations have been under pressure, harassed and intimidated for exercising their professional activities. They face disbarment or disciplinary sanctions by the Bar Association, which lacks independence and over which the Ministry of Justice exercises broad control. For instance, on 15 October, the licence of Aleksandr Pylchenko, the defence lawyer of Viktor Babariko and Maria Kolesnikova, was revoked.[60]

3. Women

60. Women have been actively involved in the peaceful protests and civic actions held, and therefore targeted by the authorities and subjected to violence and detention. Numerous accounts were received of women being violently arrested by security forces, beaten, tortured, and subjected to sexual violence and insults during transport to and in detention facilities. According to reports, most women in detention facilities are guarded by male staff, which is contrary to the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Moreover, women reported that they had to undress in the presence of men, and that they were watched by male staff members in their cells, toilets and showers, and denied menstrual hygiene.

61. Already in 2011, the Committee on the Elimination of Discriminations against Women found violations of the Convention for conditions similar to those described by women who were detained following the 2020 elections.[61] In 2016, it expressed its concern at reports that women in detention were frequently subjected to sexual abuse by male staff (CEDAW/C/BLR/CO/8, para. 44).

[56] www.kp.by/daily/217169.5/4269983/.

[57] https://news.tutby.news/society/699864.html.

[58] International Committee for the Investigation of Torture in Belarus, Mass Torture in Belarus 2020, second interim report.

[59] Human Rights Committee, general comment No. 37 (2020).

[60] International Commission of Jurists, "Belarus: revoke disbarment of lawyer Aleksandr Pylchenko", 21 October 2020.

[61] *Abramova v. Belarus* (CEDAW/C/49/D/23/2009), para. 7.7.

4. Minors

62. Reports indicate that hundreds of minors who participated in the protests were arrested, and many tortured or otherwise ill-treated, sometimes requiring hospitalization. Many parents stated that, particularly in the days following the election, they had no news about their children and had to look for them, sometimes learning what had happened only after their release.

63. International human rights law clearly states that the arrest, detention or imprisonment of a child is a measure of last resort, and that parents or guardians should be immediately notified of the arrest and the reasons for it.[62]

64. As at 24 September, administrative charges had been brought against 280 children for participating in protests,[63] in disregard for the rights of children to participation and to freedom of expression and peaceful assembly guaranteed by the Convention on the Rights of the Child. The United Nations Children's Fund (UNICEF) expressed concern at the reports of excessive use of force against children during protests and in places of detention, and at the administrative charges brought against them.[64]

65. The authorities issued public warnings threatening sanctions against parents for failing to stop their teenage children from joining the protests,[65] including the removal of parental custody if parents also took part in protests with their children.[66] Some schools reportedly forced parents to sign a form in which they acknowledged that their participation in peaceful protests could lead to the loss of their parental rights, in accordance with Presidential decree No. 18, which allows for the removal of children from parental custody and has been identified as a matter of concern by human rights mechanisms.[67] In January 2020, the Committee on the Rights of the Child expressed concern that the deprivation of parental rights could be applied as a measure to punish parents in Belarus (CRC/C/BLR/CO/5-6, para. 25 (c)).

5. Students and academics

66. On 27 October, the President of Belarus called for expelling students and terminating the employment of teachers from universities for participating in the protests. [68] Since then, at least 261 students have received disciplinary sanctions – of whom 146 were also expelled from university – for the same reason.[69] Several members of the Belarus Student Association were detained and currently face criminal charges. Many academics openly denounced the situation in Belarus, took part in rallies and petitions and made statements, and several of them were consequently fired or detained.[70]

6. Medical workers

67. Doctors, first-aid responders and other medical workers dealt directly with victims of violence, treating protesters injured by police in the streets or subjected to torture and ill-treatment in detention centres. They themselves were also targeted by the authorities, detained or fired, given that many had been outspoken about what they witnessed, regularly

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62 Convention of the Rights of the Child, art. 37; Human Rights Committee, general comment No. 35 (2014), paras. 24 and 28.

63 www.belta.by/society/view/rassmatrivaetsja-okolo-280-administrativnyh-del-ob-uchastii-nesovershennoletnih-v-nesanktsionirovannyh-408092-2020/.

64 "UNICEF Regional Director for Europe and Central Asia Afshan Khan's remarks at the Human Rights Council's Urgent Debate on Belarus", UNICEF, 18 September 2020.

65 www.belta.by/society/view/rassmatrivaetsja-okolo-280-administrativnyh-del-ob-uchastii-nesovershennoletnih-v-nesanktsionirovannyh-408092-2020/.

66 "Leave Children At Home Or Risk Losing Them, Belarusian Officials Warn Protesters", Current Time, 16 September 2020.

67 See CRC/C/BLR/3-4, paras. 42–43, and A/HRC/41/52, para. 80.

68 "Lukashenko: Expelled students can be reinstated 'under guarantees'", Belta, 13 November 2020.

69 BSA, "6th month of the Semester: Repressions against students" (https://zbsunion.by/en/news/pressure_on_students).

70 Declan Butler, "Academics mobilise support for Belarusian student protesters", University World News, 6 October 2020.

condemned the violence in public statements, or peacefully protested outside hospitals. For example, on 7 November, at least 57 medical workers were arrested within five minutes of starting a protest.[71]

V. Impunity

68. Accountability for human rights violations is an obligation under international human rights law, and it is critical for the prevention of further violations. In the present context, it would be a prerequisite to a genuine and inclusive national dialogue. International human rights law and jurisprudence spell out the legal duty of States to investigate, prosecute and punish violations of human rights, and to provide victims with an effective remedy and redress.[72]

69. To date, nothing indicates that criminal cases have been opened following the thousands of complaints filed by alleged victims of torture or other ill-treatment, nor that investigations have been conducted or criminal charges laid relating to the death of at least four people in the context of the protests.

70. According to organizations supporting victims of human rights violations perpetrated by law enforcement officials in the context of the protests, the work of the Investigative Committee on complaints of torture and ill-treatment reportedly has been neither prompt nor transparent. Often, the deadline for submitting a conclusion on the investigation was repeatedly extended on the pretext of checking information, and plaintiffs were not informed of the progress of the investigation.

71. There is no evidence of any public condemnation by the Government of the violations by the use of force by the police; indeed, the Government has consistently claimed that protesters were responsible for cases of violence against law enforcement agents. The lack of any action to ensure the accountability of law enforcement officers for widespread human rights violations committed in the context of the protests reinforces the sense of prevailing impunity.

72. The absence of steps to ensure accountability for complaints filed against the authorities is in sharp contrast with the large number of criminal cases and the hasty proceedings brought against people who participated in the protests.

73. Information provided by the Government indicates that, as at late November 2020, 4,644 complaints had been filed with the Investigative Committee on the use of violence and anti-riot equipment by law enforcement officers during the protests. For more than 1,050 of those complaints, the Committee decided not to open criminal cases. The Government also indicated that investigations into the complaints had revealed that complainants had committed actions breaching public order or been responsible for acts of violence against law enforcement officials, and that 49 people were suspects in criminal cases, while 800 faced administrative charges for participating in unauthorized events. Some reports appear to indicate that criminal or administrative cases were opened against individuals in retaliation for having filed a complaint.

VI. Conclusions and recommendations

74. **The information collected by OHCHR reveals serious violations of human rights and that a number of actions before and after the election were aimed at curtailing the rights to freedoms of opinion and expression, peaceful assembly and association, and the right to participation in political affairs, in particular before the election, which led to a human rights crisis of a magnitude unprecedented in Belarus. This situation reflects long-standing, chronic patterns of systemic violations and impunity, which have been**

[71] https://news.tut.by/society/706985.html.

[72] International Covenant on Civil and Political Rights, art. 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4 and 13.

highlighted by various international human rights mechanisms, including the treaty bodies and the Special Rapporteur on the situation of human rights in Belarus.

75. **The widespread violations committed in the context of the elections, the systematic denial of fundamental freedoms, the mass arbitrary arrests and detention of people who organized or participated in protests or voiced criticism or dissent, and the hundreds of alleged acts of torture and ill-treatment, harassment and intimidation targeting opposition members, journalists and human rights defenders and citizens in general have created an atmosphere of fear and impunity. The situation has been further compounded by the lack of action to ensure accountability for such human rights violations.**

76. **The High Commissioner recalls the recommendations made in the report of her predecessor in 2012 (A/HRC/20/8) and those subsequently made by international human rights mechanisms, including successive holders of the mandate of Special Rapporteur on the situation of human rights in Belarus. The High Commissioner hopes that the Government will issue a standing invitation to all special procedures of the Human Rights Council, including the Special Rapporteur on the situation of human rights in Belarus. She also reiterates the recommendations made in her oral update to the Council in December 2020.**

77. **The High Commissioner therefore recommends that the Government of Belarus:**

(a) **Ensure that independent, impartial, prompt, thorough, effective, credible and transparent investigations are conducted into all allegations of human rights violations in the context of peaceful protests, including loss of life and injuries, and torture or ill-treatment, including acts of sexual violence, and that perpetrators are brought to justice and adequately sanctioned;**

(b) **Ensure that all victims of human rights violations obtain redress and remedy, including compensation, rehabilitation and the right to know the truth; and take steps to prevent the recurrence of human rights violations, including acts of reprisal against victims and witnesses;**

(c) **Immediately and unconditionally release all those unlawfully or arbitrarily detained for peacefully exercising their freedoms of expression, association and peaceful assembly or their legitimate functions, including human rights defenders, journalists and lawyers, and cease and reverse any administrative or criminal judicial action against people for exercising their human rights, including the rights to freedoms of expression and peaceful assembly;**

(d) **Cease the exclusion of persons from workplaces and educational institutions, and acts of intimidation and threats made publicly by State officials and institutions;**

(e) I**nitiate a comprehensive review and reform of the national legal framework to address systemic issues and prevent the recurrence of human rights violations.**

78. **With regard to freedom of assembly, the High Commissioner recommends that the Government:**

(a) **Revise the Law on Mass Events to ensure compliance with international human rights law and jurisprudence;**

(b) **Introduce a definition of peaceful assembly in accordance with international human rights law and the positive obligations of the State to facilitate peaceful assemblies;**

(c) **Introduce a notification system in accordance with international norms and standards for all peaceful assemblies, and remove all permission-based regulations, including the requirement of designated spaces for assemblies; ensure that protection is afforded to peaceful assemblies, even when the conduct of some participants may not be peaceful; and ensure that the right to freedom of peaceful assembly of children is fully protected;**

(d) **Ensure that any restrictions imposed on assemblies are strictly necessary and proportionate to achieve legitimate aims in accordance with human rights law, and are in no case based on content, such as the political views expressed during the assembly, unless such expressions constitute legally defined incitement to violence, hostility or discrimination; when restrictions must be imposed, ensure that they are as little intrusive as possible, leaving the dispersal of assemblies as a measure of last resort.**

79. **With regard to freedom of expression and opinion, the High Commissioner recommends that the Government:**

(a) **Revise the Law on Mass Media to bring it into line with international standards, in particular by:**

(i) **Repealing mandatory accreditation as a prerequisite for exercising the profession of journalist of either online or offline media;**

(ii) **Transforming the permission-based media registration procedure into a simple, transparent and non-discriminatory notification system administered by an independent body;**

(iii) **Aligning regulation and restrictions on the Internet with international standards, and bringing the restricting or blocking of websites under the sole authority of courts, with the necessary safeguards and possibility for appeal;**

(b) **Fully decriminalize defamation and abstain from using extremism laws to repress freedom of expression.**

80. **With regard to human rights defenders, the High Commissioner recommends that the Government:**

(a) **Create an enabling environment for human rights defenders, and allow them to carry out their legitimate functions in the promotion and protection of human rights without fear of harassment, intimidation or reprisal, in compliance with the Declaration on Human Rights Defenders; and end all forms of harassment of human rights defenders, including the threat or imposition of administrative or criminal sanctions for performing their legitimate functions;**

(b) **Recognize women and men human rights defenders, and include and meaningfully consult them in all initiatives to establish dialogue on human rights in Belarus;**

81. **With regard to torture and ill-treatment, the High Commissioner recommends that the Government:**

(a) **Ratify the Optional Protocol to the Convention against Torture, and establish an independent national preventive mechanism;**

(b) **Adopt a definition of torture and ill-treatment that covers all elements of article 1 of the Convention, and introduce the absolute prohibition of torture as a specific and separate crime in the Criminal Code;**

(c) **Publicly and unambiguously condemn torture, and promote a policy of zero tolerance of torture;**

(d) **Provide mandatory training on the Convention for public officials;**

(e) **Systematically conduct prompt, impartial and transparent investigations into all allegations of torture or ill-treatment, including rape and other acts of sexual violence, and bring perpetrators to justice, with commensurate punishments if convicted;**

(f) **Ensure the independence of the Prosecutor's Office and the Investigative Committee from the executive, and establish specialized units within the Investigative Committee tasked with investigating complaints of torture confidentially and impartially;**

(g) **Ensure that all alleged cases of torture or ill-treatment are promptly documented in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and provide training on it for relevant medical staff, including with regard to sexual violence;**

(h) **Ensure the suspension of all officials implicated in alleged cases of torture or other ill-treatment, or other serious human rights violations, from duty for the duration of the investigation.**

82. **The High Commissioner also recommends that the Government ensure the independence of the judiciary and of lawyers, with full respect for fair trial and due process rights, in particular by:**

(a) **Bringing legislation and practice into line with the Basic Principles on the Independence of the Judiciary, including by establishing a judicial self-government body for the selection, appointment, promotion, dismissal and disciplining of judges; and ensuring that the security of tenure of judges is guaranteed;**

(b) **Revising regulations regarding the work of lawyers, and ensuring the full independence of bar associations and the protection of lawyers against undue interference or retaliation in connection with their professional activity, in accordance with the Basic Principles on the Role of Lawyers;**

(c) **Ensuring the rights to due process and fair trials, including the presumption of innocence, access to counsel and the right to a fair and public hearing;**

(d) **Ensuring judicial control of all forms of deprivation of liberty, including administrative detention, and the right to challenge the legality of a detention.**

83. **With regard to conditions of detention, the High Commissioner recommends that the Government:**

(a) **Take effective measures to eliminate overcrowding in places of detention, including by using non-custodial alternative measures and taking immediate measures in the context of the COVID-19 pandemic, in accordance with international recommendations;**

(b) **Bring regulations regarding conditions of detention into line with international standards, including the Nelson Mandela Rules and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, reflecting the specific needs of women and men. Regarding the detention of children, which should be used as last resort, the Government should bring regulations into line with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and implement relevant recommendations made by the Committee on the Rights of the Child.**

84. **The High Commissioner reiterates her readiness to extend the cooperation of the Office of the High Commissioner to the development and implementation of legislative reforms and of human rights policies and action plans, including in follow-up to the universal periodic review of Belarus.**