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Human rights situations that require the Council's attention

Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath

Report of the United Nations High Commissioner for Human Rights*. **

Summary

In the present report, the United Nations High Commissioner for Human Rights provides an overview of the situation of human rights in Belarus with respect to the 9 August 2020 election, including the infliction of arbitrary detentions, torture and other cruel, inhuman or degrading treatment, failure to effectively investigate allegations of such violations and lack of respect for due process and fair trial rights.

The High Commissioner includes updates on critical developments and incidents on which her examination has collected, consolidated, preserved and analysed information and evidence with a view to contributing to accountability for perpetrators and justice for victims.

* The present report was submitted after the deadline in order to reflect the most recent events.

** The annexes to the present report are circulated as received, in the language of submission only.

I. Introduction

1. In its resolution 46/20, the Human Rights Council requested the United Nations High Commissioner for Human Rights to monitor and report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, and to carry out a comprehensive examination of all alleged human rights violations committed in Belarus since 1 May 2020. The Council also requested the High Commissioner to present an interim oral update at its forty-eighth session and a comprehensive written report at its forty-ninth session.

2. In accordance with that mandate, the High Commissioner established an examination team on the situation of human rights in Belarus with a secretariat based in Geneva. On 19 May 2021, the High Commissioner appointed three experts to assist her in the discharge of the present mandate: Karinna Moskalenko (Russian Federation), Susan Bazilli (Canada) and Marko Milanović (Serbia).

II. Methodology and standard of proof

3. Pursuant to resolution 46/20, the Office of the United Nations High Commissioner for Human Rights (OHCHR) interpreted the mandate to cover the period from 1 May 2020 to 31 December 2021.

4. On 8 November 2021, OHCHR formally requested access to the territory of Belarus to facilitate its discharge of the examination. OHCHR regrets the unwillingness of the Government of Belarus to recognize or engage with its examination, and its refusal to allow access to its territory, despite the fact that the Human Rights Council expressly called upon it to do so.

5. The present report is primarily based on information received during 145 first-hand interviews (with 95 men, 49 women and one male child), conducted both in-person and remotely. A wide range of victims, witnesses, lawyers, non-governmental organizations and other stakeholders were met in person or communicated with via remote means. During the conduct of the examination, OHCHR exercised due diligence in assessing the credibility and reliability of all sources and cross-checked the information gathered to verify its validity, sought informed consent from the sources it interviewed and took all appropriate measures to protect confidentiality.

6. In response to a public call,¹ OHCHR received 170 individual submissions. It also received material from other sources with inside knowledge of and access to internal records of Belarusian security forces. OHCHR was able to verify the authenticity of these materials and found them to be credible.²

7. The methodology employed during the examination was based on international standards and best practices on human rights investigations set out by OHCHR,³ which also developed its work to collect, preserve and analyse information, preparing a basis for longer-term collection and verification efforts. In addition to first-hand statements, it collected, consolidated, preserved and analysed more than 400 items of information and evidence, including photographs, videos, public statements by officials, copies of original medical records, court documents and other digital data.

8. Violations were recorded in all six oblasts (administrative regions) of Belarus, though predominantly in Minsk.

9. OHCHR used “reasonable grounds to believe” as the standard of proof. This standard is met when factual information has been collected that would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable

¹ See www.ohchr.org/EN/HRBodies/HRC/OHCHRBelarus/Pages/CallforSubmissions.aspx.

² In accordance with United Nations standards and industry best practices, OHCHR developed a secure electronic storage information management system and workspace.

³ See www.ohchr.org/documents/publications/coi_guidance_and_practice.pdf.

degree of certainty. This standard of proof is lower than that required for finding criminal responsibility.

10. OHCHR extends its gratitude to Member States, the Special Rapporteur on the situation of human rights in Belarus, civil society organizations, including the International Accountability Platform for Belarus, the experts and, in particular, those who experienced or witnessed human rights violations and were willing to share their personal accounts.

III. Applicable law

11. The facts documented by OHCHR during its examination were assessed in the light of applicable international law. It also took into account human rights guarantees under the Constitution of Belarus and other domestic law.

12. Belarus is a State party to core United Nations human rights treaties,⁴ and is therefore bound by the obligations contained therein.

13. During the examination, OHCHR assessed incidents involving the use of force by law enforcement officials by reference to applicable international norms and standards,⁵ including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see paras. 22–34 below). Requirements of necessity and proportionality set limits on when and how force may be used lawfully during any policing actions. The use of force must also pursue a legitimate aim and be provided for by law.

14. States have the duty to respect, protect and fulfil human rights, and are responsible for any human rights violations committed by their organs or agents.⁶ Inherent in these duties is the obligation to prevent the perpetration of violations and to ensure that victims have accessible and effective remedies (see paras. 87–92 below).⁷

15. States also have a duty to investigate and prosecute gross violations of international human rights law. Investigations into such allegations must be carried out by independent and impartial bodies and be prompt, thorough and effective (see paras. 54–57 below).⁸

IV. Pre-election period (1 May to 8 August 2020)

16. Following the decision of the incumbent President, Alexander Lukashenko, to seek a further term in office, the situation of human rights in Belarus markedly deteriorated. Though opposition candidates Viktor Babaryko and Valery Tsepkalo submitted the required number of signatures to stand in the elections, the Central Election Commission refused to register them (A/HRC/46/4, para. 15).

17. A number of opposition candidates were detained arbitrarily ahead of the election. Blogger Sergey Tikhanovsky and activist Vladimir Navumik were arrested in Grodno on 29 May while collecting signatures for an opposing candidature. Viktor Babaryko and his son were detained on 18 June. Women involved in opposition politics and the female relatives of political activists were particularly targeted by reprisals. Vitalia Navumik was threatened with the removal of her children, as was Svetlana Tikhanovskaya. A woman member of her campaign faced threats of sexual violence by police.

⁴ Except the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵ Human Rights Committee, general comment No. 31 (2004).

⁶ *Ibid.*, paras. 4 and 31. See also General Assembly resolution 56/83, annex, art. 4.

⁷ See International Covenant on Civil and Political Rights, art. 2. See also Human Rights Committee, general comment No. 31 (2004), paras. 4, 15 and 17; and 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 (General Assembly resolution 60/147).

⁸ Human Rights Committee general comments No. 31 (2004), para. 15, No. 36 (2019) and No. 37 (2020).

18. Large-scale demonstrations erupted in May and June 2020. On 24 May, hundreds of protesters held slippers as a sign of protest against President Lukashenko's candidacy, followed by countrywide protests, which were violently dispersed by police (A/HRC/46/4, para. 20).

19. The pre-election period was further characterized by the repression of activists, human rights defenders, non-governmental organizations and journalists.

V. Election and immediate aftermath (9 to 14 August 2020)

20. In response to the incumbent President's declaration of victory on 9 August 2020, people took to the streets over the following days to peacefully protest the way the election had been conducted and votes counted at polling stations. Hundreds of thousands of people rallied to voice their opposition to the widely contested result.

21. Representing the largest anti-government movement in the history of Belarus, protests – including women's marches – were held in all six oblasts and brought together people from all walks of life, men, women, children, pensioners and students, frequently expressing their resistance by acts of carrying white-red-white flags and flowers and wearing white ribbons. The Government responded with a massive and violent crackdown.

A. Unnecessary and disproportionate use of force

22. After the voting ended on the evening of 9 August, people gathered peacefully in the centre of Minsk and other cities across Belarus. Protesters in Minsk gathered over several days, primarily around the victory memorial on Mashherova Avenue (commonly known as "Stela"), Victory Square and Pushkin Square. As the gatherings grew, protesters were met with a heavy-handed response by security forces. In an effort to check the spread of the protests, security forces blocked the main roads leading into Minsk, and Internet access was blocked countrywide for at least 61 hours (A/HRC/46/4, para. 35).

23. Between 9 and 14 August, various State security forces were involved in responding to the protests, including members of the Militsiya; the Special Purpose Police Detachment (OMON); the Almaz Special Anti-terrorism Unit; the Main Directorate for Combating Organized Crime and Corruption (GUBOPiK); the Internal Troops; the State Security Committee of Belarus (KGB); and the Presidential security service (see annex I). Men without insignia, wearing balaclavas, also took part in the forced dispersals of protests, creating a climate of fear and lawlessness.

24. From all available information it examined, OHCHR concluded that the protests were overwhelmingly peaceful in character. Some witnesses recounted that they had communicated their peaceful intent directly to the riot police present, offering them flowers. OHCHR received credible information that, between 9 and 14 August, four service members were injured while performing their duties. It found that isolated acts of violence such as these were not sufficient to characterize the assemblies as a whole as non-peaceful.⁹ No indication was found that the security forces made any attempt to communicate with demonstrators or to issue appropriate warnings before using water cannons, firing rubber bullets or launching stun grenades to forcibly disperse crowds.

25. Almost all interviewees described OMON riot police beating protesters and passers-by randomly with batons during dispersal. According to several witnesses, security forces in Minsk and elsewhere stopped cars and forced people out of them, beat the people and then detained them. Several individuals were beaten until they lost consciousness. During the examination, OHCHR documented tramline bruises consistent with beating by batons. In the majority of cases, these injuries were on the rear side of victims' bodies, indicating that they had not been confronting security forces at the moment of being struck. This conclusion was corroborated by open-source video footage, human rights organizations and media. Such

⁹ See Human Rights Committee, general comment No. 37 (2020), para. 17.

treatment, depending on its severity and particular circumstances, could meet the threshold of torture or other ill-treatment (see para. 46 below).

26. Water cannons and tear gas should be used only as a measure of last resort, with prior verbal warning, and only if there is clear evidence of an imminent threat of serious violence.¹⁰ OHCHR documented the widespread use of both means to disperse peaceful protesters.

27. OHCHR also documented the unnecessary and disproportionate use of crowd control agents, such as kinetic impact projectiles and stun grenades during the protests held between 9 and 14 August. Rubber bullets were fired into crowds, without warning; during the protests, for example, one woman in Minsk was shot at and a rubber bullet penetrated her briefcase. Another person saw OMON officers jumping out of a minivan, shooting what the witness believed to be rubber bullets at passengers who were leaving a taxi. The officers also shot at cars with passengers still inside.

28. OHCHR received credible information, including medical reports reviewed by an independent forensic medical expert, that rubber-coated steel bullets were used by the security forces firing directly at protesters. As evidenced by the type of injuries, these were fired at short range or in proximity, severely injuring numerous protesters.

29. OHCHR also documented a widespread pattern of the use of stun grenades against demonstrators. Security forces started shooting at the crowd, and at least one stun grenade was fired directly at them. Riot police used water cannons, then immediately followed up by throwing stun grenades into a crowd of protesters. OHCHR found reasonable grounds to believe that, in a number of cases it documented, security forces threw or launched stun grenades directly at individuals, causing major, life-threatening injuries.

30. On the basis of an analysis of 26 first-hand witness accounts, their medical records and photographic material, in conjunction with a review of the injuries of more than 1,000 individuals treated by the Minsk medical emergency services during the protests, along with open source material, OHCHR found that injuries resulting from the use of force in several cities across Belarus between 9 and 12 August included tramline bruises and hematoma on the torso, buttocks and back of the legs, head injuries (such as brain contusion), concussion, traumatic wounds, fractures and burns, ear drum perforations as a result of acoustic trauma and eye injuries. More severe injuries included multiple organ injuries sustained from rubber-coated steel bullets and internal organ damage caused by shrapnel from stun grenade fragments and burns caused by explosions.

31. OHCHR also reviewed information concerning at least three deaths allegedly the result of unnecessary or disproportionate force during the protests. They included Aleksandr Taraykovsky (shot in the chest, allegedly by a rubber bullet, in Minsk on 10 August); Aleksandr Vikhor (died in custody in Gomel on 12 August); and Gennady Shutov (allegedly shot in the head by a plainclothes police officer in Brest on 11 August, and died in hospital on 19 August). The authorities have denied responsibility for these killings, yet failed to conduct effective investigations into them, according to information collected by OHCHR during its examination.

32. The authorities claim that the dispersal of the protests was decided in the pursuit of public order objectives. OHCHR, however, found no information to indicate that the protests as such were violent or caused serious and sustained disruption of the kind that could justify forcible dispersal.¹¹ Rather, the disproportionate force appears to have been designed to generally suppress expression of dissent, to intimidate the population and to shield the incumbent Government from criticism, which are not legitimate objectives.

33. While the exact number of people subjected to violence at the hands of State authorities cannot be determined, it may be reasonably estimated as being in the thousands. The nature of security forces' responses also violated the freedoms of expression and of peaceful assembly of hundreds of thousands of Belarusians.

¹⁰ Ibid., paras. 85 and 87. See also OHCHR Guidance on Less-Lethal Weapons in Law Enforcement (www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf).

¹¹ Human Rights Committee, general comment No. 37 (2020), para. 85.

34. Furthermore, OHCHR has reasonable grounds to believe that the decision to use force against peaceful protesters was made at a high level within the Government and was implemented with a high degree of coordination. On 28 July 2020, the President instructed the head of Minsk OMON Dmitry Balaba to be heavy-handed on protesters. On 6 August, the Minister of the Interior, Yury Karaev, met with the regional heads of police and, referring to orders from the commander in chief and threatening consequences if the orders were not followed, instructed them to prevent people from assembling and to detain them. The leadership of GUBOPiK assigned officers to “attack teams”, jointly with the military, to crack down on protests. On 11 August, the deputy head of Minsk regional police instructed the use of physical force and special equipment, and to beat and detain anyone “talking on the phone” or standing in a group of five “at a bus stop”.

B. Arbitrary arrest and detention

35. Article 9 of the International Covenant on Civil and Political Rights prohibits arbitrary arrest or detention, and requires that deprivation of liberty be conducted on grounds and in accordance with procedures prescribed by law. “Arbitrariness” includes elements of inappropriateness, injustice, lack of predictability and due process of law, and elements of reasonableness, necessity and proportionality. Arrest or detention as punishment for the legitimate exercise of the rights to freedoms of opinion and expression, freedoms of assembly and association or on discriminatory grounds, is arbitrary.¹²

36. During its examination, OHCHR found that, between May 2020 and May 2021, at least 37,000 people were arbitrarily arrested and detained; between 9 and 14 August alone, approximately 13,500 were arrested (11,800, 1,000 women and 700 children). During those six days, arrests were made in more than 100 cities, towns and villages throughout Belarus, 4,616 in Minsk alone. In the rest of the country, more than 860 were made in Brest, more than 850 in Grodno, some 800 in Vitebsk, some 700 in Mogilev and roughly 650 in Gomel.

37. Of the 4,616 people arrested in Minsk between 9 and 14 August, 4,254 (92 per cent) were detained under article 23.34 of the Code of Administrative Offences for “participation in an unauthorized mass event”, a direct sanction for violations of the Law on Mass Events, a law that fails to meet international standards (A/HRC/46/4, paras. 31–32 and 78).¹³ Arrests and detentions under this offence for the legitimate exercise of the rights to freedom of opinion and expression, freedom of assembly, and freedom of association are arbitrary.

38. The massive number of arrests and cases of detention in reaction to the peaceful protests reached a scale unprecedented in Belarus. From the testimonies received by OHCHR, it appeared that arrests had mostly been made at random, and that security forces had chased and seized people they could catch, including passers-by and persons who were dragged out of cars and shops. In addition, certain persons with an “alternative appearance” (e.g., men with long hair or persons with tattoos) were specifically targeted.

39. Interviewees referred to having spent hours after their arrest in police vehicles, including being kept standing, or driven to another part of town, transferred to another vehicle, and forced to wait in a courtyard or a sport halls of police station or detention facilities, sometimes even overnight, before their arrest was effectively registered. Victims described how, during that time, they were routinely severely beaten and subjected to torture and other forms of ill-treatment.

40. OHCHR found that detainees were denied basic safeguards: they were not informed of the reasons for their arrest nor of the charges against them, were not able to communicate with their relatives who were often denied information about their whereabouts, and were mostly denied medical assistance, even when they were injured. They were also not provided legal assistance, and lawyers were denied access to them.

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

¹³ See also Venice Commission and Organisation for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, Joint Opinion on the Law on Mass Events of the Republic of Belarus, March 2012.

41. Many witnesses informed OHCHR that they were not allowed to read the police reports. Those who demanded to read them or refused to sign were beaten or threatened, including with rape. Many were forced to sign a document stating that they would not participate in protests. A number of people were released without being charged after spending up to 72 hours in custody without judicial oversight – a length of time that is unjustified, even though in line with domestic law, and has been identified by the Human Rights Committee as a violation of article 9.3 of the International Covenant on Civil and Political Rights, including for administrative minor offences.¹⁴ Moreover, these detentions were ordered for “participation in an unauthorized assembly”, in itself arbitrary.

42. The examination revealed that, between 9 and 14 August, Belarusian security forces arrested and detained a large number of people solely for having participated in a peaceful protest and exercised their right to freedom of expression as punishment and to intimidate the population. OHCHR has reasonable grounds to believe that there were widespread violations of the prohibition of arbitrary arrest or detention.

C. Torture and other cruel, inhuman or degrading treatment or punishment

43. Torture, and inhuman or degrading treatment or punishment, are prohibited by both the Convention against Torture and article 7 of the International Covenant on Civil and Political Rights. This prohibition is non-derogable and absolute.¹⁵ Article 1 of the Convention against Torture defines the constitutive elements of torture as the intentional infliction of severe pain or suffering through an act, or omission of an act, that pursues a purpose, including punishment, intimidation or obtaining information or a confession, or is based on discrimination, and the involvement, instigation, consent or acquiescence of a public official.

44. Those detained between 9 and 14 August were subjected to prolonged and repeated beatings with batons during transport in security force vehicles (*avtozak*) and at police stations and detention facilities; made to run from the vehicles to the buildings past a line-up of security forces who beat them with batons as they passed (“corridors”); and were made to stay for hours in stress positions in courtyards and hallways of police stations and detention facilities, such as standing facing the wall, kneeling on their knees and elbows or lying with their hands tied behind the back for hours, face down, on the ground.

45. Pleas for medical help, water, food and access to a lavatory were largely ignored, and detainees were often beaten to dissuade them from complaining. Persons already visibly injured were still subject to beating or even electroshock with stun weapons, often in their injured and swollen body parts, causing particularly excruciating pain. The degree and severity of the ill-treatment were often determined by law enforcement officials on the basis of the persons’ appearance, or the colour marks and symbols drawn on their bodies by security forces during their arrest. Furthermore, OHCHR found that men were raped and that other forms of sexual and gender-based violence were used against men and women in detention (see paras. 75-79 below).

46. Officials called ambulances only for the most serious medical cases. Witnesses heard officials discussing whether it was too late to take a person to hospital, and saying “stop now, you’ll kill him”, indicating their awareness of the severity of torture and ill-treatment they were causing.

47. Some detainees were forced to walk on a white-red-white flag, to sing the Belarusian national anthem, to repeat pro-government slogans or to chant “I love OMON”. In some

¹⁴ See for example *Volchek v. Belarus* (CCPR/C/129/D/2337/2014), paras. 7.3 and 7.4. Regarding the requirement to be “promptly brought before a judge”, the Human Rights Committee considers that 48 hours is ordinarily sufficient to prepare an individual for a judicial hearing, and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances (general comment No. 35, para. 33).

¹⁵ Committee against Torture, general comment No. 2, para. 5; Human Rights Committee, general comment No. 20 (1992).

cases, detainees were tortured or abused to force them to unlock their mobile phones or reveal their passwords or other information.

48. Detainees were kept in inhumane conditions regardless of COVID-19 precautions when being transported in overcrowded and unventilated security vehicles, thrown on top of each other or locked together in metal compartments (*stakan*) designed for one detainee, and in detention facilities. Those detained in Okrestino and Zhodino stated that between 30 and 50 detainees were packed into cells designed for seven or eight people, without adequate ventilation or sanitation, and were given one bottle of water to share among all of them. They were furthermore denied food for prolonged periods, and were unable to sleep or lie down owing to lack of beds or space. Detainees and insider sources spoke of having to listen to people being beaten and screaming in neighbouring cells or hallways.

49. OHCHR found that the practices of torture and ill-treatment used in a number of detention facilities in Minsk,¹⁶ were adopted also in other cities, and that these were not random occurrences.

50. A forensic analysis undertaken by an examination of testimonies, photographic materials and medical records showed a multitude of tramline bruises, extensive and severe ecchymosis, bone fractures, concussions and cranial trauma. These findings aligned with the forensic analysis of 70 torture cases received as secondary material collected by Belarusian doctors.

51. During its examination work, OHCHR also analysed the cases and associated findings made by the International Rehabilitation Council for Torture Victims, which were based on a thorough forensic examination of 50 victims from different cities in Belarus detained during the same period and selected at random from the 1,500 interviews and cases in the database of the International Committee for Investigation of Torture in Belarus. The practices and injuries identified by the Council corroborate the findings made by OHCHR. It also found the 636 cases of torture documented and analysed by the non-governmental human rights organization Viasna to be credible. Furthermore, the testimonies of victims and witnesses collected in the context of the examination corroborated the numerous accounts of torture, ill-treatment and inhumane conditions of detention documented and analysed by other organizations, including those of the Organization for Security and Co-operation in Europe (OSCE) Moscow Human Dimension Mechanism. These analyses lend further credence to the findings made by OHCHR that torture and ill-treatment were used systematically as a tool to punish and intimidate detainees.

52. OHCHR was able to corroborate through multiple, independent and credible sources that, in police stations and detention facilities, higher-ranking officials gave orders to beat detainees harder and more frequently, and selected detainees to receive harsher treatment. This confirms that persons arrested during the protests were subjected to torture and ill-treatment upon orders.

53. The information collected indicates that security forces acted upon orders and with an objective, pointing to a widespread and systematic practice of torture and ill-treatment that was largely punitive in nature against individuals for their real or perceived opposition to the Government or the election results. There are reasonable grounds to believe that the acts committed in custody by Belarusian security forces between 9 and 14 August 2020, in Minsk and other cities, qualify as torture or cruel, inhuman or degrading treatment or punishment under applicable international standards.¹⁷

¹⁶ District police stations under the District Department of Internal Affairs (RUVD), Okrestino (criminal detention centre of the Main Internal Affairs Directorate of the Minsk Executive Committee) and the Zhodino temporary detention centre (IVS).

¹⁷ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1 and International Covenant on Civil and Political Rights, art. 7.

D. Failure to effectively investigate allegations of torture and ill-treatment

54. International human rights law establishes the legal duty of States to investigate, prosecute and punish acts of torture or cruel, inhuman or degrading treatment or punishment and to provide victims with effective remedy and redress.¹⁸ OHCHR is not aware of any criminal charges brought or convictions handed down for acts of violence by security forces against protesters or persons in detention.

55. OHCHR was able to speak to a number of persons who submitted complaints of torture or ill-treatment to the Investigative Committee (see annex I, para.13) following their release from detention and who were subsequently informed that their complaints had been dismissed. Many victims were afraid to file a complaint, and several of them who did stated that they were later subjected to reprisals. In a number of cases, following their complaints, criminal and administrative charges were brought against the complainants for participating in protests (A/HRC/46/4, para. 73). Others stated that, upon their release, they were discouraged from filing a complaint. On 14 August 2020, the Deputy Minister of the Interior, Aleksandr Barsukov, publicly denied that State security forces had engaged in any acts of torture. On 2 November, Mikhail Vavulo, head of the International Legal Department of the Investigative Committee, informed the Human Rights Council that the Committee was not investigating any allegations of police abuse because “currently no cases of unlawful acts by the police had been identified.”

56. On 26 August 2021, the Investigative Committee announced that it had completed its examination of around 5,000 complaints relating to ill-treatment received in summer/autumn 2020, all of which had been rejected as “unconfirmed”, and that allegations of abuse of office, torture and sexual abuse had also not been confirmed. In an interview published on the website of the Investigative Committee, its Deputy Chairman, Anatoly Vasiliev, admitted the use of stress positions and beatings “with rubber batons” in detention facilities. He also labelled the complainants as “drunkards”, “liars” and people with criminal records who thought that by filing complaints they could avoid prosecution.

57. On 19 November 2021, President Lukashenko admitted that persons had been beaten in the Okrestino detention centre after the election, adding however that “police officers had been beaten up too”. The repeated calls for effective and independent investigations into allegations of torture and ill-treatment, including by the High Commissioner¹⁹ and the special procedures of the Human rights Council,²⁰ have gone unheeded by Belarusian authorities. The conclusions of the Investigative Committee, taken together with the discourse of officials, provide reasonable grounds to believe that allegations of torture have not been effectively investigated, in violation of the State’s obligations under article 7 of the International Covenant on Civil and Political Rights and articles 12 to 14 of the Convention against Torture.

E. Rights to due process and to a fair trial

58. In a further effort to intimidate and suppress political opposition and dissent, tens of thousands of people were charged under article 23.34 and other administrative offences, in particular from 9 to 14 August 2020, and hundreds with criminal offences.

59. From 9 to 14 August, “conveyor belt” summary administrative trials were held in detention facilities in closed hearings, which lacked basic procedural guarantees and – according to the defendants – often lasted only a few minutes. With few exceptions, the

¹⁸ International Covenant on Civil and Political Rights, arts. 2 and 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4 and 13.

¹⁹ See “Interactive Dialogue on the interim oral update of OHCHR on the situation of human rights in Belarus”, 24 September 2021; statement by the United Nations High Commissioner for Human Rights at the 49th session of the Human Rights Council, OHCHR; see also A/HRC/46/4, para. 77.

²⁰ “UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances”, OHCHR, press release, 1 September 2020.

judges ignored defendants, despite their visible injuries, when they tried to assert that they had been tortured or ill-treated.

60. During its examination, OHCHR noted numerous violations of the rights to due process and to a fair trial in both administrative and criminal cases. Lawyers' access to their clients was obstructed, defendants were not able to talk to their lawyers confidentially, and lawyers were denied adequate access to files or sufficient time to consult them and prepare their defence. Prosecution witnesses often testified anonymously via Skype.

61. In criminal cases, in particular those of high-profile dissidents, hearings were closed, and defence lawyers were forced to sign non-disclosure agreements. Lawyers who defended such cases or spoke out about human rights violations and the lack of rule law or who brought cases to United Nations human rights mechanisms were deprived of their liberty, harassed and intimidated, and faced disbarment and disciplinary sanctions. Since the election and as at November 2021, 36 lawyers have been deprived of their licenses either through disbarment or loss of certification, under procedures enabled by the lack of independence of the Bar Association and the broad control of the Ministry of Justice over the legal profession. Amendments to the Law on Bar and Lawyers, which came into force in November 2021, extended the Ministry's powers in this area further still. The intimidation and punishment of independent lawyers has a serious chilling effect on the legal profession and effectively deprives victims of human rights violations of the right to a fair hearing and access to justice.

VI. Post-election period

62. After the election, the Government continued to persecute those seeking to exercise their rights to freedom of expression, peaceful assembly, association and to participate in public affairs. Between September and December 2020, peaceful protests continued, despite the fact that they were systematically and often violently dispersed, ending in arrests and detentions.

63. In September 2020, the authorities also began to press charges against members of the opposition Coordination Council, human rights defenders, journalists, lawyers, and ordinary citizens who had participated in peaceful protests or expressed criticism. This trend continued throughout 2021. Interviewees, including some who had filed complaints of torture or ill-treatment, described how in spring and summer 2021 they were taken in for questioning and declared suspects or charged in criminal cases related to the 2020 protests.

64. Criminal charges were mostly brought under articles 293.1 ("organization of mass riots"), 342.1 ("organization of or participation in actions that grossly violate public order") and 130.1 ("incitement to social discord") of the Criminal Code.

65. On 23 May 2021, the authorities compelled the landing of Ryanair flight FR4978 and arrested passengers Roman Protasevich, the former editor-in-chief of Telegram channel NEXTA, and his partner Sofia Sapega. Mr. Protasevich was also charged under articles 293.1, 342.1 and 130.1 of the Criminal Code and Ms. Sapega under art. 130.1, facing up to 15 and six years in prison, respectively. In its opinion No. 50/2021, the Working Group on Arbitrary Detention concluded that Mr. Protasevich's detention was arbitrary and based on his exercise of freedom of expression.²¹

66. In the second quarter of 2021, the Government passed a raft of legislative amendments, further undermining the exercise of fundamental freedoms. These laws were developed in response to "the events of past year", according to the Head of the Presidential Administration. The Administrative Code of Offences and the Criminal Code were also amended, introducing new offences and harsher sentences.

67. Amendments to the Law on Mass Events and the Law on Mass Media included additional provisions that do not meet international standards. Both laws ban journalists from reporting on unauthorized protests, equating them to participants.²²

²¹ A/HRC/WGAD/2021/50.

²² Human Rights Committee, general comment No. 37 (2020), para. 30.

68. The amendment to the Law on Countering Extremism adopted on 14 May 2021 broadened the scope to persecute those expressing dissenting views by introducing individual criminal liability and expanding the list of “extremists” and “extremist activities and materials”, which now includes possessing or displaying historical symbols and national attributes, such as the white-red-white flag. Article 361.1 of the Criminal Code (“creation of an extremist group or participation in it”) carries up to 10 years in prison.

69. OHCHR found that, by May 2021, the authorities had cracked down on the remaining independent mass media outlets. On 18 May, the website of Tut.by, a popular news web portal, was blocked, a criminal case was opened for tax fraud against the media company and 15 journalists were detained. On 13 August, its websites, social media and logos were declared “extremist materials”. On 8 July, authorities blocked three news websites, including Nasha Niva, one of oldest media outlets in Belarus, conducted more than 20 searches and arrested 11 journalists.

70. In November, BelaPAN news agency and Belsat TV were declared “extremist” organizations, as was Radio Free Europe/Radio Liberty in December. By the end of 2021, 170 Telegram channels and 13 media outlets were also declared “extremist”, 146 raids had been made on offices and journalists’ homes, and 32 journalists were detained. In October, GUBOPiK warned that subscribing to such a channel carried criminal liability for participation in an “extremist formation”.

71. The authorities also massively cracked down on civil society and human rights organizations. Between September 2020 and July 2021, seven members of Viasna were detained on criminal charges and remain in pretrial detention, and seven more are suspects in criminal cases. On 14 July 2021, 50 raids were undertaken at offices and homes of human rights defenders, and 20 persons were detained. By October 2021, some 270 non-governmental organizations had been closed down, including the Belarusian Helsinki Committee, the oldest human rights organization in Belarus. This is the result of what appears to have been a concerted effort to eliminate any credible independent human rights work on violations and on countering impunity in Belarus. In a public interview with the BBC in November 2021, President Lukashenko, in response to a question on the closures of non-governmental organizations, replied that “We’ll massacre all the scum that you [the West] have been financing”.²³

72. On 26 July, the Prosecutor General announced that 4,200 criminal cases had been opened in relation to extremism and terrorism. Charges of tax evasion, which had been regularly used in the past to imprison critics and defenders, were also brought against journalists and human rights defenders.²⁴

73. By the end of 2021, 969 persons (858 men and 111 women) were in prison on what OHCHR has reasonable grounds to believe to be politically motivated charges. Of those sentenced, several received prison terms of 10 years or more: for example, Maria Kolesnikova was sentenced to 11 years, and opposition leaders Sergey Tikhanovsky, Nikolay Statkevich and Igor Losik were sentenced to 18, 14 and 15 years, respectively. The Working Group on Arbitrary Detention declared Mr. Tikhanovsky’s deprivation of liberty arbitrary and related to the peaceful exercise of his rights.²⁵

74. According to information received by OHCHR, since the election, at least some 100,000 individuals have sought safety abroad, mainly in other European countries. In numerous instances, interviewees expressed fear that their family members left behind were being harassed or intimidated by the authorities.

VII. Sexual and gender-based violence

75. Sexual and gender-based violence, including psychological violence, was regularly used against both women and men in detention to intimidate and punish protesters and those

²³ See www.bbc.com/news/world-europe-59343815.

²⁴ See Working Group on Arbitrary Detention, opinion No. 39/2012.

²⁵ Opinion No. 23/2021.

perceived as pro-opposition. The Special Rapporteur on the situation of human rights in Belarus has expressed concern that hundreds of women have been subjected to torture, ill-treatment and other forms of physical and psychological pressure while in detention, including gender-based violence and the threat of rape (A/76/145, para. 9). Acts of intimidation, including verbal insults, sexist and homophobic language were largely directed at women and individuals perceived as belonging to the LGBTIQ+ community.

76. Upon intake, women and men were typically forced to strip naked and repeatedly subjected to intrusive intimate searches. Men were often forced to kneel and bend over face to the ground for prolonged periods of time. Guards, including female guards, kicked the kneeling detainees' genital areas.

77. Sexual and gender-based violence was often directed by men towards men. Male detainees spoke of anal penetration with batons amounting to rape, as well as having their genitals grabbed or twisted. Injuries documented by medics corroborate accounts of such penetration. Medical records reviewed by OHCHR also indicated traumatic injuries to male genitalia, including lesions, multiple abrasions and contusions. Sexist and homophobic remarks directed against the victims during torture confirm that sexual violence against men was used to deliberately humiliate, assert power over and emasculate them, as a form of punishment for perceived political allegiances.

78. Overt threats of sexual violence were directed at both female and male detainees. Security officers made threats of physical and/or sexual abuse to female detainees' minor children during interrogations. Parents, and in particular mothers, were threatened with the removal of their children by social services for participating in the protests.

79. Individuals not perceived as "mainstream" – including LGBTIQ+ persons and those perceived to be – were significantly more likely to be singled out for especially cruel, inhuman or degrading treatment in detention or during house raids. In September 2020, a number of LGBTIQ+ rights activists were arbitrarily detained.

VIII. Conclusions under applicable international law

80. On 24 September 2021, the High Commissioner noted that the Government's response to the contested election in Belarus had the primary aim to suppress criticism and dissent of governmental policies rather than the protection of public order.²⁶ This conclusion was corroborated by the examination conducted, which also pointed to an active policy to prevent truth, justice and accountability for violations committed.

81. As detailed in the preceding sections of the present report, OHCHR has reasonable grounds to believe that a number of violations of international human rights law have been committed. The coordinated responses to the peaceful protests of 9 to 14 August 2020, at least, including the unlawful use of less-lethal weapons against protesters, resulting in serious injuries or deaths, provides reasonable grounds to believe that security forces systematically engaged in unnecessary or disproportionate force with the illegitimate aims of suppressing protests and the expression of differing political viewpoints.

82. There are reasonable grounds to believe that the response by the authorities to the protests between 9 and 14 August 2020 also aimed to curtail the exercise of a range of fundamental rights and freedoms, with security forces repeatedly violating the rights to freedom of expression, peaceful assembly and association. The countrywide Internet shutdown from 9 to 12 August also constituted a violation of the freedom of expression, which includes the right to seek and receive information, offline and online, and of the right of peaceful assembly.²⁷

83. Individuals were targeted following a consistent pattern of unnecessary or disproportionate use of force, arrests, detention (including incommunicado detention), and

²⁶ "Human rights in Belarus continue downward spiral, warns Bachelet", UN News, 24 September 2021 (<https://news.un.org/en/story/2021/09/1101102>).

²⁷ Human Rights Committee, general comment No. 37 (2020), para. 38. See also A/HRC/35/22, para. 8, A/74/486, para. 29, CCPR/C/CMR/CO/5, para. 41, and Human Rights Council resolution 32/13.

torture or ill-treatment, including rape and sexual and gender-based violence, and the systematic denial of the rights to due process and to a fair trial. The failure to effectively investigate human rights violations, including allegations of torture or other ill-treatment, is a contravention of the State's obligations under international human rights law. Furthermore, OHCHR found that, besides the lack of investigation, there was an active policy to shield perpetrators and prevent accountability, reflected in the degree of reprisals, intimidation of victims and witnesses, and attacks on lawyers and human rights defenders.

84. OHCHR further notes that individual criminal responsibility can accrue under customary international law, where human rights violations rise to the level of international crimes.²⁸ In terms of the present analysis, crimes against humanity are perpetrated when certain prohibited acts are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.²⁹ Such acts include imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape and certain acts of sexual violence; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

85. By May 2021, some 37,000 persons had been arrested and detained in Belarus in the context of the election, including around 13,500 between 9 and 14 August 2020. These arrests and detentions, accompanied by the unlawful use of force that caused serious bodily injury and harm, and followed by torture and ill-treatment, including rape, were on a large scale and had the effect of exerting pressure on the population, to stifle dissent and public displays of opposition to the incumbent President.

86. Given the scale and patterns of the violations identified in the present report, their widespread and systematic nature, and the evidence of official policy, knowledge and direction in respect of their collective execution by multiple State organs, in particular regarding mass arbitrary detention in the period from 9 to 14 August 2020, there are sufficient indicia to warrant further assessment of the available evidence from the perspective of applicable international criminal law.

IX. Accountability

87. In its resolution 46/20, the Human Rights Council stressed the need for accountability for human rights violations in Belarus, and requested the High Commissioner to contribute to accountability for perpetrators and justice for victims.

88. OHCHR notes that there are currently no effective remedies available domestically for Belarusians subjected to the unnecessary use of force carried out between 9 and 14 August 2020, nor for the tens of thousands of women, men and children arrested arbitrarily, subjected to torture and inhuman or degrading treatment, and denied the rights to due process and a fair trial. IT is furthermore not aware of any efforts made by the authorities to hold alleged perpetrators to account, nor of the prosecution or trial of any members of the security forces. Such conduct is also indicative of a State policy or practice of shielding perpetrators of human rights violations.

²⁸ International Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, Trial Judgment, para. 623. See also *International Criminal Court, Prosecutor v. Sesay, Kallon and Gbao (RUF Case)*, Trial Judgment, para. 58; and A/CN.4/680, para. 51.

²⁹ International courts have interpreted the contextual elements of crimes against humanity as requiring an attack directed against any civilian population, defined as a course of conduct involving the multiple commission of prohibited acts against any civilian population; a State or organizational policy to commit such an attack, through which the State actively promotes or encourages the attack against a civilian population; that the attack be widespread or systematic, where "widespread" refers to the large-scale nature of the attack and the number of victims, and "systematic" refers to the organized nature of the acts of violence and the improbability of their random or accidental occurrence; an attack need be only widespread or systematic, not both, for the contextual element to be satisfied; a nexus between the individual act and the attack; and that the perpetrator acted with sufficient *mens rea*.

89. Few meaningful avenues for justice remain for the victims within Belarus because of the role of prosecutors and lack of independence of the judiciary, the denial of the right to a fair trial, and the intimidation to which lawyers are subjected. Systemic flaws in the rule of law facilitate the use of the judiciary as an instrument of repression and a means to avoid accountability for violations. Without effective investigations and remedies, currently there is no reasonable expectation for justice to be delivered for human rights violations committed in Belarus.

90. As a State party to the International Covenant on Civil and Political Rights and the Convention against Torture, Belarus has an obligation to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed in any territory under its jurisdiction.³⁰ Victims of torture also have the right to report a complaint and to have their cases promptly and impartially examined, and to protection against intimidation.³¹ Moreover, victims of all human rights violations have the right to reparation, including measures of satisfaction and compensation.

91. OHCHR notes that criminal investigations have been initiated in at least four competent jurisdictions outside Belarus in relation to the human rights violations and potential international crimes committed in Belarus.³² In this regard it is vital that efforts to collect, document and preserve evidence of the violations continue with a view to assisting future accountability processes.

92. Pursuant to relevant United Nations protocols, the material collected, preserved, analysed and stored by OHCHR during its examination may be sought by national or international investigative or judicial authorities seeking to pursue accountability measures.³³ Opportunities to consider such cooperation within the United Nations framework for engagement with national authorities arise where informed consent to share statements, supplementary material or other documentary evidence has been given by its provider, and where such accountability processes are consistent with international human rights standards.

X. Recommendations

93. **The High Commissioner recalls all the recommendations made in her previous report to the Human Rights Council (A/HRC/46/4).**

94. **The High Commissioner further recommends that the Government of Belarus:**

(a) **Immediately release all prisoners sentenced on politically motivated grounds and cease all other ongoing violations of human rights identified in the present report, including the systematic repression of civil society, independent media and opposition groups, and refrain from committing such violations in the future;**

(b) **Promptly initiate effective, transparent and independent investigations into all past violations of human rights that can be qualified as crimes under national or international law, including mass arbitrary arrest and detention, torture and other ill-treatment, and the gender dimension of any such crimes, and ensure that investigations can cover the full chain of command that may bear individual criminal responsibility;**

(c) **Provide full reparation, including compensation, restitution, rehabilitation, appropriate forms of satisfaction and guarantees of non-repetition to all victims of human rights violations, in accordance with international and domestic law;**

³⁰ Convention against Torture, art. 12.

³¹ Ibid., art. 13.

³² See also Yearbook of the International Law Commission, 2014, vol. II (Part Two), chap. VI.

³³ See ST/SGB/2007/6 and ST/SGB/2007/5. See also the Personal Data Protection and Privacy Principles, adopted by the High-level Committee on Management on 11 October 2018.

(d) Implement structural reforms that can enable the full realization of the right to participate in public affairs and other related civil and political rights, including the freedoms of expression, peaceful assembly and association, for all Belarusians;

(e) Implement structural reforms that can enable the creation of an independent judiciary free from executive influence that can serve as a guarantor of human rights and the rule of law, including respect for the independence of lawyers and their protection;

(f) Provide access to and ensure cooperation with OHCHR and all special procedures of the Human Rights Council, including the Special Rapporteur on the situation of human rights in Belarus;

(g) Give effect to the decisions of the Human Rights Committee in the context of individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights and to the recommendations made by international human rights mechanisms, and refrain from any reprisal against those who cooperate with United Nations mechanisms.

95. The High Commissioner recommends that other States Members of the United Nations:

(a) Engage with the Belarusian authorities through continuing dialogue, with a view to ensure the State's full compliance with its obligations under international human rights law, and in this context consider appropriate use of the opportunities provided by the relevant international and regional human rights mechanisms to vindicate these obligations;

(b) Work towards accountability through national proceedings based on accepted principles of extraterritorial and universal jurisdiction, as relevant and in accordance with international law and, in combination, explore other targeted measures against credibly alleged perpetrators of grave human rights violations and abuses;

(c) Review, in this regard, their domestic legal systems with a view to addressing and removing structural barriers that may hinder effective investigations and prosecutions based on extraterritorial or universal jurisdiction, consistent with international law, including through any necessary legislative amendments and the provision of adequate resources, personnel and training to the relevant investigative, prosecutorial and judicial authorities;

(d) Ensure effective cooperation with other States engaged in accountability efforts at the national level, including through effective coordination, information-sharing, provision of mutual legal assistance and extradition, as relevant;

(e) Fully respect the principle of non-refoulement, in particular with respect to human rights defenders, journalists and victims of human rights violations who have fled Belarus to their territories, and take measures to protect their rights and enable them to lead dignified lives, including through the enjoyment of the right to work and by providing full access to public and social services in their territories, as well as to full rehabilitation services for victims of gross human rights violations, including torture;

(f) In view of the broad suppression of civil society in Belarus, consider supporting civil society actors engaged with respect to Belarus in their efforts to promote and protect human rights in the country, including in the context of accountability for human rights violations;

(g) Consider supporting further efforts to document and preserve information and evidence of human rights violations committed in Belarus for the purposes of present and future accountability measures.

Annex I

Organizational and command and control structures of the Belarusian Ministry of Interior, special and armed forces and law enforcement agencies

1. The internal security sector of Belarus comprises the Ministry of Internal Affairs and the Internal Troops subordinate to it; the Committee for State Security (KGB); the Operations and Analysis Centre under the President and the Presidential Security Service; the structures of the State Border Committee; the investigative division of the State Control Committee; the State Customs Committee; and the Main Intelligence Directorate of the Belarusian Armed Forces. While enough information is available to establish the involvement of the above-listed agencies in the events that occurred during the 9 to 14 August period, only the key agencies of the security sector are listed here.
2. The Security Council is the supreme collective coordinating and enforcing the powers of the President on matters of national security. The President appoints the members of the Council who among others determine key national interests, real and potential external and internal security threats, submit proposals to the President regarding domestic policies in ensuring public security, put forward preventive measures to prevent emergency situations and coordinate activities of the government authorities.
3. The Presidential Security Service is responsible for ensuring the security of senior officials of the Belarusian state and ensuring the security of protected objects.
4. The Ministry of Internal Affairs oversees the Penal Correction Department (PCD), the Main Directorate for Combatting Organized Crime and Corruption (GUBOPiK), the Internal Troops, and the Almaz Special Anti-Terrorism Unit.
5. The Penal Correction Department (PCD) oversees all Ministry of Internal Affairs' detention facilities.³⁴ The head of the PCD is nominated by the Minister of Internal Affairs and appointed by the President. The head of the PCD reports directly to the Minister of Internal Affairs.
6. The Main Directorate for Combatting Organized Crime and Corruption (GUBOPiK) is a unit within the Ministry of Internal Affairs. The Third Department, responsible for countering extremism, has three divisions: the first division is responsible for "countering extremism in radical public and other formations"; the second division is responsible for "countering extremism in ethnic and religious formation and illegal migration"; and the third division is responsible for computer intelligence.
7. In August 2020, four so-called "Attack Groups" were created, comprising of personnel from GUBOPiK who were in command and supported by servicemen of the special operations forces of the Armed Forces.
8. The Internal Troops are a paramilitary gendarmerie forces, subordinate to the Ministry of Internal Affairs that includes the Minsk-based 3rd Red Banner Separate Special-Purpose Brigade (Military 3214 "Uruchenskaya Brigade"), whose Special Rapid Response Unit (SOBR) performs crowd control functions as part of the riot police system. The Ministry of Internal Affairs has the authority to conduct investigations into alleged misconduct by all subordinate forces.
9. The Almaz Special Anti-Terrorism Unit (Almaz), a special-purpose detachment of the Ministry of Internal Affairs, was also deployed to operationally assist in the dispersal of mass protests.

³⁴ All heads of facilities where persons accused or convicted are held are appointed and subordinate to this department. Subordinated to the PCD are regional and Minsk city subdivisions (UDIN). All correctional and pre-trial detention facilities in their territories report to the UDIN.

10. Alongside the abovementioned Ministry of Internal Affairs bodies, the forces and officials of the Committee for State Security (KGB); the Operations and Analysis Centre under the President; the Investigative Committee; and the Ministry of Defence were involved in the events during the 9 to 14 August period.
11. The Committee for State Security of the Republic of Belarus (KGB) is Belarus' national intelligence agency. The Alpha Group is an elite KGB unit dedicated to anti-terrorism operations, that can be tasked to assist operationally the Public Security Police and other law enforcement agencies.
12. The Operations and Analysis Centre under the President of the Republic of Belarus (OAC) is the state security agency in charge of classified information and state secrets, responsible for the information environment and telecommunication channels including internet traffic control.
13. The Investigative Committee, a body nominally independent from the Ministry of Internal Affairs, is exercising authority in the area of pre-trial criminal proceedings.
14. The Ministry of Defence ordered the transfer of servicemen from the 5th Spetsnaz Brigade to assist the Special Purpose Police Department (OMON).

Annex II

Map of Belarus

