



BELARUS ON HOLD: CRACKDOWN ON POST-ELECTION PROTESTS

Findings of Fact-finding Mission to Belarus

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for Human Rights



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Executive Summary

This report summarises the findings of a monitoring mission to Minsk, the capital of Belarus, organised by Truth Hounds and International Partnership for Human Rights (IPHR) within the framework of the Civic Solidarity Platform (CSP) on 10-18 August 2020. It documents and investigates allegations of human rights violations perpetrated by Belarusian authorities in connection with the peaceful mass protests that followed the highly contested and charged presidential election that took place on 9 August.

The mission team gathered over 40 testimonies from victims and witnesses of human rights violations related to the post-election protests, as well as from observers such as journalists and human rights defenders. The mission team also drew on information from other credible sources, including material available in the public domain.

This reports shows that the response of the authorities to the post-election protests in Belarus has resulted in violations of key human rights standards. Major findings include:

- The authorities have severely impinged upon the right to freedom of assembly, with law enforcement authorities and security forces violently dispersing peaceful protests and using excessive, unnecessary, and indiscriminate force against protesters. The evidence compiled by our mission also indicates that law enforcement authorities have used rubber bullets, flash grenades, stun guns and other less-lethal weapons against peaceful protesters with the apparent intention of harming them, as well as of intimidating and discouraging them from exercising their right to assemble peacefully.
- The authorities have carried out arbitrary, indiscriminate and unlawful detentions of peaceful protesters, passers-by, as well as observers, in violation of the right to liberty and security of person. In addition to riot and regular police, plainclothes police officers with no signs of identification have played an active role in these round-ups.
- People detained in connection with peaceful protests have been subjected to torture and other ill-treatment at the hands of law enforcement authorities. We have documented allegations of detainees being severely beaten; forced to assume stressful body positions for prolonged periods of time; intimidated and coerced into signing confessions and statements; subjected to sexual harassment and violence; and held in overcrowded detention cells and denied access to safe drinking water, food and adequate sanitary facilities. Detainees have also been denied access to medical treatment, including vital medication for chronic conditions.
- The authorities have failed to safeguard the right to life of protesters, including by using excessive force against protesters and allowing enforced disappearances to take place. Violent interventions of law enforcement authorities have resulted in serious injuries and even fatalities among protesters, with several people reported to have died during protests, in detention or as result of enforced disappearances. The evidence compiled for this report shows that the authorities have failed to investigate allegations of enforced disappearances and that they have deprived family members of disappeared persons of relevant information needed to ascertain the whereabouts of their loved ones.
- The authorities have failed to comply with international standards guaranteeing fair trial and due process rights when putting protesters on trial. Many court hearings have been hastily convened and held behind closed doors inside detention facilities. This has prevented defendants from

arranging for legal counsel and preparing their defence, while also preventing public scrutiny of the proceedings.

- In violation of the right to freedom of expression, journalists and human rights defenders covering protests have been subjected to arbitrary and/or unlawful detentions, intimidation and harassment, which appear to have been aimed at preventing them from documenting and publicising information about the harsh response of the authorities to the post-election protests.

I. Methodology

On 11-18 August 2020, a team of ten monitors including representatives of IPHR and Truth Hounds, as well as volunteers conducted a fact-finding mission to Belarus within the framework of the CSP. Local partner organisations assisted with the implementation of the mission.

The purpose of the mission was to document and investigate allegations of the use of disproportionate and excessive force, arbitrary detentions, abusive treatment of protesters and other human rights violations perpetrated by the police, security forces and other authorities in connection with the peaceful mass protests that followed the contested presidential election held in Belarus on 9 August 2020.

The monitors interviewed and recorded testimony from victims of human rights violations, witnesses, lawyers, journalists and NGO leaders with first-hand information about the events under investigation. We wish to thank all those who agreed to meet our delegation and share their observations, experiences, analyses, photos and video-recordings. Most people we spoke to did so on condition of anonymity and therefore we have not used their real names in this report for security reasons.

This report presents information obtained during the fact-finding mission, as well as other relevant information from credible sources and provides a legal assessment of the response of the Belarusian authorities to the post-election protests. The report primarily focuses on the events of 9-16 August 2020, but also covers developments after these dates when applicable (e.g. ongoing violations that fit into the pattern documented).

II. Overview of Events

Background to the peaceful mass protests

A highly charged and disputed Belarusian presidential election took place on 9 August 2020. Ahead of the election, the authorities barred several opposition candidates from running and arrested several of them on criminal charges. According to Belarusian human rights defenders, the authorities arrested at least 2,000 political opposition activists, journalists, bloggers, peaceful protesters and others in the months leading up to the vote. Among them were nine members of opposition candidate Svetlana Tikhanovskaya's campaign staff. Tikhanovskaya emerged as long-term President Alexander Lukashenko's main opponent in the election after entering the race instead of her husband, the popular YouTube blogger Sergei Tikhanovsky who was denied registration and arrested.

In the evening of Election Day, the Central Election Commission (CEC) announced the preliminary results, which indicated an overwhelming victory for Alexander Lukashenko with some 80 percent of the votes. According to the CEC, Tikhanovskaya only received around 10 percent of the votes. However, independent exit polls showed a strikingly different result: almost 80 percent in favour of Tikhanovskaya and less than 10 percent for the incumbent.¹

In addition to the discrepancies between the exit polls and the official results, there were serious concerns about the lack of transparency of the vote count since independent observers were prevented from accessing polling stations. The Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) did not deploy any election observation mission due to the lack of invitation.² Local electoral commissions were made up of people approved by the government, mostly teachers and members of pro-government associations.³ While citizens were encouraged to join electoral commissions as part of public initiatives implemented prior to the election, only few were admitted among the thousands of people who applied.

There were credible reports of widespread and systematic irregularities during the election. Among others, police reportedly forced the electoral commissions at several polling stations to erroneously report that Lukashenko had won 80 percent of votes.⁴

After the announcement of the preliminary election results on 9 August 2020, people took to the streets to protest what they believed to be the rigged re-election of Lukashenko and to defend the votes they had cast for Tikhanovskaya. Large numbers of peaceful protesters gathered in the main squares in the capital, Minsk, as well as in Brest, Gomel, Grodno, Mogilev, Molodechno, and other cities across the country on Election Day and in the days and weeks after the election. At the time of publication, the protests were still ongoing. The authorities have violently cracked down on the peaceful post-election protests, using a range of repressive tactics, as documented and analysed in this report.

The main opposition candidate, Svetlana Tikhanovskaya fled to Lithuania after apparently being intimidated by government representatives during a three-hour long meeting in the building of the CEC in Minsk on 10 August 2020. She allegedly faced threats with respect to her own safety and well-being, as well as those of her family members. In addition, she was forced to record a video in which she said that she accepted the official election results and called for an end to the demonstrations. As of mid-August 2020, Tikhanovskaya resumed her opposition activity in exile and recorded several video

1 Belarusian Institute for Strategic Studies, August 2020: <https://belinstitute.com/en/article/belarus-aliaksandr-lukashenka-will-do-anything-cling-power>

2 "ODIHR will not deploy election observation mission to Belarus due to lack of invitation", 15 July 2020, <https://www.osce.org/odihr/elections/457309>

3 Tableau Public, 2 September 2020: <https://public.tableau.com/profile/vizuatators?fbclid=IwAR3rub8S70zO2aOQ8VInluR4WPDB8YWS09n4VsMYKD3aV8Xtb4jOOotFUZc#!/vizhome/28878/2020eng>

4 Democracy Reporting International, 11 August 2020: <https://democracy-reporting.org/statement-the-eu-should-step-up-to-support-the-people-of-belarus/?fbclid=IwAR1LLZrNI-EJ0ejOsnFLs4VYuemfYg5HFWDefk8Re-6gezAJMbM38yLAWfE>

messages addressing the people of Belarus,⁵ international institutions⁶ and other audiences,⁷ calling for an end to police violence, the immediate release of all political prisoners and a free and fair presidential election.

Harsh response to the protests

Allegations of the use of excessive force and ill-treatment of peaceful protesters by law enforcement authorities were reported starting from around 10 pm on 9 August 2020. At that time, witnesses reported seeing violent assaults on peaceful protesters in Minsk, Brest, Mogilev and other Belarusian cities by riot police, regular police, military forces, and plainclothes police officers who had no signs of identification. Witnesses allege that riot police and plainclothes police officers used rubber bullets, flash grenades, tear gas and physical force against the protesters. In Minsk, a police van drove into a crowd of protesters. In response to the protests, the authorities deployed additional military trucks and equipment in the city of Minsk. The use of excessive force and ill-treatment of protesters by law enforcement authorities were also reported during peaceful protests held in subsequent days.

While comprehensive statistics are lacking, available information on the number of people in need of medical attention during the first few days of post-election protests provides an indication of the scale of the violence used by law enforcement authorities. By 16 August, 158 people were known to have been hospitalised, while the number of those seeking medical care reached one thousand. For example, in Brest, some 23 people were hospitalised out of the 100 who required medical assistance and in Grodno, 25 were hospitalised out of 163.⁸

In addition to police brutality, peaceful protesters, random passers-by, as well as journalists and human rights defenders on duty were allegedly subjected to a number of other human rights violations in connection with the protests held on Election Day and in subsequent days. These alleged human rights violations include: arbitrary and/or unlawful detentions; torture and ill-treatment in detention; and poor conditions of detention (i.e. overcrowded detention facilities, and deprivation of access to food, drinking water and adequate sanitation facilities). There are also concerns that the authorities failed to comply with due process and international fair trial standards particularly during court hearings, which were held inside detention facilities and behind closed doors.

Based on available information, it is not possible to determine the exact number of individuals subjected to human rights violations in connection with the post-election protests. However, figures available as of 2 September 2020 indicate that at least 7,000 people have been detained and six protesters killed by law enforcement authorities, although the demonstrations have been primarily peaceful (in some cases protesters have reportedly thrown stones at law enforcement officials for self-defense purposes).

5 BBC News Russian, «Давайте вместе защитим наш выбор»: новое обращение Светланы Тихановской, 14 August 2020: <https://www.bbc.com/russian/live/news-53698604>

6 'Ruptly' Youtube Channel, 'LIVE: Belarus opposition leader Tikhanovskaya addresses the European Parliament', 25 August 2020: <https://www.youtube.com/watch?v=AP7MhtFBI5w>; Council of Europe, 'Secretary General gravely concerned by human rights violations in Belarus', 08 September 2020: <https://www.coe.int/ru/web/portal/-/secretary-general-gravely-concerned-by-human-rights-violations-in-belarus>; BBC News, Belarus: 'Tikhanovskaya urges UN intervention to stop violence', 05 September 2020: <https://www.bbc.com/news/world-europe-54024272>

7 'In time Ukraine' Youtube Channel, 'Обращение Светланы Тихановской к гражданам России: Поддержите белорусский народ.' 09 September 2020: <https://www.youtube.com/watch?v=O9YQPWashu4>

8 Tableau Public, 2 September 2020: <https://public.tableau.com/profile/vizuaturs?fbclid=IwAR3rub8S70zO2aOQ8VInluR4WPDB8YWS09n4VsMYKD3aV8Xtb4jOOotFUZc#//vizhome/28878/2020eng>

In terms of legal proceedings, over 90 criminal cases have been opened against peaceful protesters, yet no criminal cases have been initiated against any law enforcement officials in relation to the excessive use of force against civilians.⁹

Restrictions on internet access

Authorities disrupted internet access in an apparent response to the peaceful, countrywide protests, thus also restricting access to the outside world. From 9 to 12 August 2020, internet access was severely restricted for a total of 61 hours, leaving access only to 2G networks, permitting text messages and voice calls. Lukashenko, the National Center for Response to Computer Incidents, and Beltelecom (the state internet service provider) blamed foreign cyberattacks for the disruptions. However, independent experts and an independent monitoring group attributed the disruptions to government interference.¹⁰ Once internet access was restored, reports of the full scale of police beatings and other violence against protesters spread online, leading even more people to join the protests.

Since 12 August 2020, there have repeatedly been new internet disruptions, apparently in response to the continued mass protests. On 14 August, protesters were unable to connect to mobile internet at Independence Square in Minsk, as law enforcement officers started to gather in the city centre. Three days later, a 15-minute nationwide disruption was recorded during what was meant to be a pro-Lukashenko protest. The disruption took place as the crowd started chanting, in reference to Lukashenko, “Go away! Go away!”

On 23 August 2020, when more than 100,000 protesters gathered in Minsk, mobile internet services were disrupted for over three hours as protesters moved towards the presidential palace. Three days later, cellular internet was again restricted in Minsk for about an hour, coinciding with arrests at a protest in the city centre. Ahead of the disruptions on 23 August, the privately owned internet service provider, A1, notified its users that there would be temporary bandwidth restrictions of the company’s 3G networks due to “requests by the authorities related to ensuring national security.” In a separate message, the company also noted that the vast majority of the country’s internet service providers were required to connect via Beltelecom and the National Traffic Exchange Center, both of which have the technical capacity for internet disruptions. The company reported that connectivity had been restored half an hour after posting the notification. The authorities have also blocked websites covering the presidential election, the subsequent nationwide protests, and police brutality.¹¹

III. Main Issues

This chapter is devoted to a discussion of key human rights affected by the response of the Belarusian authorities to the post-election protests. It sets out applicable international standards for each of these rights and provides a description and assessment of relevant developments on the ground in Belarus. The chapter starts with a general overview of the legal framework for the protection of human rights in Belarus.

9 Tableau Public, 2 September 2020: <https://public.tableau.com/profile/vizuators?fbclid=IwAR3rub8S70zO2aOQ8VInluR4WPDB8YWS09n4VsMYKD3aV8Xtb4jOOotFUZc#!/vizhome/28878/2020eng>

10 Human Rights Watch, Belarus: Internet Disruptions, Online Censorship, 28 August 2020: <https://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship>

11 Human Rights Watch, Belarus: Internet Disruptions, Online Censorship, 28 August 2020: <https://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship>

Legal framework for the protection of human rights in Belarus

INTERNATIONAL HUMAN RIGHTS STANDARDS

Belarus is a signatory to key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR, ratified on 12 November 1973), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT, ratified on 13 March 1987) and other treaties mentioned below. As a state party to these treaties, Belarus is legally bound to comply with the obligations set out in them. Belarus is not a member of the Council of Europe nor a party to the European Convention on Human Rights. However, Belarus is a member of the Organization for Security and Cooperation in Europe (OSCE) and, in this capacity, has agreed to observe a set of human rights commitments.¹²

HUMAN RIGHTS STANDARDS IN NATIONAL LEGISLATION

The Constitution of Belarus recognizes the supremacy of generally recognised principles of international law and, according to article 8 of the Constitution, domestic law must fully comply with these principles. Further, article 21 of the Constitution provides that the supreme goal of the state is to safeguard the rights and freedoms of Belarusian citizens. The Constitution also guarantees major human rights and fundamental freedoms including: the right to liberty and security of a person and the prohibition of torture, inhuman or degrading treatment or punishment (article 25); the right to a fair trial and presumption of innocence (articles 26-27); the right to privacy (article 28); the freedom of thoughts and beliefs and their free expression (article 33); the freedom to hold assemblies (article 35); the freedom of association (article 36), the right to participate in the solution of state matters, both directly and through freely elected representatives (article 37); and the right to vote freely and to be elected to state bodies on the basis of universal, equal, direct or indirect suffrage by secret ballot (article 38).

Under articles 22 and 23 of the Constitution, everyone is equal before the law and has the right to equal protection of their rights and legitimate interests without any discrimination. Moreover, restrictions on human rights are permitted only when specified by law, on the grounds of national security, public order, or the protection of the morals and health of the population or of the rights and freedoms of others. Article 60 of the Constitution guarantees everyone protection of their rights and liberties by a competent, independent and impartial court of law within time periods specified in law; citizens are also entitled, in accordance with the law, to recover, through the courts, both property damage and financial compensation for moral injury.

The right to freedom of peaceful assembly, the use of force by law enforcement officials

RELEVANT INTERNATIONAL STANDARDS

The right to peaceful assembly stands at the cornerstone of democracy protecting the rights of individuals and groups to meet and engage in inter alia peaceful protest. Both the right to freedom

¹² OSCE, "Human Dimension Commitments Vol 1, 3rd Edition" 2011 - available at <https://www.osce.org/files/f/documents/5/d/76894.pdf>; OSCE, Human Dimension Commitments, Vol 2, Chronological Compilation, November 2012 - <https://www.osce.org/odihr/elections/76895>

of peaceful assembly and association are contained in international human rights instruments.¹³ It is important to note that only peaceful assembly is protected by the right to freedom of assembly. There should always be a presumption in favour of holding assemblies and this right should, as far as possible, be enjoyed without regulation. Most importantly, states are under a positive obligation to facilitate and protect public assemblies, and any policing of protests should comply with the key principles of legality, necessity, proportionality and non-discrimination.

National legislation regulating the conduct of assemblies is not consistent with international standards. According to the Law on Mass Events of the Republic of Belarus, in order to hold a protest or a demonstration, organisers must apply for permission from the authorities at least 15 days prior to the planned event.¹⁴ Despite the introduction of elements of a notification procedure for assemblies in 2018 (with advance notification 10 days prior to an assembly, in a limited number of places determined by the authorities), the conditions for holding a peaceful assembly have not improved. National legislation also does not make any provision for spontaneous assemblies, simultaneous or counter assemblies.

Further, the Law on Mass Events prohibits any announcements relating to the time and location of upcoming assemblies in the media or online until the assemblies have been authorised by the authorities. Any announcements made in violation of this requirement in and of themselves constitute a grounds for banning assemblies.

The Law on Mass Events also obliges the organisers of assemblies to conclude contracts with state agencies on the payment for security operations related to assemblies, as well as ambulance and cleaning services de facto provides a serious obstacle to freedom of assembly. In 2018, the government amended this law to introduce fixed fees for these mandatory services associated with holding public assemblies. The fixed fees have become a practical and financial obstacle for many organisations seeking to hold public assemblies; they are simply unable to pay the high fees required under the law.

In practice, pro-democratic and pro-freedom of expression assemblies are frequently banned on arbitrary grounds in Belarus. When the organisers turn to court in such cases, courts typically rule in favour of the authorities.

In accordance with international standards, law enforcement authorities may only use force in strictly limited circumstances. The International Committee of the Red Cross defines the use of force as “any physical constraint imposed on a person, ranging from physical restraint by hand or with a restraining device to use of firearms or other weapons.”¹⁵ As a general human rights principle, force may be used but only when strictly necessary and only for lawful law enforcement purposes. In all instances, damage and injury are to be minimised. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF, 1990) governs the use of force in law enforcement operations.¹⁶ The guidelines call on law enforcement officials to “apply non-violent means before resorting to the use

13 Article 21, ICCPR; Article 20(1), UDHR. According to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, Second Edition (2010), an assembly is defined as “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose” See, OSCE/ODIHR “Guidelines on Freedom of Peaceful Assembly” Second edition 2010 available at: <https://www.osce.org/files/f/documents/4/0/73405.pdf>

14 The Law on Mass Events of the Republic of Belarus, 04 January 2010: <https://www.refworld.org.ru/pdfid/546074ec4.pdf>

15 ICRC “The use of force in law enforcement operations’, Legal factsheet 3 September 2015, see: <https://www.icrc.org/en/document/use-force-law-enforcement-operations>

16 UN Basic Principle on the Use of Force and Firearms by Law Enforcement Officials (1990) - available at: <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

of force or firearms.”¹⁷ In those cases where the lawful use of force and firearms are unavoidable, law enforcement officials should exercise restraint and act in proportion to the seriousness of the offence.¹⁸

In line with international human rights standards, the use of firearms is limited to certain situations and only when less extreme means have proved ineffective to achieve the specified aims. The use of firearms is limited to: (i) self-defence or the defence of others against the imminent threat of death or serious injury; (ii) prevention of the perpetration of a particularly serious crime involving a grave threat to life and (iii) the arrest of a person presenting a danger of perpetrating such a crime and resisting authority, or prevention of his or her escape.¹⁹

People in detention or custody are particularly vulnerable to human rights abuses at the hands of law enforcement officials. In such cases, the authorities should not use force, except when strictly necessary to maintain security in the institution or where personal safety is threatened.

Rubber bullets, noise grenades and stun guns are considered to be “non-lethal” or “less lethal” weapons and are often used as a tool of public order management (i.e. at public assemblies).²⁰ In times of civil unrest, such weapons have become the preferred *modus operandi* for law enforcement officials, yet they are not without risk if not used in a lawful way. For example, the inappropriate use of rubber bullets targeting the face or head may result in skull fracture and brain injury. In such instances, the fundamental human rights of the participants should be respected. If less-lethal weapons are to be used to address acts of violent individuals, international standards call on law enforcement officials to give due care to the “likely proximity of third parties and bystanders”.²¹

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

While the post-election protests in Belarus have not been sanctioned in advance by the authorities as required by national law, the law enforcement response to them has been disproportionate and unlawful. Local and international human rights NGOs, as well as international human rights bodies have concluded that the post-election protests have been primarily peaceful, involving neither the use of violence, weapons nor other specialised tools and that they have not presented any kind of future threat.²² As documented by our mission, and confirmed by visual and other materials in the public domain, law enforcement authorities and security forces have frequently used excessive, unnecessary, and indiscriminate force against protesters. Protesters have reported being verbally abused, beaten or otherwise ill-treated by law enforcement officials, including riot police, internal troops, and officers with no signs of identification. The evidence compiled by our mission also indicates that law enforcement authorities have used rubber bullets, flash grenades, stun guns and other less-lethal weapons against peaceful protesters with the apparent intention of harming them.

17 BPUFF, par 4

18 BPUFF, par 5(a)

19 BPUFF, par 9

20 See Geneva Academy, “United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement”, August 2019 available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Guidance%20on%20Less%20Lethal%20Weapons.pdf>

21 See above at par 6.3.2

22 Amnesty International, ‘Protect Peaceful Protestors in Belarus’, August 2020: <https://www.amnesty.org/en/get-involved/take-action/protect-peaceful-protesters-in-belarus/>; The UN Human Rights Office of the High Commissioner, ‘UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances’, 1 September 2020: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>; Human Rights Center “Viasna”, 2 September 2020: <http://spring96.org/ru/news/99339>

This victim account illustrates the beating of a peaceful protester:

M07 They [riot police] grabbed me by the head and the hand and dragged me out of my car and right away started beating me with a baton on my head, spine, and stomach. They immediately twisted my arms behind my back, communicated using only foul language and constantly threatened me. They said that they will now break my arms and legs and that I should tell them who organised the protests.²³

The following victim and witness accounts illustrate the use of less-lethal weapons, such as rubber bullets and flash grenades against peaceful protesters.

M01 I ran up to the riot police with the crowd to protect other peaceful protesters they were beating... I was all for the peaceful protest, I didn't want to use any kind of force. I wanted to help the guys...to run away somehow. So I approached them from the side to distract the riot police's attention and to drag the guys out. I was about two-three meters from the riot police when an explosion happened near me...about one and a half meter away from me. I felt the wave, lost orientation at some point... Then I realised I have a wound on my hand and a [flash] grenade splinter in it.²⁴

M20 On 10 August 2020, I came out into the street to express my disagreement with the election results and the actions of the riot police on 9 August. I met some of my friends with similar views and we went towards Pushkina metro station [in Minsk] where many people had already gathered... [...] We learned that internal troops had fired [at some of the protesters] with rubber bullets and that they were coming back. [...] [People] started to carry heavier objects, like benches and flowerbeds onto the main road to block it. [...] When it got dark, at least five minivans arrived via a sidewalk and right away, we could hear the sound of the first flash grenades being thrown towards the crowd. The crowd was just standing still... Well, of course when people heard the explosions they started to run.²⁵



Image: Truth Hounds

23 CSP interview with M07, 12 August 2020

24 CSP interview with M01, 11 August 2020

25 CSP interview with M20, 14 August 2020

M04 Around midnight, riot police appeared in front of the Orbita [hotel]. The shooting was so heavy that I thought the hotel would collapse. They were firing with [rubber bullet] guns and throwing [flash] grenades.²⁶

Victims whom our monitors interviewed also reported being attacked by riot police on non-public properties, including through the use of less lethal weapons. As a result, these properties were damaged, in addition to the harm suffered by the individuals affected.

M19 I came from my work at the garage to the city of Zaslavl. I went to a vending stall to get myself cigarettes and some coffee, and to talk to my friends... It was on 12 August 2020, around 10:30 pm. We stood near the stall...not carrying out any kind of protests. Riot police arrived at the square and we locked ourselves into the stall... We were scared. [Police] ran to the stall and started pounding at the door. The door was closed; they shouted that they would break the whole stall, if we don't open the door. Someone opened the door. They immediately began to beat me on my head with batons, threw me against the window so it broke... Then we were lying on the floor and they beat us with batons, kicked us with their feet and slapped us with their hands. I was kicked in the genital area... street, sprinkled bolontids on my face. They had no signs of identification, just black uniforms and helmets.²⁷

In some cases, it is unclear whether riot police targeted residential premises deliberately or the damage resulted from attacks on peaceful protesters gathering nearby.

M18 On 10 August 2020, around 11 pm, a stun grenade, possibly with tear gas, hit our apartment. [...] Around 8.30 pm people started gathering around the circle [road] on Pushkinskaya street and this lasted until 10.30 pm. Then the riot police arrived... It was 200-300 of them. They lined up with shields and blocked the road. They used brutal force... I mean, right away you could hear the sounds of stun grenades.²⁸



Image: Truth Hounds

26 CSP interview with M04, 12 August 2020

27 CSP interview with M19, 15 August 2020

28 CSP interview with M18, 15 August, 2020

The right to life and protection against enforced disappearance

RELEVANT INTERNATIONAL STANDARDS

Under international human rights law, everyone has the right to life, liberty and security of person, whilst the “arbitrary” deprivation of life is prohibited.²⁹ The notion of “arbitrary” goes further than being simply unlawful and includes considerations of reasonableness, necessity and proportionality. The right to life is fundamental and non-derogable. However, it is not absolute and international human rights treaties do recognise that there may be some instances when the deprivation of life may not be arbitrary. For example, in those cases where lethal force is used in self-defence, to effect an arrest or to quell a riot. States are expected to take all necessary measures to prevent arbitrary deprivations of life by law enforcement officials.³⁰ The UN Human Rights Committee has made clear that the use of potentially lethal force for law enforcement purposes should only be a measure of last resort when it is strictly necessary to protect life or prevent serious injury from an imminent threat.³¹

Enforced disappearances are used by authoritarian regimes as a tool of terror spreading fear and anxiety among the population. The disappearance of an individual has a profound effect on family members and friends who are left in a “no man’s land” and legal limbo. Such actions constitute a crime under international law and, accordingly, states are required to investigate, prosecute and punish the perpetrators. The practice of enforced disappearances infringes a number of human rights including, the right to security and dignity of the person, the right to humane conditions of detention, the prohibition of torture and other cruel and inhuman treatment and the right to life (if the victims are killed or their fate is unknown). Under international human rights law, an enforced disappearance is deemed to be the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”³²

International human rights instruments prohibit the practice of enforced disappearances in all circumstances including a war or other public emergency.³³

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

As of 27 August 2020, six persons had been reported dead, in what was believed to be the result of actions of riot police and other law enforcement officials in connection with the post-election protests.

Two people died whilst taking part in peaceful protests: Hienadz Šutaŭ and Aliaksandr Tarajkoŭski were

29 See ICCPR, Article 6 (the right to life) and Article 9 (right to liberty and security of the person)

30 HRC General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life - CCPR/C/GC/36 - 30 October 2018 - available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf, para 13

31 See HRC General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life - CCPR/C/GC/36 - 30 October 2018 - para 12 (see above)

32 UN International Convention for the Protection of All Persons from Enforced Disappearance (CEPD), 2006 available at: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx> Belarus is not a party to CEPD.

33 CEPD, Article 1.2

lethally injured and killed, respectively, by riot police during peaceful protests, most likely as a result of the use of lethal weapons by the police.

Aliaksandr Vichor died from a heart attack in a riot police van, having spent several hours in the heat of the van with no access to water. The Ministry of Foreign Affairs claimed that Vichor died as a result of a drug overdose.

Arciom Parukaŭ was hit by a civilian car on 11 August 2020. His family members are unsure whether he was participating in the protests but it cannot be excluded that he was hit by a car when attempting to escape police brutality.

The body of Kanstancin Šyškaŭ, a local election committee member from the town of Volkovysk who refused to sign the official election protocol on Election Day, was found in the forest by the search group "Angel" on 18 August 2020. Shyshmakov left his workplace around 4 pm on 15 August 2020 and had been missing since then (see more on concerns about enforced disappearances below).

Mikita Kryucou's body was also found in the forest; later his family learned that he had been detained prior to his death. It is therefore likely that Kryucou's death resulted from torture in detention and that his body was brought to the forest by the police.



Hienadz Šutaŭ 1977-19.8.2020

Image: <https://www.svaboda.org/a/30791741.html>



Arciom Parukaŭ 2001-16.8.2020

Image: <http://spring96.org/be/news/99346>



Kanstancin Šyškaŭ 1991-15.8.2020

Image: <https://www.svaboda.org/a/30790568.html>



Aliaksandr Vichor 1995-11.8.2020

Image: <https://www.svaboda.org/a/30782151.html>



Aliaksandr Tarajkoŭski 1986-10.8.2020

Image: <https://www.svaboda.org/a/30781421.html>



Mikita Kryucou 1992 - 22.08.2020

Image: <https://www.svaboda.org/a/30798180.html>

The actual death toll might be higher since the whereabouts of dozens of people apprehended by the police remain unknown.³⁴ One of the individuals who provided information to our monitors about the events on 9-16 August 2020 believes to have witnessed a killing of an unarmed peaceful young man:

M04 A guy came out of the crowd with his hands up. [He was] around 160 cm tall, skinny, with dark hair. As he walked closer to the riot police, they started firing at him. All of them. He fell down. The ambulance arrived quickly and took him away. I didn't see where the wound was, it was dark. People say he was killed, as on the next day there were many flowers in that place.³⁵

Family members of individuals involved in the post-election protests in Belarus have repeatedly reported the alleged disappearance of their relatives. These witnesses have been unable to ascertain the whereabouts of their relatives despite multiple attempts to locate them through inquiries (via phone and in person) at police stations, detention centres, hospitals, and morgues. While some of those reported missing have later been found, others remained disappeared at the time of writing.

M05 We [at Viasna Centre for Human Rights] have received many [Telegram] messages and phone calls from people looking for their missing relatives. [...] No information about the whereabouts [of those missing] is available either through courts or detention centres where those detained for administrative offenses are usually brought.³⁶

M07 My brothers are now in Zhodino [a prison in the Minsk Region]; we were looking for them for two days, as they were not on any lists [of detainees].³⁷

M08 My daughter is still missing. I went to the Pervomayskiy District Department of Internal Affairs (DDIA); they told me there are no lists [of detainees]. They said I should call 102 [which I did, but] they never picked up. [...] Then Pervomayskiy DDIA said that she had never been there and that I should look...in all police stations in Belarus. I went to Sovetskiy [police station], the staff told me she was not there either. I still do not know where my child is.³⁸

M06 She [the witness's mother] was still in touch with me when she was in the police van. Then she cut off [the phone call], [and] there was no [further] connection [from her] or any kind of information about her whereabouts. The next day I went to the District Department of Internal Affairs where they told me she had not been brought either to the central police station nor to any other police station so I had to come here [, to a temporary detention centre], where I found out that a court hearing had taken place and that [my mother] had been sentenced [...] to 8 days' detention. Yesterday two police vans full of women drove away from the [Frunzenskiy] court. No one knows where they were taken. Literally no one. My mom is 68 years old.³⁹

34 Viasna Human Rights Centre, 14 August 2020: <http://spring96.org/en/news/99039>

35 CSP interview with M04, 12 August 2020

36 CSP interview with M05, 12 August 2020

37 CSP interview with M07, 13 August 2020

38 CSP interview with M08, 13 August 2020

39 CSP interview with M06, 12 August 2020

The right to liberty and security of persons: unlawful and/or arbitrary detentions

RELEVANT INTERNATIONAL STANDARDS

The right to liberty and security of person is one of the most fundamental human rights as it impacts so profoundly on our physical freedoms. The right is protected under a number of international human rights documents, including the Universal Declaration of Human Rights (UDHR) and the ICCPR.⁴⁰ International human rights law allows for depriving individuals of their liberty only in very limited circumstances.⁴¹ Any deprivation of liberty must be reasonable, necessary, proportionate, and non-discriminatory and it must be in accordance with the law and for a specific aim.

Most importantly, international human rights law prohibits the arbitrary deprivation of liberty (i.e. arrest or detention). Further, individuals arrested or detained on a criminal charge are afforded a number of safeguards including the right to challenge the grounds of their detention and the reasons for arrest, as well as the rights to legal counsel and to a trial within a reasonable time or to release.⁴² Any detention should be subject to ongoing and regular review by a court or other independent and impartial tribunal.

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

Victims and witnesses, interviewed as part of the evidence gathering process for this report, allege that riot police and plainclothes police officers with no signs of identification detained individuals without any lawful justification and on an arbitrary basis. In addition, victims and witnesses who were interviewed, as well as local and international human rights organisations allege that riot police and plainclothes police officers forcibly disappeared civilians, including random passers-by, peaceful protesters, as well as journalists and human rights activists.^{43 44}

The testimonies not only point to possible intentional arbitrary and/or unlawful detentions but also to concerted efforts by law enforcement officials to intimidate and discourage the population of Belarus from exercising their lawful right to peaceful assembly, most likely following orders from senior government officials. This is supported by the indiscriminate pattern of detentions, as well as the

40 ICCPR, Article 9 (right to liberty and security of person) and the UDHR, Article 3

41 Article 9 of the ICCPR does not provide a full list of reasons for depriving a person of liberty but does recognize that individuals may be detained on criminal charges. Article 5 of the ECHR does however provide a list of permissible grounds to detain an individual a) the lawful detention of a person after conviction by a competent court;(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

42 ICCPR, Article 9 (2)-(4)

43 The UN Human Rights Office of the High Commissioner, "UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances", 1 September 2020: available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>

44 Human Rights Center "Viasna", 2 September 2020: <http://spring96.org/ru/news/99339>

carefully planned and orchestrated round-ups carried out by riot police and other law enforcement officials, including those with no signs of identification. Victims report being forcefully removed from locked private premises and subsequently being beaten and detained.

M03 In the early hours of 10 August 2020, my boyfriend and I were returning home after a walk and noticed a riot-police bus [on the side of the road]. A man on the other side of the road decided to cross the road to the side where the bus was. [The riot police officers] didn't like it, they started screaming: "Face down!" We went on. They [the riot police] screamed: "Face down, you too!" While we hesitated for a second, not understanding what was happening, the police hit us with batons from the back and threw us into a police van.⁴⁵

M10 I was planning to meet my friend around 7 pm at a cafe where she works but she called me and said the area was cordoned off. I wasn't planning to take part in the protest. [...] I met my classmate and we decided that we would walk in the opposite direction, away from all these events... We figured that the riot police was already in the city centre. As we were talking, a riot police van drove towards us. We tried to go to the side but they surrounded us. We tried to run away but they were all around us. I didn't fight, I just stood there. They ran up to me and ordered me to lie down. As I lay down, they beat me. Then they carried me to the van in which they arrived.⁴⁶

Election observers, who have highlighted election irregularities, have also reportedly been detained by law enforcement officials.

M02 He [my husband] pointed at a large hole in the ballot box and, in response, the head of [the election] commission called the police. We tried to talk to the cadets who were present and explain that he had done nothing wrong but they didn't react. Two big men arrived, dressed in jeans and T-shirts [...] They twisted my husband's arms and tried to take his phone away. We repeatedly asked them what was happening but they did not say anything. They put him in a car; we tried to block it but they drove off anyway. [...] He has been missing since 9 August; we looked [for him] and asked everywhere.⁴⁷

Torture, cruel, inhuman or degrading treatment or punishment

RELEVANT INTERNATIONAL STANDARDS

International human rights law prohibits torture and ill-treatment at all times. Among others, ICCPR (article 7) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) set out this ban.⁴⁸ The prohibition of torture is also widely seen as forming part of customary international law and states may not derogate from this prohibition even in times of war or emergency.⁴⁹

45 CSP interview with M03, 11 August 2020

46 CSP interview with M10, 13 August 2020

47 CSP interview with M02, 11 August 2020

48 Article 7 of the ICCPR provides for the prohibition against torture, or other cruel, inhuman or degrading treatment or punishment.

49 UN CAT - Article 2.2.

The most comprehensive definition of torture is found in the UN CAT.⁵⁰ It defines torture as:

1. Intentional infliction of severe pain and suffering (whether physical or mental) on a person;
2. For such purposes as:
 - a. obtaining information or a confession from the person affected or information about a crime a third person has committed or is suspected of committing;
 - b. Intimidating or coercing the affected person or a third person;
 - c. or for any reason based on discrimination of any kind.
3. The pain or suffering must have been inflicted by, at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity;
4. It does not include any pain and suffering arising only from, inherent in or incidental to lawful sanctions.

Under the UN CAT, states are obliged to take various steps to prevent torture on their territory, including criminalising torture in their domestic law. Further, states are under a duty to promptly and thoroughly investigate any allegations of torture whenever there are reasonable grounds to believe that an act of torture has been committed on their territory.⁵¹

The distinction between torture and cruel, inhuman or degrading treatment or punishment ("other ill treatment")

Unlike torture, cruel, inhuman and degrading treatment is not defined in any international human rights treaties.⁵² It refers to a form a punishment or treatment that does not meet the threshold of torture, usually because it does not reach the level of severe pain or suffering. The exact boundaries between torture and other forms of ill-treatment are often difficult to identify and will depend on the particular circumstances of the case, the characteristics of the individual in question and the level of intensity of the suffering inflicted. Cruel, inhuman or degrading treatment or punishment does not have to be inflicted for a specific purpose (unlike torture), but there does have to be some intent to expose individuals to the conditions which amount to or result in the ill-treatment.

Degrading treatment is generally at the lower end of the scale to cruel or inhuman treatment and usually involves some form of humiliation and debasement of the victim. Moreover, no physical element is necessary to establish torture or other ill-treatment and psychological harm or suffering to a victim may suffice for the purposes of establishing a human rights violation.

Certain abusive acts have been declared by international human rights bodies to amount to violations

50 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNCAT (1984) available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

51 UN CAT - Article 12

52 The UN Human Rights Committee does not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied. See UN Human Rights Committee, General Comment No 20 - Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) HRI/ GEN/1/Rev.9, March 1992 - <https://www.refworld.org/docid/453883fb0.html>

of the prohibition against torture and other ill-treatment. These include, but are not limited to: infliction of wounds or injuries, electric shocks, severe forms of beatings, rape or other sexual violence or molestation, stress positions, and being forced to witness torture or atrocities being inflicted on others.

Whilst ill-treatment is prohibited under international law, a state does not have the same extent of obligations to criminalise, investigate and prosecute acts of cruel, inhuman and degrading treatment that it has in relation to torture.

CONDITIONS OF DETENTION

In some instances, the conditions of detention in and of themselves may amount to cruel, inhuman or degrading treatment. The suffering and humiliation involved must go beyond the inevitable suffering that is connected with imprisonment. Overcrowding and inadequate facilities in respect of heating, sanitation, sleeping arrangements, food and contact with the outside world have been found to be inhuman and degrading treatment.⁵³

In terms of international standards, the UN Standard Minimum Rules for the Treatment of Prisoners (the “UN Mandela Rules”) provide a de minimis soft law standard for the treatment of prisoners.⁵⁴ There are some 122 rules in total which were adopted by the UN General Assembly (UNGA) in 1957 and were subsequently revised and re-adopted unanimously in 2015. The rules govern every aspect of a prisoner’s life including access to healthcare, food, water, contact with the outside world as well as obligations on prison authorities to investigate allegations of torture or ill-treatment. Most importantly, the Mandela Rules are grounded in principles of compassion and dignity.

DOMESTIC LAW AND PRACTICE ON THE BAN ON TORTURE

Belarusian legislation does not define torture as a specific crime in accordance with article 1 of the UN CAT. The Criminal Code does not criminalise the whole range of acts of torture. Senior government officials have not publicly and explicitly condemned the use of torture, nor have they warned the perpetrators of torture and their accomplices that they might be held to account. There is also no guidance, training or information available to prosecutors, judicial and law enforcement officials on the practical implementation of the UN CAT.

Contrary to international human rights law, the current Belarusian authorities practice forced expulsion, deportation and extradition to countries known to use or practice torture and which apply the death penalty. There have been cases of public and covert extradition and expulsion from Belarus without due process, including in the case of Svetlana Tihkanovskaya who fled to Lithuania after apparently being intimidated by representatives of Lukashenko’s government.

Belarus has no independent bodies authorised to visit and monitor places of detention without prior notice, including psychiatric hospitals and other places of forced detention. The existing Public Monitoring Commission (PMC) can visit places of detention only with the permission of the Department of Execution of Sentences of the Ministry of Interior. The PMC members are not entitled to take photos and record videos or accept complaints from prisoners. Human rights defenders

53 “Greek Case” Report of the European Commission on Human Rights, 5 November 1969, 12 Yearbook of the European Convention on Human Rights 1

54 United Nations, The UN Standard Minimum Rules for the Treatment of Prisoners 2015 - available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

with expertise in international human rights law and standards are unreasonably excluded from membership in the PMC.

Contrary to article 15 of the UN CAT, domestic law does not include any provision excluding the use of evidence obtained by torture.

It is of further concern that the investigation of crimes committed by officials of prosecutor's offices, internal affairs bodies, and the Investigative Committee in connection with their official or professional activities is carried out directly by the Investigative Committee, which constitutes a unified and centralised system of law enforcement agencies.⁵⁵

As mentioned above, international human rights law requires any investigations into allegations of torture to be carried out promptly and by an independent and impartial body. The Belarusian authorities have not, to date, taken any measures to ensure an independent investigation of cases related to the use of torture. The Investigative Committee has no specific unit for the examination of cases related to the use of torture.

Currently, there are two Criminal Code articles that mention torture: Article 128 on "Crimes against the security of mankind" and article 394 (part 3) on "Coercion to testify". In 2015, article 128 was amended to include a note⁵⁶ defining the act of "torture" in line with the concept of torture under the UN CAT. However, there is still no separate article criminalising the act of torture and the two abovementioned articles do not cover the whole range of acts of torture nor do they include reference to the criminal responsibility for committing acts of torture, as required by Article 4(2) of the UN CAT. Under national legislation, the statute of limitations also does not apply to all acts of torture. Thus, currently there is no article in the Criminal Code providing for criminal responsibility for all acts of torture in line with articles 1 and 4 of the UN CAT.

In 2018, the UN Committee against Torture, which supervises the implementation of the UN CAT, urged Belarusian authorities to take all necessary steps to:

"16(a) Establish dedicated, specialized units within the State party's Investigative Committee to which persons deprived of their liberty can safely and confidentially submit complaints of torture and ill-treatment, including allegations of sexual violence;

16(b) Ensure that all complaints of torture and ill-treatment are promptly, effectively and impartially investigated, and adopt measures to strengthen the independence from the Executive of the Investigative Committee in order to enhance their ability to carry out this function;

16(c) Ensure that, in cases of alleged torture and ill-treatment, suspected perpetrators are suspended from duty immediately and for the duration of the investigation."⁵⁷

55 The Investigative Committee of the Republic of Belarus, About: <https://sk.gov.by/en/about-comitet-en/>

56 Criminal Code of the Republic of Belarus. Article 128. Crimes against the security of mankind: https://kodeksy-by.com/ugolovnyj_kodeks_rb/128.htm

57 United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 7 June 2019: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBLR%2fCO%2f5&Lang=en

The Committee also issued a separate recommendation on the identification of law enforcement officers, saying that:

“18. The State party should strengthen its compliance with legislation that requires all law enforcement officers on duty, including riot police and State Security Committee personnel, to wear visible identification so as to ensure individual accountability and protection against acts of torture and ill-treatment. In addition, it should promptly and effectively investigate and, as appropriate, punish law enforcement officers alleged to have acted in breach of the Convention.”

These recommendations have not been implemented.

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

Allegations of torture and ill-treatment of protesters involved in the post-election protests in Belarus have been brought to the attention of international human rights bodies. On 1 September 2020, a group of UN Special Rapporteurs and human rights experts expressed alarm at the large number of reports they had received about the use of torture and ill-treatment against people deprived of their liberty after the presidential election.⁵⁸ The experts called on the Belarusian authorities to stop torturing protesters, to promptly release those in detention, as well as to fully and impartially investigate alleged abuses and hold the perpetrators to account.

By mid-September 2020, over 600 people detained in connection with the post-election protests in Belarus had been released, including from Okrestino temporary detention centre, the detention facilities at Pervomayskiy District Department of Internal Affairs, Moskovskiy District Department of Internal Affairs, and Oktyabrskiy District Department of Internal Affairs, as well as from Zhodino prison. At the time of publication of this report, at least 122 people remained in detention in Zhodino and Brest prisons, having been convicted and sentenced by the courts.

Many of those released have alleged being subjected to torture and/or ill-treatment by police officers and plainclothes police officers with no signs of identification. The allegations of torture and/or ill-treatment include:

- intimidation;
- severe beatings;
- application of less lethal weapons, such as batons and stun guns;
- being forced to assume stressful body positions (e.g. standing on one's knees with one's head down) for prolonged periods of time;
- inhumane and unlawful interrogations;
- poor detention conditions (such as keeping detainees outdoors, including at night and in cold temperatures);
- overcrowded detention cells;

58 UN news, “UN human rights experts: Belarus must stop torturing protestors and end enforced disappearances” 1 September 2020, Office of the High Commissioner on Human Rights - available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E>

- lack of access to safe drinking water and adequate food supply;
- poor sanitary conditions; and
- threats of torture, rape, and arbitrary detention of family members, as well as threats to reduce essential supplies such as water for non-compliant behaviour.

M12 While we were outside [of the detention premises], it had become very cold. We were not allowed to stand closer to each other to warm up. At some point, they [the detention centre officials] guided us inside the building, beating us along the way. It was brutal. When we entered the building, we were forced to undress. They searched us. Then they sent us to the courtyard for walks and they locked us up there. There were 90 of us in a yard the size of an average kitchen. It was very cold, so we huddled together. It was getting dark by then. We spent the rest of the evening there. Later we were transferred to an even smaller courtyard. They [the police officers] brought two bottles of water for all of us [and] there was a bucket in the yard. We stayed there until the morning. [...] When they [Okrestino temporary detention centre staff] beat us, they demanded that we tell them “who was paying us”. They beat me with questions about how I was connected with this or that person from my contact list on my phone. Sometimes, they beat me and others silently, for no particular reason.⁵⁹

M11 Then they [riot police officers] threw us into a Gazelle [vehicle] and took us to the Pervomaisky District Department of Internal Affairs [in Minsk]. There we were all thrown into the gym, put on our knees, legs to chest, head to the floor, hands behind our backs. My legs and arms were numb. [...] Many felt bad, because it is a great stress on the legs. Muscles are in constant tension. And some people just couldn’t stand it. They straightened their legs, lay on their stomachs. These people were beaten.⁶⁰

M13 They [riot police officers] took me to the Pervomayskiy District Department of Internal Affairs [in Minsk]. There I was in a cell for about three hours. Then we were all taken to the gym and forced to kneel with our hands behind our heads. We were not allowed to drink. If someone fell asleep, they were woken up by being beaten with a baton or kicked. This lasted for the whole night [and the next day] until three in the afternoon. [...] We were brought to Okrestino [detention centre] and told to not lift our heads. We were all placed on the grass on our knees with our heads down. If someone put their heads up or spoke with others, they were beaten severely. I heard very loud screams. I saw a guy being carried on a stretcher because his pelvis was broken.⁶¹

M03 The size of the cell was about 10 square meters. There was a sink, a toilet separated by a small wall, and two bunk beds with four sleeping spots. We took turns to sleep. [...] We drank water from the tap, we had a 1,5 liter bottle that could be filled with water. [...] At some point, it [water] was turned off for some 10-15 minutes, apparently to intimidate us. There was also a girl from the initiative group of Tikhanovskaya; she was severely beaten. They took her out into the corridor, put her on her knees, twisted her arms, and beat her.⁶²

59 CSP interview with M12, 14 August 2020

60 CSP interview with M11, 14 August 2020

61 CSP interview with M13, 15 August 2020

62 CSP interview with M03, 11 August 2020

Recently released detainees have also reported about overcrowded detention centres, with cells designed for 4-8 detainees accommodating up to 50 people, in serious violation of international human rights standards.⁶³ In such cases, detainees are forced to take turns to sleep and are not able to sit down.

ALLEGATIONS OF SEXUAL VIOLENCE

Sexual violence is prohibited under international human rights law through the prohibition of torture and other ill-treatment and a number of human rights tribunals have found rape of detainees to amount to torture.⁶⁴ As a signatory to the UN Convention on the Elimination of All Forms of Discrimination against Women, Belarus is legally bound by the obligations in this treaty. Whilst the treaty itself does not contain specific provisions relating to gender-based violence, the UN Committee on the Elimination of Discrimination against Women (CEDAW) has read in gender-based violence as a form of discrimination against women prohibited under the treaty.⁶⁵ The UN CEDAW has also stated that the Convention establishes state responsibility for gender-based violence perpetrated by public authorities.⁶⁶

Some victims interviewed during our mission (both female and male victims) reported being subjected to sexual harassment, threats of sexual violence and direct sexual violence (such as rape) by law enforcement officials while in detention. In light of the sensitive nature of the subject and the high risk of re-traumatisation of victims, data collection for this report is limited to the testimonies of victims who experienced sexual harassment and threats of rape by police officers, including investigators, forcing the victims to sign confessions they did not give and were not allowed to read through.

M21 They [the police officers] beat me for over an hour. [...] They stretched my hands forward and stepped on them with their feet, so that I could not protect myself. They beat me on my heels, as medics later said, in order to affect the kidneys. They poked a baton towards my anus through the pants. They threatened me with drowning my head in the toilet and with rape. After this, I agreed to sign everything.⁶⁷

M17 At night, a masked man came to get me [in the detention facility] and took me upstairs to the investigator. He yelled at me, hit me in the face with a pile of documents, ordered me to place my hands on the table and brandished an awl over them. When he calmed down,

63 International standards recommend individual cell accommodation overnight. According to the Council of Europe, European Committee for the Prevention of Torture (CPT), the minimum standard for personal living space in prison establishments is 6m² of living space (plus sanitary facility) for a single-occupancy cell, or 4m² per prisoner (plus fully-partitioned sanitary facility) in a multiple-occupancy cell; moreover, the walls of the cell must be at least 2m from each other, and the ceiling at least 2.5m from the floor., See: European Committee for the Prevention of Torture, "Living space per prisoner in in prison establishments: CPT standards", 15 December 2015, available at: <https://rm.coe.int/16806cc449>

64 European Court of Human Rights, *Aydin v. Turkey*, September 1997, (ibid., § 1741); *Aydin v. Turkey* (1997) was the first time the Court recognised that an act of rape by public officials or another person acting in an official capacity constitutes a form of torture. Available at: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-58371%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58371%22]})

65 The UN Committee on the Elimination of Discrimination against Women defines gender based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence", General Comment 19, para 6, CEDAW Committee available at: <https://www.refworld.org/docid/52d920c54.html>

66 See above par 8

67 CSP interview with M21, 16 August 2020

he stroked my hair, face, and lips. He pressed me to his stomach and said that I was a good girl and I would do everything right. [...] I feel the primary reason that I wasn't raped is that I kept saying that I was on my period anywhere I could.⁶⁸

Many of those released from detention have filed complaints against riot police, regular police and plainclothes police officers involved in torture and ill-treatment; however, there is no data as to whether these cases are being actively investigated by the police and the individuals concerned have not been notified of the progress of their complaints.⁶⁹

Access to medical assistance, including vital medication

RELEVANT INTERNATIONAL STANDARDS

The denial of medical treatment in prison can amount to ill-treatment and, in line with international human rights standards, states are under an obligation to ensure that a person is detained in conditions which are compatible with respect for their human dignity.⁷⁰ People deprived of their liberty are extremely vulnerable and the authorities have a heightened duty to protect them. This duty extends to the provision of health-care and treatment whenever necessary.⁷¹ The UN Human Rights Committee has found that denial of medical treatment after being subjected to ill-treatment itself amounts to cruel and inhuman treatment.⁷²

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

Victims and witnesses interviewed by our mission team alleged that the police deprived detainees of critical medication for chronic conditions whilst in pre-detention facilities. Recently released detainees have reported being intimidated with threats to turn off running water in the detention cell in response to requests for medical help either from themselves or fellow detainees.

M03 One girl [in the cell] felt bad, so we asked for medical help. I think she had a rubber bullet in her leg... There was blood. And then she started coughing badly, she had bronchitis or asthma... It wasn't clear what's exactly wrong with her. We asked to call a doctor to get her examined. They [the detention centre staff] told us not to knock and to stay quiet and threatened us to turn off the water, so we wouldn't be able to drink and flush the toilet.⁷³

Several witnesses report experiencing difficulties in passing on essential medication to individuals in pre-trial detention facilities with chronic diseases such as epilepsy, asthma and chronic heart disease.

68 CSP interview with M17, 15 August 2020

69 TUT.BY, the Belorussian Portal, 'Over 600 people report beatings, 122 remain in detention': <https://news.tut.by/society/696969.html>

70 ICCPR, 1966, Article 10.1 states: 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person' - available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

71 See: Principle 24, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988, - available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

72 UN Human Rights Committee, *Mika Miha v Equatorial Guinea* CCPR/C/51/D/414/1990, 10 August 1994 - available at: <http://hrlibrary.umn.edu/undocs/html/vws414.htm>

73 CSP interview with M03, 11 August 2020

According to these reports, family members brought parcels containing medication for chronic conditions to the respective pre-trial detention facilities but, despite being accepted by police officers, the parcels did not reach the intended addressee for unknown reasons.

M10 There were people who needed medical assistance [in a cell of the trial centre №6] and the doctor was coming for about two days. [...] One man had issues with blood pressure, he needed medication. Another guy had a congenital heart defect, he has an artificial valve, you could hear how it clicks. He needed blood thinning pills and he only got them on the last day. I have an allergy, my mother brought a parcel with medication and apparently police accepted it. But I never received this parcel.⁷⁴

In some cases, authorities have prevented people from bringing in chronic care medications to their loved ones in pre-trial detention facilities by withholding relevant information that would help these people ascertain the whereabouts of their family members.

M04 Last night I called 102 and they told me that he [my son] was in detention. This morning I called them again but they told me that he is not on the lists [of detainees]. [...] Volunteers helped me to find out that he is not here [in the temporary detention centre]. He is epileptic and he needs medication daily.⁷⁵

Many of the several hundred protesters who were released from detention centres in Minsk and Zhodino on 13 August 2020 were taken in ambulances to hospital for medical treatment following their time in detention. Released individuals who were brought to medical facilities prior to returning home allege that riot police were guarding exits/entrances of hospitals, instilling fear in those leaving these facilities.

M09 The hospital did not give me any documents [concerning my health]. I only wrote a statement that I would go home by myself. But when I was leaving, these black cars [of the riot police] were standing by the hospital. We tried to pass by as quietly as possible, so they wouldn't detain us again.⁷⁶

M05 We [at Viasna Human Rights Centre] already know a few names of those who witnessed and/or suffered from [the use of] firearms. Soon we will meet these people. Usually you are not able to have a conversation with those with gunshot wounds. They are located in the Masherov hospital [in Minsk], which is guarded by soldiers of the armed forces with weapons, dogs and everything.⁷⁷

There are allegations that individuals with serious mental health issues were denied critical medical care, thus endangering not only the individual themselves but also other detainees.

M17 A woman in my cell had delirium tremens [a severe form of alcohol withdrawal]. A police officer pushed her and she smashed her head. We put a bandage on her by ourselves. She was inadequate, she even scratched me and beat some other girls.⁷⁸

74 CSP interview with M10, 13 August 2020

75 CSP interview with M04, 12 August 2020

76 CSP interview with M09, 13 August 2020

77 CSP interview with M05, 12 August 2020

78 CSP interview with M17, 16 August 2020

There are additional reports that medical staff have endeavoured to bring detainees to hospitals in an effort to protect them from sustaining further injury or other health risks in detention.

M09 When the [ambulance] brigades were coming to Okrestino [temporary detention centre], they were saying something like: “Ok, we are taking all of them [detainees] away” and some kind of justifications to drag people out.⁷⁹

Unfortunately, such efforts proved to be insufficient as the authorities only granted permission to leave the detention facilities to individuals with severe health issues or requiring ongoing medical treatment. According to reports, medical personnel in ambulances patrolled the entrances of the detention facilities to take detainees for urgent medical treatment on release.

M15 Ambulance cars were on duty near the entrance [of the Oktyabrsky District Department of Internal Affairs in Minsk]. Those feeling particularly bad were taken to hospitals right away.⁸⁰

The right to a fair trial and due process rights

RELEVANT INTERNATIONAL STANDARDS

The right to a fair trial is a general norm of customary international law and is protected by international human rights treaties, including the ICCPR.⁸¹ This treaty provides a full range of rights and guarantees applicable to both criminal and non-criminal proceedings. The minimum guarantees include the right to a fair and public hearing, to be tried without undue delay, to be present and meaningfully participate during trial and the right to prepare a defence and communicate with legal counsel. Court hearings should, as a rule, be subject to public scrutiny in line with the principles of an “open court”.⁸² Any restrictions on fair trial rights should comply with key human rights principles of legality, necessity and proportionality.

In terms of due process rights, international human rights law provides important safeguards for individuals deprived of their liberty.⁸³ The initial arrest and detention of an individual are, in many ways, the stages of criminal proceedings where an individual is most vulnerable to breaches of the right to a fair trial. Most importantly, anyone arrested or detained must be notified of the reasons for their arrest or detention, including their right to counsel.⁸⁴ In addition, they should be informed promptly of any charges against them. International human rights standards also require that anyone arrested or detained be fully notified of their rights as a suspect which include: the right to legal counsel, to medical assistance, to challenge the lawfulness of detention, the right not to incriminate oneself, including the right to remain silent and the right to notify a third person of the arrest or detention. Detainees are also entitled to prompt access to their families and to communicate with them and receive visits.

79 CSP interview with M09, 13 August 2020

80 CSP interview with M15, 16 August 2020

81 ICCPR, Article 14 available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

82 See General Comment 32, UN Human Rights Committee - CCPR/C/GC/32 - para 29, 23 August 2007 - available at: <https://www.refworld.org/docid/478b2b2f2.html>

83 ICCPR, Article 14; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (UN General Assembly) - available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

84 ICCPR, Article 14; see also General Comment 35, UN Human Rights Committee, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35 - available at: <https://www.refworld.org/docid/553e0f984.html>

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

The evidence gathered from both former detainees and relatives of people detained in connection with the post-election protests in Belarus suggests that the authorities have failed to comply with international standards in relation to fair trial and due process rights. In particular, a large proportion of court hearings have taken place unannounced at detention facilities in the absence of legal counsel and relatives. As a general human rights principle and in order to ensure transparency, courts must make the relevant information about the time and venue of the hearings available to the parties and the general public.⁸⁵ Court hearings have proceeded unannounced thus preventing potential lawyers and family members of the detainees from attending in person.

M05 [Viasna Human Rights Centre] It is impossible to find out whose case was considered by the court, where it was considered, who was the judge, and what the court decision is as judges go to the places where the detainees are and conduct trials there. Information about trials is not public, as it should be according to national legislation and international human rights standards. So relatives and other interested individuals don't know that court hearings are taking place. They don't know whether their, say, husband or son has been sentenced to fifteen days' detention and will return home thereafter, or if he will never return at all, as everyone knows that there are injured and killed people.⁸⁶

M06 On 11 August 2020, trials took place here [at Frunzenskiy Court]. We got this information from people who were released [...]; no one announced this or put up any lists [of people going on trial]. For example, someone comes out, you show a photograph and they say something like: "Yes, she is there". Only in the evening of 11 August, we found out that she [the witness's mother] is [being tried] in court [...] [In order to find out at which court she was on trial], we just phoned up all the courts and in Frunzenskiy they told us she was there. So I went to this court and they told me that she had been convicted under some article to for 8 days [of detention].⁸⁷

International human rights standards provide that everyone arrested or detained - whether on a criminal charge or not - has the right to the assistance of legal counsel.⁸⁸ This right is effective the moment that a person arrested or detained is deprived of their liberty. Thereafter, legal counsel should be afforded adequate time to prepare a defence and have access to case materials under the principle of equality of arms.

However, several witnesses interviewed by our mission team allege that trials have been convened at haste and insufficient time allotted to the hearings themselves, i.e. about two minutes per hearing. In addition, former detainees allege disproportionately short notice of the court hearings, i.e. the hearings announced on the day of the event, preventing detainees from contacting their potential lawyers to advise and represent them at court.

85 See General Comment 32, UN Human Rights Committee - CCPR/C/GC/32 - para 28, 23 August 2007 available at: <https://www.refworld.org/docid/478b2b2f2.html>

86 CSP interview with M05, 12 August 2020

87 CSP interview with M06, 12 August 2020

88 ICCPR, 1966 Article 14.3 (d) - right to assistance of legal counsel at trial available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (UN General Assembly), Principle 17 available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

M12 We [a group of detainees in the Okrestino detention centre] were told that we will have court hearings and that we will now prepare for this procedure. For some, the court hearing took place on that same day.⁸⁹

M10 Most of us signed empty protocols. [...] The trials took place on the third day [of the detention]. As far as I understand, it was illegal to detain us for so long for an administrative violation [before bringing us before a court]; 72 hours' pre-trial detention can be applied in cases of criminal offenses. [...] They officers at the detention facility] took people out of the cell one by one and brought them to trial. They read our sentences out loud and asked whether we agreed. A district police officer told me to write: "I agree partially, please do not punish me harshly". Later the judge asked me what I agreed with, and I answered that I don't agree with anything. They gave me basic ten days [of detention].⁹⁰

In addition, detainees allege that they have been intimidated and forced to sign protocols, confessions, and other unknown documents without being allowed to read through them or to seek clarifications of any kind. In some cases, detainees have reported being pressured to sign empty protocols, apparently to subsequently be completed by law enforcement officials. Detainees have, among others, been threatened that they may be subjected to beatings, rape and other forms of torture, or that their detention may be extended should they refuse to sign the documents in question. These practices are in violation of international human rights law. The extraction of statement or confessions on the grounds of coercion is prohibited under international human rights law and no one charged with an offence should be compelled to confess guilt.⁹¹ Moreover, in accordance with international human rights law, any statement or confession obtained as a result of torture or other ill-treatment should be excluded from evidence and trial proceedings under the exclusionary rule.⁹²

M21 After beating me, they [police officers] threatened me with drowning my head in the toilet and with rape, so I agreed to sign [the protocol]. But when they gave me a pen, I asked to read what was written there. In response, they beat me with batons again. I fell on my knees and realised that I could no longer resist. So I signed several documents they gave me. I did not see what kind of documents these were. I don't know what I confessed to. [...] He [a police officer] ordered me to sit on the chair inside a cage. He asked whether I had taken part in any protests and whether I was going to [take part in new protests]. Then he gave me a paper and ordered me to sign it. It was written there that I am obliged to come to court at the first request and that I am informed that my potential involvement in unlawful mass events will mean liability for me.⁹³

M15 Something was written there [on the protocol]. [...] My friend asked: "What am I signing?", the police officer responded: "I'll explain to you now" and showed his wrist. So we signed everything without further questions. It was some 10-20 pages.⁹⁴

89 CSP interview with M12, 14 August 2020

90 CSP interview with M10, 13 August 2020

91 See principle 21 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (UN General Assembly) 21. "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person" available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

92 See Article 15, UN CAT

93 CSP interview with M21, 16 August 2020

94 CSP interview with M15, 16 August 2020

M17 They [the investigator and his assistants] instantly prepared a stack of documents and while I tried to read what was written there, they yelled: “Sign it, bitch!” and kicked me.⁹⁵

Rights of journalists and human right defenders

RELEVANT INTERNATIONAL STANDARDS

The right to freedom of expression is enshrined in international human rights instruments and is the lifeblood in any free society.⁹⁶ It is through this right that individuals and groups can share, exchange and debate ideas to help build strong and thriving democracies. The right is broad in scope encompassing freedom of the media and the right to seek, receive and impart information. While this right is not absolute and may be restricted on certain grounds including national security or public order, any restrictions should be lawful, proportionate and necessary in a democratic society.

Journalists play a critical role in the world today sharing information, shaping the narrative, holding governments to account and playing an important “public watchdog” role in society. Yet, they are increasingly coming under threat and, in many countries, are subject to intimidation, harassment, political pressure and censorship.⁹⁷ According to the World Press Freedom Index 2020 on Belarus, “critical journalists and bloggers are threatened, leading news sites are blocked, access to information is restricted and media diversity is unknown.”⁹⁸ Belarus ranks 153 out of 180 states on the Index.

In September 2016, the UN Human Rights Council (HRC) adopted a landmark resolution on the safety of journalists which condemns, in very clear terms, all attacks and violence against journalists and media workers.⁹⁹ In particular, the HRC urges states to conduct independent and thorough investigations into allegations of violence and threats against journalists and to bring perpetrators to justice. The HRC calls for an enabling environment in which journalists and other media workers can operate safely and without fear. Whilst the HRC resolution is not legally binding per se on UN member states, it reflects a strong political commitment to adhere to its terms.

The UN Special Rapporteur on Belarus alongside other UN experts have expressed deep concern at the crackdown on civil society space in Belarus especially in relation to the arrest of human rights defenders, journalists and bloggers. Anaïs Marin, the UN's Special Rapporteur on the situation of human rights in Belarus stated in June 2020: “We are gravely concerned that these arrests that are connected with the exercise of the fundamental freedoms of peaceful assembly and freedom of opinion and expression have a chilling effect on civil society, independent journalism and the unhampered expression of dissenting views.”¹⁰⁰ In a similar tone, the OSCE Representative on the Freedom of the Media, Harlem Désir, expressed concern about the detention of journalists covering public gatherings

95 CSP interview with M17, 17 August 2020

96 Article 19, ICCPR; Article 19, UDHR

97 Council of Europe, ‘Journalists under Pressure: Unwarranted interference, fear and self-censorship in Europe’, March 2017 available at: <https://rm.coe.int/168070ad5d>

98 World Press Freedom Index, 2020 - Belarus available at: <https://rsf.org/en/belarus>

99 UN Human Rights Council resolution, ‘The safety of journalists’, 6 October 2016, A/HRC/RES/33/2-available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/226/24/PDF/G1622624.pdf?OpenElement>; See also: Article 19, “Acting on UN Human Rights Council Resolution 33/2 on the safety of journalists”, 2017 available at: https://www.article19.org/wp-content/uploads/2017/11/safety_of_journalists_WEB_23.10.pdf

100 UN News, “Belarus must stop crackdown to silence opposing views”, 5 June 2020, UN Office of the High Commissioner on Human Rights available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25932&LangID=E>

in June 2020. In a statement, Désir said: “The journalists play a crucial role in covering events of public interest, particularly those related to elections. Obstruction of media activities negatively affects media freedom and the free flow of information, and is a matter of great concern.”¹⁰¹

The Belarusian laws on Mass Media and on Mass Events entitle journalists to attend mass events in their professional capacity. In addition, the Minister of Internal Affairs of Belarus, Yury Karayeu, has stated that it is unacceptable to interfere with the work of journalists: “I have always spoken against any forms of violence against journalists. I support civilised coverage of events. The press is sacred, [...] one can’t touch them.”¹⁰²

DESCRIPTION AND ASSESSMENT OF POST-ELECTION EVENTS IN BELARUS

According to the Belarusian Association of Journalists (BAJ), in August 2020, 151 journalists were detained in Belarus.¹⁰³ Moreover, between 1 and 8 September, at least 17 journalists were unlawfully and/or arbitrarily detained by law enforcement officials in Minsk, Vitsebsk, Mogilev, Brest and other Belarusian cities. Those detained include:

1. Artsyom Sizintsau - Radio Racyja, a member of the BAJ
2. Ales Asiptsou - BelaPAN
3. Zmitser Kazakevich - a parliamentary candidate
4. Maksim Harchanok - Belsat
5. Alena Dubovik - Belsat
6. Nasta Zakharevich - independent journalist
7. Maria Vaitovich - Euroradio
8. Raman Hadun - Belarusians and Market
9. Vasil Semashka - independent journalists
10. Valeria Ulasik - a member of BAJ
11. Svyatoslav Zorkiy - Komsomolskaya Pravda v Belarusi
12. Nadzeya Kalinina - TUT.BY
13. Aliaksei Sudnikau - TUT.BY
14. Maria Eleshevich - Komsomolskaya Pravda v Belarusi

101 OSCE, “OSCE media Representative concerned by detention of journalists in Belarus, calls on authorities to ensure right of media to cover public gatherings” 20 June 2020, available at: <https://www.osce.org/representative-on-freedom-of-media/455110>

102 Belarusian Association of Journalists, ‘BAJ protests over arrests and court rulings against journalists’, 05 September 2020: <https://baj.by/en/content/baj-protests-over-arrests-and-court-rulings-against-journalists>

103 Belarusian Association of Journalists, ‘151 journalists were detained in Belarus in August’, 2 September 2020: <https://baj.by/en/content/151-journalists-were-detained-belarus-august>

15. Siarhei Shchepochou - Komsomolskaya Pravda v Belarusi
16. Mikita Dubaleka - Komsomolskaya Pravda v Belarusi
17. Andrei Shauluha - BelaPAN

In the morning of 8 September 2020, police tried to break into the apartment of TUT.BY editor Halina Ulasik. She did not open the door, as she was not expecting anyone. Halina Ulasik's neighbours reported seeing three men in black uniforms and balaclavas near the apartment block. A few hours later, the police officers returned with a search warrant. The police searched the apartment and seized two cell phones, two laptops and flash drives. The police announced that a criminal case had been instigated against Halina Ulasik's daughter, Valeria Ulasik, who is also a journalist and a member of BAJ. Valeria Ulasik was detained by the police and was charged under article 23.34 of the Code of Administrative Offences (violation of the procedure of organising or holding mass events). Halina Ulasik was not detained.¹⁰⁴ This arbitrary detention of Valeria Ulasik likely took place to intimidate her, her mother Halina Ulasik, and other journalists and to prevent them from covering the post-election events in Belarus.

On 4 September 2020, Kastychnitski Court of Minsk sentenced six journalists to three days of detention:

1. Nadzeya Kalinina - TUT.BY
2. Aliaksei Sudnikau - TUT.BY
3. Maria Eleshevich - Komsomolskaya Pravda v Belarusi
4. Siarhei Shchepochou - Komsomolskaya Pravda v Belarusi
5. Mikita Dubaleka - Komsomolskaya Pravda v Belarusi
6. Andrei Shauluha - BelaPAN

The court recognised them as participants in unauthorised protest actions. The journalists were released following the announcement of the verdicts as their terms had already been completed.

Testimonies collected for this report confirm that journalists and human rights defenders monitoring post-election protests have been subjected to a series of rights violations by law enforcement officials, including riot police and people with no signs of identification. These violations include disproportionate and frequent documentation checks, verbal harassment, physical abuse, and detentions, preventing them from covering protests. In some cases, the accreditation of journalists has been arbitrarily withdrawn. These actions appear to have been directly and indirectly aimed at preventing journalists and human rights defenders from documenting or publicising information related to the disproportionate use of force by law enforcement officials, unlawful and/or arbitrary detentions, and other human rights violations related to the post-election protests.

Abduljalil A, a video journalist with BBC news testifies:

We [a group of three journalists] experienced a serious incident in Minsk. I started filming near metro Pushkinskaya. There was a large column of people in black, in full gear and in

104 Belarusian Association of Journalists, 'Valeria Ulasik charges under administrative case, apartment search', 08 September 2020: <https://baj.by/en/content/valeria-ulasik-charges-under-administrative-case-apartment-search>

helmets. They had no identifying marks. They ran up to us, started shouting: “Take the camera away, show your accreditation!” We showed our accreditation and they let us go. Then we realised that they had ripped off my colleague’s accreditation badge and camera, right off her neck. I shouted that they must return the accreditation badge. Two of them ran up to me: one hit me with a baton right away, the second one tried to kick me with his feet. Luckily, my camera was not damaged.¹⁰⁵

Pashkevich Oleg, a lawyer with the Viasna Human Rights Centre testifies:

At the moment [as of 12 August 2020], three of our regional representatives have been detained and one is forced to hide temporarily. [Those detained include]: Vladimir Velichkin from the city of Brest, Alexander Kaputsky from Molodechno, and Oleg Matskevich from Borisov. Matskevich was summoned to the investigative committee as a witness via a phone call. He refused to come. [However,] he went to the district election commission to get a response to complain he submitted earlier, and was detained there. At the moment, we do not even know the reason for his detention. In Molodechno, there were also clashes so they [the government] decided to simply remove the person [Kaputsky] who was ready for serious action [to document violations and hold those responsible to account]. [...] There are also many other journalists and human rights defenders who have been detained.¹⁰⁶

V. Key Findings

The right to freedom of peaceful assembly and the use of force by law enforcement authorities

The protests held following the 9 August presidential election in Belarus have been predominantly peaceful, with Belarusians seeking to exercise their right to peaceful assembly. The authorities have severely impinged upon this right, violently dispersing protests and detaining and ill-treating participants, observers and passers-by. International human rights standards clearly mandate that the authorities should only use force in a proportional manner and in a way where damage and injury are minimised. Moreover, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials call on law enforcement officials to “apply non-violent means before resorting to the use of force or firearms.” The evidence documented in this report indicates that the Belarusian authorities have failed to adhere to these standards and have not exercised appropriate restraint in responding to protests or taken mitigating measures to minimise damage or injury, including when using rubber bullets, flash grenades, stun guns and other weapons that are considered less lethal.

The right to life and protection against enforced disappearance

The evidence collected by our mission team suggests that the Belarusian authorities have failed to comply with their duty under international human rights law to safeguard the right to life of all those within their jurisdiction, including by using excessive force against protesters and failing to prevent enforced disappearances. According to the UN Human Rights Committee, enforced disappearances

¹⁰⁵ CSP interview with Abdujalil A., 31 August 2020

¹⁰⁶ CSP interview with Pashkevich Oleg, a lawyer with the Viasna Human Rights Centre, 12 August, 2020

entail acts that represent a grave threat to life¹⁰⁷ and result in a violation of the right to life.¹⁰⁸ Enforced disappearances also violate other rights, in particular the right to liberty and security of person and the prohibition against torture and other ill-treatment. In any case of alleged disappearances, the authorities are required to undertake an effective and speedy inquiry to establish the location and whereabouts of the individual concerned and to bring the perpetrators to justice. The evidence compiled for this report shows that the Belarusian authorities have failed to comply with their obligations under international law with respect to enforced disappearances and that they have deprived family members of disappeared persons of relevant information needed to ascertain the whereabouts of their loved ones.

Right to liberty and security of person

The testimonies of victims and witnesses compiled for this report strongly suggest that the Belarusian authorities have arrested and detained individuals on an arbitrary, indiscriminate and potentially unlawful basis in connection with the peaceful protests held on Election Day and in the post-election period. There are ongoing concerns in this respect. The arbitrary arrests and detention of peaceful protesters, passers-by and members of the public violate the right to liberty and security of person and the actions of the authorities are in clear contravention of international human rights standards and norms.

Prohibition on torture and other ill-treatment

The evidence collected for this report indicates that people deprived of their liberty in Belarus in connection with the post-election protests have been subjected to torture and other ill-treatment at the hand of law enforcement authorities in contravention of international human rights standards. Moreover, the authorities have failed to promptly and impartially investigate allegations of torture and ill-treatment and bring the perpetrators to justice as required under the UN Convention against Torture and other international human rights treaties ratified by Belarus.

The right to a fair trial and due process rights

The right to fair trial and due process rights provide important and critical safeguards to those individuals deprived of their liberty and subject to criminal proceedings. These rights apply to “everyone” charged with a criminal offence and states should, at all times, adhere to internationally-recognised fair trial standards. The right to legal advice and representation is an essential component of the right to a fair trial.

The evidence compiled for this report shows that the Belarusian authorities have failed to comply with international fair trial and due process rights standards in relation to people detained in connection with the post-election protests. In particular, many court hearings have taken place unannounced at detention facilities in the absence of legal counsel of the choice of those on trial. In violation of the “open court” principle, hearings have also been held behind closed doors, thus preventing public scrutiny and the presence of family members of the defendants. In addition, several of those interviewed by our mission team reported that only a couple of minutes were allotted to individual court hearings, making

107 HRC General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life - CCPR/C/GC/36 - 30 October 2018 - para 58

108 HRC General Comment No 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life - CCPR/C/GC/36 - 30 October 2018 - para 58

meaningful reviews of these cases impossible. All these circumstances have severely compromised the right to a fair trial and are likely to have had a detrimental impact on trial outcomes. It is of further concern that detainees have alleged being forced to sign confessions later used in court. The extraction of confessions on the grounds of coercion is prohibited under international human rights law and no one should be compelled to confess guilt.

Freedom of expression and protection of journalists and human rights defenders

This report documents cases involving arbitrary/unlawful detention and harassment of journalists covering the peaceful post-election protests in Belarus. The deliberate targeting of journalists and other media actors, as well as the repeated blocking of internet access reported following the elections amount to an attack on the right to freedom of expression and the freedom of the press, which is of particular concern at this time of upheaval and crisis in Belarus. Human rights defenders have also been subjected to intimidation and harassment that appear to have been aimed at preventing them from documenting or publicising information about human rights violations related to the post-election protests.

VI. Recommendations

On the basis of the findings of this report, we would like to make a series of recommendations to the Belarusian authorities, as well as to the EU, the OSCE and the broader international community:

To the authorities of Belarus:

INVESTIGATIONS AND ACCOUNTABILITY FOR POST-ELECTION VIOLATIONS

- In accordance with international human rights standards, undertake prompt, thorough, impartial and independent investigations into all allegations of unlawful conduct by law enforcement officials in connection with the peaceful protests held across Belarusian cities following the presidential election on 9 August 2020. Investigations should be carried out with respect to all of the following allegations, ensuring a careful examination of the circumstances of each individual case, including those documented in this report:
 - Allegations that peaceful protests were dispersed by the authorities using excessive force, including the use of less lethal weapons, such as batons, tear gas, flash grenades and rubber bullets, although protests posed no clear threat to public order or security or the rights and freedoms of others.
 - Allegations that law enforcement officials involved in the dispersal of protests failed to ensure that the use of force was strictly proportionate and aimed at minimising damage, injury and fatalities.
 - Allegations that protesters, passers-by and journalists were chased, hit, kicked, beaten and subjected to other ill-treatment by law enforcement authorities.
 - Allegations that plainclothes police officers with no signs of identification took an active part in the detention and ill-treatment of protesters.

- Allegations that police obstructed the work of journalists and human rights defenders monitoring and covering peaceful protests, including by confiscating accreditations and equipment of journalists.
 - Allegations of arbitrary and unlawful detentions of protest participants and passers-by.
 - Allegations that police officials who detained individuals did not identify themselves and failed to grant detainees access to legal safeguards, including by informing them of the reasons for their detention and their rights and status as detainees and ensuring that they had prompt access to legal assistance and were able to contact their family members.
 - Allegations of inadequate treatment of individuals in detention, including by denying and restricting their access to safe drinking water, food and sanitation facilities; adequate medical assistance; as well as legal counsel and contacts with family.
 - Allegations of the failure to ensure prompt access to medical assistance for those who suffered injuries during the dispersal of protests and the detention of participants and passers-by.
 - Allegations of torture and ill-treatment of individuals in detention, including severe beatings; abuse involving the use of batons, stun guns and other less lethal weapons; and forcing detainees to assume stressful bodily positions for a prolonged period of time.
 - Allegations of psychological violence of individuals in detention, such as threats of torture, rape, and arbitrary detention of family members, as well as threats to deprive detainees of access to essential supplies such as water for non-compliant behaviour.
 - Allegations of enforced disappearances of detainees.
- Put a stop to and prevent further reprisals against human rights defenders and journalists monitoring and reporting on the protests.
 - Ensure that all those responsible for human rights violations perpetrated after the 9 August presidential election, including those with command and supervision responsibility, are brought to justice in fair legal proceedings. All sanctions imposed should be commensurate with the severity of the violations committed.
 - Provide reparation to victims of human rights violations in connection with the post-election protests, including (as required by the UN CAT) by providing victims of torture with fair and adequate compensation, including the means for as full rehabilitation as possible, and providing dependants of victims who died as a result of an act of torture with compensation.
 - Take immediate steps to put an end to ongoing human rights violations of the kind described above, including by refraining from dispersing peaceful protests and detaining and using excessive force against the participants; promptly releasing those who are currently in detention in retaliation for exercising their freedom of peaceful assembly; protecting those deprived of their liberty against torture and ill-treatment and safeguarding their rights to fair trial and due process; and preventing reprisals against human rights defenders and journalists monitoring and reporting on the protests.

REFORMING NATIONAL LEGISLATION AND LAW ENFORCEMENT PRACTICE

- Bring national legislation and practice on holding and policing assemblies into full compliance with international human rights standards. In particular, the authorities should ensure that peaceful

assemblies can take place without interference, that any actions to disperse protests are used only as a last resort exclusively on grounds prescribed by international human rights law, and that the means employed for dispersal are strictly necessary and proportionate in any given situation.

- Ensure that access to the internet and other communications is not arbitrarily restricted in the interests of those in power.
- Ensure that all individuals deprived of their liberty in Belarus are afforded their rights under international fair trial standards and due process.
- Conduct adequate training for law enforcement officials on the policing of assemblies and the treatment of detainees in accordance with international human rights standards and review law enforcement instructions, procedures and oversight structures to effectively prevent violations.

POLITICAL COMPETITION

- Organise a free and fair presidential election under monitoring by trusted independent election observing bodies, including the OSCE/ODIHR; such bodies should be able to carry out their functions freely and without interference.
- Stop persecuting members of the political opposition, as well as their supporters and family members; drop the charges against those prosecuted on politically motivated grounds; and release all those who are currently behind bars on such grounds.

To the international community:

- Insist that the Belarusian authorities put an end to ongoing post-election human rights violations and that they take urgent action to investigate all allegations of violations perpetrated since the 9 August election and to bring those responsible to justice, in accordance with the recommendations made above.
- Make further political and economic engagement with the Belarusian government, as well as any financial assistance to it conditional on ensuring impartial and independent investigations into, as well as accountability for human rights violations perpetrated since the election and on undertaking wider reforms to safeguard the fundamental rights and freedoms of citizens.
- Call for the conduct of a new presidential election held in full compliance with international standards for free and fair elections, and unhindered monitoring by independent local and international observers.

WITH RESPECT TO EU ENGAGEMENT:

- Ensure that issues of human rights, democracy, good governance and Rule of Law are central to the EU-Belarus Partnership Priorities and that comprehensive and in-depth consultations are regularly carried out with Belarusian civil society organisations as part of this process.
- Ensure that a united and strong position of the 27 EU member states on the ongoing human rights violations in Belarus is formulated and presented at the EU Summit on the 1-2 October as well as at other upcoming high level fora.

- Provide rapid financial assistance to support victims of repression in Belarus, in particular for the purpose of funding the rehabilitation of survivors of torture and ill-treatment and the relocation of victims who had to flee the country, while freezing EU fund transfers, and discontinuing loans to the current regime or state-controlled projects – in line with the resolution of the European Parliament of 17 September 2020.
- Adopt targeted sanctions against individuals in the Belarusian regime responsible for the falsification of the presidential election and the post-election crackdown on peaceful protesters, including Alexander Lukashenko, and implement these without delay. At the same time, include the perpetrators in the national sanctions lists of individual member states.
- Use universal jurisdiction as a critical tool to bring to justice the perpetrators of torture and ill-treatment and other serious human rights violations committed in Belarus in connection with the post-election crackdown.

ON OSCE ENGAGEMENT:

- We welcome the decision to invoke the Moscow Mechanism with respect to the situation in Belarus and call on the Belarusian authorities to fully cooperate with the mission of independent experts being established for the purpose of carrying out an impartial investigation of human rights violations committed in the context of the protests.