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***Four years since the human rights crisis in
Belarus: Filling the accountability gap***

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Four years have elapsed since a wave of popular protests, and subsequent repressions, marred the last presidential election in Belarus. The human rights situation has continued to deteriorate, and gradually it has fallen off the radar of international attention. Even though some of the human rights violations committed by law-enforcement bodies or their surrogates in the context and in the aftermath of the 9 August 2020 election could amount, according to the UN High Commissioner for Human Rights, to crimes against humanity,ⁱ impunity for these atrocities persists – and so does the systematic persecution of any government critic.

Holding perpetrators to account is a *sine qua non* condition to break the vicious circle and prevent reoccurrence. However, this is not achievable in Belarus, where the judicial administration is not independent from the executive but rather is part of its arbitrary arsenal. Hence, international accountability mechanisms were established to gather evidence. Under universal jurisdiction, criminal proceedings were even launched in foreign courts. Due to a lack of political will, these initiatives haven't yielded tangible results yet. As more needs to be done to deliver justice to the victims, this policy paper makes recommendations for moving from words to deeds to that effect.

A deepening but documented human rights crisis

The human rights situation in Belarus has never been satisfactory, but it sharply deteriorated from May 2020 onwards in the wake of a contested electoral campaign. In the absence of international election observers – the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) did not receive a timely invitation to deploy a monitoring mission – domestic observers alone assessed the process, conducting exit polls online that revealed massive manipulations.ⁱⁱ Prior to election day, everyone had witnessed an unprecedented popular mobilization in favour of opposition candidate Sviatlana Tsikhanouskaya. Hence, upon hearing the official results giving the incumbent a landslide victory, Belarusians hit the streets to protest what they perceived as yet another stolen election.

The government reacted to what it saw as “mass disorders” with disproportionate violence, arbitrarily detaining around 13,500 people between 9 and 14 August 2020. At least five protesters lost their lives in August, reportedly at the hands of anti-riot forces. As popular pickets and marches continued during the Autumn, so too did the crackdown: by year’s end, a total of 35,000 peaceful protesters had been detained or fined for trying to exert their right to freedom of peaceful assembly or expression. Once released, a majority reported ill-treatment in detention, including numerous cases of torture.ⁱⁱⁱ

Violations were duly recorded by Belarusian human rights defenders and reported to international stakeholders, including to the mandate of the UN Special rapporteur on the situation of human rights in Belarus.^{iv} A report commissioned by the OSCE, published on 5 November 2020, provided a comprehensive overview of the extent of the crackdown.^v Based on these documents, as well as on allegations received and verified by the Office of the High Commissioner for Human Rights (OHCHR), it can be argued that since 2020 the following human rights have been massively violated.

- **The right to take part in public affairs:** several candidates were prevented from taking part in the election, including two who were arrested on spurious criminal charges before the vote.
- **The right to freedom of expression:** dozens of journalists were detained for allegedly participating in or organizing mass disorders;^{vi} thousands of people received administrative sentences for expressing dissenting views. Since 2021, anti-extremist legislation has been amended to criminalize dissent,^{vii} with lists of “extremist” material, persons and organisations being maintained as part of a state policy to silence and punish criticism.^{viii}
- **The right to freedom of peaceful assembly and association:** the crackdown on peaceful protesters was soon followed by a methodical purging of civil society of all its undesirable elements, starting with human rights defence organisations.^{ix}
- **The right to a fair trial:** this includes the right to defence and the presumption of innocence.^x

In 2024, Belarus entered a new electoral cycle, with no sign of improvement in view. Each month, dozens of people are still being arbitrarily detained, prosecuted and sentenced, oftentimes behind closed doors. Many of those serving prison terms on political charges – about 1,400 according to human rights defenders^{xi} – suffer from discrimination and ill-treatment. Some have been held *incommunicado* since March 2023, sparking suspicion of enforced disappearance. Over a hundred lawyers who defended clients in “political” cases have been disbarred.^{xii} The crackdown on independent NGOs intensified, leading to the virtual eradication of the civic space,^{xiii} as over 1,500 associations – amounting to about half of those registered before 2020 – have been forcefully dissolved.^{xiv} Among those targeted were online communities (Telegram chats, fundraising and solidarity platforms) starting in 2021, followed by independent trade unions (the four remaining ones were dissolved in 2022),^{xv} political parties (as a result of mandatory re-registration, 11 out of 15 parties lost legal status in 2023), and since 2024, religious associations.

International accountability mechanisms amid continuous impunity for past violations

The deepening human rights crisis has sparked considerable attention from various UN bodies, the OSCE^{xvi} and the Council of Europe.^{xvii} The human rights crisis has made its way to the UN Security Council twice, albeit for *Arria formula* (informal) meetings only, on 4 September and on 22 January 2021. In March 2021, the UN Human Rights Council established a dedicated accountability mechanism under the authority of the High Commissioner for Human Rights – it was tasked with collecting evidence of violations “with a view to contributing to accountability for perpetrators and justice for victims and, where possible, to identify those responsible.”^{xviii}

The Belarusian government refused to cooperate with this mandate and granted neither the High Commissioner’s Office (OHCHR) nor the three appointed independent experts access to the country. It is worth noting that this pattern of non-cooperation also characterised an investigation launched by the International Civil Aviation Organisation (ICAO) concerning the diversion of Ryanair flight FR4978, which underwent a forced

landing on 21 May 2021 in Minsk, apparently to arrest an exiled opposition blogger travelling on board.^{xix}

The Belarusian government has ignored all calls to discontinue its policies and comply with its international human rights obligations. Not only have the authorities failed to investigate the violations allegedly committed since 2020^{xx}, they have reportedly subjected victims to intimidation and threats to compel them to self-censorship or exile^{xxi}. Government critics who fled Belarus to avoid arbitrary arrest have been the target of further harassment and criminal trials *in absentia*. Property seizure and the withdrawal of citizenship are among the possible punishments for these “extremists” in exile. In 2022, Belarus denounced the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), thereby depriving Belarusians of their right to submit individual petitions to the Human Rights Committee.

Notwithstanding these attempts at escaping international scrutiny, in a 2022 report the High Commissioner alleged that “the scale and patterns of the violations”, “their widespread and systematic nature” and “the evidence of official policy” warranted a further assessment of collected evidence “from the perspective of applicable international criminal law”^{xxii}. In a 2024 report to the Council, the High Commissioner reiterated that some of the violations committed since 2020 could amount to crimes against humanity (“the OHCHR has reasonable grounds to believe that the crime of persecution, which is a crime against humanity, may have been committed”) because the government of Belarus “has implemented an organized, continuing and systematic campaign of violence, repression and punishment, pursuant to or in furtherance of a policy to attack a civilian population, specifically defined and delineated by its real or perceived opposition to the Government”^{xxiii}.

In other words, the requisite contextual elements for crimes against humanity appear to have been met because, as argued by human rights lawyers in a July 2023 report, “there are reasonable grounds to believe” that the attack discussed in the report was “directed against the Belarusian civilian population, and specifically against civil society and those perceived as democratic opposition” and that it is “widespread, systematic and qualifies as a state policy”^{xxiv}. There is no problem of a lack of evidence of the

physical elements of crimes against humanity, according to other human rights advocates, as it is “estimated that NGOs have documented more than 5000 potential cases [and] about 200 potential suspects who can be identified.”^{xxv}

The “accountability gap” and how to fill it

According to the International Law Commission, crimes against humanity pose a threat to international peace and security, creating an obligation for the international community to take effective collective measures to prevent and remove them. Yet in the case of Belarus, it appears that in spite of the accumulated evidence, the political will is missing to effectively “remove” the threat. As a result, victims feel that the testimonies they shared about the atrocities endured and the identity of the perpetrators who inflicted them have merely served to accumulate evidence for archival purposes, with no actual possibility of justice that would effectively deter perpetrators from continuing to violate human rights with a sense of impunity.

Yet according to the UN Charter, suspicion of crimes against humanity should warrant the referral of the situation that has unfolded in Belarus since 2020 to the International Criminal Court, or the establishment of an *ad hoc* tribunal. Since Russia, a permanent Security Council member, is also a close ally of Belarus, it would predictably veto such an initiative. Under the current government, there is no reason to expect cooperation from the Belarusian state with the court, the competence of which Belarus has not recognised. There are other avenues for the ICC prosecutor to use to initiate an investigation into alleged crimes that fall within the jurisdiction of the court, however.

To that effect, in May 2021 a coalition of human rights defenders submitted a Communication to the ICC under article 15(2) of the Rome Statute alleging that the crime of persecution and deportation had been committed in Belarus in the context of the post-August 2020 crackdown^{xxvi}. Because part of the crime was committed on the territory of states (to which Belarusians fled) that recognise the competence of the ICC (Lithuania, Poland and Latvia) or cooperate with it (Ukraine), the filing parties requested the prosecutor to conduct a preliminary inquiry and seek authorisation from the Pre-trial Chamber to open a full investigation into the alleged crimes.



This initiative was followed by calls for states to send referrals to the ICC prosecutor^{xxvii}. Unfortunately, following the full-fledged invasion of Ukraine in February 2022, the court has understandably focused on the crimes committed in that context, and the Communication was left unanswered. Against this backdrop, and in the absence of alternative remedies, many Belarusian victims turned to national criminal courts in the countries to which they had fled. Several cases were consequently submitted in half a dozen European countries that recognise the universal jurisdiction of their tribunals.

Experts have identified several legal, procedural and institutional obstacles that explain why their investigation has stumbled so far. These include a lack of appropriate expertise and resources of national investigative bodies; inappropriate regulations for the treatment of Belarusian victims and witnesses (being under international protection, their personal details cannot be disclosed); the impossibility of interrogating suspects or arresting culprits unless and until they visit a country ready to detain and extradite them (which is unlikely, particularly because the suspected perpetrators are usually under sanctions and visa bans); and insufficient political will to make changes happen so that investigations can actually take place, be publicised enough to serve “healing” and deterring purposes, and lead to condemnations, albeit *in absentia*^{xxviii}. In fact, it appears that most of the states where complaints were submitted are “not yet fully ready to recognize the crimes carried out by the Lukashenka regime as a threat to the global rule of law and security and therefore are of direct national interest of the countries concerned”^{xxix}.

Recommendations

In light of the above, experts have suggested several ways to improve the situation^{xxx}. I fully endorse and hereby echo their recommendations to states that support accountability for the crimes committed in Belarus since 2020, calling on them to:

- Adopt a long-term strategy clarifying the purpose of universal jurisdiction and eliminating legal provisions that unduly restrict its scope of application.

- Create specialised bodies to investigate international crimes, allocating them sufficient resources and building up their capacity through training, including training based on the knowledge held by Belarusian civil society (human rights defenders and lawyers, NGOs, and the diaspora).
- Strengthen inter-country cooperation to facilitate the exchange of expertise and data, including about suspects.
- Produce methodological guidelines on working with international crimes in Belarus.
- Build on the best investigative practices developed at the UN and the European Court of Human Rights.
- Facilitate the transfer to national courts of data held in international repositories (OHCHR, International Accountability Platform for Belarus) and evidence that provides contextual elements of crime against humanity.
- Request competent authorities to publish progress reports for the media and the wider public to know where procedures stand and why they are delayed.



ENDNOTES

ⁱ The UN High Commissioner for Human Rights. Situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath. Report (A/HRC/52/68), para. 54. *United Nations*. February 3, 2023.

ⁱⁱ Rudnik, A. Explainer: how do we know that Belarusian election was rigged and who won the race? *Centre for New Ideas*, September 1, 2020. <https://newbelarus.vision/explainer-elections/>

ⁱⁱⁱ See reports and articles published by the International Committee for the Investigation of Torture in Belarus (<https://torturesbelarus2020.org/en/>).

^{iv} The SR-Belarus mandate was established by the UN Human Rights Council in 2012 following the previous post-electoral crackdown, and it has been renewed yearly ever since. The author of this paper has been holding it since 1 November 2018. All reports and press releases are available on the mandate's webpage (<https://www.ohchr.org/en/special-procedures/sr-belarus>). Communications (e.g. allegation letters on specific cases) sent by Special Procedures to the government of Belarus, and replies received (if any), are accessible via a search engine (<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).

^v Benedek, W. OSCE Rapporteur's report under the Moscow Mechanism on alleged human rights violations related to the presidential elections of 9 August 2020 in Belarus. *Organization for Security and Co-operation in Europe*. November 5, 2020. Vienna: OSCE, 58 p. <https://www.osce.org/odihr/469539>

^{vi} The independent Belarusian Association of Journalists (BAJ) publishes annual reports monitoring the situation of mass media (cf. https://baj.media/en/aglyady_category/annual-reports/), as well as repressions against the profession (https://baj.media/en/aglyady_category/statistics-and-lists-of-detainees/). Since 2020, Belarusian journalists have been arrested on more than 500 occasions (<https://baj.media/en/belarusian-media-workers-behind-bars-portraits/>), with 37 of them behind bars as of 1 August 2024.

^{vii} Viasna. Restrictions on freedom of expression under the pretext of fighting extremism and terrorism. Annual reports published in 2024 (38 p.) and 2023 (54 p.). <https://spring96.org/en/editions>

^{viii} See the 2023 SR-Belarus reports to the Human Rights Council (A/HRC/53/53) and the General Assembly (A/78/327).

^{ix} Observatory for the Protection of Human Rights Defenders. Suppression of the Right to Defend Human Rights in Belarus: Policy and Legislative Changes in 2021-2023. *Fédération Internationale des Droits de l'Homme & Organisation Mondiale Contre la Torture*, 2023, 37 p.

<https://www.omct.org/en/resources/reports/belarus-how-human-rights-defenders-are-being-silenced-a-new-report>

^x Belarus' veteran human rights center Viasna (Spring) has observed politically-motivated proceedings in administrative and criminal courts, recording violations of the rights of most of those subject to trial. See annual reports published here: <https://spring96.org/en/editions>

^{xi} According to Viasna, which maintains a daily count of political prisoners in Belarus (<https://prisoners.spring96.org/en>). As of 4 August 2024 the list included 1,390 people. Taking into account those released in the past four years, an estimated 5,000 people have been detained on politically motivated charges since the spring of 2020.

^{xii} Human Rights Watch. Politically motivated crackdown on human rights lawyers in Belarus. May 27, 2024. Report, 95 p. <https://www.hrw.org/report/2024/05/27/i-swear-fulfill-duties-defense-lawyer-honestly-and-faithfully/politically>

^{xiii} See the 2024 SR-Belarus report to the Human Rights Council (A/HRC/56/65), focusing on freedom of association.

^{xiv} Lawtrend, Freedom of Association and legal environment for civil society organizations in Belarus in 2023. N.d. <https://www.lawtrend.org/english/freedom-of-association-and-legal-environment-for-civil-society-organizations-in-belarus-in-2023>

^{xv} Several trade union leaders have been jailed, prompting the ILO Conference to take measures under article 33 of its Constitution to condemn the Belarusian government's disregard for the recommendations made by the Commission of Inquiry since the early 2000s to secure Belarus' compliance with a number of ILO Conventions protecting the right of workers and independent trade unions.



^{xvi} 17 OSCE member states had invoked the Moscow Mechanism in relation to human rights violations in Belarus in 2020. One year later, 35 of them invoked the Vienna mechanism, and this number went up to 38 invoking that human dimension mechanism again, this time regarding political prisoners in Belarus, on 11 July 2024.

^{xvii} For lack of a moratorium on the death penalty as a first step towards abolition, Belarus has been denied membership in the Council of Europe. Its Parliamentary Assembly maintains continuous attention on Belarus, however, and mandated rapporteurs Paul Galles (EPP, Luxembourg) and Kimmo Kiljunen (Finland, SOC) have prepared reports on “Addressing the specific challenges faced by the Belarusians in exile” (<https://pace.coe.int/en/files/31822/html>) and “A democratic future for Belarus” (<https://pace.coe.int/en/files/33223/html>), respectively.

^{xviii} Cf. resolution A/HRC/46/20 dated 21 March 2021, para. 13. An OHCHR Examination of the human rights situation in Belarus (OEB) was established that conducted hundreds of interviews with victims and witnesses (cf. <https://www.ohchr.org/en/hr-bodies/hrc/ohchr-belarus/index>). The Council renewed the mechanism yearly, on 4 April 2024, in the format of a Group of independent Experts (<https://www.ohchr.org/en/hr-bodies/hrc/gie-belarus/index>).

^{xix} After initially failing to identify the origin of the bomb alert used to justify the diversion – due to a lack of cooperation with the investigation on the part of Belarus – the ICAO concluded that the bomb alert was false and condemned the interference as unlawful, cf. fact-finding report published in July 2022 (<https://www.icao.int/Security/Pages/FFIT.aspx>).

^{xx} The Investigative Committee of the Republic of Belarus decided not to initiate any criminal investigation despite having received no less than 5,000 complaints of torture and ill-treatment in 2020. Cf. Golubok, S. Special tribunal for Belarus: legal and policy implications. *iSans policy paper*, July 25, 2023, 10 p., <https://isans.org/analysis/policy-papers/special-tribunal-for-belarus-legal-and-policy-implications.html>

^{xxi} See the 2022 SR-Belarus report to the General Assembly (A/77/195), dedicated to the rights of Belarusians compelled to exile as a result of repression and prevented from safely returning to Belarus.

^{xxii} [Emphasis added]. *Situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath*, report A/HRC/49/71 dated March 4, 2022, para. 86.

^{xxiii} See OEB report A/HRC/55/61, dated March 15, 2024, para. 52.

^{xxiv} de Hoon, M., Vasilyeu, A. and Kolesava-Hudzilina, M. Crimes against humanity in Belarus. Legal analysis and accountability options. *Justice Hub report*, Vilnius: Law and Democracy Center, July 2023, 114 p., <https://ldc-jh.eu/?p=20171>. The authors convincingly argue that the crimes against humanity of “imprisonment, torture, murder, rape, and other grave forms of sexual violence, enforced disappearance, persecution and deportation” have been committed.

^{xxv} Kravchuk, N. and Dzhibladze, Y. Addressing the accountability gap. Why the application of the universal jurisdiction principle in respect of cases from Belarus is stumbling in Europe and what can be done about it. *iSANS*, Warsaw: International Strategic Action Network for Security, November 30, 2023. 9 pages; p. 6 <https://isans.org/articles/why-the-application-of-the-universal-jurisdiction-principle-in-respect-of-cases-from-belarus-is-stumbling-in-europe-and-what-can-be-done-about-it.html>

^{xxvi} IPHR, Global Diligence LLP, Truth Hounds, and Norwegian Helsinki Committee. *The Situation in Belarus/Lithuania/Poland/Latvia and Ukraine: Crimes against Humanity of Deportation and Persecution. Communication submitted under Article 15(2) of the Rome Statute of the International Criminal Court* in May 2021, 66 p. https://truth-hounds.org/wp-content/uploads/2021/05/by_icc_submission.pdf.

^{xxvii} Golubok, S. Crimes against Humanity in Belarus: Referral to the International Criminal Court. *iSANS*, September 2023, 10 p., <https://isans.org/analysis/policy-papers/crimes-against-humanity-in-belarus-referral-to-the-international-criminal-court.html>

^{xxviii} Kravchuk, N. and Dzhibladze, Y. Challenges in the application of the universal jurisdiction principle in respect of cases from Belarus. Case studies from Lithuania, Germany, Poland and Czechia. *iSANS*, November 2023, 66 p., <https://isans.org/analysis/reports/challenges-in-the-application-of-the-universal-jurisdiction-principle-in-respect-of-cases-from-belarus.html>

^{xxix} Kravchuk, N. and Dzhibladze, Y. Addressing the accountability gap..., *op. cit.*; p. 7

^{xxx} Kravchuk, N. and Dzhibladze, Y. Addressing the accountability gap..., *op. cit.*; p. 8-9

