



# COMMUNICATION SUBMITTED UNDER ARTICLE 15(2) OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT:

## The Situation in Belarus/Lithuania/Poland/Latvia and Ukraine:

CRIMES AGAINST HUMANITY OF DEPORTATION AND PERSECUTION

May 2021

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# I. INTRODUCTION

1. International Partnership for Human Rights ('IPHR'), in collaboration with Global Diligence LLP, Truth Hounds and Norwegian Helsinki Committee (the 'Filing Parties') submit this Communication under Article 15(2) of the Rome Statute to the International Criminal Court ('ICC Statute').
2. The Filing Parties aver that since May 2020, President Lukashenko along with key members of the Presidential Administration, the government, law enforcement, state security, the judiciary and other agents and proxies of Republic of Belarus (hereinafter the 'Lukashenko regime') have waged a campaign of violence, intimidation, harassment and systematic denial of fundamental human rights against the civilian population of Belarus in a bid to retain power at all costs (hereinafter, 'campaign of repression'). There is a reasonable basis to believe that the conduct of the Lukashenko regime amounts to a widespread and systematic attack on the civilian population pursuant to a State policy. As part of this attack, the regime has forcibly displaced thousands of civilians to the territories of neighbouring Lithuania, Poland, Latvia and Ukraine without grounds permitted under international law, by expulsion or other coercive acts perpetrated on political grounds (crimes against humanity of deportation and persecution). Whilst the Republic of Belarus is not a State Party to the ICC, the Court may exercise its jurisdiction where at least part of the conduct takes place in the territory of a State Party – in this case, victims crossing onto the territories of Lithuania, Latvia, Poland and Ukraine as a result of expulsion or other coercive act. Lithuania, Latvia and Poland are State Parties to the ICC, whilst Ukraine has accepted the jurisdiction of the Court over all ICC Statute crimes taking place on its territory since November 2013.
3. In deciding whether to initiate an investigation, Article 53(1) obliges the Prosecutor to consider three distinct factors: (i) whether there is a reasonable basis to believe that a crime within the *jurisdiction* of the Court has been or is being committed; (ii) whether the case is or would be *admissible*; and (iii) whether, '[t]aking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would *not* serve the *interests of justice*'.<sup>1</sup> Each of these factors is assessed to the requisite standard in separate sections below.<sup>2</sup>

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1 ICC-02/17, Situation in the Islamic Republic of Afghanistan, Appeals Chamber, 'Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan', 5 March 2020 (the 'Afghanistan Appeal Decision'), para 28.

2 For purposes of assessing the strength of a communication, the applicable evidentiary standard can be no higher than a 'reasonable basis to believe', which—as set out in Article 53(1)(a)—is the lowest such standard provided for in the ICC Statute. See ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 34 ('The requisite standard of proof of "reasonable basis" has been interpreted by the Chambers of the Court to require "a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court "has been or is being committed".') (citing ICC-01/09, *Situation in the Republic of Kenya*, PTCII, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the *Situation in the Republic of Kenya*', 31 March 2010 (the 'Kenya Article 15 Decision'), para 35). Upon seeking authorization for an investigation, the information available to the OTP is expected to be neither 'comprehensive' nor 'conclusive'. It must be understood within the context in which it operates: the standard should be construed and applied against the underlying purpose of the procedure in Article 15(4) of the ICC Statute, which is to prevent the ICC from proceeding with unwarranted, frivolous, or politically motivated investigations that could have a negative effect on its credibility. Nor does all the information under this standard need to necessarily point to one conclusion. Kenya Article 15 Decision, paras 27–35; see also ICC-OTP, Report on Preliminary Examination Activities 2019, 5 December 2019, paras 3, 11.

## II. EXECUTIVE SUMMARY

4. On 9 August 2020, a presidential election was held in Belarus. According to official results, the incumbent President Lukashenko – in power since 1994 – won another decisive victory claiming over 80% of the votes. According to opponents and critics of the regime, the election was stolen by Lukashenko, through barefaced violations of electoral law and outright election fraud. In the run-up to the vote, key opposition candidates and vocal critics were barred, detained and baselessly charged with serious crimes.
5. In the wake of the election, thousands have taken to the streets denouncing what they perceive as a brazen attempt to hold on to power by a man widely referred to as “Europe’s last dictator”. Protests, public-sector strikes and vocal challenges to Lukashenko’s rule have been crushed by a state apparatus under Lukashenko’s control. An estimated 33,000 have been arrested, many have been subjected to violence, torture and inhuman treatment and arbitrary detention. Those who refuse to yield to Lukashenko’s will are harassed by law enforcement and other government agents, threatened with losing their jobs, the custody of their children, their assets, their homes and businesses. Leaders of the democratic opposition have been detained and physically expelled from Belarus by the authorities. Judicial actors loyal to Lukashenko, target vocal opponents, critics and organisers of weekly protests with trumped-up charges of serious crimes for which they face lengthy terms of imprisonment. At least six persons have lost their lives as a result of the regime’s conduct.
6. In a televised interview released on 14 November 2020, Lukashenko announced that a ‘core group’ of 2000 protesters should be “taken away to Lithuania and Poland”.<sup>3</sup> In another public speech, Lukashenko declared: “we are not going to prevent anyone from leaving but remember this – if you leave you are not going to be able to return”.<sup>4</sup> Whilst many have chosen to stay and protest against the regime – enduring increasingly unbearable circumstances – thousands have succumbed to the coercive environment and have been forced to flee the country, leaving everything behind. The regime’s campaign of repression is clearly calculated to create a coercive environment that would crush the opposition and push individuals to either accept the outcome of the August election, or flee the country.
7. According to official figures, some 14,000 citizens of Belarus have fled the country since the August election. Whilst the filing parties are not able to confirm the circumstances of all of those who have left, there is a reasonable basis to believe that the majority fall into one of three categories: (i) persons who were physically expelled by the regime; (ii) persons who fled as a result of the imminent threat of arbitrary arrest and/or other coercive measures; and (iii) persons who fled as a result of the coercive environment created by the Lukashenko regime.

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3 YouTube, “Интервью президента Республики Беларусь Александра Лукашенко, 14.11.2020. Полное видео”, 14 November 2020, available at: [https://www.youtube.com/watch?v=C7zjzOJg-1I&fbclid=IwAR1wMRuPm6jjpFumfOrj\\_uvJK2SjwxqWUg\\_\\_l1yRA7gHuh8bOs8-vMUI-xc](https://www.youtube.com/watch?v=C7zjzOJg-1I&fbclid=IwAR1wMRuPm6jjpFumfOrj_uvJK2SjwxqWUg__l1yRA7gHuh8bOs8-vMUI-xc); see time market 2:53:25 et seq.

4 DW, “Не надо никого держать: как Лукашенко борется с «утечкой мозгов» из Беларуси”, 7 December 2020, available at: <https://www.dw.com/ru/ne-nado-nikogo-derzhat-kak-lukashenko-boretsja-s-utechkoj-mozgov-iz-rb/a-55843877>; DW, “Белорусы не смогут вернуться в страну из-за приказа Лукашенко. Это законно?”, 6 November 2020, available at: <https://www.dw.com/ru/belorusy-ne-mogut-vernutsja-v-stranu-iz-za-prikaza-lukashenko-jeto-zakonno/a-55519202>.

8. On the basis of all available information, the filing parties aver that the situation in Belarus qualifies as a widespread or systematic attack on the civilian population of Belarus pursuant to a State policy to commit such an attack. Thus, there is a reasonable basis to believe that the conduct of various Belarusian state actors and proxies satisfies the contextual elements of crimes against humanity under the ICC Statute.
9. There is a reasonable basis to believe that as part of this attack, the Lukashenko regime forcibly deported thousands of citizens through expulsion and other coercive acts, including arbitrary arrests and prosecution, violence, physical abuse and torture, intimidation and the deprivation of fundamental rights calculated to suppress dissent or force all critics and opponents of the regime out of the country. For these reasons, the filing parties aver that since at least June 2020, the Lukashenko regime has perpetrated the crime against humanity of deportation under Article 7(1)(d) of the ICC Statute.
10. Furthermore, there is a reasonable basis to believe that the expulsions and other coercive acts leading to forced displacement were directed against an identifiable group or collectivity based on political grounds – i.e. all those critical of and in opposition to the Lukashenko regime. For these reasons, the filing parties aver that since at least June 2020, the Lukashenko regime has committed coercive acts and severe deprivations of fundamental human rights that qualify as the crime against humanity of persecution under Article 7(1)(h) of the ICC Statute.
11. Based on the available information at the time of filing, there are no known completed, pending, or planned domestic investigations or prosecutions by any competent authority related to the specific allegations contained in this Communication. Accordingly, the issue of complementarity currently presents no obstacles to proceeding with the inquiries proposed in this Communication.
12. The crimes and human rights deprivations alleged in this Communication are grave ones. The scale, nature, manner, and impact of this conduct are considerable. At the time of filing, up to six people have been killed, over 33,000 have been arrested and hundreds have been tortured in police detention. Thousands have been driven out of the country. The crimes alleged have been committed with obvious brutality, by way of oppressive means and evident cruelty, and pursuant to a systemic program of governmental abuse of power—all with discriminatory motives against a body of peaceful civilian protestors, activists and journalists exercising their political rights under international and domestic law. Accordingly, the gravity of the criminal conduct presented by this Communication satisfies the requirements of Article 17(1)(d) of the ICC Statute for present purposes.
13. To the Filing Parties' best knowledge, there is no reason to believe that an investigation into the conduct described in this Communication would not serve the interests of justice. In fact, there is every reason to believe that accountability for the violence and ruthlessness perpetrated by the Lukashenko regime over the last eight months is overdue. The impact of this conduct has serious and long-lasting ramifications on the lives of individual victims as well as groups and communities residing in Belarus and beyond. Relevant stakeholders—including representatives of the victims, as well as international and domestic civil-society organizations in Belarus and around the world—support a full investigation into responsibility for the crimes against humanity alleged herein, with a view to bringing the perpetrators to justice before the ICC.

14. For the reasons presented in this Communication, the filing parties respectfully request the ICC Prosecutor to conduct a preliminary inquiry into the situation in Belarus (and Lithuania, Latvia, Poland and Ukraine), with a view to seeking authorisation to open a full investigation into the alleged crimes.

# III. FACTUAL BACKGROUND

## A. Historical Repression

15. Considered ‘Europe’s last dictator’, President Alexander Lukashenko has been in power in Minsk for over 25 years.<sup>5</sup> He has never allowed Belarus to establish any semblance of authentic parliamentary democracy, instead concentrating all power in an authoritarian executive branch notably characterized by complete control over the nation’s security apparatus.<sup>6</sup>
16. The contentious 9 August 2020 presidential vote was not the first time that Lukashenko had falsified an election or punished protesters with violence and arrests; he did so quite crudely in both 2006 and 2010.<sup>7</sup> Successive UN Special Rapporteurs on the situation of human rights in Belarus have consistently described a deeply oppressive environment in the country, with many of the undemocratic and authoritarian patterns recurring and even intensifying.<sup>8</sup>
17. Lukashenko has clung to power ‘not just through harsh police tactics, hollow promises of reform, and the passage of time’; he has additionally ‘relied on a more insidious and often invisible machinery of persuasion, coercion, and repression: a domestic security agency little changed from the Soviet era’ and still known as the KGB.<sup>9</sup>

‘Over the past 26 years, Lukashenko has created a system of suppressing dissent in Belarus that instils the feeling of animal fear in people’, said Pavel Latushko, a former culture minister and onetime ambassador to France, Poland, and Spain. It controls a network of spies and monitors—known as ‘curators’—who oversee every establishment in the country, from schools and businesses to the presidential administration. Its agents collect compromising materials on just about anyone suspected of disloyalty and eavesdrop on the conversations of senior government officials to make sure they toe the party line. Workers at factories and other state-

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5 *Begin-Sadat Center for Strategic Studies*, Jiri Valenta, ‘Belarus Needs Peaceful US Engagement’, 13 October 2020, available at: <https://besacenter.org/perspectives-papers/belarus-us-engagement/>; see also *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431> (‘He has ruled the country since 1994 and earned the sobriquet of ‘Europe’s last dictator’.”)

6 *Foreign Policy*, Vladislav Davidzon, ‘Lukashenko’s Talk Offers Could Trap Him or Protesters’, 13 October 2020, available at: <https://foreignpolicy.com/2020/10/13/belarus-lukashenko-talk-protesters-russia/>.

7 *Atlantic Council*, Anders Åslund, ‘The West finally imposes sanctions on Belarus’, 6 October 2020, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/the-west-finally-imposes-sanctions-on-belarus/> (‘In 2006, the United States and the EU imposed sanctions. Since then, the United States has maintained sanctions against sixteen individuals and nine major Belarusian enterprises. In 2016, after Lukashenko had freed all political prisoners, the EU ended sanctions that had targeted many more people, with the list including no less than 170 individuals. Following the relaxation of EU sanctions in 2016, international financial institutions including the International Monetary Fund, the World Bank, and the European Bank for Reconstruction and Development returned to Belarus. However, the IMF has not yet been able to provide any financing.’)

8 OHCHR, Urgent debate on the situation of human rights in Belarus, 45th session of the Human Rights Council, Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights, Geneva, 18 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26259&LangID=E>.

9 *New York Times*, Ivan Nechepurenko, “‘You Cannot Say No’: The Reign of Terror That Sustains Belarus’s Leader”, 14 November 2020, available at: <https://www.nytimes.com/2020/11/14/world/europe/belarus-lukashenko-protests-crackdown.html>.

run operations, which employ more than 40 percent of the country's work force, risk losing their jobs if they are suspected of being disloyal, one of the reasons Lukashenko maintains a quasi-Soviet economic model. 'You understand well that if you express your point of view, you will be held responsible', Mr Latushko said. 'You can be reprimanded, or face an administrative or criminal case. In the worst scenario, you can be destroyed physically.'<sup>10</sup>

Such controls are institutionalized,<sup>11</sup> and key features include politically-motivated judges, brainwashing of law enforcement officials, and harassment of lawyers.<sup>12</sup>

18. Those who publicly questioned the legitimacy of Lukashenko's rule or were perceived as a threat have been jailed, ill-treated and forced to flee Belarus under threat of further arrest and violence. In 2011, Ales Mikhalevich – an opposition presidential candidate spent two months in prison for protesting the results of the 2010 presidential elections, where he claims to have been tortured. He was one of seven other presidential candidates arrested in the wake of the election. After his release, he denounced his treatment in detention and was summoned for further interrogation by the KGB. Fearing for his life he fled to a neighbouring country.<sup>13</sup> Natalya Radzina – chief editor of the opposition Khartiya-97 website was arrested by the KGB and charged with organising mass disorder – a crime that carries a 15-year jail term. She was summoned for further interrogations by the KGB and fled to neighbouring Russia and then on to Poland and Lithuania.<sup>14</sup> Natalia Kaliada and Nicolai Khalezin – co-founders of Belarus Free Theatre - fled Belarus and were declared public enemies – effectively banned from returning home.<sup>15</sup>

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10 *New York Times*, Ivan Nechepurenko, "You Cannot Say No": The Reign of Terror That Sustains Belarus's Leader', 14 November 2020, available at: <https://www.nytimes.com/2020/11/14/world/europe/belarus-lukashenko-protests-crackdown.html>.

11 *New York Times*, Ivan Nechepurenko, "You Cannot Say No": The Reign of Terror That Sustains Belarus's Leader', 14 November 2020, available at: <https://www.nytimes.com/2020/11/14/world/europe/belarus-lukashenko-protests-crackdown.html> ("We have two systems of law in the country, the one for normal crimes, such as murder or rape," said Andrei Sytko, a former high-ranking prosecutor. "The second parallel system is driven by politics. The whole vertical of power from a police officer to the prosecutor general and the Supreme Court is working to defend the current political regime." And while Lukashenko does not manage that system from day to day, people within it pursue their tasks with a zealotry born of fear of the president. "Officials are afraid of his righteous anger and are ready to commit punitive actions voluntarily," said Sytko. "For them it is better to punish and overdo.")

12 *New York Times*, Ivan Nechepurenko, "You Cannot Say No": The Reign of Terror That Sustains Belarus's Leader', 14 November 2020, available at: <https://www.nytimes.com/2020/11/14/world/europe/belarus-lukashenko-protests-crackdown.html> ("Law enforcement members also get brainwashed, said Yevgeny Babak, a former assistant prosecutor in Minsk. Every week, he says, he had to attend "political information" classes where he had to sit through state-run propaganda news shows and fill up an "ideology notebook" with the main takeaways. [...] Judges routinely make politically-motivated rulings. Aleksei Pasko, a judge in the Pinsk district in the country's west, quit his job after he realized how many "political" cases he would have to hear after thousands of protesters were detained. [...] Lawyers, the only actors in the system with some semblance of independence, are regularly threatened and harassed, and sometimes have their licenses revoked. Maria Kolesava-Hudzilina, an acclaimed lawyer who has been defending jailed protesters, says she was often warned during visits with her clients that she, "might not be able to leave the building".")

13 *New York Times*, "Former Presidential Candidate Claiming Abuse, Flees Belarus", 14 March 2011, available at: <https://www.nytimes.com/2011/03/15/world/europe/15belarus.html>.

14 *RFE/RL*, "Belarusian Oppositionist Skips KGB Meeting, Reportedly Flees Country", 1 April 2011, available at: [https://www.rferl.org/a/opposition\\_activist\\_said\\_to\\_flee\\_belarus/3544337.html](https://www.rferl.org/a/opposition_activist_said_to_flee_belarus/3544337.html).

15 *BBC*, "Belarus Free Theatre: Thespian guerrilla group", 1 June 2013, available at: <https://www.bbc.co.uk/news/world-europe-22701897>.

19. Lithuania, Latvia and Poland—once part of the former Soviet Union, like Belarus, but now Members of the EU and NATO—have a history of granting refuge to its neighbour’s opposition figures.<sup>16</sup>

## B. Pre-Election Manoeuvres Against the Opposition

20. In the lead up to the August presidential election, Belarusian government authorities engaged in a number of moves designed to stymie opposition candidates. According to Human Rights Watch (‘HRW’):

On 15 July, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (‘OSCE’), which monitors elections in the region, stated that for the first time, it would not monitor the vote, citing the authorities’ failure to deliver a timely invitation.

The authorities pressed criminal charges against two opposition presidential hopefuls, one of them a top candidate, and refused to register the candidacy of another top candidate. From May through July, police arrested at least 1100 people for gathering peacefully on issues related to the election. Courts sentenced nearly 200 people to detention for up to 15 days, with some sentenced to multiple terms. They fined more than 300 others.

Police arrested journalists and bloggers as they were reporting from peaceful public gatherings, in some cases using excessive force. Some were released shortly afterward without charges. Others were charged for participation in unsanctioned public gatherings and/or resisting police orders and were fined by courts, despite their assertions that they were covering the events on assignment. Some said the police beat them.<sup>17</sup>

The Lukashenko regime’s policy to suppress opposition in the context of the 2020 elections began in earnest in early-May 2020, when Sergei Tikhanovsky, a popular blogger who had intended to run for president, was arrested and detained multiple times on spurious charges.<sup>18</sup>

21. In response, Tikhanovsky’s wife, Svetlana Tikhanovskaya announced she would run in her husband’s place and emerged as Lukashenko’s main opponent. Tikhanovsky became her campaign manager. On 29 May, police again arrested Tikhanovsky in Hrodna, when he and other activists were gathering signatures for his wife’s candidacy. The authorities spun the events in Hrodna into a large case, alleging mass criminal behaviour, and detained 18 other bloggers and political activists. Tikhanovsky and others remain in pre-trial custody, facing years in prison.<sup>19</sup>

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16 Al Jazeera, ‘Belarus election challenger Tikhanovskaya flees to Lithuania’, 11 August 2020, available at: <https://www.aljazeera.com/news/2020/08/11/belarus-election-challenger-tikhanovskaya-flees-to-lithuania/>.

17 Human Rights Watch, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>.

18 See, e.g., Washington Post, Robyn Dixon, ‘Belarus’s Lukashenko jailed election rivals and mocked women as unfit to lead. Now one is leading the opposition’, 23 July 2020, available at: [https://www.washingtonpost.com/world/europe/belarus-lukashenko-opposition-election/2020/07/23/86f231f6-c5ca-11ea-a825-8722004e4150\\_story.html](https://www.washingtonpost.com/world/europe/belarus-lukashenko-opposition-election/2020/07/23/86f231f6-c5ca-11ea-a825-8722004e4150_story.html).

19 Politico, ‘Belarusian opposition leader on trial as Lukashenko continues his crackdown’, 17 February 2021, available at: <https://www.politico.eu/article/belarus-viktor-barbariko-opposition-leader-trial-alexander-lukashenko-continues-crackdown/>; Human Rights Watch, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at:

22. On 15 July, hundreds of opposition supporters gathered in Minsk to file complaints about the Central Election Commission (“CEC”)’s refusal to register opposition candidates. Among others, police violently detained Anton Trafimovich, a reporter covering the event, breaking his nose.<sup>20</sup> The following day, police arrested presidential candidate Viktor Babaryka and his son, Eduard, his father’s campaign manager. Both were taken into custody on charges including tax evasion.<sup>21</sup> Later in the month, authorities announced new criminal charges of preparation for mass riots against Tikhanovsky and another opposition politician, Mikolai Statkevich.<sup>22</sup> Authorities also opened a separate investigation against Tikhanovsky for incitement to violence against the police.<sup>23</sup>
23. In July, citing telephone threats, Tikhanovskaya sent her children abroad (to an undisclosed EU location) for safety.<sup>24</sup> Shortly afterwards, Valery Tsepalo, one of the independent candidates removed from the ballot, also left Belarus (for Russia) with his children, citing concerns for their safety.<sup>25</sup>
24. From May through July, police detained peaceful protestors in a variety of settings and arrested and beat journalists covering the events.<sup>26</sup> After news of the arrests and beatings of protestors and journalists spread, Lukashenko called on his cabinet to expel foreign journalists, claiming bias and

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<https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists> (‘Two unidentified women attempted unsuccessfully to pick a fight with Tsikhanouski. When police officers rushed in, one officer fell to the ground. Although videos of the event show that he was not hit or pushed, the authorities claim he was injured. They opened a criminal investigation into “organizing group actions that grossly violate public order” and violence against the police.’); *see also International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 5, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>; *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431> (‘Sergei Tikhanovsky, her husband and a popular social-media personality, has been in jail since May on sedition charges during his campaign to oust Mr Lukashenko.’)

- 20 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists> (‘Trafimovich told *Human Rights Watch* that the authorities are pressing charges against him, most likely to justify injuring him.’)
- 21 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>.
- 22 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>.
- 23 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>.
- 24 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>; *Reuters*, Andrei Makhovsky, ‘Belarus presidential candidate sends her children abroad after threats’, 20 July 2020, available at: <https://www.reuters.com/article/us-belarus-election-candidate-children/belarus-presidential-candidate-sends-her-children-abroad-after-threats-idUSKCN24L1Q6>.
- 25 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists>; *Reuters*, Andrei Makhovsky, ‘Belarus opposition leader flees abroad with two sons ahead of election’, 24 July 2020, available at: <https://www.reuters.com/article/us-belarus-election/belarus-opposition-leader-flees-abroad-with-two-sons-ahead-of-election-idUSKCN24P1MV>.
- 26 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists> (‘At least 195 people were detained from May 6 through 31 alone.’); *ibid* (‘Some of these events were to collect signatures for presidential hopefuls. Although Belarusian election law allows such gatherings, law enforcement deemed them unsanctioned assemblies.’)

falsely stating that they had called for ‘mass disturbances’.<sup>27</sup> According to Belarusian human rights defenders (‘HRDs’), the authorities arrested at least 2000 political opposition activists, journalists, bloggers, peaceful protesters, and others (collectively, the ‘Opposition’) in the months leading up to the vote. Among them were nine members of Tikhanovskaya’s campaign staff.<sup>28</sup> On 6 August, Belarusian sound engineers Vladyslav Sokolovsky and Kirill Galanov were arrested for playing an iconic Soviet-era protest song at a pro-government rally in Minsk.<sup>29</sup>

25. Thus, well in advance of the elections, the Lukashenko regime adopted a strategy to decapitate protests, forcing opposition leaders to leave the country became the preferred method of disconnecting them from the protesters.<sup>30</sup>

## C. The August 2020 Election and Its Violent Aftermath

26. Elections went ahead on 9 August, and government officials barred foreign observers from monitoring the poll.<sup>31</sup> According to official results, Lukashenko won in a landslide.<sup>32</sup> The opposition rejected the results as rigged and claimed victory for Tikhanovskaya.<sup>33</sup> Independent exit polls

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27 *Human Rights Watch*, ‘Belarus: Crackdown on Political Activists, Journalists’, 30 July 2020, available at: <https://www.hrw.org/news/2020/07/30/belarus-crackdown-political-activists-journalists> (‘In June, Lukashenko accused Telegram social media channels of spreading “fake news” and inciting public protests. Interior Minister Yuri Karaeu told Parliament that these “people are [...] attempting to make a street revolution.”’)

28 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 5, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>.

29 *AFP*, ‘Fearing persecution, Belarus activists flee to Lithuania’, 28 August 2020, available at: <https://www.france24.com/en/20200828-fearing-persecution-belarus-activists-flee-to-lithuania> (‘Sokolovsky was jailed for 10 days for his act of defiance on August 6—just before the election. The musician remembers being held in solitary confinement, then in overcrowded cells, and deprived of a cot but he was spared the beatings handed out to other pro-democracy protesters. [...] The act turned the song, performed by Russian 1980s rock star Viktor Tsoi and his band Kino shortly before the fall of the Soviet Union, into an anthem and a rallying cry for protesters.’)

30 *Belarus Digest*, Yarik Kryvoi, ‘Why the West fails to make a difference in Belarus’, 19 October 2020, available at: <https://belarusdigest.com/story/why-the-west-fails-to-make-a-difference-in-belarus/> (‘Leaders of traditional opposition groups such as Mikola Statkievich and Pavel Seviatynets found themselves in prison well before elections took place. Some of the new leaders who emerged in 2020, such as would-be election candidate Viktar Babaryka and his campaign manager Maria Kolesnikova, did not want to leave and also ended up in prison. But most of the leaders of the 2020 presidential election campaign and post-election protests, including opposition candidate Sviatlana Tsikhanouskaya, prominent member of the opposition Co-ordination Council Paval Latushka, and scores of others, were forced to leave the country. [...] The authorities reserved imprisonment was reserved for those who refused to leave.’)

31 *Guardian*, Patrick Wintour, ‘UK imposes sanctions on Belarus president Alexander Lukashenko’, 29 September 2020, available at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko>.

32 *TUT.BY*, ‘ЦИК огласил окончательные итоги выборов. За Лукашенко проголосовало 80,1%, за Тихановскую —10,1% 14 August 2020, available at: <https://news.tut.by/economics/696655.html>; *BBC*, ‘Belarus election: Opposition leader Tikhanovskaya left “for sake of her children”’, 12 August 2020, available at: <https://www.bbc.com/news/world-europe-53733330> (‘President Alexander Lukashenko secured 80% of the vote in Sunday’s poll, the electoral commission says, but there have been numerous claims of fraud.’)

33 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431>.

favoured the latter view,<sup>34</sup> as did well-founded concerns over fraudulent vote counting.<sup>35</sup> After the announcement of the preliminary results, people took to the streets. 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.<sup>36</sup>

27. After announcing on 10 August that she would not leave the country—despite the detention of several of her campaign staff—Tikhanovskaya appeared to change her mind after spending several hours at the CEC.<sup>37</sup> On 11 August, Tikhanovskaya, fled to neighbouring Lithuania.<sup>38</sup> She said she had ‘made the decision’ to see her children (whom she had previously evacuated).<sup>39</sup> Her departure followed a second night of protests. Local media reported clashes between security services and protesters in cities including Minsk. Internet outages were reported across Belarus.<sup>40</sup>

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34 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 6, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (‘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.’) (citing Belarusian Institute for Strategic Studies, August 2020).

35 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 6, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (‘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. Local electoral commissions were made up of people approved by the government, mostly teachers and members of pro-government associations.’) (citing ‘ODIHR will not deploy election observation mission to Belarus due to lack of invitation’, 15 July 2020; Tableau Public, 2 September 2020); *ibid*, p 6 (‘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.’) (citing Democracy Reporting International, 11 August 2020).

36 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 6, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>.

37 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431>; see also *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 6, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (‘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.’)

38 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431>.

39 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431> (‘“This campaign really gave me a shot in the arm and I thought I could survive everything,” she said. “Not one life is worth what is happening right now. Children are the most important thing in our lives.”’)

40 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, ‘Belarus opposition leader flees to Lithuania after rejecting election results’, 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431>.

28. Linas Linkevicius, Lithuania's foreign minister, said on 11 August that Tikhanovskaya had been detained 'for a very long time, maybe seven hours' after visiting the commission. He added that she had been granted a Lithuanian visa, and would be able to stay in the country for a year. In a video published on 11 August, Tikhanovskaya is seen reading a prepared statement calling on her supporters to recognize the results: 'Belarusians, I call for your prudence and ask you to respect the law. I do not want blood or violence. I ask you not to resist the police, and not to [protest] so that your lives are not endangered.' Maria Kolesnikova, a Tikhanovskaya ally, said security services forced Tikhanovskaya to read the statement while she was detained and suggested coercion by threatening her husband and other detained team members.<sup>41</sup>
29. Veronika Tsepkalo, members of the Tikhanovskaya team and wife of another opposition candidate removed from the ballot, left the country for Poland on 10 August after receiving threats of arrest.<sup>42</sup> Her husband had left Belarus for Russia with their two sons in July after being told that he faced arrest and his children would be sent to a state orphanage.<sup>43</sup> By mid-August, Tikhanovskaya had resumed her opposition activity in exile and recorded several video messages addressing the people of Belarus, international institutions, and other audiences, calling for an end to police violence, the immediate release of all political prisoners, and a free and fair presidential election.<sup>44</sup>
30. Later in August, Sokolovsky and Galanov (the jailed sound engineers) joined approximately two dozen pro-opposition Belarusians who had already sought refuge in Lithuania. According to Sokolovsky: 'I'm not even thinking about going back at the moment. It's not clear what is happening and it's dangerous.' After being released, he was taken in for questioning for several hours on 21 August at the interior ministry and threatened with additional criminal charges. The next day, he 'made [his] way to Lithuania with the help of the embassy'.<sup>45</sup>
31. In late-August, a Lithuanian interior ministry spokeswoman said her country had accepted 22 Belarusian activists so far—half of whom had requested political asylum, adding that another 14

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41 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, 'Belarus opposition leader flees to Lithuania after rejecting election results', 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431> ('Sergei Tikhanovsky, her husband and a popular social-media personality, has been in jail since May on sedition charges during his campaign to oust Mr Lukashenko.')

42 *Reuters*, Joanna Plucinska, 'Belarusian activist to press fight against Lukashenko with opposition leader', 19 August 2020, available at: <https://www.reuters.com/article/uk-belarus-election-poland-tsepkalo/belarusian-activist-to-press-fight-against-lukashenko-with-opposition-leader-idUKKCN25F1MU>.

43 *Financial Times*, James Shotter, Max Seddon, and Richard Milne, 'Belarus opposition leader flees to Lithuania after rejecting election results', 11 August 2020, available at: <https://www.ft.com/content/f8726f35-693f-4c39-bc0d-8592214f9431>.

44 *International Partnership for Human Rights*, 'Belarus on Hold: Crackdown on Post-Election Protests', September 2020, pp 6–7, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (citing *BBC News Russian*, 'Давайте вместе защитим наш выбор': новое обращение Светланы Тихановской, 14 August 2020; 'Ruptly' Youtube Channel, 'LIVE: Belarus opposition leader Tikhanovskaya addresses the European Parliament', 25 August 2020; Council of Europe, 'Secretary General gravely concerned by human rights violations in Belarus', 08 September 2020; *BBC News*, Belarus: 'Tikhanovskaya urges UN intervention to stop violence', 05 September 2020; 'In time Ukraine' Youtube Channel, 'Обращение Светланы Тихановской к гражданам России: Поддержите белорусский народ.' 09 September 2020).

45 *AFP*, 'Fearing persecution, Belarus activists flee to Lithuania', 28 August 2020, available at: <https://www.france24.com/en/20200828-fearing-persecution-belarus-activists-flee-to-lithuania> ('The act turned the song, performed by Russian 1980s rock star Viktor Tsoi and his band Kino shortly before the fall of the Soviet Union, into an anthem and a rallying cry for protesters. A clip of the song has even been tweeted by Lithuanian Foreign Minister Lina Linkevicius with the words in English: "Belarus has awakened".')

activists had received permission to arrive in Lithuania but had not yet crossed the border. The repression in Belarus has turned Lithuania into a place of refuge for pro-democracy Belarusians. Since the crackdown, Lithuania eased coronavirus restrictions to allow in people from Belarus on 'humanitarian grounds'. Poland also announced an easing of entry restrictions to let in fleeing Belarusians, as well as offering to treat anyone injured in the recent violent crackdown on mass protests.<sup>46</sup>

32. On 30 August, the government of Belarus withdrew the accreditation of 17 journalists working for foreign media outlets.<sup>47</sup> Local journalists who deigned to voice their opposition were detained and ill-treated. Denis Dudinsky, the host of a popular morning show on state television who had declared that Lukashenko, no matter how brutal, would never 'force Belarusians back into the box they existed in for these 26 years', was arrested, detained and interrogated by the authorities. He reappeared a few days later with a video message calling on the opposition to stop protesting. Asked what made him change his mind, Dudinsky remarked obliquely that 'these people know how to formulate their requests in such a way that you cannot say no'.<sup>48</sup>
33. On 15 September, HRW summarized a markedly worsening situation:

Belarusian security forces arbitrarily detained thousands of people and systematically subjected hundreds to torture and other ill-treatment in the days following the 9 August 2020 presidential election.

The victims described beatings, prolonged stress positions, electric shocks, and in at least one case, rape, and said they saw other detainees suffer the same or worse abuse. They had serious injuries, including broken bones, cracked teeth, skin wounds, electrical burns, and mild traumatic brain injuries. Some had kidney damage. Six of the people interviewed were hospitalized, for one to five days. Police held detainees in custody for several days, often incommunicado, in overcrowded and unhygienic conditions.

[HRW] interviewed 27 former detainees, 21 men and 6 women, nearly all of whom said they were arrested between 8 and 12 August. Some were arrested as they took part in demonstrations that they described as peaceful; others were grabbed off the streets or from their cars. Many shared medical documents and photographs of injuries. At least five still had bruises and/or wore casts at the time of the interview. [HRW] also spoke with 14 people with knowledge of the arrests and abuse, most between 20 and 29 August, in Minsk, Hrodna, and Homiel, including witnesses

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46 AFP, 'Fearing persecution, Belarus activists flee to Lithuania', 28 August 2020, available at: <https://www.france24.com/en/20200828-fearing-persecution-belarus-activists-flee-to-lithuania> ('Lithuania and Belarus have close historic ties, dating back to the 14th-century Grand Duchy of Lithuania, but have followed very different paths since the breakup of the Soviet Union. The Baltic states are firmly anchored in the West, having joined the European Union and NATO in 2004, but Belarus has turned into one of the world's most isolated states under Lukashenko. Belarusians like Sokolovsky may have little choice but to follow unfolding events from afar. "I'm a musician, I play the guitar. But at the moment I'm not up to it. I am trying to resolve remotely all my problems at home.")

47 OHCHR Press Release, 'UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances', Geneva, 1 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26296>.

48 *New York Times*, Ivan Nechepurenko, "'You Cannot Say No': The Reign of Terror That Sustains Belarus's Leader", 14 November 2020, available at: <https://www.nytimes.com/2020/11/14/world/europe/belarus-lukashenko-protests-crackdown.html>.

to arrests, healthcare workers, and detainees' relatives. [HRW] also examined 67 video recordings and written accounts by former detainees and their relatives, either from public sources or shared directly with researchers.

From 9 to 13 August, police arrested nearly 7000 people [...].

With protests in their sixth week, Belarusian authorities have expelled, harassed, or stripped of accreditation dozens of foreign journalists and local journalists working for foreign and local independent outlets. Starting the first week of September, they have begun to again arrest protesters in large numbers, with the Interior Ministry reporting more than 600 detained on 6 September alone, and more than 300 in custody.

Detainees said that police, riot police (known as OMON, or Special Task Police Force), and special designation forces (Spetsnaz) picked them up off the streets, in some cases using extreme violence, then beat them in dangerously confined spaces in vehicles where they had trouble breathing.

The security forces transported the detainees to police precincts and other detention facilities where they kicked, punched, and beat them with truncheons, forced them to stand, kneel, or lie in stress positions for hours, then held them for days in overcrowded cells. Police often denied detainees food and water and denied their requests to go to the toilet. All said they saw dozens of others subjected to similar or worse treatment.

In Hrodna, a 29-year-old journalist said that when he was arrested, despite displaying his press credentials, an OMON officer broke both his wrists. A medic described witnessing an incident in Minsk on 11 August, in which an OMON officer trying to arrest a motorist who had stopped his car shot a rubber bullet point-blank at him. The medic said she treated the victim on the side of the road, but he ended up needing surgery to extract the bullet from his lungs.

The aim of the abuse, former detainees said, appeared to be to punish and humiliate. [...]

Detainees said that police and guards confiscated detainees' medications, frequently ignored calls for medical care, and in some cases denied it altogether. In one case, a detainee with a pre-existing medical condition was ill-treated and denied timely medical attention. He fell into a coma in custody and was clinically dead by the time he was transferred to a hospital.

Three healthcare workers said they treated numerous demonstrators and former detainees injured by police. Some of those tortured asked the health workers not to file the violent injury reports that are required by law, for fear of retaliation.

All of those interviewed said they were denied access to a lawyer. Those taken before a judge said the proceedings lasted only a few minutes and ended with short arrest sentences for administrative offenses. Some of them said they were released early, most likely because of overcrowded detention facilities.

Those who had no court hearing said they were released within 72 hours, the maximum period allowed under Belarusian law before a court hearing is required.

All said that when released, they had to sign a document promising not to participate in ‘unsanctioned assemblies’, and were given a written warning of criminal charges if they did.

Police and detention center officials failed to keep track of the thousands of people arrested, and detainees’ family members said they struggled, in many cases for days, to find out where their relatives were or what happened to them.

Dozens of former detainees lodged complaints with the authorities alleging cruel and degrading treatment by police. [HRW] is aware of several preliminary inquiries launched by the authorities, but they have not yet opened a single criminal case at time of writing.<sup>49</sup>

34. Also in September, International Partnership for Human Rights (‘IPHR’) released a detailed summary of events:

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.<sup>50</sup>

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 hospitalized, while the number of those seeking medical care reached one thousand. For example, in Brest, some 23 people were hospitalized out of the 100 who required medical assistance and in Grodno, 25 were hospitalized out of 163.<sup>51</sup>

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

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49 *Human Rights Watch*, ‘Belarus: Systematic Beatings, Torture of Protesters’, 15 September 2020, available at: <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>.

50 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 7 available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>.

51 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 7, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (citing Tableau Public, 2 September 2020).

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.<sup>52</sup>

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 7000 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).<sup>53</sup>

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.<sup>54</sup>

In its report, IPHR specifically documents a number of international human rights violations by the Belarusian authorities.

35. In September, a number of prominent critics and opposition leaders were detained by Belarusian law enforcement and security services and driven to the borders of Ukraine, Poland and Lithuania. On 5 September, Olga Kovalkova—an associate of exiled opposition leader Tsikhanovskaya—was detained by the KGB, taken to no man’s land between Belarus and Poland and told to leave the country under threat of lengthy detention.<sup>55</sup> On 8 September, Maria Kolesnikova, Ivan Kravtsov and Anton Rodnenkov —members of the opposition Coordination Council—were driven into no man’s land between Belarus and Ukraine and told to cross into Ukraine under threat of detention and violence.<sup>56</sup>
36. The EU has refused to recognize the election results. The UN has received hundreds of reports of torture and abuse of detainees.<sup>57</sup> Belarus has ignored several offers by OSCE chairman, Albanian Prime Minister Edi Rama, to visit.<sup>58</sup>

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52 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 7, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>.

53 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 7, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html>.

54 *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 8, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (citing Tableau Public, 2 September 2020).

55 AP, ‘Belarus activist resists effort to deport her to Ukraine’ 9 September 2020, available at: <https://apnews.com/article/international-news-ap-top-news-europe-5c29fffaba356dfc0e2b66aecff9d5c>; CNN, ‘Belarusian activist forcible removed from country by security services’, 9 September 2020, available at: <https://www.cnn.com/2020/09/09/europe/belarus-minsk-olga-kovalkova-protests-intl/index.html>.

56 *Ibid.*

57 *Deutsche Welle*, ‘OSCE to investigate human rights during Belarus election’, 17 September 2020, available at: <https://www.dw.com/en/osce-to-investigate-human-rights-during-belarus-election/a-54967965>.

58 *Deutsche Welle*, ‘OSCE to investigate human rights during Belarus election’, 17 September 2020, available at: <https://www.dw.com/en/osce-to-investigate-human-rights-during-belarus-election/a-54967965>.

37. On 11 October, even as Lukashenko appeared to reach out to the protesters,<sup>59</sup> his regime engaged in a renewed bout of intense violence during the day's demonstrations. Social media and Telegram channels chronicled indiscriminate beatings of protesters by interior ministry troops and plainclothes security agents. As many as 400 peaceful protesters and 40 journalists were arrested by riot police who deployed rubber bullets and pepper spray.<sup>60</sup>
38. On 12 October—following weeks of sustained protests—the Belarus interior ministry announced that police could use lethal weapons if needed due to what it described as the radicalization of mass protests. Security forces had detained hundreds of protesters the previous day and used water cannon and batons to break up crowds demanding a new election. Footage published by local news outlets showed police officers wearing black balaclavas dragging protesters into unmarked black vans and beating protesters with their batons at a rally that drew thousands onto the streets of Minsk. One sequence showed a police van unleashing a powerful jet of water from a cannon into crowds, visibly pushing them back. Security forces have detained more than 13,000 people.<sup>61</sup> The authorities also announced on 12 October that more than 700 people had

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59 *Foreign Policy*, Amy Mackinnon, 'The President of Belarus Has Been Stalling, Now It's Crunch Time', 15 October 2020, available at: <https://foreignpolicy.com/2020/10/15/belarus-protests-lukashenko-prison-meeting-opposition-general-strike/> ('On 10 October, Lukashenko made an unexpected visit to a KGB-run prison for a four-and-a-half-hour meeting with jailed members of the political opposition, including the former banker Viktor Babariko, Lukashenko's most formidable rival until he was arrested in June. The president's press office said that details of the roundtable were to remain secret, but that the goal was to "hear everyone's opinion". The meeting was a dramatic about-face from a president who previously accused the opposition of trying to mount a coup against him, and it was a tacit acknowledgement of the political nature of their detention. Belarus has no shortage of political prisoners, but none has ever been granted an audience with the president. [...] Rather, the meeting was widely seen as a way to split the opposition and create a puppet opposition for negotiations. Two prisoners—Yury Vaskrasenski, a member of Babariko's election campaign team, and Dzmitry Rabtsevich, the director of the Belarus office of the IT company PandaDoc— were released on house arrest shortly after the meeting. In an interview with state media, Vaskrasenski said he had been asked to make suggestions for constitutional changes, though some suspected he was reading from a prepared statement.')

60 *Foreign Policy*, Vladislav Davidzon, 'Lukashenko's Talk Offers Could Trap Him or Protesters', 13 October 2020, available at: <https://foreignpolicy.com/2020/10/13/belarus-lukashenko-talk-protesters-russia/> ('The simultaneous gestures toward opening up dialogue along with increased repression and brutality on the streets of Minsk make a perverse sort of sense. The beatings underlined the regime's leverage on political opponents and signaled that Lukashenko would not tolerate being seen as offering political concessions out of weakness.');

*Foreign Policy*, Amy Mackinnon, 'The President of Belarus Has Been Stalling, Now It's Crunch Time', 15 October 2020, available at: <https://foreignpolicy.com/2020/10/15/belarus-protests-lukashenko-prison-meeting-opposition-general-strike/> ('The very next day, Lukashenko shattered any pretense he was extending an olive branch when police arrested over 700 people during protests on Sunday, cracking down with a degree of violence not seen since the immediate aftermath of the disputed election in August. On Monday, the deputy minister of internal affairs warned that police were prepared to use lethal weapons against protestors.')

61 *Reuters*, 'Belarus allows police to use lethal weapons at mass anti-government protests', 12 October 2020, available at: <https://in.reuters.com/article/belarus-election-protests-arms-idINKBN26X1T5> ('Belarus police will now be permitted to use combat weapons in the streets if needed, the Interior Ministry said on Monday, as security forces again clashed with protesters who want President Alexander Lukashenko to quit after a contested August 9 election. "Fascists," the protesters chanted in a tense standoff with security forces personnel wearing balaclavas who responded with flare guns and an unidentified spray, according to video clips circulating on social media. The sound of a blast could be heard as plumes of grey smoke filled the air at the scene. There were no immediate reports of injuries or arrests. A spokesman for the Interior Ministry later confirmed that police had used flare guns and tear gas to disperse an unauthorized rally. "The protests, which have shifted largely to Minsk, have become organized and extremely radical," the Interior Ministry said in a statement. "In this regard, the Interior Ministry's employees and internal troops will not leave the streets and, if necessary, will use special equipment and military weapons," it said.');

*VOA News*, 'Belarus Allows Police to Use Firearms Against Protesters "If Need Be"', 12 October 2020, available at: <https://www.voanews.com/europe/belarus-allows-police-use-firearms->

been detained in demonstrations a day earlier, with 570 of them still in custody awaiting a court hearing.<sup>62</sup>

39. On 16 October, Belarusian authorities announced they had issued an arrest warrant for Tikhanovskaya, accusing her of 'attempts to overthrow constitutional order' and of posing a threat to national security.<sup>63</sup> Ahead of the next weekly protest slated for 18 October, a senior police official said on television that officers would use firearms if needed against demonstrators: 'We will of course humanely use weapons against them, including firearms, and we will remove the most dangerous (ones) from the streets', said Nikolai Karpenkov, head of the police unit tasked with fighting organized crime and corruption.<sup>64</sup>
40. On 17 October, police detained scores of demonstrators, as well as several journalists covering the protests.<sup>65</sup> The protest (the tenth such weekly event) held on 18 October drew tens of thousands to the streets of Minsk, despite the previous threat by officials to use firearms against protesters. Police detained 280 people nationwide, including 215 in the capital.<sup>66</sup> Images posted on Telegram showed security forces again deploying water cannon and blockading streets with barbed wire and heavy machinery.<sup>67</sup>

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*against-protesters-if-need-be.*

62. VOA News, 'Belarus Allows Police to Use Firearms Against Protesters "If Need Be"', 12 October 2020, available at: <https://www.voanews.com/europe/belarus-allows-police-use-firearms-against-protesters-if-need-be>; Reuters, 'Belarus allows police to use lethal weapons at mass anti-government protests', 12 October 2020, available at: <https://in.reuters.com/article/belarus-election-protests-arms-idINKBN26X1T5> ('The violence followed a meeting Lukashenko held on Saturday in a Minsk jail with detained opposition leaders, an unusual event that prompted some opposition activists to believe he was preparing to make concessions. In a rare concession, two people who had taken part in the meeting with Lukashenko—businessman Yuri Voskresensky and Dmitry Rabtsevich, director of the Minsk office of PandaDoc software maker—were released late on Sunday, Belarus state television reported.')
63. Associated Press, Liudas Dapkus, 'Canadian FM sees exiled Belarus opposition figure in Vilnius', 16 October 2020, available at: <https://apnews.com/article/belarus-emmanuel-macron-europe-sviatlana-tikhanouskaya-lithuania-a0e06a4ac097f4171408a99e8ad688e8>; Reuters, Tom Balmforth, 'Belarus seeks presidential challenger's arrest, threatens to use firearms at protests', 16 October 2020, available at: <https://www.reuters.com/article/us-belarus-election-tsikhanouskaya-wante/belarus-seeks-presidential-challengers-arrest-threatens-to-use-firearms-at-protests-idUSKBN271183> ('Belarus said on Friday it was seeking the arrest of exiled opposition leader Svetlana Tikhanovskaya for jeopardising national security, days after she called for a general strike if the president does not yield to protesters' demands to quit.')
64. Reuters, Tom Balmforth, 'Belarus seeks presidential challenger's arrest, threatens to use firearms at protests', 16 October 2020, available at: <https://www.reuters.com/article/us-belarus-election-tsikhanouskaya-wante/belarus-seeks-presidential-challengers-arrest-threatens-to-use-firearms-at-protests-idUSKBN271183>.
65. Associated Press, 'Police in Belarus disperse another protest, detain scores', 17 October 2020, available at: <https://apnews.com/article/alexander-lukashenko-belarus-europe-minsk-df19640c8d62c273f10b5bb2c442eb9c> ('Hundreds of students marched across the capital, chanting "Go away" to demand that President Alexander Lukashenko step down. They were blocked by police, who rounded up some and forced others to disperse. Later in the day, hundreds of women, some holding white-and-red umbrellas in the colors of the opposition flag, staged their regular weekend march across the capital, Minsk. "You sang your song, it's time to get off the stage!" one placard read. The Viasna human rights center said more than 30 demonstrators were detained. [...] Several journalists were detained on Saturday.')
66. Reuters, Anton Kolodyazhnyy and Tom Balmforth, 'Police in Belarus detained 280 people at protests on Sunday – ministry', 19 October 2020, available at: <https://www.reuters.com/article/us-belarus-election-protests-police/police-in-belarus-detained-280-people-at-protests-on-sunday-ministry-idUSKBN27410S>.
67. Al Jazeera, 'Tens of thousands march in Belarus despite police threat to fire', 18 October 2020, available at: <https://www.aljazeera.com/news/2020/10/18/tens-of-thousands-march-in-belarus-despite-police-threat-to-fire>.

41. On the following Sunday, 25 October, police used stun grenades against protesters as more than 100,000 people marched in Minsk demanding Lukashenko's resignation. Two journalists were arrested prior to the protest. Tear gas was deployed, and several arrests were made, at simultaneous protests in Lida and other Belarusian cities.<sup>68</sup>
42. As calls for strike actions continued, Lukashenko replaced his interior minister with the Minsk police chief who had previously led the crackdowns. Addressing security chiefs on 30 October, Lukashenko called for 'harsh measures' to be taken against protestors: 'If anyone touches a security officer, that person should leave the site without their hands at least. I am publicly saying this so that all understand how determined we are. There is nothing else left for us. We do not have space to step back, and we are not going to step back.'<sup>69</sup> The 12th weekly rally on the following day, 1 November, was met with by-now-routine violence and mass detention.<sup>70</sup> The authorities justified their reaction as necessary to maintain order and public safety.<sup>71</sup> On 2 November, a Belarus representative to the UN Human Rights Council told the body the country was not investigating a single allegation of police abuse. According to the official: 'Currently there have been no identified cases of unlawful acts by the police.'<sup>72</sup>

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68 *Al Jazeera*, 'Belarus police fire stun grenades as 100,000 protest', 25 October 2020, available at: <https://www.aljazeera.com/news/2020/10/25/belarus-police-fire-stun-grenades-as-100000-protest>.

69 *Atlantic Council*, 'Belarus uprising enters dangerous new phase', Doug Klain, 30 October 2020, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/belarus-uprising-enters-dangerous-new-phase/>.

70 *Bloomberg*, Jake Rudnitsky, 'Belarus Protests Continue as New Interior Minister Takes Over', 1 November 2020, available at: <https://www.bloomberg.com/news/articles/2020-11-01/belarus-protests-continue-as-new-interior-minister-takes-over> ('Police sought to prevent protesters from gathering into a large group and made multiple arrests, according to reports in local media including the country's largest news websites *Tut.by* and *Onliner.by*. More than 70 people including three journalists have been detained during the protest action on Sunday, according to Minsk-based human rights center *Viasna* which is not officially registered by the country's authorities. [...] The weekly rally came after growing student activism led to more than 120 expulsions from Minsk universities, according to the non-governmental Belarusian Student Association, and as Lukashenko warned people not to cross "red lines" in their protests. "If anyone touches a soldier, I have already instructed the generals, he should leave without hands at a very minimum," Lukashenko said when introducing Interior Minister Ivan Kubrakov Friday.')

71 *Radio Free Europe/Radio Liberty*, 'Belarus Forces Fire Tear Gas, Beat Demonstrators In Minsk As Tens Of Thousands Take To Streets', 1 November 2020, available at: <https://www.rferl.org/a/belarus-forces-fire-tear-gas-beat-demonstrators-in-minsk-as-tens-of-thousands-take-to-streets/30924193.html> ('Security forces in [Minsk] have detained more than 200 people in the latest anti-government protest [...]. Thousands of demonstrators took part November 1 in marches in Minsk as part of almost daily protests demanding [...] Lukashenko's resignation and a new vote. According to a list published by the human rights group *Vyasna*, nearly all the people detained were taken into custody in Minsk. Four journalists were among those detained, and two of them were "severely beaten", said Boris Goretsky of the Belarusian Association of Journalists, according to *RFE/RL's* Belarus Service. Columns of security trucks and buses to hold detainees could be seen around the city as people marched toward a well-known monument to Soviet-era repression victims outside the capital. Protesters were targeted with flash-bang grenades, and law enforcement used tear gas and batons to try to disperse the crowds. Authorities acknowledged that police officers also fired warning shots into the air during the demonstration in Minsk. These were "necessary measures to maintain order in the capital and ensure public safety during an unauthorized mass event", a statement of the Minsk City Executive Committee quoted by *Interfax-Zapad* said. [...] Armored vehicles equipped with machine guns were seen in Minsk along with water cannons and other anti-riot equipment, according to AP. It was the 12th consecutive Sunday of marches in Minsk [...].')

72 *Reuters*, Stephanie Nebehay, 'Belarus tells UN it has seen no cases of police abuse', 2 November 2020, available at: <https://www.reuters.com/article/us-belarus-election-un/belarus-tells-u-n-it-has-seen-no-cases-of-police-abuse-idUSKBN27114B>.

43. On 8 November, the 13th Sunday of peaceful protests, more than 1000 people were detained in Minsk and other Belarusian cities.<sup>73</sup>
44. On 12 November, Roman Bondarenko, a 31-year-old anti-government protester died in hospital following what demonstrators say was a severe beating by security forces; thousands took to the

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73 *Reuters*, 'Belarus security services detain hundreds of protesters in the capital', 8 November 2020, available at: <https://www.reuters.com/article/us-belarus-election/belarus-security-services-detain-hundreds-of-protesters-in-the-capital-idUSKBN2700G0> ('Videos showed black-clad security service members carrying batons chasing protesters and taking them away in vehicles. [...] The Viasna Human Rights Centre, which is not registered in Belarus, said around 360 people had been detained. [...] On Saturday, 60 doctors and other medical staff who had gathered for a rally were detained, according to Viasna.');

*Radio Free Europe/Radio Liberty*, 'Belarusian Activists Say More Than 800 Detained At Anti-Government Rallies', 8 November 2020, available at: <https://www.rferl.org/a/belarusian-activists-say-more-than-500-detained-at-anti-government-rallies/30936279.html> ('The Viasna human rights group said about 800 people had been detained by security forces on November 8. The arrests were made in Minsk, Homel, Vitebsk, Zhlobin, and other cities. At least six of those listed as detained were journalists. The group said some of the detainees were later released. Video and photos on social media showed men, often in plainclothes, brutally wrestling demonstrators to the ground and forcing them into police transport.');

*Amnesty International*, 'Belarus: More than 1000 people arrested in a single day of peaceful protests amid escalating repression of rights', 9 November 2020, available at: <https://www.amnesty.org/en/latest/news/2020/11/belarus-more-than-1000-people-arrested-in-a-single-day-of-peaceful-protests-amid-escalating-repression-of-rights/> ('According to the human rights group Viasna, security forces detained at least 1053 people over the weekend in Minsk and other major Belarusian cities as protesters turned out on the streets for the 14th consecutive Sunday. At least nine journalists were detained while reporting, according to the Belarusian Association of Journalists. [...] The detentions continued in Minsk in the evening after the protests ended. According to eyewitnesses and video footage, police used indiscriminatory force and beat protesters and bystanders.');

*Human Rights Watch*, 'Crackdown on Peaceful Protesters Escalates in Belarus', 9 November 2020, available at: <https://www.google.com/>

streets to protest his death. The Ministry of Internal Affairs denied responsibility for the killing.<sup>74</sup> However, the head of the Viasna Human Rights Centre said men in plain-clothes had detained Bondarenko in Minsk and handed him over to police officers, who then brutally beat him inside a van.<sup>75</sup> Bondarenko's sister said that he was taken from Minsk's central police department to the hospital, where he died after suffering severe injuries.<sup>76</sup>

45. On 13 November, Lukashenko characterized the protests as illegitimate, likening them to the movements that have overthrown leaders in other post-Soviet countries: 'We unequivocally assess the events taking place in the country after the elections as an attempt at an unconstitutional coup on the patterns of, as they say now, colour revolutions.'<sup>77</sup>
46. On 15 November, at the 14th Sunday protests, at least 1000 were detained across the country.<sup>78</sup> Police wielded clubs and used tear gas and water cannons to disperse the crowds. Video shows police violently beating protesters, detaining people, and taking them away in police vehicles.<sup>79</sup> Detentions also occurred in the cities of Navahrudak, Babruisk, Vitsebsk, Homel, and Svetlahorsk.<sup>80</sup>
47. Between November 2020 and March 2021, weekly protests have continued unabated, as have the regime's attempts to suppress the protests and drive the opposition into submission or exile.
48. On 16 February 2021, the authorities conducted a coordinated attack on the homes and offices of prominent opposition journalists and human rights organisations and activists across Belarus. At least 25 persons were targeted in Minsk, as were the offices of Viasna Human Rights Centre

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*search?client=safari&rls=en&q=Human+Rights+Watch,+%E2%80%98Crackdown+on+Peaceful+Protesters+Escalates+n+Belarus%E2%80%99,+9+November+2020&ie=UTF-8&oe=UTF-8.*

74. *Al Jazeera*, 'Outrage in Belarus, EU after opposition supporter dies', 13 November 2020, available at: <https://www.aljazeera.com/news/2020/11/13/outrage-in-belarus-eu-after-opposition-supporter-dies> ('Thousands of people have taken to the streets of Minsk and other Belarusian cities after Witnesses say Roman Bondarenko was detained on Wednesday evening after scuffling with people in plain-clothes who had come to a playground to remove red-and-white ribbons that represent the protest movement against veteran President Alexander Lukashenko. [...] The state's Investigative Committee alleged Bondarenko was drunk, which was disputed in local media, citing the official medical report into his death. An inquiry has been launched.')
75. *Al Jazeera*, 'Outrage in Belarus, EU after opposition supporter dies', 13 November 2020, available at: <https://www.aljazeera.com/news/2020/11/13/outrage-in-belarus-eu-after-opposition-supporter-dies> ('"As a result, Raman sustained a severe head injury and in grave condition was brought to the police [department]. An ambulance wasn't called for two more hours. The doctors were unable to save Raman Bandarenka's life", Bialiatski said, calling for a criminal investigation to hold those responsible for Bondarenko's death accountable.')
76. *CNN*, Hanna Yavorava and Radina Gigova, 'At least 1000 people detained in Belarus in a single day following protester's death', 16 November 2020, available at: <https://www.cnn.com/2020/11/15/europe/belarus-protests-death-election-intl/index.html>.
77. *Al Jazeera*, 'Outrage in Belarus, EU after opposition supporter dies', 13 November 2020, available at: <https://www.aljazeera.com/news/2020/11/13/outrage-in-belarus-eu-after-opposition-supporter-dies>.
78. *CNN*, Hanna Yavorava and Radina Gigova, 'At least 1000 people detained in Belarus in a single day following protester's death', 16 November 2020, available at: <https://www.cnn.com/2020/11/15/europe/belarus-protests-death-election-intl/index.html>.
79. *CNN*, Hanna Yavorava and Radina Gigova, 'At least 1000 people detained in Belarus in a single day following protester's death', 16 November 2020, available at: <https://www.cnn.com/2020/11/15/europe/belarus-protests-death-election-intl/index.html>.
80. *CNN*, Hanna Yavorava and Radina Gigova, 'At least 1000 people detained in Belarus in a single day following protester's death', 16 November 2020, available at: <https://www.cnn.com/2020/11/15/europe/belarus-protests-death-election-intl/index.html>.

and the headquarters of the Association of Belarusian Journalists. According to the vice president of the Association of Belarusian Journalists, Barys Haretski, latest wave of police searches was “the largest crackdown ever on journalists and rights activists Europe has ever seen.”<sup>81</sup> The OSCE human rights office expressed its ‘utmost concern’ at the attack.<sup>82</sup>

49. According to some accounts, more than 33,000 people have been detained—thousands of them brutally beaten—since the August 9 election.<sup>83</sup>
50. After months of post-election demonstrations, the protesters show little willingness to give up and the authorities continue to rely on violence and intimidation. To date, several people have been killed, tens of thousands arrested and many tortured in police detention.<sup>84</sup> At the time of filing, approximately 14,000 citizens of Belarus, including protesters, political activists, and HRDs have fled Belarus to neighbouring Lithuania, Latvia, Poland and Ukraine.

## D. International Reactions

51. On 1 September, UN human rights experts called on Belarus to stop torturing detainees and bring to justice police officers who have been humiliating and beating protesters in custody with impunity. The experts also urged the authorities to fully comply with fundamental safeguards—immediate registration, judicial oversight of detention and notification of family members as soon as an individual is deprived of liberty—with a view to preventing enforced disappearances. Prompting their remarks was the receipt of 450 documented cases of torture and ill-treatment of individuals deprived of their liberty; reports of violence against women and children, including sexual abuse and rape with rubber batons; and some 6700 people, including journalists and bystanders, detained after exercising their right to freedom of peaceful assembly, with many arbitrarily arrested and hastily sentenced.<sup>85</sup>
52. In early September, Lithuania, Latvia, and Estonia imposed travel bans on Lukashenko and 29 other Belarusian officials.<sup>86</sup> Later in the month, the UK imposed sanctions on Lukashenko, his son,

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81 RFE/RL, ‘Belarus Escalates Crackdown on Journalists, Activists’, 16 February 2021, available at: <https://www.rferl.org/a/tsikhanouskaya-condemns-searches-journalists-rights-defenders/31105551.html>.

82 OSCE/ODIHR, ‘Searches targeting human rights defenders in Belarus of utmost concern, OSCE human rights head says’, 16 February 2021, available at: <https://www.osce.org/odihr/478669>.

83 Al Jazeera, ‘US hits Belarusian officials with travel bans for crackdown’, 19 February 2021, available at: <https://www.aljazeera.com/news/2021/2/19/us-hits-belarusian-officials-with-travel-bans-for-crackdown>.

84 Belarus Digest, Yarik Kryvoi, ‘Why the West fails to make a difference in Belarus’, 19 October 2020, available at: <https://belarusdigest.com/story/why-the-west-fails-to-make-a-difference-in-belarus/>.

85 OHCHR Press Release, ‘UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances’, Geneva, 1 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26199&LangID=E> (The experts include: the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the UN Special Rapporteur on the situation of human rights in Belarus; the UN Special Rapporteur on the promotion and protection of the right to freedom of expression; the UN Special Rapporteur on the rights of peaceful assembly and association; the UN Working Group on Arbitrary Detention; and the UN Working Group on Enforced or Involuntary Disappearances.)

86 FNF Europe, Toni Skorić, ‘Lithuania Takes a Clear Stand on the Belarus Crisis’, 4 September 2020, available at: <https://fnf-europe.org/2020/09/04/lithuania-takes-a-clear-stand-on-the-belarus-crisis/> (‘On Monday, Lithuania, Latvia and Estonia imposed travel bans on the Belarusian ruler Alexander Lukashenko and 29 other officials, expressing the impatience of the Baltic countries with the EU’s cautious approach.’); Patrick Wintour, “No going back”: Poland and Lithuania urge UK to act against Belarus’, The Guardian, 11 September 2020 (‘Lithuania has,

and six other senior government officials judged to be responsible for rigging the presidential poll and suppressing subsequent street protests.<sup>87</sup> The move was coordinated with a similar response from Canada.<sup>88</sup>

53. According to the UK Foreign Office:

Alexander Lukashenko's regime is responsible for a string of human rights violations against opposition figures, media and the people of Belarus in the wake of rigged elections. Despite numerous calls from the international community, he has refused to engage in dialogue with the opposition, choosing instead to double down on his violent repression. [...] The sanctions have been imposed in response to the torture and mistreatment of hundreds of peaceful protestors in custody following the fraudulent presidential elections. [...] Many opposition figures have been arrested or forcibly deported and denied re-entry, in a clear show of Lukashenko's disdain for dialogue with the opposition and for basic human rights.<sup>89</sup>

The Foreign Office emphasized that Belarusian authorities have taken no action to hold those responsible to account.<sup>90</sup>

54. On 17 September, 17 participating states, including the United States, invoked the OSCE's 'Moscow Mechanism', to establish an independent expert mission, which will look into credible reports of serious human rights abuses and violations, including election fraud and substantial interference with freedom of expression and the right of peaceful assembly in Belarus.<sup>91</sup> According to the

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along with [...] Estonia and Latvia, already imposed travel bans on some Belarus officials [...].'; *Atlantic Council*, Anders Åslund, 'The West finally imposes sanctions on Belarus', 6 October 2020, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/the-west-finally-imposes-sanctions-on-belarus/> ('[T]he three Baltic countries have stood out as pioneers. They have listened carefully to Belarusian civil society activists, who have called for numerous human right violators to be punished. In addition to demanding joint EU action, Lithuania, Latvia, and Estonia separately went ahead and sanctioned thirty senior Belarusians including Lukashenko on August 31. When the EU subsequently failed to act, the three Baltic countries sanctioned 100 more Belarusian officials.')

87 *Guardian*, Patrick Wintour, 'UK imposes sanctions on Belarus president Alexander Lukashenko', 29 September 2020, available at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko>

88 *Guardian*, Patrick Wintour, 'UK imposes sanctions on Belarus president Alexander Lukashenko', 29 September 2020, available at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko> ('The foreign secretary, Dominic Raab, announced the sanctions on Tuesday in coordination with a similar move from Canada. "We will hold those responsible for the thuggery deployed against the Belarusian people to account and we will stand up for our values of democracy and human rights," he said.')

89 *Guardian*, Patrick Wintour, 'UK imposes sanctions on Belarus president Alexander Lukashenko', 29 September 2020, available at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko>.

90 *Guardian*, Patrick Wintour, 'UK imposes sanctions on Belarus president Alexander Lukashenko', 29 September 2020, available at: <https://www.theguardian.com/world/2020/sep/29/uk-imposes-sanctions-on-belarus-president-alexander-lukashenko>.

91 US Mission to the OSCE, Press Release, 'The OSCE Invokes the Moscow Mechanism over Credible Reports of Human Rights Abuses and Election Irregularities in Belarus', Vienna, 17 September 2020, available at: <https://osce.usmission.gov/press-release-the-osce-invokes-the-moscow-mechanism-for-belarus/> ('Before, during, and after the fraudulent August 9 elections in Belarus, the United States and other participating States of the Organization for Security and Cooperation in Europe (OSCE) expressed deepening concerns about respect for human rights and fundamental freedoms in the country.');

*Deutsche Welle*, 'OSCE to investigate human rights during Belarus

group, authorities in Belarus have unjustly and forcefully detained, arrested, and abused various members of the Opposition; journalists have been targets of violence and stripped of their accreditation in retaliation for their work; and leading Opposition figures have been detained, arrested, or driven out of the country “in an attempt to silence dissent”.<sup>92</sup>

55. On 18 September, the UN Deputy High Commissioner for Human Rights condemned and summarized the situation to date.<sup>93</sup>
56. In early October, the European Council imposed restrictive measures against 40 individuals identified as responsible for repression and intimidation against peaceful demonstrators, opposition members, and journalists in the wake of the election.<sup>94</sup> The decision to impose sanctions followed the European Council conclusions, in which EU leaders once more condemned the unacceptable

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election’, 17 September 2020, available at: <https://www.dw.com/en/osce-to-investigate-human-rights-during-belarus-election/a-54967965> (‘More than a dozen members of the Organization for Security and Cooperation in Europe (OSCE) have launched an investigation into alleged human rights abuses and election fraud following Belarus’ August presidential election. The team will investigate reports of persecution of political candidates, journalists and activists. It will also look into the use of force against peaceful protesters, illegal detention and torture. The mission is expected to publish a report within two months. “Basically, the mission is about holding the Belarussian authorities accountable for their gross violations of the right of the people of Belarus to have free and fair elections, fundamental freedoms and a well-functioning rule of law”, said Danish Foreign Minister Jeppe Kofod in a statement. [...] The 57-nation OSCE predominately features European nations, including Russia, which has supported Lukashenko, albeit with more hesitance than in the past during the political crisis. Russia did not sign off on the investigation. The United States, Canada and 15 European nations—not including Germany—supported the mission.’)

- 92 US Mission to the OSCE, Press Release, ‘The OSCE Invokes the Moscow Mechanism over Credible Reports of Human Rights Abuses and Election Irregularities in Belarus’, Vienna, 17 September 2020, available at: <https://osce.usmission.gov/press-release-the-osce-invokes-the-moscow-mechanism-for-belarus/> (‘Moreover, the Belarus authorities have not responded to the OSCE Chairmanship’s earlier offers to facilitate a national dialogue between Belarussian authorities and representatives of the people of Belarus.’) *Nb.* ‘The Moscow Mechanism allows a group of ten or more participating [OSCE] States to establish a mission of independent experts to look into a particularly serious threat to the fulfillment of human rights commitments in a participating State.’ *Ibid.*
- 93 OHCHR, Urgent debate on the situation of human rights in Belarus, 45th session of the Human Rights Council, Statement by Nada Al-Nashif, UN Deputy High Commissioner for Human Rights, Geneva, 18 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26259&LangID=E> (‘We are witnessing thousands of arrests. Hundreds of reports of torture and other ill-treatment, including sexual violence and the reported torture of children. The violent abduction of people in broad daylight by masked individuals—presumably on the basis of their peacefully expressed opinions. Armed police and security personnel are being deployed in a near-systematic pattern of unnecessary or excessive use of force against largely peaceful demonstrators. Authorities are aggressively pursuing criminal and administrative cases against people perceived as supporting the opposition. They include members of the opposition Coordination Council—all but one of its leaders now in detention or abroad—as well as workers’ leaders and other protestors. Those targeted may be placed in administrative detention for up to 25 days, or charged with organizing or participating in “mass disorder” or other crimes which carry heavy prison sentences. Journalists reporting on the protests have been arbitrarily arrested and detained, ill-treated, stripped of their accreditation or equipment, and subjected to judicial harassment. Since the elections, the authorities have also repeatedly restricted Internet access. In other words, we are seeing the same underlying systemic deficiencies leading to an intensifying cycle of serious human rights violations. I am particularly alarmed by the hundreds of allegations of torture and other ill-treatment in police custody, with scant evidence of prompt investigation or official disapproval of these reported incidents. Instead, we have received worrying indications that victims and their lawyers are increasingly reluctant to present complaints of torture and other ill-treatment—for fear of retaliation.’)
- 94 European Council, Press Release, ‘Belarus: EU imposes sanctions for repression and election falsification’, 2 October 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/10/02/belarus-eu-imposes-sanctions-for-repression-and-election-falsification/>.

violence by Belarusian authorities against peaceful protesters, as well as intimidation, arbitrary arrests, and detentions following the elections, the results of which the EU does not recognize.<sup>95</sup>

57. At the same time, the US expanded its existing sanctions on Belarus from 16 people to 24 people. None of these countries recognize Lukashenko as the legitimate president of Belarus.<sup>96</sup> Further diplomatic scuffles ensued, with eight countries—including Romania, Germany, and the Czech Republic—recalling their ambassadors to Belarus in solidarity with Poland and Lithuania. On 9 October, British foreign Secretary Dominic Raab said the UK would recall its ambassador in solidarity with Poland and Lithuania over Belarus' decision to expel their diplomats.<sup>97</sup> Later in October, the EU agreed to impose a new round of sanctions on Belarus officials, including Lukashenko.<sup>98</sup>
58. In late-October, the European Parliament awarded the Sakharov Prize for human rights to Tikhanovskaya and other leading members of the opposition movement's Coordination Council.<sup>99</sup> Around the same time, the UN Special Rapporteur on the human rights situation in Belarus, Anais Marin, demanded that the government 'stop repressing its own people', a rebuke echoed by 52 mainly European countries and the European Union before the UN Human Rights Committee. The nations called for an end to violence against peaceful demonstrators and intimidation of opposition leaders, journalists, HRDs, protesters, and others associated with the pro-democracy movement.<sup>100</sup>
59. On 5 November, the OSCE released its report on the election and subsequent crackdown, describing abuses by the Belarus authorities as 'massive and systematic and proven beyond doubt'.<sup>101</sup> The

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95 European Council, Press Release, 'Belarus: EU imposes sanctions for repression and election falsification', 2 October 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/10/02/belarus-eu-imposes-sanctions-for-repression-and-election-falsification/>; Atlantic Council, Anders Åslund, 'The West finally imposes sanctions on Belarus', 6 October 2020, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/the-west-finally-imposes-sanctions-on-belarus/>.

96 Atlantic Council, Anders Åslund, 'The West finally imposes sanctions on Belarus', 6 October 2020, available at: <https://www.atlanticcouncil.org/blogs/ukrainealert/the-west-finally-imposes-sanctions-on-belarus/> ('The difference between the sanctions imposed by the United States and the EU is significant but not untypical. The United States tends to be tougher but typically targets fewer people. It has persistently sanctioned Lukashenko himself, which the UK and Canada have now also done, while the EU has chosen to exclude him from sanctions.')

97 Reuters, 'Poland and Lithuania recall diplomats from Belarus', 9 October 2020, available at: <https://www.reuters.com/article/us-belarus-election-poland-lithuania/poland-and-lithuania-recall-diplomats-from-belarus-idUSKBN26U2FK>.

98 Wall Street Journal, Laurence Norman and Thomas Grove, 'EU to Sanction Russia Over Poisoning and Belarus Leader Over Crackdown', 12 October 2020, available at: <https://www.wsj.com/articles/eu-sanctions-belarus-lukashenko-over-violent-crackdown-11602505608> ('Earlier this month, EU officials imposed an asset freeze on 40 Belarusian officials. The foreign ministers agreed to adopt a new sanctions package in coming weeks against Mr Lukashenko and others involved in the crackdown on protesters and the presidential elections.')

99 Al Jazeera, 'Belarus opposition movement wins Sakharov Prize for human rights', 22 October 2020, available at: <https://www.aljazeera.com/news/2020/10/22/belarus-opposition-movement-wins-shakarov-prize-for-human-rights> (The EU award, named after Soviet dissident Andrei Sakharov, was created in 1988 to honor individuals or groups who defend human rights and fundamental freedoms.)

100 Radio Free Europe/Radio Liberty, 'Calls For End To Violence Against Protesters In Belarus Grow At UN As Nationwide Strike Begins', 27 October 2020, available at: <https://www.rferl.org/a/calls-for-end-to-violence-against-protesters-in-belarus-grow-at-un-as-nationwide-strike-begins/30914675.html>.

101 Al Jazeera, 'OSCE report: Belarus vote was "not transparent, free or fair"', 5 November 2020, available at: <https://www.aljazeera.com/news/2020/11/5/osce-condemns-belarus-massive-abuses-calls-for-new-elections> ('The report was produced at the request of 17 countries, including France, the United Kingdom and the United States. It is based

report documents election fraud, violations of freedoms of expression and assembly, excessive police violence and systematic torture, widespread arrests of peaceful protesters, and numerous politically motivated prosecutions; it further calls on the Belarusian government to annul the election results, hold a new poll in line with international standards, release all political prisoners, and hold perpetrators responsible for torture and other abuses following an independent investigation.<sup>102</sup>

60. On 9 November, two UK diplomats were expelled from Minsk by the Belarusian authorities for, according to the UK government, observing the protests. The UK Foreign Secretary described the act as 'part of a concerted campaign of harassment aimed at activists, media and now diplomats'.<sup>103</sup> The US also condemned the move.<sup>104</sup> Going a step further on 12 November, the US Secretary of State called on Belarusian authorities to release those who have been detained 'for exercising their human rights and fundamental freedoms by peacefully participating in protests, calling for free and fair elections, and advocating for a national dialogue to end the ongoing crisis'.<sup>105</sup>

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on 700 submissions of evidence but the rapporteur, who produced the report, however, was not able to travel to Belarus as Minsk refused to cooperate with the inquiry.)

- 102 *Human Rights Watch*, 'Belarus: Expert Report Calls for International Inquiry into Torture', 6 November 2020, available at: <https://www.hrw.org/news/2020/11/06/belarus-expert-report-calls-international-inquiry-torture> ('The independent expert, Professor Wolfgang Benedek, analyzed 700 submissions received online, surveyed extensive reports and testimony provided by more than 20 Belarusian and international human rights organizations, including *Human Rights Watch*, and interviewed numerous victims and witnesses. The Belarusian government refused to grant Benedek's request to visit Belarus and did not reply to his requests for information. The report confirmed the systematic nature of torture of detained protesters by Belarusian riot police in the aftermath of the elections, noting that the "brutal violence seems to have had the purpose of punishment and humiliation, but in particular of intimidation of potential other protesters." The report also found that police use of water cannons, rubber bullets, and stun grenades against protesters was "disproportionate," and constituted excessive violence. In the report, Benedek states it was "worrying" that not a single individual from the security forces has been held accountable for torture or excessive use of force, and notes that several people who submitted torture complaints faced reprisals in the form of threats of groundless criminal charges. Benedek states that media freedoms, journalists' safety, and other rights are "under massive attack." He documents that in the post-election period, at least 178 journalists "experienced repression and violations." Dozens have been injured since January due to police violence. Women have been at the forefront of the ongoing protests. The report describes threats of sexual violence women faced in police custody, and says that women were "forced to undress in the presence of men, cameras observing their cells and toilets were operated by men, and there was a general lack of women guards." Benedek describes other aspects of intimidation, persecution, and harassment against broad groups of civic actors, ranging from civil society organizations and women and labor activists to religious leaders, athletes, and artists.')
- 103 *Guardian*, 'Britain responds angrily to expulsion of diplomats from Belarus', 9 November 2020, available at: <https://www.theguardian.com/world/2020/nov/09/britain-responds-angrily-to-expulsion-of-diplomats-from-belarus> ('The UK's foreign and defence secretaries have reacted angrily to the expulsion of two British diplomats from strife-torn Belarus. [...] Dominic Raab tweeted: "The expulsion of 2 UK diplomats from Belarus for legitimately observing protests is wholly unjustified. [...] Ben Wallace, the defence secretary, said: "The expulsion of the UK defence attache based on fabricated and misleading accusations is a flagrant attempt to divert attention from the growing oppression to free speech and freedoms inside Belarus by the Lukashenko regime."')
- 104 *Radio Free Europe/Radio Liberty*, 'US Condemns "Arbitrary" Expulsion Of UK Diplomats From Belarus', 11 November 2020, available at: <https://www.rferl.org/a/belarus-u-s-condemns-arbitrary-expulsion-u-k-diplomats/30942659.html>.
- 105 *CNN*, Hanna Yahorava and Radina Gigova, 'At least 1000 people detained in Belarus in a single day following protester's death', 16 November 2020, available at: <https://www.cnn.com/2020/11/15/europe/belarus-protests-death-election-intl/index.html> ("These political prisoners have been subject to harsh and life-threatening detention conditions, including credible reports of torture", Pompeo said. "They are among the thousands of individuals who have been subjected to unjust detentions since the start of the violent crackdown." "The United States stands with those who remain detained and unaccounted for, those who have been killed, and those who

61. On 17 December 2020, the EU imposed its third round of sanctions on 36 individuals and entities connected to the Lukashenko regime, including high level officials, judges and economic actors and entities.<sup>106</sup> On 19 February 2021, the US imposed sanctions on 43 Belarusian nationals identified as having a role in the regime's crackdown on protesters and journalists.<sup>107</sup>

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continue to peacefully assert their right to choose their leaders in free and fair elections", he said.)

- 106 European Council, 'Belarus: EU imposes third round of sanctions over ongoing repression', 17 December 2020, available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/12/17/belarus-eu-imposes-third-round-of-sanctions-over-ongoing-repression/>.
- 107 *Al Jazeera*, 'US hits Belarusian officials with travel bans for crackdown', 19 February 2021, available at: <https://www.aljazeera.com/news/2021/2/19/us-hits-belarusian-officials-with-travel-bans-for-crackdown>.

## IV. JURISDICTION

62. In accordance with Article 53(1)(a) of the ICC Statute, the Prosecutor must determine whether there is a reasonable basis to believe that a crime within the jurisdiction of the ICC has been, or is being, committed.<sup>108</sup> In particular, this requires an assessment of (i) subject-matter jurisdiction (*ratione materiae*); (ii) temporal jurisdiction (*ratione temporis*); and (iii) either territorial or personal jurisdiction (*ratione loci* or *ratione personae*).<sup>109</sup>

### A. Subject-Matter Jurisdiction

63. As set out below, there is a reasonable basis to believe that the crimes against humanity of deportation and persecution have been committed on the territories of Belarus and Lithuania, Poland, Latvia and Ukraine.

### B. Temporal Jurisdiction

64. The Court may exercise jurisdiction over crimes committed after the entry into force of the Rome Statute or, where a state has become party to the Rome Statute later, after the entry into force of the Rome Statute for that state.<sup>110</sup> While Belarus is not a party to the Rome Statute, Lithuania deposited its instrument of ratification on 12 May 2003, Latvia on 28 June 2002 and Poland on 12 November 2001.<sup>111</sup> In addition, on 8 September 2015, the Foreign Minister of Ukraine submitted a further declaration to the ICC Registrar, accepting “the jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in the territory of Ukraine since 20 February 2014”.<sup>112</sup>

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108 Myanmar Article 15 Decision, para 40 (citing Kenya Article 15 Decision, para 39; Burundi Article 15 Decision, para 31); see also ICC-OTP, Report on Preliminary Examination Activities 2019, 5 December 2019, para 4; ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 36.

109 ICC Statute, Article 5(1) (ICC jurisdiction ‘shall be limited to the most serious crimes of concern to the international community as a whole’, namely: [...] (ii) crimes against humanity; (iii) war crimes; [...]); ICC Statute, Article 11 ((1) The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute. (2) If a state becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that state, unless that state has made a declaration under article 12, paragraph 3.); ICC Statute, Article 12(2) (The ICC ‘may exercise its jurisdiction if one or more of the following states are parties to this Statute [...]: (a) the state on the territory of which the conduct in question occurred [...]; (b) the state of which the person accused of the crime is a national’); see also Myanmar Article 15 Decision, para 40 (‘The Chamber recalls that, for conduct to fall within the jurisdiction of the Court, it must: (i) fall within the category of crimes set out in article 5 and defined in articles 6 to 8 *bis* of the Statute (jurisdiction *ratione materiae*); (ii) fulfill the temporal conditions specified in article 11 of the Statute (jurisdiction *ratione temporis*); and (iii) meet one of the two requirements contained in article 12(2) of the Statute (jurisdiction *ratione loci* or *ratione personae*)’ (citing Kenya Article 15 Decision, para 39; Burundi Article 15 Decision, para 31).

110 ICC Statute, Article 11; Myanmar Article 15 Decision, para 112.

111 See ICC Website (*Assembly of States Parties: States Parties to the Rome Statute: Eastern European States*: Lithuania).

112 ICC, Ukraine, “Declaration lodged by Ukraine under Article 12(3) of the ICC Statute”, 8 September 2015, available at: [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/ukraine/Pages/ukraine.aspx).

65. As set forth below, the alleged crimes have been partially committed on the territories of Lithuania, Latvia, Poland and Ukraine since as early as June 2020. Consequently, assuming all other requirements are satisfied, the Court may assert temporal jurisdiction over the crimes alleged in this Communication.<sup>113</sup>

## C. Territorial Jurisdiction

66. At the ICC, 'the preconditions for the exercise of the Court's [territorial] jurisdiction [...] are, as a minimum, fulfilled if at least one legal element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party'.<sup>114</sup> In other words, the exercise of territorial jurisdiction requires that 'at least part of the conduct (i.e. the *actus reus* of the crime) must take place in the territory of a State Party'.<sup>115</sup>
67. Regarding the crime against humanity of deportation, acts 'initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute'.<sup>116</sup> It follows that, in the circumstances identified in this Communication, the Court has jurisdiction over the alleged forced displacement of opponents of the Lukashenko regime from Belarus to Lithuania, Latvia, Poland and Ukraine 'provided that such allegations are established to the required threshold'.<sup>117</sup> In the present case, there is a reasonable basis to believe that the expulsions and coercive acts of the perpetrators, which took place in Belarus, have forced opponents and critics of the Lukashenko regime, who were lawfully present in Belarus, to cross the border into neighbouring Lithuania, Latvia, Poland and Ukraine. Accordingly, for present purposes, part of the *actus reus* of the crime of deportation occurred in the territories of Lithuania, Latvia, Poland and Ukraine.<sup>118</sup>

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113 ICC-01/19, Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation', Pre-Trial Chamber III, 14 November 2019 (the 'Myanmar Article 15 Decision'), para 114.

114 ICC-RoC46(3)-01/18, 'Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute"', Pre-Trial Chamber I, 6 September 2018 (the 'Myanmar Jurisdiction Decision'), para 64; Myanmar Article 15 Decision', paras 1, 43, and 45 *et seq* (citing, concurring with, and expounding further on the Myanmar Jurisdiction Decision).

115 Myanmar Article 15 Decision, para 61 (noting consistency with customary international law).

116 Myanmar Jurisdiction Decision, para 73.

117 Myanmar Jurisdiction Decision, para 73. *Nb.* 'This conclusion is without prejudice to subsequent findings on jurisdiction at a later stage of the proceedings.' *Ibid.* See also Myanmar Article 15 Decision, para 52 ('The legal elements of the crime of deportation require, inter alia, that the 'perpetrator deport [...] by expulsion or other coercive acts'. This element may be carried out by the perpetrator either by physically removing the deportees or by coercive acts that cause them to leave the area where they were lawfully present. In such a situation, the victims' behavior or response as a consequence of coercive environment is required to be established for the completion of the crime. If the victims refused to leave the area despite the coercive environment or they did not cross an international border, it would constitute forcible transfer or an attempt to commit the crime of deportation.') (citing ICC Elements of Crimes, Article 7(1)(d), para 1).

118 Myanmar Article 15 Decision, para 53; see also *ibid*, para 62 ('The alleged deportation of civilians across the Myanmar-Bangladesh border, which involved victims crossing that border, clearly establishes a territorial link on the basis of the *actus reus* of this crime (i.e. the crossing into Bangladesh by the victims). This is the case under the objective territoriality principle, the ubiquity principle, as well as the constitutive elements approach. The present situation therefore falls well within the limits of what is permitted under customary international law.')

68. Regarding the crime against humanity of persecution, there is a reasonable basis to believe that critics and opponents of the Lukashenko regime were forcibly displaced from Belarus to Lithuania, Latvia, Poland and Ukraine on political grounds. Thus, the Court may exercise territorial jurisdiction over the crime against humanity of persecution, as an element or part of this crime (i.e., the cross-border transfer) took place on the territory of a State Party or Ukraine.<sup>119</sup>
69. Therefore, assuming all other elements are satisfied, the Court may assert territorial jurisdiction over those crimes.<sup>120</sup>

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119 Myanmar Jurisdiction Decision, para 76 (internal citation omitted).

120 See Myanmar Article 15 Decision, para 41 (referring to the OTP's formulation).

## V. CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY

70. Contextual (also known as *chapeau*) elements are the factual requirements that distinguish ICC Statute crimes from domestic crimes and human rights violations. For an act to qualify as an international crime, its contextual elements must be established through evidence to the requisite standard.
71. The most recent ICC decision to comprehensively and authoritatively deal with these contextual issues—with respect to crimes against humanity—is Trial Chamber III's judgment in the Bemba case.<sup>121</sup> The various tests articulated in that decision (the 'Bemba Tests') are stated and applied throughout this section.
72. As demonstrated below, there is a reasonable basis to believe that, when considered together, the criminal conduct of various Belarusian state actors satisfies the contextual elements of crimes against humanity under the ICC Statute. According to Article 7 of the ICC Statute, a crime against humanity means any of the enumerated criminal acts 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.<sup>122</sup> Moreover, such attack means 'a course of conduct involving the multiple commission of [the enumerated] acts [...] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack'.<sup>123</sup> The acts in question 'need not constitute a military attack'; and the policy in question 'requires that the State or organization actively promote or encourage such an attack against a civilian population'.<sup>124</sup>
73. The Bemba Test separates the contextual requirement of crimes against humanity into four distinct elements: (i) the existence of an attack directed against any civilian population; (ii) the widespread or systematic nature of the attack; (iii) acts committed as part of the attack (nexus); and (iv) knowledge of the attack.<sup>125</sup> Each is dealt with in turn. Notably, the OTP will be 'permitted to

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121 ICC-01/05-01/08, Situation in the Central African Republic, *Prosecutor v Bemba*, Trial Chamber III, 'Judgment pursuant to Article 74 of the Statute', 21 March 2016 (the 'Bemba Trial Judgment'); see also ICC-01/05-01/08, Situation in the Central African Republic, *Prosecutor v Bemba*, Appeals Chamber, 'Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute"', 8 June 2018 (the 'Bemba Appeal Judgment'). *Nb.* While Mr Bemba was acquitted on appeal, there was no reversal of the Trial Chamber's findings relevant to the contextual standards. Indeed, the Appeals Chamber implicitly endorsed these findings and made a further refinement discussed below. See fn 72, *infra*.

122 ICC Statute, Article 7(1).

123 ICC Statute, Article 7(2); see also ICC Elements of Crimes: Article 7, Crimes against humanity, Introduction, para 3 ('"Attack directed against a civilian population" in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.')

124 ICC Elements of Crimes: Article 7, Crimes against humanity, Introduction, para 3. *Nb.* 'A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.' *Ibid*, fn 6.

125 Bemba Trial Judgment, paras 148 *et seq*.

consider facts which fall outside [the Court's] jurisdiction in order to establish [...] the contextual elements of the alleged crimes'.<sup>126</sup>

74. For the reasons discussed below, the situation in Belarus qualifies as a widespread or systematic attack on the civilian population of Belarus pursuant to a State policy to commit such an attack.

## A. An Attack Directed Against Any Civilian Population

75. The Bemba Test separates the first element into three separate sub-requirements: (1) a course of conduct involving the multiple commission of acts referred to in Article 7(1); (2) directed against any civilian population; and (3) pursuant to or in furtherance of a State or organizational policy to commit such attack.<sup>127</sup>

### 1. A COURSE OF CONDUCT INVOLVING THE COMMISSION OF MULTIPLE ARTICLE 7(1) ACTS

76. The attack need not constitute a 'military' attack; rather, it refers to a 'campaign or operation carried out against the civilian population'.<sup>128</sup> The 'course of conduct' requirement indicates that the provision is not designed to capture single isolated acts, but 'describes a series or overall flow of events as opposed to a mere aggregate of random acts'.<sup>129</sup> Such course, involving the multiple commission of Article 7(1) acts, indicates a quantitative threshold requiring 'more than a few', 'several', or 'many' acts.<sup>130</sup> The number of the individual types of acts referred to in Article 7(1) is irrelevant, provided that each of the acts fall within the course of conduct and cumulatively satisfy the required quantitative threshold.<sup>131</sup> While only those acts enumerated in Article 7(1)(a) to (k) may be relied upon to demonstrate the 'multiple commission of acts',<sup>132</sup> broad claims of such acts—even those ultimately found to fail on evidentiary grounds at trial or on appeal—may suffice regarding the contextual element of crimes against humanity, 'which operates at a higher level of abstraction'.<sup>133</sup>

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126 Myanmar Article 15 Decision, para 93 ('In this regard, the Chamber wishes to make the following clarification: while the Court is not permitted to conduct proceedings in relation to alleged crimes which do not fall within its jurisdiction, it "has the authority to consider all necessary information, including as concerns extra-jurisdictional facts for the purpose of establishing crimes within its competence". [...] In other words, although the Court does not have jurisdiction over [certain] alleged crimes *per se*, it considered them in order to establish whether or not the contextual elements of crimes against humanity may have been present.') (citing Comoros Article 53 Decision, para 17); *see also* Bemba Appeal Judgment, para 117.

127 Bemba Trial Judgment, para 148.

128 Bemba Trial Judgment, para 149 (citing ICC Elements of Crimes, Introduction to Article 7, para 3; Bemba Confirmation Decision, para 75; Katanga Trial Judgment, para 1101); *see also* Kenya Article 15 Decision, para 80.

129 Bemba Trial Judgment, para 149 (citing Katanga Trial Judgment, para 1101; Tadić Trial Judgment, para 644).

130 Bemba Trial Judgment, para 150 (citing Bemba Confirmation Decision, para 81).

131 Bemba Trial Judgment, para 150 (citing Kunarac et al Appeal Judgment, paras 96, 100; Kupreškić et al Trial Judgment, para 550).

132 Bemba Trial Judgment, para 151. *Nb.* This is without prejudice to acts not listed in Article 7(1) being considered for other purposes, such as, for example, in determining whether the attack was directed against a civilian population or was pursuant to or in furtherance of a State or organizational policy.

133 Bemba Appeal Judgment, para 117 ('In the view of the Appeals Chamber, this did not amount to an error. While the Trial Chamber could not convict Mr Bemba of these criminal acts, they could nevertheless be taken into account for the finding regarding the contextual element of crimes against humanity, which operates at a higher

77. The Lukashenko regime has been engaged in a course of conduct including the commission of Article 7(1) acts in various locations across Belarus and beyond its borders. As set out in section VI and VII, the regime's use and threat of violence, arbitrary arrest and other forms of coercion have resulted in the crimes of deportation and persecution. Additionally, the regime's conduct amounts to other criminal acts that – whilst they may fall outside the Court's jurisdiction - are relevant for the purposes of this particular contextual element:<sup>134</sup> murder, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, sexual violence of significant gravity, enforced disappearance of persons, and/or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. The character and volume of such acts indicate far more than individual or isolated episodes. Rather, the now well-documented record reveals a sustained campaign of criminal acts beginning as early as May 2020 and ranging unabated to the present. Considered together, these acts form a course of conduct that constitutes an attack directed against the civilian population:

**a. Use of force against protesters resulting in murder and other inhumane acts causing great suffering, or serious injury to body or to mental or physical health**

78. Belarusian law enforcement and security forces have employed unnecessary and disproportionate force against peaceful protesters and other detainees. This violence has taken place on the streets, in police vans and in places of detention. Well documented incidents of unprovoked police brutality demonstrate systematic violations of Belarusian and international legal frameworks on the use of force and weapons by the police.<sup>135</sup> Witnesses and video footage attest to the police firing stun grenades and rubber bullets into large crowds of peaceful protesters without prior warning and often at close range – leading to thousands of injuries.<sup>136</sup> Further evidence demonstrates police picking out individual protesters and applying excessive force with their boots, fists and batons – often against persons who are not resisting or are already on the ground or in custody vehicles.<sup>137</sup>

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level of abstraction. The Appeals Chamber also notes in this regard that Mr Bemba has not argued that he has not received sufficient notice of the allegations regarding these criminal acts and there is no unfairness arising from the Trial Chamber having relied on these criminal acts for the purpose of the contextual element of crimes against humanity.) *Nb.* On appeal, Bemba had argued that, among other things, the contextual elements of crimes against humanity had not been established. *Ibid*, para 29.

134 See Bemba Appeal Judgment, para 117.

135 For domestic law see: The Law of the Republic of Belarus # 263-3 of July 17, 2007 "On Bodies of Internal Affairs" setting out strict grounds and procedure for the use of physical force, special equipment and weapons by the law-enforcement bodies. For international standards, see UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

136 CSP interview with M20, 14 August 2020: 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 ash grenades being thrown towards the crowd. The crowd was just standing still [...] Well, of course when people heard the explosions they started to run"; see also: *Al Jazeera*, 'Belarus police fire stun grenades as 100,000 protest', 25 October 2020, available at: <https://www.aljazeera.com/news/2020/10/25/belarus-police-fire-stun-grenades-as-100000-protest>; *Radio Free Europe/Radio Liberty*, 'Belarus Forces Fire Tear Gas, Beat Demonstrators In Minsk As Tens Of Thousands Take To Streets', 1 November 2020, available at: <https://www.rferl.org/a/belarus-forces-fire-tear-gas-beat-demonstrators-in-minsk-as-tens-of-thousands-take-to-streets/30924193.html>

137 CSP interview with M07, 12 August 2020: "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 organized

79. From 12 October 2020, Belarussian law enforcement has been officially authorized to use lethal force against anti-government protesters (although evidence suggests that lethal force had been used prior to this date).<sup>138</sup> In a clear threat of lethal force aimed at his detractors, Lukashenko appeared in a widely disseminated video which showed him wielding an assault rifle and flying over Minsk in a helicopter.<sup>139</sup>
80. In at least three cases, there is a strong basis to believe that conduct (or omission) by state agents has resulted in the unlawful and unnecessary loss of life:
81. **Aliaksandr Taraikouski** was killed by Belarussian security forces on 10 August 2020 near the Pushkinskaya metro station in Minsk. As demonstrated in two videos of the incident shot from two separate angles,<sup>140</sup> Taraikouski – dressed in shorts and a t-shirt – was slowly approaching a line of security officers with both of his hands empty and up in the air. At approximately ten meters from the line of security officers, one of the officers fires a weapon aimed directly at Taraikouski. Taraikouski stops and bends down from the impact of the shot – holding his torso. Seconds later, he collapses onto the ground. A large blood stain is visible on his shirt in the chest area. According to a post-mortem examination, he died as a result of an open chest wound and extensive blood loss. The authorities have failed to conduct an effective investigation or prosecute those responsible for Taraikouski murder. According to Belarussian officials, Taraikouski died from the explosion of an unidentified explosive device in his hands.<sup>141</sup>
82. **Henadz Shatau** died on 19 August 2020, as a result of a bullet wound to the head fired by a Belarussian police officer on 11 August 2020 near the Maskovski district administration building in Brest. A video of the incident shows three police officers in plain clothes approaching Shatau and his friend, sitting on a bench. Shatau is clearly unarmed. Following a brief altercation, Shatau attempts to flee. The police officers give chase and three shots are fired – one of them wounding Shatau in the head. According to the authorities – Shatau attacked the police with a metal pipe and the officer shot him in self-defense. The video of the incident does not bear this version of events out. The authorities have failed to conduct a genuine investigation into the murder and the police officer responsible has not been held accountable.<sup>142</sup>

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the protests.”; *International Partnership for Human Rights*, ‘Belarus on Hold: Crackdown on Post-Election Protests’, September 2020, p 11, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (‘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).

138 *Al Jazeera*, “Belarus police threaten to use firearms on protesters”, 12 October 2020, available at: <https://www.aljazeera.com/news/2020/10/12/belarus-police-threaten-to-use-firearms-on-protesters>; *BBC*, “Belarus protests: Police authorised to use lethal weapons”, 12 October 2020, available at: <https://www.bbc.co.uk/news/world-europe-54513568>.

139 *BBC*, “Belarus: Lukashenko leaves helicopter carrying assault rifle”, 23 August 2020, available at: <https://www.bbc.co.uk/news/av/world-europe-53884461>.

140 Telegram, “Забойства Аляксандра Тарайкоўскага — відэа з іншага ракурса”, 15 August 2020, available at: <https://t.me/euroradio/5296>.

141 Viasna Human Rights Centre, “Belarus After Elections”, available at: [http://spring96.org/files/book/en/2020\\_elections\\_tortures\\_en.pdf](http://spring96.org/files/book/en/2020_elections_tortures_en.pdf).

142 Viasna Human Rights Centre, “Belarus After Elections”, available at: [http://spring96.org/files/book/en/2020\\_elections\\_tortures\\_en.pdf](http://spring96.org/files/book/en/2020_elections_tortures_en.pdf).

83. **Aliaksandr Vikhor** died from a suspected heart attack in police custody on 12 August 2020. Vikhor had been arrested on 9 August, and sentenced to 10 days of administrative detention under Article 23.34 of the Code of Administrative Offences (organizing or participating in an unauthorized mass event). On 12 August, he was being transferred to a detention facility to serve out his sentence. Due to overcrowding at the facility, Vikhor was forced to spend several hours detained inside a very hot and poorly ventilated van with no access to water. According to witnesses, Vikhor collapsed and started screaming and asking for the authorities' help. The authorities took him to a psychiatric hospital, from which he was re-directed to a hospital where he later died of a suspected heart attack. The Ministry of Foreign Affairs later claimed that Vikhor died as a result of a drug overdose. Vikhor's mother was not permitted to see his body. The authorities have failed to conduct an effective investigation into the circumstances of Vikhor's death in custody.<sup>143</sup>
84. In three further cases, there are good reasons to suspect that conduct by public authorities or proxies has resulted in the loss of life:
85. **Raman Bandarenka** died as a result of severe head trauma inflicted by suspected plain clothes police officers on 11 November 2020. According to witnesses, a group of six men and three women in plain clothes arrived at the 'Square of Changes' (a focal point of protest in Minsk) and began to tear down the white and red protest mural. Bandarenka confronted the men non-violently. According to witnesses and video footage of the incident,<sup>144</sup> the men attacked him and dragged him into their minivan where they proceeded to beat him and drove off. Several hours later, Bandarenka was delivered to hospital by the police, where he died from internal bleeding to his brain.<sup>145</sup> According to the police, Bandarenka was picked up on the streets, "beaten and drunk". A spokesperson for the police called his assailants "concerned citizens who confronted those spreading anti-government symbols." The authorities have failed to carry out an effective investigation into Bandarenka's death, or to bring those responsible to account.<sup>146</sup>
86. The lifeless body of **Kanstantin Shyshmakou**, a museum director and member of a local election committee in Volkovysk who refused to sign the official election protocol on 9 August 2020, was found in the forest by a search group on 18 August 2020. On 15 August 2020 - his first day of work following his refusal to certify the vote at the polling station - Shyshmakou called his wife to tell her that he could not work there anymore. He left his workplace around 5 pm and went missing, until his body was discovered three days later. The authorities have not disclosed any medical examination of his body and have concluded that his death was not suspicious. There has been no independent and effective investigation into his death.<sup>147</sup>

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143 Viasna Human Rights Centre, "Belarus After Elections", available at: [http://spring96.org/files/book/en/2020\\_elections\\_tortures\\_en.pdf](http://spring96.org/files/book/en/2020_elections_tortures_en.pdf).

144 See video of assault and witness accounts here: <https://news.tut.by/society/707579.html?fbclid=IwAR3TWfVg2MwOYy-JK9AJVLic6WPcaeCCLrkgRmziac7mkDIG0wLrc2ytGIO>

145 See copy of medical report here: <https://spring96.org/ru/news/100362>.

146 HRW, "Man Killed for Protecting Symbols of Peaceful Protests in Belarus", 13 November 2020, available at: <https://www.hrw.org/news/2020/11/13/man-killed-protecting-symbols-peaceful-protests-belarus>; TUT.BY, "«В операционную привезли уже в коме». Неизвестные во дворе снимали ленты, избивали парня, он в реанимации", 12 November 2020, available at: <https://news.tut.by/society/707579.html?fbclid=IwAR3TWfVg2MwOYy-JK9AJVLic6WPcaeCCLrkgRmziac7mkDIG0wLrc2ytGIO>.

147 Kharkiv Human Rights Protection Group, "Belarusian museum director who refused to sign false election protocol found dead", 19 August 2020, available at: <http://khp.org/en/index.php?id=1597789267>; Onliner, "Директора музея в Волковыске, который не поставил подпись в протоколе, нашли мертвым", 18 August 2020, available at: <https://people.onliner.by/2020/08/18/direktora-muzeya-v-volkovyske-kotoryj-ne-postavil-podpis-v-protokole-nashli-mertvym>.

87. **Mikita Kryucou** was found hanged in a woodland in the Partyzanski district of Minsk. Kryucou was last seen with a white and red flag in front of a group of OMON officers in Minsk on 12 August 2020 (as can be seen on video footage).<sup>148</sup> His mobile phone signal was traced to a police department building close to where his body was discovered. He found in the woods a week later – hanged and with signs of violence. According to the authorities, the official cause of death is suicide. There has been no independent and effective investigation into his death.

**b. Ill-treatment of detainees amounting to torture and other inhumane acts causing great suffering, or serious injury to body or to mental or physical health**

88. Thousands of peaceful protesters, civil society and labour activists, lawyers, journalists, business owners and others have been violently arrested<sup>149</sup> and arbitrarily detained by Belarusian authorities<sup>150</sup> in conditions falling far below the threshold of humane detention.<sup>151</sup> Detainees also report violence and abuse in custody and during interrogations, including sexual violence, prolonged stress positions, electric shocks, humiliation and physical and/or mental abuse - meeting the threshold of torture.<sup>152</sup> Over 800 individual cases of torture have been communicated to the

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148 An investigation into Kryucou's disappearance, including a video of his participation in the protest can be found here: <https://twitter.com/franakviacorka/status/1297259792172490753>.

149 *International Partnership for Human Rights*, 'Belarus on Hold: Crackdown on Post-Election Protests', September 2020, p 11, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> (IPHR Report): '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, ash grenades, stun guns and other less-lethal weapons against peaceful protesters with the apparent intention of harming them.' (citing *Amnesty International*, 'Protect Peaceful Protestors in Belarus', August 2020; 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; Viasna Human Rights Center, 2 September 2020).

150 OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus, 5 November 2020, available at: <https://www.osce.org/odihr/469539>, p.32: 'Because of the circumstances, most detention have to be qualified as "arbitrary detentions"; IPHR report, pp 17-18: '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 organizations 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. Victims report being forcefully removed from locked private premises and subsequently being beaten and detained.' (citing UN Office of the High Commissioner for Human Rights, "UN human rights experts: Belarus must stop torturing protesters and prevent enforced disappearances", 1 September 2020; Human Rights Center "Viasna", 2 September 2020).

151 *Human Rights Watch*, "Belarus: Systematic Beatings, Torture of Protesters", of 15 September 2020; available at: <https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters>.

152 OSCE Report, pp. 41-44; Letter of several NGOs to UN Special rapporteur on Situation of Human Rights in Belarus of 24 August 2020, available at: <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-human-rights-ngos-call-on-torture-and-arbitrary-arrests-of-> "bodily injuries – fractures, bruises of various sizes, some of them covering the entire surface of the thighs, bruises on the torso, as well as mental trauma from beatings in the premises or on the territory of internal affairs departments, in detention facilities, and in other facilities used to hold detainees" as well as that "the detainees were forced to take a certain, usually humiliating position, shout slogans, read prayers, and sing the national anthem. The transportation of the detainees was accompanied by ill-

UN Committee Against Torture and other international bodies.<sup>153</sup> The following witness accounts illustrate the severity and cruelty of treatment, and the pain and suffering endured by detainees – they are representative only:

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.<sup>154</sup>

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.<sup>155</sup>

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.<sup>156</sup>

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

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treatment and beatings; often the detainees were stacked one on top of the other. Some detainees were forced to maintain a motionless, uncomfortable position for several hours, after which the limbs became completely numb; the hands of the detainees were tied with self-locking plastic zip ties, causing particular suffering; IPHR Report, pp 22–23.

153 On 1 September, the UN Human Rights Office reported receiving 450 individual cases of torture: UNOHCHR, “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>; According to Viasna Human Rights Centre, as of the end of November, over 800 cases have been submitted.

154 CSP interview with M12, 11 August 2020.

155 CSP interview with M11, 14 August 2020.

156 CSP interview with M13, 15 August 2020.

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.<sup>157</sup>

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.<sup>158</sup>

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, 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.<sup>159</sup>

89. Numerous other witness accounts of torture and other inhumane acts have been documented by Viasna Human Rights Centre, including extreme physical violence, sexual violence, attempted rape and psychological torment.<sup>160</sup> Witnesses also report the systematic denial of medical care to those injured as a result of the authorities' conduct.<sup>161</sup>

### **c. Unlawful detention and enforced disappearance**

90. An estimated 33,000 protesters, activists, journalists, bloggers and other civilians have been arrested and detained by Belarusian authorities since the August election. In many cases, particularly in the first waves of arrests, people were held incommunicado for several days. The detainees were denied access to legal assistance and were not allowed to contact their next of kin. Likewise, those searching for the detainees were systematically denied information about the detainees' fate and whereabouts.<sup>162</sup> The following witness accounts typify thousands of similar cases:

"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

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157 CSP interview with M03, 11 August 2020.

158 CSP interview with M21, 16 August 2020.

159 CSP interview with M17, 15 August 2020.

160 Viasna Human Rights Centre, "Belarus After Election: Report on the human rights situation in Belarus in the post-election period", available at: [http://spring96.org/files/book/en/2020\\_elections\\_tortures\\_en.pdf](http://spring96.org/files/book/en/2020_elections_tortures_en.pdf).

161 *International Partnership for Human Rights*, 'Belarus on Hold: Crackdown on Post-Election Protests', September 2020, p 25, available at: <https://www.iphronline.org/joint-report-belarus-on-hold-crackdown-on-post-election-protests.html> ('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.')

162 UNOHCHR, "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>

Sovetskiy [police station], the staff told me she was not there either. I still do not know where my child is.”<sup>163</sup>

“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”.<sup>164</sup>

91. According to staff at the Viasna Centre for Human Rights, the centre had been inundated with calls and messages from people looking for their missing relatives as no information about those missing is available through the police, courts or detention centres.<sup>165</sup> In some cases, detainees remained missing until their release from administrative detention.
92. Considered in their totality and in indivisible tandem with the crimes of deportation and persecution set out in detail below, the above-stated crimes satisfy the Bemba Test’s quantitative threshold for a course of conduct amounting to an attack on the civilian population.<sup>166</sup>

## 2. DIRECTED AGAINST ANY CIVILIAN POPULATION

93. The term ‘civilian population’ denotes a collective, as opposed to individual civilians.<sup>167</sup> The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. Where an attack is carried out in an area containing both civilians and non-civilians, factors relevant to determining whether an attack was directed against a civilian population include: the means and methods used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the form of resistance to the assailants at the time of the attack, and the extent to which the attacking force complied with the precautionary requirements of the laws of war.<sup>168</sup>

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163 CSP interview with M08, 13 August 2020.

164 CSP interview with M06, 12 August 2020.

165 CSP interview with M05, 12 August 2020.

166 See Bemba Trial Judgment, para 150. Moreover, the broad charges of criminality set out above bolster this contextual element ‘which operates at a higher level of abstraction’. Bemba Appeal Judgment, para 117.

167 Bemba Trial Judgment, para 152. *Nb.* Article 50 of Additional Protocol I provides a definition of a ‘civilian population’, considered to be customary in nature and therefore relevant to the consideration of crimes against humanity. Additional Protocol I, Article 50; see also Katanga Trial Judgment, para 1102; Blaškić Appeal Judgment, paras 110, 113–114; Kordić & Čerkez Appeal Judgment, para 97; Mrkšić & Šljivančanin Appeal Judgment, para 35; and ECCC Case 002 Trial Judgment, para 185.

168 Bemba Trial Judgment, para 153 (citing Additional Protocol I, Article 50(3); Katanga Trial Judgment, paras 1105, 1138; Blaškić Appeal Judgment, paras 114–115; Galić Appeal Judgment, para 144; Kordić & Čerkez Appeal Judgment, para 50; Mrkšić & Šljivančanin Appeal Judgment, para 30; Kunarac et al Appeal Judgment, para 91; ECCC Case 001 Trial Judgment, para 309; ECCC Case 002 Trial Judgment, paras 183–184).

94. The requirement that the attack be ‘directed against’ the civilian population means that the civilian population must be the primary, as opposed to incidental, target of the attack. It does not mean, however, that the entire population of a geographic area was targeted. Rather, something more than the targeting of a limited number of specific individuals is required.<sup>169</sup> The provision is in no way limited to populations defined by common nationality, ethnicity or other similar distinguishing features.<sup>170</sup>
95. Finally, despite the requirement that the attack be directed against a civilian population, there is no requirement that the individual victims of crimes against humanity be ‘civilians’ only; the notion includes other protected persons.<sup>171</sup>
96. There is a reasonable basis to believe that this element is satisfied. Every victim mentioned in this filing is clearly a member of the Belarusian civilian population, and each has been engaged in the quintessentially civilian activities of political campaigning, demonstrating, protesting, documenting, journalism, advocating, and/or defending political activity. As demonstrated, the Belarusian authorities have targeted a broad collective of individuals, which includes any and all civilians actually, or perceived to be, supportive of Lukashenko’s political opponents.
97. In the course of the attacks, the authorities have utilized particularly brutal means and methods, spared no one in particular, and in many cases blatantly disregarded established international human rights law. Far from incidental targets, civilians have been deliberately terrorized in order to serve the ruling party’s obvious goal: silencing the opposition in order to maintain power at all costs. Various Belarusian government entities—especially the police, the KGB and the courts—have been deployed in the course of the attacks. And while there is no numerical threshold, the numbers set out above describe a portion of the Belarusian population far greater than a limited number of specific individuals.
98. Accordingly, this element is satisfied for present purposes.

### **3. PURSUANT TO OR IN FURTHERANCE OF A STATE OR ORGANIZATIONAL POLICY**

99. A ‘policy’ requires the active promotion or encouragement of an attack against a civilian population by such organization.<sup>172</sup> While it may be of evidential value, a motive or purpose underlying the policy to attack the civilian population is not required.<sup>173</sup> Such policy need not be formalized and may be inferred from a variety of factors taken together, including: (i) the attack was planned, directed, or organized; (ii) a recurrent pattern of violence; (iii) the use of public or private resources to further the

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169 Bemba Trial Judgment, para 154 (citing Bemba Confirmation Decision, paras 76–77, fn 99; Katanga Trial Judgment, para 1104–1105, fn 2630; Kunarac et al Appeal Judgment, para 90; Stakić Trial Judgment, para 627; Naletilić & Martinović Trial Judgment, para 235; ECCC Case 002 Trial Judgment, para 182).

170 Bemba Trial Judgment, para 155 (citing Bemba Confirmation Decision, para 76; Katanga Trial Judgment, para 1103).

171 Bemba Trial Judgment, para 156 (citing Mrkšić & Šljivančanin Appeal Judgment, para 32; Martić Appeal Judgment, paras 307–313; ECCC Case 001, Judgment, para 311; Sesay et al Trial Judgment, para 82; Geneva Conventions of 1949, Common Article 3; First Geneva Convention, Articles 12–13, 19, 24–26; Fourth Geneva Convention, Articles 16, 63; Additional Protocol I, Articles 12, 15, 22, 23(5), 41(1), 51; Additional Protocol II, Articles 9, 13).

172 Bemba Trial Judgment, para 159 (citing ICC Elements of Crimes, Introduction to Article 7, para 3; Katanga Trial Judgment, para 1108).

173 Bemba Trial Judgment, para 159.

policy; (iv) the involvement of state forces in the commission of crimes; (v) statements, instructions or documentation attributable to the State condoning or encouraging the commission of crimes; and/or (vi) an underlying motivation.<sup>174</sup>

100. The course of conduct must reflect a link to the State policy, in order to exclude random acts perpetrated by isolated and un-coordinated individuals acting on their own.<sup>175</sup> This is satisfied where a perpetrator either deliberately acts to further the policy or engages knowingly in conduct envisaged by the policy.<sup>176</sup> There is no requirement that the perpetrators necessarily be motivated by the policy, or that they themselves be members of the organization.<sup>177</sup> In exceptional circumstances, a policy may be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.<sup>178</sup>

101. There is a reasonable basis to believe that this element is satisfied, as demonstrated by the animating theory of this case: an authoritarian ruler and his government, fearful of an election loss after many years in power, have brutally deployed the mechanisms of state power to crush a vocal opposition—all in plain sight. The Lukashenko regime is an organized body of individuals with a brutally simple common purpose: retaining power. In furtherance of this end, the regime has actively directed, promoted and encouraged conduct that constitutes an attack against critics and opponents of the regime. Such policy has been made manifest by the shared characteristics of the various attacks: similar, recurrent patterns of violence; the use of State forces—police, security services, riot police (OMON or Special Task Police Force), special designation forces (Spetsnaz), prison officials and guards, judges and court officials, the CEC, military (to a lesser extent), plainclothes officers/agents; and instructions attributable to authorities condoning and encouraging crimes. The police, for example, have been explicit in their intention and authority to use lethal force.

102. Far from random, isolated, and/or uncoordinated behaviour, the acts set out in this Communication have been deliberately undertaken (planned, directed, and organized) in furtherance of crushing all opposition to the regime. Plain to any reasonable observer, Lukashenko and his associates have been specifically identified as the driving force behind the post-election violence by the UN, the EU, the OSCE, and multiple nations monitoring the situation. Given the obvious and heavy-handed involvement of government forces and other state agents, there exists reasonable basis to believe that a state policy to attack critics and opponents of the regime underlies the conduct described in this Communication. Lukashenko has personally admitted that the ill treatment of protesters on the streets and in detention was deliberate and, in his words, ‘well deserved’.<sup>179</sup> In a speech given to law enforcement and security officials on 30 October 2020, Lukashenko warned: “we take no prisoners [...] if anyone touches a member of the security forces, as a minimum they will leave with no hands”.<sup>180</sup>

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174 Bemba Trial Judgment, para 160 (citing Bemba Confirmation Decision, para 81; Katanga Trial Judgment, paras 1109–1110; Blaškić Trial Judgment, para 204).

175 Bemba Trial Judgment, para 161.

176 Bemba Trial Judgment, para 161.

177 Bemba Trial Judgment, para 161 (citing Katanga Trial Judgment, para 1115).

178 Bemba Trial Judgment, para 159 (citing ICC Elements of Crimes, Introduction to Article 7, fn 6; Katanga Trial Judgment, para 1108).

179 YouTube, “Рабочие против Лукашенко (полное видео)”, 17 August 2020, available at: <https://youtu.be/f878zy9BdIA>; see from marker 4:35.

180 DW, “«Пленных не берем»: Лукашенко угрожает протестующих «оставить без рук». DW Новости (30.10.2020)”, 30 October 2020, available at: <https://www.dw.com/ru/пленных-не-берем-лукашенко-угрожает->

103. Accordingly, this element is satisfied for present purposes.

## B. Widespread or Systematic Nature of the Attack

104. These disjunctive conditions serve as qualifiers that characterize the nature of the ‘attack’ itself.<sup>181</sup> The term ‘widespread’ connotes the large-scale nature of the attack and the large number of targeted persons, and that such attack may be ‘massive, frequent, carried out collectively with considerable seriousness, and directed against a multiplicity of victims’.<sup>182</sup> Such an assessment is neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts; nor does the temporal scope of the attack have an impact on this specific analysis.<sup>183</sup> The term ‘systematic’ refers to the organized nature of the underlying crimes and the improbability of their random occurrence.<sup>184</sup>

105. There is a reasonable basis to believe that elements of the Lukashenko regime engaged in attacks of both a widespread and systematic nature. As demonstrated throughout this Communication, the police and other state authorities frequently targeted a large number of civilians in multiple locations throughout Belarus, in particular in Minsk (also Brest, Gomel, Grodno, Mogilev, Molodechno, Hrodna, Homiel). At times—for example, in the case of arrests—the attacks were massive and carried out with considerable coordination and seriousness, resulting in the detention and ill treatment of thousands of protesters. The same pattern of behaviour is repeated methodically week after week. Precise and effective, the attacks on the opposition have been marked by their sophisticated organization and intensity of purpose beginning in early-May and continuing to the time of filing – demonstrating their systematic nature.

106. Accordingly, this element is satisfied for present purposes.

## C. Extra-Jurisdictional Facts

107. To clarify and emphasise, in making the contextual determination, the OTP may take into account *all of the related violence that has taken place on the territory of the offending non-state party*—in this case, Belarus. As PTC III put it:

[W]hile the Court is not permitted to conduct proceedings in relation to alleged crimes which do not fall within its jurisdiction, it ‘has the authority to consider all necessary information, including as concerns extra-jurisdictional facts for the purpose of establishing crimes within its competence’. *In other words, the Court is permitted to consider facts which fall outside its jurisdiction in order to establish, for instance, the contextual elements of the alleged crimes.* In the situation at hand, the Chamber has considered the information regarding alleged coercive acts (including

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*протестующих-оставить-без-рук-dw-новосту-30102020/av-55453332.*

181 Bemba Trial Judgment, para 162 (citing Bemba Confirmation Decision, para 82).

182 Bemba Trial Judgment, para 163 (citing Bemba Confirmation Decision, para 83; Katanga Trial Judgment, para 1123).

183 Bemba Trial Judgment, para 163.

184 ICC-01/04-01/07-717, Situation in the Democratic Republic of the Congo, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, ‘Decision on the confirmation of charges’, Pre-Trial Chamber I, 30 September 2008, para 394.

alleged murder, forcible transfer of population, imprisonment, torture, rape, or persecution) which have allegedly occurred entirely on the territory of Myanmar for the purpose of evaluating whether the Prosecutor has a reasonable basis to believe that an attack against the Rohingya civilian population pursuant to a State policy may have occurred. [...] *[A]lthough the Court does not have jurisdiction over these alleged crimes per se, it considered them in order to establish whether or not the contextual elements of crimes against humanity may have been present.*<sup>185</sup>

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108. Based on the above, there is a reasonable basis to believe that, since May 2020, a widespread and/or systematic attack has been committed against the Belarusian civilian population, pursuant to a state policy to commit such an attack.

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185 Myanmar Article 15 Decision, para 93 (citing Comoros Article 53 Decision, para 17) (emphasis added).

## VI. CRIME AGAINST HUMANITY OF DEPORTATION

109. A reported 14,000 citizens of Belarus have fled the country since the August election. Whilst the filing parties are not able to confirm that all 14,000 departures meet the criteria of forced displacement, it is a reasonable assumption that the vast majority of those who fled did so as a result of expulsion or other coercive acts. Indeed, there is a reasonable basis to believe that a majority of those who left fall into one of three categories: (i) persons who were physically expelled by the regime; (ii) persons who fled as a result of the imminent threat of arbitrary arrest and/or other coercive measures; and (iii) persons who fled as a result of the coercive environment created by the Lukashenko regime through mass arrests, criminal prosecutions, threats, harassment and other deprivations of fundamental rights. The regime has relied on the state apparatus under its authority and control to crush dissent and suppress opposition voices. The arrests, violence and arbitrary prosecutions are a means to an end. The campaign of repression enforced through state security, the judiciary and the all-pervading bureaucracy has been calculated to push the population into making an impossible choice: stay in Belarus and accept the regime or flee into exile. Thus, the regime clearly intends that those who will not yield will eventually flee Belarus in the face of increasingly draconian measures, or at the very least, is aware that this will occur in the ordinary course of events.<sup>186</sup> Consequently, there is a reasonable basis to believe that, since at least June 2020, Belarusian authorities have perpetrated the crime against humanity of deportation under Article 7(1)(d) of the ICC Statute.

### A. Applicable Law

110. The crime against humanity of deportation is defined as the ‘forced displacement of the persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law’.<sup>187</sup> To prove this crime, the following elements must be established:

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.<sup>188</sup>

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186 ICC Statute, Article 30(2).

187 ICC Statute, Article 7(1)(d); ICC Statute, Article 7(2)(d).

188 ICC Elements of Crimes, Article 7(1)(d).

111. Provided that all other requirements are met, the displacement of persons lawfully residing in an area to another State amounts to deportation; whereas such displacement to a location within the borders of a State must be characterized as forcible transfer.<sup>189</sup> The requirement of displacement *across a border* constitutes a specific element of the crime of deportation under the Statute.<sup>190</sup>
112. Deportation is an ‘open-conduct crime’, meaning that a perpetrator may commit various forms of conduct which amounts to expulsion or other coercive acts, including deprivation of fundamental rights, killing, violence (including sexual violence), torture, enforced disappearance and other forms of inhuman treatment.<sup>191</sup> The OTP is required to prove that one or more such acts ‘produced the effect to deport or forcibly transfer the victim’.<sup>192</sup> The term ‘forced’ may include physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, or the act of taking advantage of a coercive environment.<sup>193</sup> Ultimately, the forced character of the displacement is determined by the absence of genuine choice by the victim in his or her displacement, resulting from the expulsion or coercive acts of the perpetrator.<sup>194</sup>
113. While international (humanitarian) law permits displacement in specific circumstances where the security of the population or imperative military reasons so require, this is never the case where the crisis that caused the displacement is the result of unlawful activity.<sup>195</sup> The lawful presence of an individual must be assessed on the basis of international law and should not be equated with the domestic requirements of lawful residence.<sup>196</sup>

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189 Myanmar Jurisdiction Decision, para 54 (citing Lubanga Article 74 Judgment, para 609); *see also ibid*, paras 55–56; *see also* IT-95-5/18-T, *Prosecutor v Karadžić*, ‘Judgment’, Vol I of IV, Trial Chamber, 24 March 2016 (the ‘Karadžić Trial Judgment’), para 488 (‘There is an important distinction between the two crimes; for deportation, the displacement of persons must be across a *de jure* border between two states or, in certain circumstances, a *de facto* border, and for forcible transfer, the removal may take place within national boundaries.’)

190 Myanmar Jurisdiction Decision, para 60 (emphasis added); *see ibid* (‘The reason is that [...] the destination requirement is essential to article 7(1)(d) of the Statute as it determines the appropriate legal qualification to be assigned to the behavior criminalized under this provision.’)

191 Myanmar Jurisdiction Decision, para 61 (citing Ruto Confirmation Decision, para 244).

192 ICC-01/09–01/11, *Prosecutor v Ruto et al, Situation in the Republic of Kenya*, ‘Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute’, Pre-Trial Chamber II, 23 January 2012 (the ‘Ruto Confirmation Decision’), para 245 (‘Absent such a link between the conduct and the resulting effect of forcing the victim to leave the area to another State or location, the Chamber may not establish [the crime].’)

193 ICC Elements of Crimes, Article 7(1)(d), Crime against humanity of deportation or forcible transfer of population, FN12; Karadžić Trial Judgment, para 489.

194 Karadžić Trial Judgment, para 489. *Nb.* ‘As such, while persons may consent to, or even request, their removal, any consent or request to be displaced must be given voluntarily and as a result of the individual’s free will, assessed in light of the surrounding circumstances of the particular case.’ *Ibid.*

195 Myanmar Article 15 Decision, para 98 (citing relevant ICL, IHL, IHRL, and commentary); *see also* Karadžić Trial Judgment, para 492 (‘Although forced removal for humanitarian reasons is justifiable in certain situations, it is not justified where the humanitarian crisis that caused the displacement is itself the result of the perpetrator’s own unlawful activity.’)

196 Myanmar Article 15 Decision, para 99 (citing relevant ICL, IHL, IHRL, and commentary); *see also* Karadžić Trial Judgment, para 491 (‘In analyzing this element of deportation and forcible transfer, the terms “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence.’)

## B. Relevant Facts

114. According to official statistics released by Belarusian authorities, between August and October 2020, an estimated 14,000 citizens of Belarus fled the country to neighbouring States, with the majority settling in Lithuania, Latvia, Poland and Ukraine.<sup>197</sup> According to the same sources, the number of people who have fled Belarus from August to October 2020 is five times higher than the combined total of emigrants over the preceding 12 months.<sup>198</sup> Thus, the post-election violence and campaign of repression has pushed thousands of citizens of Belarus to leave their country.
115. In a televised interview released on 14 November 2020, Lukashenko announced that a ‘core group’ of 2000 protesters should be “taken away to Lithuania and Poland”.<sup>199</sup> This message was taken on by the regime’s law enforcement and judiciary, which has targeted political opponents, vocal critics, actual or perceived leaders of protest groups, social-media activists and administrators – tightening the noose of repression and gradually pushing all critics and opponents out of the country. On 10 December 2020, Lukashenka ratified a legislative amendment that allows the authorities to strip Belarusian citizenship from anyone who is involved in ‘extremist acts or caused serious harm to the interests of Belarus’.<sup>200</sup> Those who have fled are not able to return and risk losing their citizenship altogether.<sup>201</sup> According to Lukashenko, “we are not going to prevent anyone from leaving but remember this – if you leave you are not going to be able to return”.<sup>202</sup> Thus, the regime’s message is clear – stay and yield or run and never come back.
116. Whilst the filing parties have not been able to verify all 14,000 cases, semi-structured interviews were conducted with a representative sample of 50 Belarusian citizens who have fled the territory of Belarus as a direct result of the regime’s campaign of repression. Further cases of forced displacement have been obtained from open-source investigations. The documented cases of displacement can be separated out into the following groups:

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197 *TUT.BY*, “В МВД рассказали, сколько белорусов уехало из страны с начала осени. Цифры впечатляют”, 21 October 2020, available at: <https://finance.tut.by/news704904.html>.

198 *Ibid.*

199 YouTube, “Интервью президента Республики Беларусь Александра Лукашенко, 14.11.2020. Полное видео”, 14 November 2020, available at: [https://www.youtube.com/watch?v=C7zjzOJg-1I&fbclid=IwAR1wMRuPm6jipFumfO\\_rj\\_uvJK2SjwxqwUg\\_\\_l1yRA7gHuh8bOs8-vMUI-xc](https://www.youtube.com/watch?v=C7zjzOJg-1I&fbclid=IwAR1wMRuPm6jipFumfO_rj_uvJK2SjwxqwUg__l1yRA7gHuh8bOs8-vMUI-xc): see time market 2:53:25 *et seq.*

200 The law was approved by the Constitutional Court of Belarus - <http://kc.gov.by/document-68193> - and ratified on 10 December 2020: [https://pravo.by/upload/docs/op/H12000067\\_1608152400.pdf](https://pravo.by/upload/docs/op/H12000067_1608152400.pdf)

201 See Witness Statement: BR-001 – the witness was turned away at the Lithuania-Belarus border on the pretext that the witness had ‘undeclared good’. On further questioning it transpired that the goods in question was a single chocolate bar. The Belarusian authorities refused to allow the witness to declare the chocolate bar or to throw it away. After several hours and multiple attempts to cross the border, the witness turned back under the impression that the authorities were simply not going to let the witness into Belarus under any pretext; See also, *DW*, “Лукашенко закрыл границы? Что там происходит и кого пускают в Беларусь”, 30 October 2020, available at: <https://www.dw.com/ru/kogo-puskajut-v-belarus-i-cto-proishodit-na-granice/a-55451353>.

202 *DW*, “Не надо никого держать: как Лукашенко борется с «утечкой мозгов» из Беларуси”, 7 December 2020, available at: <https://www.dw.com/ru/ne-nado-nikogo-derzhat-kak-lukashenko-boretsja-s-utechkoj-mozgov-iz-rb/a-55843877>; *DW*, “Белорусы не смогут вернуться в страну из-за приказа Лукашенко. Это законно?”, 6 November 2020, available at: <https://www.dw.com/ru/belorusy-ne-mogut-vernutsja-v-stranu-iz-za-prikaza-lukashenko-jeto-zakonno/a-55519202>.

- (1) Persons who were physically expelled by Belarusian authorities.
- (2) Persons who fled as a result of the imminent threat of arrest and/or other coercive measures.
- (3) Persons who fled as a result of the coercive environment.

Each group of victims will be examined in turn:

## 1. PERSONS WHO WERE PHYSICALLY EXPELLED BY BELARUSIAN AUTHORITIES

117. The filing parties are aware of at least six cases where opposition leaders and activists were taken to the border or told to leave the Republic of Belarus under threat of arrest and violence. All six victims are leaders of the democratic opposition. Their expulsion was calculated to send a message to all other critics and opponents that the regime will not tolerate opposition on its territory.
118. On 11 August 2020, opposition candidate **Svetlana Tikhanovskaya** fled Belarus to Lithuania citing fear for her children. On 10 August 2020, Tikhanovskaya had been taken in for questioning after she submitted an official challenge to the election result. On 11 August 2020, a video appeared on social media where Tikhanovskaya – clearly reading from a script – calls on citizens of Belarus to respect the outcome of the vote and refrain from protesting. On the same day, Tikhanovskaya revealed that she had reluctantly crossed the border into Lithuania, saying that the decision to leave had been the most difficult in her life, but that “children are the most important thing in our lives”.<sup>203</sup> Tikhanovskaya’s husband – a barred opposition presidential candidate Sergei Tikhanovskiy – has been detained by Belarusian authorities since May. Her detention and prosecution would have left her children – who had been taken to Lithuania weeks before the election in response to threats – with both parents facing indefinite detention. A member of her campaign team said that Tikhanovskaya had been pressured to leave the country by the authorities in exchange for the release of her campaign manager, Maria Moroz, who had been held by police since Saturday. According to the then Foreign Minister of Lithuania, “It was not her intention, I believe, to leave Belarus, but it was the only option she could take, I believe”.<sup>204</sup>
119. On 11 August 2020, **Maria Moroz** – campaign manager for Svitlana Tikhanovskaya’s presidential bid – fled Belarus to Lithuania together with Tikhanovskaya. Moroz had been detained by Belarusian authorities on 8 August 2020. It is understood that Moroz and Tikhanovskaya’s departure from Belarus was a precondition of Moroz’s release from custody.<sup>205</sup>
120. **Olga Kovalkova**—a member of the opposition Coordination Council—was detained in Okrestino detention centre for 10 days and was sentenced to a further 15 days of detention. Her health deteriorated and she called for medical assistance. Instead of a medic, two masked KGB officers walked into her cell. They informed her that she has been called for further interrogations and that her detention will continue. Then they told her that they will take her out of the country.

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203 BBC, “Belarus election: Opposition leader Tikhanovskaya left ‘for sake of children’, 12 August 2020, available at: <https://www.bbc.co.uk/news/world-europe-53733330>.

204 *The Guardian*, “Belarus opposition candidate implies threat to children after leaving country”, 12 August 2020, available at: <https://www.theguardian.com/world/2020/aug/11/belarus-opposition-candidate-lithuania-protests-svetlana-tikhanouskaya>.

205 *The Guardian*, “Belarus opposition candidate implies threat to children after leaving country”, 12 August 2020, available at: <https://www.theguardian.com/world/2020/aug/11/belarus-opposition-candidate-lithuania-protests-svetlana-tikhanouskaya>.

When she asked whether she had a choice, they answered that she did not. On 5 September 2020, Kovalkova was blindfolded, shoved in the back of a vehicle and driven to no man's land between Belarus and Poland.<sup>206</sup> According to a statement from the opposition Coordination Council, "on the night of September 5, the Belarusian special services took Olga Kovalkova, a confidant of Svetlana Tikhanovskaya, to the Belarusian-Polish border and released her to a no-man's land (sic)".<sup>207</sup> According to Kovalkova, "Representatives of the militia and the interior ministry of Belarus came to me and said that if I did not agree to leave, I would face long arrests [...] it was said that there would be more (arrests) to infinity."<sup>208</sup>

121. On 8 September, **Maria Kolesnikova, Ivan Kravtsov and Anton Rodnenkov**—members of the opposition Coordination Council—were taken to no man's land between Belarus and Ukraine and told to cross into Ukraine under threat of detention and violence.<sup>209</sup> All three had been detained by the authorities on 7 September and 'disappeared' for a 24-hour period. On 8 September, the three vocal opponents of the regime were taken to the Ukrainian border. In an act of protest against her expulsion, Maria Kolesnikova seized her passport from the dashboard of the vehicle, tore it to pieces and threw it out of the window. She then opened the back door and walked back towards Belarus where she was detained by the authorities. Meanwhile, her two colleagues Ivan Kravtsov and Anton Rodnenkov were expelled from Belarus into Ukraine.<sup>210</sup>

## 2. PERSONS WHO FLED AS A RESULT OF THE IMMINENT THREAT OF ARREST AND/OR OTHER COERCIVE MEASURES.

122. Other activists, protesters and striking state enterprise workers have fled Belarus in the face of imminent threats of arrest and/or other coercive measures. Members of this category of displaced persons were summoned for questioning or were threatened with arrest, prosecution or other coercive measures by the authorities or their proxies. In all cases, the persons in question felt that they had no choice but to flee the country. In light of Lukashenko's public statements encouraging opponents to flee, and the regime's expulsion of other prominent opposition figures, the regime's intention to coerce its opponents into fleeing Belarus is implicit in its conduct. The following 15 individuals whose stories were documented through interviews and open-source materials serve as representative examples of the regime's forcible displacement of its critics and opponents through threat of arbitrary arrest, criminal prosecution, violence and other forms of coercion.

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206 Interview with Kovalkova can be accessed here: <https://epamova.org/news/sovet-v-izgnanii-razgovor-s-olgoj-kovalkovoj>; See also: press statement of the Coordination Council: <https://rada.vision/zayavlenie-koordinacionnogo-soveta-o-pohishheniyah-zhestkih-narusheniyah-i-ustrashenii>; see also AP, 'Belarus activist resists effort to deport her to Ukraine' 9 September 2020, available at: <https://apnews.com/article/international-news-ap-top-news-europe-5c29fffaba356dfc0e2b66aecff9d5c>; CNN, 'Belarusian activist forcibly removed from country by security services', 9 September 2020, available at: <https://www.cnn.com/2020/09/09/europe/belarus-minsk-olga-kovalkova-protests-intl/index.html>.

207 *Ibid.*

208 *Reuters*, "Belarusian opposition activist Kovalkova leaves country after arrest", 5 September 2020, available at: <https://www.reuters.com/article/uk-belarus-election-poland-kovalkova-idUKKBN25W0PJ>.

209 AP, 'Belarus activist resists effort to deport her to Ukraine' 9 September 2020, available at: <https://apnews.com/article/international-news-ap-top-news-europe-5c29fffaba356dfc0e2b66aecff9d5c>; CNN, 'Belarusian activist forcibly removed from country by security services', 9 September 2020, available at: <https://www.cnn.com/2020/09/09/europe/belarus-minsk-olga-kovalkova-protests-intl/index.html>.

210 AP, 'Belarus activist resists effort to deport her to Ukraine' 9 September 2020, available at: <https://apnews.com/article/international-news-ap-top-news-europe-5c29fffaba356dfc0e2b66aecff9d5c>; CNN, 'Belarusian activist forcibly removed from country by security services', 9 September 2020, available at: <https://www.cnn.com/2020/09/09/europe/belarus-minsk-olga-kovalkova-protests-intl/index.html>.

123. **Veronika Tsepkalo** is a senior ally of Tikhanovskaya and wife of former opposition presidential candidates – **Valeriy Tsepkalo**. Valeriy Tsepkalo is a former Belarusian ambassador to the United States who was barred from running in the August presidential election. In July 2020, he fled from Belarus, alleging that he had been warned by the authorities that he faced imminent arrest and the revocation of his parental rights.<sup>211</sup> After his departure, Veronika Tsepkalo continued to support Tikhanovskaya's campaign. On 9 August 2020, after being detained and questioned by the authorities, Veronika Tsepkalo fled to Poland via Ukraine having been threatened by officials that her arrest and criminal prosecution were imminent.<sup>212</sup> She faces the prospect of a lengthy prison sentence, should she return to Lukashenko's Belarus.
124. **Pavel Latushko** – a former minister of culture and ambassador to France who is a member of the opposition Coordination Council – was arrested and subjected to a three-hour interrogation. Prior to his arrest, he said he has received repeated threats and warnings to leave the country.<sup>213</sup> Lukashenko made public comments that Latushko had 'crossed a red line' and would face further arrest and prosecution.<sup>214</sup> Perceiving that he had no choice but to escape Belarus or face indefinite detention in Belarus' grim penitentiary system, Latushko fled the country to Poland. Latushko faces charges under Article 357.1 (conspiracy or other actions committed with the aim of seizing or retaining state power in an unconstitutional way), Article 361-1 (creating an extremist entity or leadership of such entity) and Article 361-3 (inciting harm to national security). If convicted he faces years of imprisonment.<sup>215</sup>
125. On 27 October 2020, **Witness BR-002** – a striking employee of a state enterprise – fled Belarus with his family out of fear of imminent arrest and political persecution.<sup>216</sup> In the morning of 26 October, BR-002 alongside other senior colleagues at a state-owned enterprise recorded a Telegram video in which they denounced the authorities' violence against protesters and announced their decision to join the general strike. On the same day, they were called in for talks with the regional management of the enterprise. The management were not interested in hearing their position, threatening the striking workers with "guaranteed consequences". The next morning, BR-002 noticed an unmarked police vehicle in the parking of the state enterprise and decided to leave the premises. On his way out, he noticed two other police vehicles heading towards his workplace. He was then informed that law enforcement agents were trying to enter his home and the homes of all other participants in the 26 October Telegram recording. A law enforcement agent tried to force his way in to give him a summons to appear for questioning on 28 October. BR-002 realised that his arrest was imminent and decided to flee the country. In light of the widespread accounts of arrests, prolonged detentions and violence in custody, BR-002 feared that if he had stayed in Belarus, he would have been subjected to detention and violence. After nightfall on 27 October, BR-002, his wife and children fled to the Lithuanian border in their vehicle.

211 *Euronews*, "Prominent Belarusian opposition figure Valery Tsepkalo flees to Russia amid arrest fears", 30 July 2020, available at: <https://www.euronews.com/2020/07/29/prominent-belarusian-opposition-figure-valery-tsepkalo-flees-to-russia-amid-arrest-fears>.

212 *Reuters*, "Belarusian activist to press fight against Lukashenko with opposition leader", 19 August 2020, available at: <https://www.reuters.com/article/uk-belarus-election-poland-tsepkalo-idUKKCN25F1MU>.

213 AP, "AP Interview: Ex-official urges transition talks in Belarus", 20 August 2020, available at: <https://apnews.com/article/cd05a41081c05a0a2f0fb67ba8599437>.

214 AP, "Belarus activist resists effort to deport her to Ukraine" 9 September 2020, available at: <https://apnews.com/article/international-news-ap-top-news-europe-5c29fffaba356dfc0e2b66aecfff9d5c>.

215 *Belta*, "Belarusian prosecution initiates international search for Pavel Latushko", 18 January 2021, available at: <https://eng.belta.by/society/view/belarusian-prosecution-initiates-international-search-for-pavel-latushko-136660-2021/>.

216 Witness Statement: BR-002

126. **Witness BR-003** is the 'owner' and administrator of a protest channel on Telegram.<sup>217</sup> She organised fundraising events, protest groups and documented the authorities' repressions. In October 2020, she began to notice that the authorities began to round up other Telegram channel owners and administrators. A number of her colleagues were arrested and charged with criminal offences under Articles 293.2 (participation in riots – three to eight years of imprisonment) and 342 (organisation of public order violations – fine to three years of imprisonment) of the Criminal Code of Belarus. One morning, she woke up to persistent ringing and knocking on her door. She refused to answer. She looked out of the window and saw a car with two men in civilian clothing. She contacted her support group who organised her escape and took her out of Minsk to the provinces. After her departure, her apartment was searched. Her lawyer informed her that, in light of her online activism and given what had happened to others in her position, she faced an imminent threat of arrest that would result in prolonged pre-trial detention followed by a lengthy prison sentence. Witness BR-003 felt that she had no choice but to flee Belarus. She crossed the border into Lithuania and is certain that she would be immediately arrested if she tried to return.
127. **Witness BR-004** – an activist and regular participant in protests – fled Belarus for Lithuania.<sup>218</sup> He had been arrested and subjected to administrative detention on two occasions. One of his colleagues was arrested and charged under Article 293 of the Criminal Code (organisation or participation in riots – three to fifteen years of imprisonment). His colleague's lawyer informed BR-004 that the authorities were very interested in him and that his arrest was imminent. Given his colleague's situation, he understood that he would be charged with a criminal offence and faced years of imprisonment. Fearing imminent detention and violence, BR-004 and his family fled to Lithuania. BR-004 feels that he had no choice other than to flee or face political persecution.
128. **Witness BR-005** – a participant in protests in Gomel – fled Belarus following multiple arrests and threats of prolonged detention and losing custody of her children.<sup>219</sup> On 27 September 2020, BR-005's husband was arrested and subsequently given a 14-day administrative detention order. Witness BR-005 was released with a caution and a threat of sexual violence against her 20-year-old daughter. On 29 September, law enforcement agents attempted to enter her house to arrest her daughter. During what she describes as a police 'siege', BR-005 managed to smuggle her daughter onto a neighbour's property who drove her across the border into Ukraine. Later the same day, another group of law enforcement agents arrived at her property and informed her that her husband is being charged with a criminal offence under Article 363(2) (violent resistance to a law enforcement agent – five years of imprisonment) – entered her property and conducted a search. At the same time, BR-005 received a phone call from her younger daughter's school, asking to see her for 'questioning'. Following the search, BR-005 was detained and taken to a police station. Her minor children were taken away into state custody. She spent a day in police detention and was subsequently taken to a court where she was told that if she confessed to an unspecified public order offence, she would get a fine, but if she did not, she would be charged with a criminal offence and her children would be taken away and placed in an orphanage. BR-005 agreed to the fine. On the next day, BR-005 received multiple phone calls and messages from law enforcement agents, summoning her to an interview at the police station in the framework of a 'criminal investigation'. She understood that she was about to be arrested in connection with an interview that she gave to an opposition media outlet about her ordeal. She feared that if she were to be charged, she would face prolonged detention and stood to lose her children. She contacted a volunteer organisation to organise a passage to Lithuania. She believes that she had no choice but to flee Belarus.

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217 Witness Statement: BR-003.

218 Witness Statement: BR-004.

219 Witness Statement: BR-005.

129. **Witness BR-006** was monitoring the August election and actively campaigned against what he perceived was voter fraud – by lawful means.<sup>220</sup> Once he realised that the authorities were not interested in investigating electoral law violations, he began to participate in peaceful protests. On 13 September 2020 he was arrested by the police and brutally beaten – causing him serious injuries and internal bleeding. After spending 10 hours in detention, he was finally taken to hospital where he received urgent medical care. During his detention, he was threatened with prolonged detention based on a false charge of “hitting someone with his car” (although he was charged with participation in a protest). During his stay at the hospital, he received multiple phone calls from unknown persons who were threatening him with abduction and violence. He was also called in for questioning by the police – but was not told of any investigation or charge. After his release from hospital, his lawyer informed him that a criminal case has been opened against him. BR-006 decided to immediately flee Belarus as he perceived an imminent threat to his life and liberty in connection to his election monitoring and protest activities.
130. **Witness BR-007** is a member of an independent trade union.<sup>221</sup> He took part in multiple protests in the town of Salihorsk. On 29 August 2020, he was arrested by the local police force and charged with a public order offence under the administrative code (Article 23.34). Following his release, he continued to participate in protests and strikes at his state-owned employer. One day in October, he was warned by the head of the local police department that if he did not cease his “activities”, he would be charged with a criminal offence and imprisoned for ten years. BR-007 immediately understood this as a threat of imminent arrest and felt that he had no choice but to flee Belarus.
131. **Witness BR-008** actively campaigned for democracy and against the regime’s violence and Grodno.<sup>222</sup> She also participated in protests and spoke to journalists. She was arrested on 15 August 2020, detained for 24 hours and charged with violating public order and given a fine. In September, staff at her children’s school informed her that they are going to refer her family to social services with a view to taking her children into state custody. Following this, the hospice that she was managing was placed under investigation by the financial and tax authorities. BR-008 and her husband began to receive messages that her arrest was imminent, and that on arrest, the children would be taken into an orphanage. She was also informed of a criminal investigation against her and her husband. They decided to flee Belarus. Their border crossing was filmed by the authorities and the footage was used as part of government propaganda. BR-008 wants to return home but feels that she is unable to do so as she would risk arrest, prolonged detention and losing her children.
132. **Witness BR-009** is an activist who protested against the regime’s campaign of repression and volunteered for Viasna Human Rights Centre and other organisations, providing first aid and other assistance to victims of repression.<sup>223</sup> On 19 November 2020, she was arrested at her home by the KGB and taken – blindfolded – to KGB headquarters for interrogation. The interrogation lasted from 17:00 until 6:00. She was repeatedly accused of organising protests, and shown evidence that she had been subject to a covert investigation (her phone was wire-tapped, her online activities monitored and she was filmed at protests). BR-009 was told that she will be charged under Articles 293 (riot – up to 15 years of imprisonment) and 342 (organisation of public order violations – fine to three years of imprisonment) of the Criminal Code of Belarus and would face further charges if she did not cooperate. After her interrogation, she was told that “this was not her last visit” and taken to Okrestino for detention and trial on administrative charges. Following her release, BR-009

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220 Witness Statement: BR-006.

221 Witness Statement: BR-007.

222 Witness Statement: BR-008.

223 Witness Statement: BR-009.

decided to flee Belarus, as she feared for her and her children's' liberty. She felt that she did not have a choice. When BR-009 and her family reached the Lithuanian border, they were kept in a room for several hours by Belarusian border guards. BR-009 was told that she was under criminal investigation – which normally ought to have made her crossing illegal – but that she was free to cross. BR-009 understood that she was being deported under threat of arrest on return.

133. **Witness BR-010** is a member of the opposition Coordination Council and was an active participant in the protest movement.<sup>224</sup> She gave multiple interviews to foreign and local journalists and made a public stance against the Lukashenko regime. She was arrested on 4 October, released the following day and then summoned for questioning on 9 October. As soon as she arrived at the police station, she was arrested, interrogated and taken to Okrestino for trial, receiving a 15-day administrative detention sentence. In the course of her interrogations, she was informed that she would be charged with a criminal offence, if she did not provide information about the Coordination Council and its members. As soon as she was released, she received another summons informing her that she had been sentenced to a further 12 days of administrative detention. Her health had deteriorated during her detention, and she did not receive adequate medical care. She was frightened that she would be subjected to indefinite detention and decided to flee to the Lithuanian border. BR-010 believes that the authorities imposed a further 12 days of detention on the day of her release in order to push her to leave the country.
134. **Witness BR-011** is a human rights defender who organised or oversaw several prominent campaigns in support of victims of political repression and persons affected by COVID-19.<sup>225</sup> The campaigns were publicly denounced by the authorities and BR-011 was named and shamed in state-controlled media and social media. In June 2020, as the organisation began to support opposition candidates for upcoming presidential elections, he was informed by the authorities that his arrest and criminal prosecution was imminent. BR-011 believes that the message was deliberately conveyed to him through his trusted channels in order to push him to leave Belarus in the run-up to the elections. He fled to Ukraine and then to Lithuania. Subsequently, he was informed that he faces criminal charges and would be imprisoned if he returns to Belarus.
135. **Witness BR-012** is a blogger and a citizen journalist who actively denounced election fraud and the subsequent campaign of repression.<sup>226</sup> On 7 August 2020 he was arrested, tried and sentenced to 15 days of administrative detention for 'hooliganism' in relation to his citizen journalism. He also took part in protests. **Witness BR-013** is BR-012's wife and an active member of the protest movement in her own right.<sup>227</sup> She also takes part in BR-012's citizen journalism activities and had her own online chat forum and online publication. BR-013 was publicly identified as an 'organiser of mass protests' by the authorities and was sent a summons to appear at the police station for questioning. Throughout August, both BR-012 and BR-013 were subjected to a massive online and mass media discreditation campaign. They also received private messages through SMS and on Viber with threats of arrest, prosecution and having their children taken into state custody. BR-012 and BR-013 left Belarus on 17 August, shortly after BR-012's release from custody. They had intended to return "once the situation cools down" but the events in Belarus and threats against them intensified. They received threats of violence against them and their children – with identifying information such as their address and their children's' school – informing them that they will be "got"

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224 Witness Statement: BR-010.

225 Witness Statement: BR-011.

226 Witness Statement: BR-012.

227 Witness Statement: BR-013.

as soon as they return to Belarus. BR-012 and BR-013 made a decision not to return and settled in Ukraine, inferring from the threats that the authorities intended for them to stay abroad.

136. **Witness BR-018** was an activist and took part in protests.<sup>228</sup> He was arrested and exposed to brutal violence in detention – including stress positions, degrading treatment, severe beatings and strangulation. After his released he was informed by three separate sources that his arrest and criminal prosecution was imminent. Other members of his organisation had already been arrested and charged with serious crimes. He decided to flee to Lithuania rather than face lengthy detention.

### 3. PERSONS WHO FLED AS A RESULT OF THE COERCIVE ENVIRONMENT

137. Mass arrests, incarceration and brutal violence perpetrated against critics and opponents of the Lukashenko regime, high profile expulsions of opposition leaders and Lukashenko's public statements calling for opponents to be 'taken away' to neighbouring countries have created a highly coercive environment. Whilst the most vocal and active critics and opponents are actively targeted by the regime, many others have fled to Lithuania, Latvia, Poland and Ukraine pre-emptively, to escape the coercive environment or being caught up in the tightening noose of repression.

138. Many of the those who have fled the country had been arrested or exposed to the authorities' violence during protests, strike action and arbitrary detention. In a highly centralised and controlled state like Belarus, many key aspects of life – from employment to schooling and university education, medical care and housing – are under the authorities' direct control. In this context, overt opposition to the regime can have immediate and direct consequences beyond arrest and prosecution – including the loss of gainful employment, housing, loss of custody of children, expulsion from education institutions, being shut out from banking services and vital administrative systems, and the denial of medical and social care. Whilst many have chosen to stay and protest against the regime – enduring increasingly unbearable circumstances, thousands have succumbed to the coercive environment and were forced to flee the country, leaving everything behind.

139. All witnesses interviewed by the filing parties testify to the all-encompassing coercive environment that has resulted in their displacement beyond the borders of Belarus. Below are extracts from a selection of interviews that demonstrate the regime's coercive environment and how it resulted in the victim's displacement from Belarus:

- **Witness BR-014** noticed that he was followed from the hospital where he received treatment for his injuries inflicted by law enforcement agents. He was followed everywhere he went. He recalls an overwhelming sense of fear and panic. He decided not to go home as he feared violence and arrest there and had to sleep at six different addresses over a short period of time before fleeing to Lithuania. He says that his "choices" were to either lose his mind from fear, go to prison or flee.<sup>229</sup>
- After being released from custody, **Witness BR-015** discovered that his parents' home was under constant surveillance and his younger brother was being put under sustained pressure by the authorities. Other colleagues were arrested and charged with criminal offences. The situation became unbearable for him and his family and he decided to flee.<sup>230</sup>

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228 Witness Statement: BR-018.

229 Witness Statement: BR-014.

230 Witness Statement: BR-015.

- **Witness BR-016** sustained serious injuries at the hands of law enforcement and required medical treatment that he felt he would not receive in Belarus. He was constantly receiving anonymous threats on his phone.<sup>231</sup>
- Following his arrest on administrative charges, **Witness BR-017** was advised that he is likely to face subsequent criminal charges. He noticed that his bank card was blocked. He called the state-controlled bank and was told that he had to attend in person with his passport to unblock the card. On the next day, his other card was blocked. He understood this to be an attempt to lure him into custody and fled to Lithuania.<sup>232</sup>
- **Witness BR-019** was monitoring proceedings and lists of detainees at Okrestino detention centre.<sup>233</sup> She received an anonymous call. The caller proceeded to abuse and intimidate her. After threatening her with arrest for making inquiries about other detainees he asked how her son and mother were doing – in a clear attempt to frighten her. Subsequently, she was contacted by her son’s teacher who told her that her activities were well known and that she is likely to lose custody of her child as a result. Early one morning she received persistent calls and knocks on the door, which she interpreted as police harassment or attempts to arrest her. Following these threats, she fled to Lithuania.
- **Witness BR-020** noticed that his home and workplace were staked out by law enforcement agents. Law enforcement agents were also asking about him at the workplace and previous addresses. He felt that he could not stay at home or go into work, so he fled to Lithuania.<sup>234</sup>
- **Witness BR-021** was arrested and detained for 15 days.<sup>235</sup> In the course of his detention he was beaten, kept in cold inadequate conditions. He was subjected to electric shocks and strangulation and suffered fractures to his jawbone. He also experienced threats of a sexual nature and other degrading treatment. After his release, he noticed men were staking out his house. One evening he was told by the men that he would have to “do some more time” soon. He could not bear to re-live the trauma of his first detention and decided to flee the country.

140. The regime’s campaign of repression was clearly calculated to create a coercive environment that would crush the opposition and push individuals to either accept the outcome of the August elections, or flee the country. The many tentacles of Belarus’ leviathan state bureaucracy and the state security apparatus have been engaged in this task. Through repeated arrests, spurious prosecutions and threats of loss of employment, businesses, housing and custody of children, the regime has sought to coerce its population into submission, or failing that, to flee across the border. Consequently, thousands of citizens of Belarus have fled as a result of the coercive environment intentionally created by the regime.

## C. Analysis

141. Based on information gathered in the course of the filing parties’ investigation, there is a reasonable basis to believe that the Lukashenko regime has forcibly displaced thousands of

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231 Witness Statement: BR-016.

232 Witness Statement: BR-017.

233 Witness Statement: BR-019.

234 Witness Statement: BR-020.

235 Witness Statement: BR-021.

lawful residents of Belarus to neighbouring Lithuania, Latvia, Poland and Ukraine, without grounds permitted under international law.

142. According to official figures, some 14,000 citizens of Belarus have fled the country since the August election. Whilst the filing parties are not able to confirm that all 14,000 departures meet the criteria of forced displacement, there is a reasonable basis to believe that a majority of those who left were either physically expelled by the regime, fled as a result of an imminent threat of arbitrary arrest and/or other coercive measures, or fled as a result of the coercive environment created by the regime's mass arrests, criminal prosecutions, deprivations of fundamental rights, threats, psychological oppression and harassment. In all three scenarios, those who were displaced had no genuine choice – the threats to their liberty and physical or psychological integrity had become unbearable. All victims of displacement had been lawfully present in Belarus – by virtue of their citizenship or legal residence. All interviewed victims confirm that they want to return to live in Belarus but are unable to do so out of fear of arrest, violence, criminal prosecutions and other coercive measures.
143. There is a reasonable basis to believe that the regime has intended the forced displacement of its critics and opponents, or at the very least has intentionally engaged in repressive conduct in full awareness that mass forced displacement would occur in the ordinary course of events.<sup>236</sup> From the start of the presidential election campaign up to the day of filing of this Communication, the regime has deployed the full machinery of the state under its authority and control to crush dissent and suppress opposition voices. From Lukashenko's public rhetoric to the threats and warnings from law enforcement, state school staff and other public servants – the message is clear: accept the regime or leave the country. Failure to do one or the other would result in perpetual harassment, arrest, violence, criminal prosecution, prolonged detention, loss of custody of children, loss of employment, housing, savings and other key state-provided services. The campaign of repression was not an end in itself, but a means to crush the opposition or force it beyond the borders of Belarus.
144. The forced displacement is an integral part of the regime's widespread and/or systematic attack on the civilian population described above. All victims of displacement were members of the targeted part of the population – actual or perceived opponents and critics of the regime. Their displacement was a key goal of the regime's attack – to suppress or rid itself of all critics and opponents in order to cement the regime's hold on power. All direct perpetrators, their commanders and superiors were clearly aware of the attack, and the manifest link between the expulsions, threats and other key contributors to the coercive environment and the overall attack. Consequently, the criminal conduct described in this section qualifies as crimes against humanity.

## D. Conclusion

145. In light of the above, there is a reasonable basis to believe that the Lukashenko regime forcibly deported thousands of citizens through physical expulsion, threats of arrest, violence and other coercive acts and the creation of a coercive environment calculated to suppress or displace all critics and opponents of the regime. Thus, the available information provides a reasonable basis to believe that, since at least June 2020, Belarusian authorities have perpetrated the crime against humanity of deportation under Article 7(1)(d) of the ICC Statute.

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236 ICC Statute, Article 30(2)(a)(b).

## VII. CRIME AGAINST HUMANITY OF PERSECUTION

146. The various transgressions inflicted upon the critics and opponents of the regime over the course of months of protesting in Belarus—use of force against peaceful protestors; killing and enforced disappearance; unlawful/arbitrary detention; torture and serious ill treatment, including the denial of medical assistance; denial of due process; denial of other fundamental rights and harassment—amount to severe deprivations of fundamental rights contrary to international law. This conduct has been committed in connection with—indeed, it has been the impetus for—the population displacement (deportation) that was to follow. There is no question that critics and opponents of the regime have been (objectively and subjectively) identified and targeted on political grounds.<sup>237</sup> As members, supporters, protestors, bloggers, online activists and advocates, those targeted have made no secret of their political opinion about the regime. Thus, there is a reasonable basis to believe that, since at least June 2020, Belarusian state actors have committed coercive acts and severe deprivations of fundamental human rights that qualify as the crimes against humanity of persecution on political grounds under Article 7(1)(h) of the ICC Statute.

### A. Applicable Law

147. As part of a widespread or systematic attack on the civilian population, '[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender [...], or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court' may be qualified as a crime against humanity.<sup>238</sup> At the ICC, persecution 'means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity'.<sup>239</sup>

148. Persecution is committed either through a single act or a series of acts.<sup>240</sup> Not every infringement of human rights amounts to persecution, but only a 'severe deprivation' of a person's 'fundamental rights contrary to international law'. Fundamental rights may include a variety of rights, whether derogable or not, such as the right to life; the right not to be subjected to torture or cruel, inhuman, or degrading treatment; and freedom of expression, assembly, and association.<sup>241</sup>

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237 Myanmar Article 15 Decision, para 102 (citing relevant ICL).

238 ICC Statute, Article 7(1)(h); *see also* ICC Elements of Crimes, Article 7(1)(h), Crime against humanity of persecution, Elements: 1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights. 2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such. 3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law. 4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court. 5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

239 ICC Statute, Article 7(2)(g).

240 Burundi Article 15 Decision, para 130.

241 Myanmar Article 15 Decision, para 101 (citing Burundi Article 15 Decision, para 132).

149. The targeted group or collectivity must be identifiable by any of the characteristics mentioned in article 7(2)(g) of the Statute. In assessing whether a group is identifiable, a mixed approach may be adopted, considering both objective and subjective criteria.<sup>242</sup> As regards the subjective criteria, the perception of the group by the perpetrator as well as the perception and self-identification of the victims may be considered.<sup>243</sup>
150. The notion of persecution on political grounds includes the targeting of civilians on the basis of their political opposition, whether *actual or perceived*, to a particular regime or its leader.<sup>244</sup> Victims of political persecution are not required to be members of a political party or group.<sup>245</sup> Where individuals are targeted, it must be specifically because of their *actual or perceived* association with that group<sup>246</sup> or, simply, their *actual or perceived* political opinions.<sup>247</sup> It is the perpetrator's *subjective* identification of the group or collectivity that matters; this would include those 'defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies'.<sup>248</sup>

## B. Relevant Facts

151. As set out in greater detail above, Belarusian authorities have engaged in a violent and sustained attack against opponents and critics of the Lukashenko regime since at least June 2020 (earlier waves of attacks on critics and opponents took place in 2010 and 2016). State actors have severely impinged upon the victims' right to freedom of assembly, with law enforcement authorities and security forces violently dispersing peaceful protests and using excessive, unnecessary, and indiscriminate force—including rubber bullets, flash grenades, stun guns as well as lethal weapons—against the protesters with the apparent intention of harming them physically, as well as intimidating and discouraging them from exercising their right to assemble peacefully.
152. Violent interventions of law enforcement authorities have resulted in serious injuries and even fatalities among protesters, with up to six people reported to have died during protests, in detention or as result of enforced disappearances. Belarusian authorities have failed to investigate allegations of enforced disappearances and have deprived victims' family members of the information needed to ascertain the whereabouts of their loved ones.

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242 Myanmar Article 15 Decision, para 102 (citing relevant ICL).

243 Myanmar Article 15 Decision, para 103 (citing relevant ICL).

244 Ivory-Coast Article 15 Decision, paras 204–206 (In the Ivory-Coast Case, ICC PTC I determined that at least 316 victims of murder, rape, and other inhumane acts committed by pro-incumbent forces 'were targeted by reason of their identity as perceived political supporters of [the opposition]'. Such targeting was found to have been based on political and other grounds.); *ibid*, para 274 (As the Chamber put it: 'The victims of these crimes were targeted because they were perceived to be members of Alassane Ouattara's political groups or his supporters or because they lived in neighborhoods of Abidjan believed to be Ouattara strongholds. [...] Laurent Gbagbo and other members of the common plan perceived all members of the abovementioned political [and other] groups as supporters of Alassane Ouattara.')

245 Gerhard Werle, *Principles of International Criminal Law*, 2nd Ed, 2009, para 907.

246 *Ibid*, paras 890, 899.

247 ICC-01/11-12, *Situation in Libyan Arab Jamahiriya*, Pre-Trial Chamber I, 'Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi', 27 June 2011, para 65; *ibid*, paras 42–64 (Those who were described by the PTC as targeted persons included activists and demonstrators against the Abo Sleem massacre, writers and journalists perceived as dissidents, recipients of banned television frequencies, protestors against arrests of activists, and members of a funeral procession for murdered dissidents.)

248 *Prosecutor v Naletilić and Martinović*, Trial Chamber, 'Judgment', 31 March 2003, para 636.

153. The authorities have carried out arbitrary, indiscriminate, and unlawful detentions of peaceful protesters, passers-by, observers and other vocal activists and *actual or perceived* critics and opponents of the Lukashenko regime. In addition to riot and regular police, plainclothes police officers with no signs of identification have played an active role in these round-ups, police harassment in victims' homes and workplaces and public spaces. Other agents and employees of Belarus' state machinery – including managers of state-owned enterprises, heads of education institutions, social services, banking services, housing services and others – have contributed to the harassment, intimidation and deprivation of fundamental rights of those who are perceived to resist the regime's attempt to hold on to power.
154. People detained in connection with peaceful protests have been subjected to torture and other serious ill treatment at the hands of law enforcement and state security. Detainees have been 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.
155. The authorities have failed to comply with international standards guaranteeing fair trial and due process rights to protesters. Many court hearings have been hastily convened and held behind closed doors inside detention facilities. This has prevented defendants from arranging for effective legal counsel and preparing their defence, while also preventing public scrutiny of the proceedings.
156. 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 publicizing information about the harsh response of the authorities to the post-election protests.
157. All of the above-stated deprivations, combined with direct or indirect expulsions of prominent critics and opponents, have contributed to an increasingly coercive environment calculated to force those who refused to yield to the regime to flee Belarus. The regime's campaign of repression has resulted in the forced displacement of at least 14,000 citizens of Belarus – all defined by their political opposition, whether *actual or perceived*, to the regime or its leader.

## C. Analysis

158. Based on the facts presented, there is a reasonable basis to believe that persecution against the opposition—an identifiable group or collective—took place on political grounds, in connection with the crime against humanity of deportation.<sup>249</sup> The various violations discussed throughout this filing amount to the intentional and severe deprivation of fundamental rights contrary to international law, by reason of the victims' actual or perceived opposition to the regime.<sup>250</sup>
159. The various transgressions inflicted upon the critics and opponents of the regime over the course of months of protesting in Belarus—use of force against peaceful protestors; killing and enforced disappearance; unlawful/arbitrary detention; torture and serious ill treatment, including the denial

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249 ICC Statute, Article 7(1)(h).

250 ICC Statute, Article 7(2)(g).

of medical assistance; denial of due process; denial of other fundamental rights and harassment—amount to severe deprivations of fundamental rights contrary to international law. These include: the right to life; the right not to be subjected to torture or cruel, inhuman, or degrading treatment; freedom of expression; freedom of assembly and association; the right to due process and the right to private and family life.<sup>251</sup>

160. There is no question that critics and opponents of the regime have been (objectively and subjectively) identified and targeted on political grounds.<sup>252</sup> As members, supporters, protestors, bloggers, online activists and advocates, those targeted have made no secret of their political positions and allegiances. The perpetrators have demonstrably perceived the group as opponents, and the victims self-identify as such.<sup>253</sup> A straightforward political rivalry—pro-Lukashenko versus anti-Lukashenko—has permeated the elections and their violent aftermath.

161. The persecutory conduct described throughout this filing has been committed in connection with—indeed, it has been the impetus for—the population displacement (deportation) that was to follow. On this point, the record is clear: the deportee victims fled Belarus for no other reason than violent and sustained targeting and the coercive environment created by the regime. Those who fled across international borders did so in response to the regime’s persecution.

## D. Conclusion

162. There is a reasonable basis to believe that the alleged coercive conduct leading to the forced displacement of thousands of opponents and critics of the Lukashenko regime was directed against an identifiable group or collectivity. Further, based on the available information, there is a reasonable basis to believe that the targeting was based on political grounds.<sup>254</sup> On the available information, there is a reasonable basis to believe that, since at least June 2020, Belarusian state actors have committed coercive acts and severe deprivations of fundamental human rights that qualify as the crimes against humanity of persecution on political grounds under Article 7(1)(h) of the ICC Statute.<sup>255</sup>

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251 Myanmar Article 15 Decision, para 101 (citing Burundi Article 15 Decision, para 132).

252 Myanmar Article 15 Decision, para 102 (citing relevant ICL).

253 Myanmar Article 15 Decision, para 103 (citing relevant ICL).

254 See Myanmar Article 15 Decision, para 109. *Nb.* ‘It is for the investigation to determine whether or not this was actually the case. The Chamber reiterates the need to obtain further clarity on the contours of the group-identity in question as well as the basis of the alleged targeting.’ *Ibid* (internal citations omitted).

255 See Myanmar Article 15 Decision, para 110.

## VIII. ADMISSIBILITY

163. The admissibility assessment at the ICC includes three components: complementarity, gravity and the interest of justice.<sup>256</sup> At the preliminary examination stage, the Prosecutor must demonstrate to the requisite standard that any potential future case arising from a requested investigation would satisfy these three criteria. The assessment of the three admissibility criteria is therefore limited to a basic overview at this stage.

### A. Complementarity

164. According to the principle of complementarity, ICC prosecutions are impeded in cases that are, or have been, subject to genuine proceedings by other competent authorities.<sup>257</sup> The key question is whether there are any relevant and genuine national investigations or prosecutions in relation to the criminal conduct in question.<sup>258</sup> The assessment must be case specific, namely, whether existing national proceedings encompass the same persons, for the same conduct, as are being investigated and prosecuted by the ICC. The ICC Appeals Chamber has confirmed that this assessment cannot be undertaken on the basis of hypothetical national proceedings that may or may not take place in the future: it must be based on the concrete facts as they exist at the time. The absence of any national proceedings is sufficient to render a case admissible.<sup>259</sup> Only if there are relevant national proceedings, shall the Prosecutor then assess ‘whether such national proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings’.<sup>260</sup> In any case, prior to the identification of specific suspects or charges, the inquiry is largely premature.<sup>261</sup>

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256 See ICC Statute, Article 17(1) (‘Having regard to paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3; (d) The case is not of sufficient gravity to justify further action by the Court.’); ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, paras 42 *et seq*; ICC-OTP, Report on Preliminary Examination Activities 2019, 5 December 2019, para 5.

257 ICC Statute, Article 17(1)(a)–(c).

258 ICC-01/04-01/07, Situation in the Democratic Republic of Congo, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Appeals Chamber, ‘Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case’, 25 September 2009, para 78.

259 *Ibid* (‘It follows that in case of inaction, the question of unwillingness or inability does not arise; inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) renders a case admissible before the Court, subject to article 17 (1) (d) of the Statute. This interpretation of article 17 (1) (a) and (b) of the Statute also finds broad support from academic writers who have commented on the provision and on the principle of complementarity.’)

260 ICC-01/11-01/11, Situation in Libya, *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Pre-Trial Chamber I, ‘Decision on the Admissibility of the Case Against Abdullah Al-Senussi’, 11 October 2013, para 210; *see also* ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 49.

261 *See* Myanmar Article 15 Decision, para 115 (‘Given the open-ended nature of the Request—there are at present no specific suspects or charges—and the general nature of the available information, the Chamber sees no need to conduct a detailed analysis, as this would be largely speculative.’); *ibid*, para 116 (‘Moreover, specific challenges to the admissibility of specific cases can be brought at a later stage, pursuant to article 19 of the Statute’); *ibid*, para 117 (‘The Chamber therefore does not consider it necessary to assess complementarity at this point in time. It suffices to note that, on the basis of the currently available information, there is no indication that any potential future case would be inadmissible.’)

165. Based on the available information at the time of filing, there are no known completed, pending, or planned domestic investigations or prosecutions by any competent authority related to *the specific allegations* contained in this Communication. Accordingly, the issue of complementarity currently presents no obstacles to the Prosecutor proceeding with the inquiries proposed in this Communication.

## B. Gravity

166. A case may be inadmissible at the ICC when it is ‘not of sufficient gravity to justify further action by the Court’.<sup>262</sup> An assessment of gravity is based on the scale, nature, and manner of commission of crimes, as well as their impact.<sup>263</sup>

167. Scale refers to the number of direct and indirect victims, the extent of the damage caused by the crimes, in particular the bodily or psychological harm caused to the victims and their families, or their geographical or temporal spread. The nature of the crimes refers to the types of crimes committed and to specific elements of each offence. The manner of commission requires an examination of the means employed to execute the crime, the degree of participation and intent of the perpetrator, the extent to which the crimes were systematic or resulted from a plan or organized policy or otherwise resulted from the abuse of power or official capacity, and elements of particular cruelty, including the vulnerability of the victims and any discriminatory motives. The impact of crimes refers to the suffering endured by the victims, their increased vulnerability; the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.<sup>264</sup>

168. As noted above, just as the Prosecutor will be permitted to consider extra-jurisdictional matters with respect to its assessment of the contextual elements, events falling outside the ICC’s jurisdiction may also be considered for purposes of the gravity determination.<sup>265</sup>

169. The crimes and human rights deprivations alleged in this Communication are grave ones. The scale, nature, manner, and impact of this conduct are considerable. At the time of filing, several people have been killed, an estimated 33,000 arrested with many ill-treated and tortured in police detention, and thousands have been driven out of the country. The crimes alleged have been committed with obvious brutality, by way of oppressive means and evident cruelty, and pursuant to a systemic program of governmental abuse of power—all with discriminatory motives against a body of peaceful civilian protestors, activists and journalists exercising their political rights under international and domestic law. According to the victims themselves, the impact of these crimes has been enormous: the terror of violence and confinement marked by physical and psychological suffering in Belarus, the persistent harassment, intimidation and denial of fundamental rights beyond the criminal justice system, and the indignity of forced displacement across international borders, including the separation from family, friends, and community. In its effort to maintain grip on power, the Lukashenko regime has unleashed an attack on the civilian population of Belarus that affects every household, business and

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262 ICC Statute, Article 17(1)(d).

263 ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 61; ICC-02/05-02/09-243-Red, Situation in Darfur, *Prosecutor v Bahar Idriss Abu Garda*, Pre Trial Chamber I, ‘Decision on the Confirmation of Charges’, 8 February 2010, para 31.

264 ICC-OTP, Policy Paper on Preliminary Examinations, November 2013.

265 Comoros Article 53 Decision, para 17 ([T]he Court has the authority to consider all necessary information, including as concerns extra-jurisdictional facts for the purpose of establishing crimes within its competence *as well as their gravity.*) (emphasis added).

organisation. Families have been threatened with separate from their children, young people deprived of an education, workers of their employment. Thousands have been deprived of their liberty. Many more live in fear of harassment and repression.

170. Accordingly, the gravity of the criminal conduct presented by this Communication satisfies the requirements of Article 17(1)(d) of the ICC Statute for present purposes.

## C. Interests of Justice

171. Article 53(1)(c) of the ICC Statute provides that the Prosecutor shall consider whether, 'taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation *would not serve* the interests of justice'. Unlike jurisdiction and admissibility, which require an affirmative finding, the 'interests of justice' is a countervailing consideration: the Prosecutor must assess whether there are substantial reasons to believe that an investigation would not serve the interests of justice.<sup>266</sup> According to the Prosecutor's stated practice, 'there is a strong presumption that investigations and prosecutions will be in the interests of justice, and therefore a decision not to proceed on the grounds of the interests of justice would be highly exceptional'.<sup>267</sup> In making a determination, the Prosecutor 'will consider, in particular, the interests of victims, including the views expressed by the victims themselves as well as by trusted representatives and other relevant actors'.<sup>268</sup>

172. Until very recently, this issue had been a straightforward and uncontroversial one at the ICC. Following a brief appellate interval triggered by a PTC ruling that sought to alter the Prosecutor's

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266 ICC-OTP, Report on Preliminary Examination Activities 2019, 5 December 2019, para 8. *See also* ICC Statute, Article 53(1) (regarding '[i]nitiation of an investigation') ('The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether: [...] (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.');

ICC-01/09, *Situation in the Republic of Kenya*, PTC II, 'Request for authorisation of an investigation pursuant to Article 15', 26 November 2009, paras 60, 63.

267 ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 71.

268 ICC-OTP, Policy Paper on Preliminary Examinations, November 2013, para 68. *Nb.* Such actors include community, religious, political or tribal leaders, States, and intergovernmental and non-governmental organisations. *Ibid.*

approach,<sup>269</sup> the status quo ante has been restored.<sup>270</sup> In reaffirming the Prosecutor's historical methodology, the ICC Appeals Chamber found that when proceeding *proprio motu* pursuant to Article 15, the OTP has great discretion.<sup>271</sup> In such cases, its determinations regarding the interests of justice shall not be subject to PTC review.<sup>272</sup> Moreover, the Appeals Chamber took the opportunity to emphasize a number of points,<sup>273</sup> two of which are worth noting: (i) As Article 53(1) is formulated in the negative, the Prosecutor 'need not affirmatively determine that an investigation would be in the interests of justice'.<sup>274</sup> (ii) A key aspect of the assessment is 'the gravity of the crimes and the interests of victims as articulated by the victims themselves'.<sup>275</sup>

173. To the Filing Parties' best knowledge, there is no reason to believe that an investigation into the conduct described in this Communication would not serve the interests of justice. In fact, there is every reason to believe that accountability for the violence and ruthlessness perpetrated by the Belarusian authorities over the last eight months is overdue. The impact of this conduct has serious and long-lasting ramifications on the lives of individual victims as well as groups and communities residing in Belarus and beyond. Relevant stakeholders—including representatives of the victims, as well as international and domestic civil-society organizations in Belarus and around the world—support a full investigation into responsibility for the crimes against humanity alleged herein, with a view to bringing the perpetrators to justice before the ICC.

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269 For many years, the OTP had operated under a highly permissive approach. See ICC-02/17, Situation in the Islamic Republic of Afghanistan, PTC II, 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan', 12 April 2019 (the 'Afghanistan Article 15 Decision'), para 87 ('The Prosecution, consistently with the approach taken in previous cases, does not engage in detailed submissions on the matter and simply states that it has not identified any reason which would make an investigation contrary to the interests of justice.') Nevertheless, Pre-Trial Chamber II introduced a measure of ambiguity in a major departure from previous practice, imposing additional tests where none had previously existed. Afghanistan Article 15 Decision. However, in the ICC's most recent confirmation decision, a different PTC adhered to the previous OTP practice without even a passing mention of PTC II's Afghanistan decision. In the more recent case, PTC III accepted the OTP's submission that it had 'identified no substantial reasons to believe that an investigation into the situation would not be in the interests of justice' and simply found 'no reason to disagree'. Myanmar Article 15 Decision, para 119 (internal citations omitted). Notably, PTC III stated that its 'view [was] reinforced by the fact that, according to the Registry's Final Consolidated Report, "all victims representations state that the victims represented therein want the Prosecutor to start an investigation in the Situation"'. *Ibid.* The Afghanistan Article 15 Decision was appealed by the OTP.

270 ICC-02/17, Situation in the Islamic Republic of Afghanistan, Appeals Chamber, 'Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan', 5 March 2020 (the 'Afghanistan Appeal Decision').

271 Afghanistan Appeal Decision, paras 30, 31.

272 Afghanistan Appeal Decision, paras 34–46.

273 Afghanistan Appeal Decision, para 48 ('Having determined in relation to the Prosecutor's first ground of appeal that the Pre-Trial Chamber erred in considering the 'interests of justice' when deciding on the Prosecutor's Request, the Appeals Chamber sees no need to address the Prosecutor's second ground of appeal. However, the interpretation given to the term 'interests of justice' as it appears in article 53(1)(c) of the Statute by the Pre-Trial Chamber has been the subject of extensive submissions before the Appeals Chamber and has provoked much commentary from the academic community and civil society. The concept of the 'interests of justice' is of significance under the Statute, particularly for the Prosecutor who remains obliged to consider it in her assessment under articles 15(3) and 53(1) of the Statute. For this reason, the Appeals Chamber is of the view that it is appropriate to provide some observations on the Pre-Trial Chamber's approach to this concept.')

274 Afghanistan Appeal Decision, para 49.

275 Afghanistan Appeal Decision, para 49.

## IX. CONCLUSION AND REQUEST

174. Between June 2020 and March 2021, the Lukashenko regime has unleashed a campaign of repression against critics and opponents of his rule. An estimated 33,000 have been arrested, many have been subjected to violence, torture and inhuman treatment and arbitrary detention. Those who refuse to yield to the regime are harassed by law enforcement and other government agents, threatened with losing their jobs, custody of their children, their assets, homes and businesses. Leaders of the democratic opposition have been detained and physically expelled from Belarus by the authorities. Other vocal opponents, critics and organisers of weekly protests have been charged with serious crimes for which they face lengthy terms of imprisonment. At least six persons have lost their lives as a result of the regime's conduct. According to official figures, some 14,000 citizens of Belarus have fled the country since the August election.
175. On the basis of all available information, the filing parties aver that the situation in Belarus qualifies as a widespread or systematic attack on the civilian population of Belarus pursuant to a State policy to commit such an attack. As part of that attack, the Lukashenko regime has forcibly deported thousands of citizens through physical expulsion, threats of arrest, violence and other coercive acts and the creation of a coercive environment calculated to suppress dissent and/or displace all critics and opponents of the regime. Furthermore, the alleged coercive conduct leading to the forced displacement of thousands of opponents and critics of the Lukashenko regime was directed against an identifiable group or collectivity and was based on political grounds.
176. As such, there is a reasonable basis to believe that since at least June 2020, the Lukashenko regime has perpetrated the crime against humanity of deportation under Article 7(1)(d) of the ICC Statute and the crimes against humanity of persecution on political grounds under Article 7(1)(h) of the ICC Statute.
177. Based on the available information at the time of filing, there are no known completed, pending, or planned domestic investigations or prosecutions by any competent authority related to the specific allegations contained in this Communication. The gravity of the criminal conduct presented by this Communication meets the requirements of Article 17(1)(d) of the ICC Statute for present purposes. To the Filing Parties' best knowledge, there is no reason to believe that an investigation into the conduct described in this Communication would not serve the interests of justice.
178. For the foregoing, the filing parties respectfully request the ICC Prosecutor to conduct a preliminary inquiry into the situation in Belarus (and Lithuania, Latvia, Poland and Ukraine), with a view to seeking authorisation to open a full investigation into the alleged crimes.

Done in London, Oslo and Brussels on 10 May 2021.