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International Mechanisms for Accountability for Human Rights Violations in Belarus

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Summary

Since the fraudulent presidential election in August 2020, the authorities in Belarus have committed serious violations of human rights and crimes against humanity in an attempt to hold to power and to suppress any civil activism. These have reached the level of crimes against humanity due to their severity and systematic nature. As international crimes and serious human rights violations, especially massive torture, they represent violations of peremptory norms of international law that create obligations for other states to take measures to stop them and to hold their perpetrators accountable.

Since August 2020, various stakeholders have already taken several measures and invoked international mechanisms to develop legal processes related to accountability. The measures by the international community and civil society include documentation and investigation by NGOs, civic tech initiatives, the OSCE Moscow and Vienna mechanisms, the International Accountability Platform for Belarus, and the OHCHR mandate. There have also been legal proceedings initiated by other states.

There are also various other mechanisms for individual and state responsibility that could be invoked to bring those responsible for international crimes and violations of international law to justice and to stop the ongoing violations in Belarus. These included mechanisms for individual criminal responsibility such as the International Criminal Court, ad hoc tribunals, and universal jurisdiction. They also include mechanisms for state responsibility such as the International Court of Justice (ICJ) and UN treaty bodies' inter-state procedures. While Belarus has not recognized *ipso facto* jurisdiction of the ICJ, the jurisdictional clause in the following treaties—the Convention against Torture, the Convention on the Elimination of All Form of Discrimination Against Women, the International Civil Aviation Organiza-

tion and the Chicago Convention for Civil Aviation—could be used to start proceedings in ICJ. There are also other possible accountability mechanisms under international labor law, international migration law, and international sport law.

This paper is the first comprehensive overview of international legal mechanisms applicable to the situation in Belarus. It aims to bring new ideas for holding Belarusian state officials responsible for crimes committed and provide the foundation for strategic discussions and coordination of further legal actions. It is also part of a broader discussion about effective instruments for prosecution for human rights violations and the fight against impunity for authoritarian regimes. The paper offers recommendations for Belarusian and international civil society organizations, groups, and human rights lawyers; for foreign governments; for intergovernmental organizations; for foreign and Belarusian media organizations; and for Belarusian political forces and groups.

With the total crackdown on civil society and any dissident voices in Belarus, international accountability mechanisms are one of the instruments left that might change the situation in the country. Since the 2020 presidential election, Belarus has demonstrated that impunity invites more and graver crimes. The Lukashenka regime has also started to pose a threat to the security of neighboring states, including EU member states, as well as to Belarusian society.

Other states should take seriously their obligations to seek individual or state responsibility for violations of human rights in Belarus. The use of any of the mechanisms described in this paper would be a meaningful intervention in the crisis and might help to change the course of events. It would also provide an important background for comprehensive investigations and trials at the national or hybrid level when the regime falls and comprehensive transitional justice becomes possible.

Introduction

The human rights crisis in Belarus has reached an unprecedented level. The large-scale torture, murders, and arrests of thousands of peaceful protesters in the summer and autumn of 2020 have been followed by thousands of politically motivated criminal prosecution cases. The independent media, civil society, and businesses are suffering from regularly initiated criminal cases, inspections, forced closures, and other unlawful state interventions. Legal and institutional changes—legislation on media, political parties, and extremism—have also been introduced with the intent to destroy the remnants of civil society and to bring everything under unfettered governmental control. These developments have armed Belarus's authoritarian regime with totalitarian features and make it less controllable.

In view of the serious human rights crisis in Belarus, the international community—mainly the EU member states—responded with non-recognition of the official results of presidential election of August 9, 2020 and the incumbent government, sectoral and individual sanctions against state officials, and support to victims of human rights violations as well as to civil society and independent media. However, the issue of bringing perpetrators of international crimes and human rights violations to responsibility remains largely untouched.

One of the main obstacles is that no existing international mechanism could fully address the situation in Belarus. In a manner typical to most authoritarian regimes, the country has not submitted itself to jurisdiction of any international judicial or quasi-judicial institution. Nonetheless, during the last year several initiatives and legal proceedings have been launched to react to the crisis.

An effective legal response to the crisis in Belarus is particularly urgent to stop the worsening repression. It would be a particularly important precedent at a time when many authoritarian or authoritarian-leaning regimes similarly commit serious human rights violations and international crimes while enjoying absolute

impunity and citing national sovereignty. Impunity leads to new crimes, population displacements, suffering, and deaths. The discussion about accountability for crimes committed in Belarus is a part of broader conversation about effective instruments for prosecution for human rights violations and the fight against impunity for authoritarian regimes.

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This paper focuses on legal ways and mechanisms of responding to the crisis in Belarus. The first section sets out how the situation in Belarus has escalated to the level of international crimes. This is followed by a description of measures already taken by the international community to establish accountability for international crimes committed in the country. The third section examines available international legal mechanisms that could apply to the situation of Belarus, looking at the advantages and disadvantages of each and how each could be invoked.

This paper is the first comprehensive overview of international legal mechanisms applicable to the situation in Belarus. It aims to bring new ideas for holding Belarusian state officials responsible for crimes committed and provide the foundation for strategic discussions and coordination of further legal actions. It is also part of a broader discussion about effective instruments for prosecution for human rights violations and the fight against impunity for authoritarian regimes.

A team of Belarusian lawyers with expertise in human rights and international law, and currently working on promotion of justice and accountability for Belarus, prepared this first comprehensive overview on the topic. Their names could not be disclosed for security reasons.

The Worsening Human Rights Situation

Belarus became independent from the Soviet Union in 1991. Four years later, Alexander Lukashenka came to power as a result of the country's first and last free presidential election. He positioned himself as a young independent politician, fighting corruption and promising stability. However, he soon started to concentrate power in his hands, eliminating the political opposition, free media, and civil society.

Originally allowed to serve for only two presidential terms, Lukashenka organized referenda on amending the constitution in 1996 and 2004 to allow him to stay in power. Although their holding and results were contested, these allowed him to run for president indefinitely and widened the extent of presidential powers, effectively turning Belarus into a presidential republic. Lukashenka's presidency has been marked by authoritarianism, oppression, and human rights violations. The allegations against the regime range from state-sponsored and politically motivated murders¹ to routine election fraud.² Although crackdowns and persecution of dissenters have been common, the regime's response to the peaceful protests in 2020 has arguably been the most brutal.

The Situation since August 2020

The presidential election on August 9, 2020 was held in a context of continuous intimidation, harassment, and repression of the opposition, leading to the arrests

of approximately 1,500 individuals ahead of the poll.³ According to Human Rights Defenders for Free Elections and the Organization for Security and Co-operation in Europe (OSCE), the electoral process at all stages failed to comply with international standards of democratic and fair elections and violated political rights.⁴ When Lukashenka declared himself to be re-elected with 80 percent of the votes, despite ample evidence of electoral fraud,⁵ this mobilized Belarusians to take their demands for free and fair elections to the streets.

In response the authorities unleashed an extensive, brutal, and disproportionate crackdown on peaceful protesters, leading to mass arrests, torture, and ill-treatment of thousands. The repression was particularly harsh immediately after the election with 3,000 arrests reported in the first 48 hours.⁶ The Ministry of Internal Affairs reported 6,700 arrests nationwide between August 9 and 12.⁷ Several national and international NGOs as well as UN experts estimate

1 DW, Belarus: How Death Squads Targeted Opposition Politicians, December 1, 2019.

2 OSCE/ODIHR Election Observation Mission Final Report, [Presidential Election in the Republic of Belarus, October 11, 2015](#), January 28, 2016; OSCE/ODIHR Election Observation Mission Final Report, [Presidential Election in the Republic of Belarus, December 19, 2010](#), February 22, 2011; OSCE/ODIHR Election Observation Mission Final Report, [Presidential Election in the Republic of Belarus, March 19, 2006](#), June 7, 2006; OSCE/ODIHR Election Observation Mission Final Report, [Presidential Election in the Republic of Belarus, September 9, 2001](#), October 4, 2001.

3 United Nations Human Rights High Commissioner, [Statement of Mrs. Anaïs Marin, UN Special Rapporteur on the situation of human rights in Belarus, at the Urgent Debate on the situation of human rights in Belarus Human Rights Council 45th session](#), September 18, 2020; OSCE, [OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#), November 5, 2020, p. 32; Amnesty International, [Belarus: Full-scale Attack on Human Rights ahead of presidential Election](#), June 29, 2020.

4 Human Rights Defenders for Free Elections, [Republic of Belarus. Presidential Election. August 9, 2020. Preliminary Report on Election Observation](#), August 11, 2020; Human Rights Defenders for Free Elections, [Republic of Belarus. Presidential Election. August 9, 2020. Final Report on Election Observation](#), December 9, 2020.

5 "Falsifications at Every Third Polling Station: 'Golos' Questioned the Results of Election in Belarus, Announced by the Central Electoral Commission," Current Time, August 11, 2020; Kostya Manenkov and Daria Litvinova, "Belarus Poll Workers Describe Fraud in Aug. 9 Election," The Washington Post, September 1, 2020; OSCE, Wolfgang Benedek, "OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus," October 29, 2020, p. 21.

6 World Organization against Torture (OMCT), [Halt Violence Against Peaceful Protesters and Restore Internet Access](#), August 11, 2020.

7 [Official Telegram channel of the Ministry of Internal Affairs of Belarus](#), undated.

that number to be around 7,000.⁸ The violence by the authorities in the first days of the protests transformed the agenda of the demonstrators, who started demanding not only a new election but also an end to killings, torture, and political persecution and justice for victims.

The situation was then less tense for two weeks but in September harsh repression and arbitrary detention restarted, and they have sporadically continued since. Every third detainee faces physical violence, relatives are not informed about detention, the majority of trials take place outside courtrooms or via video, and detention conditions are inhuman.⁹ Since August 2020, more than 40,000 persons have been detained for taking part in peaceful assemblies.¹⁰ In July 2021, the authorities declared that criminal cases under charges of “terrorism” or “extremism” numbered more than 4,200,¹¹ and there were more than 4,600 criminal cases related to the violations of conducting mass events, such as demonstrations.¹² As of the beginning of November 2021, the number of political prisoners was 850. In July 2021, more than 270 independent NGOs and 94 legal offices were forced to shut down as part of the campaign by the state bodies to “clean up” civil society space.

In 2021, the authorities intensified the financial, legal, and political pressure on independent media outlets and journalists. Prominent media outlets and their leaders have been declared “extremist” and shut down, with their staff imprisoned or fined.

Other websites have been blocked. The accreditations for foreign media workers have not been renewed. Raids on newsrooms and arrests of journalists have happened on a near-weekly basis. It is evident that the authorities seek to dominate completely the information sphere, leaving citizens unable to access information beyond that provided by government-controlled propaganda organs.

The denial of justice to victims of torture is endemic in Belarus.

Despite the serious allegations of human rights violations, including torture and ill-treatment of those imprisoned, the authorities have failed to open any effective investigation into violence committed by police officers and state officials. By September 9, 2020, the Investigative Committee had received 1,800 complaints about “bodily injuries,” and yet as of December 31 not a single case had been opened.¹³ On February 21, 2021, the UN High Commissioner for Human Rights noted that preliminary investigation bodies in Belarus had received 4,644 complaints about the use of physical force and special measures by the law-enforcement agencies since the election.¹⁴

The victims who lodged official complaints have subsequently been subjected to police intimidation and judicial harassment, and they risk new detention or torture. The denial of justice to victims of torture is endemic in Belarus.¹⁵ That was widely demonstrated in 2021 by flagrant cases of political persecution. These include: the refusal to investigate the case of political prisoner and activist Mikola Dziadok, who was tortured in detention in November 2020 and

8 Human Rights Watch, [Belarus: Systematic Beatings, Torture of Protestors](#), September 15, 2020; International Partnership for Human Rights (IPHR), Truth Hounds and Civic Solidarity, [Belarus on Hold: Crackdown on Post-Election Protests, Findings of a Fact-finding Mission to Belarus](#), September 2020; United Nations Human Rights High Commissioner, Statement of Mrs Anaïs Marin.

9 Project 23–34.net, [Report on Human Rights Violations](#), based on analysis of more than 5,000 documented cases.

10 FIDH, [Mobilising for Justice in Belarus](#), 2021.

11 REFORM.by, [“Shved: Over 4,200 criminal cases are related to extremism and terrorism.”](#) Reformation, July 26, 2021.

12 REFORM.by, [“Investigative Committee initiated 4,691 criminal cases after protests.”](#) Reformation, July 30, 2021.

13 CAT Russia and OMCT, [Corridor of Truncheons. How Popular Demonstrations Are Met With Massive Police Violence and Denial of Justice](#), January 26, 2021.

14 OHCHR, [Enhanced Interactive Dialogue on the High Commissioner’s report on Belarus](#), February 25, 2021.

15 CAT Russia and OMCT, [Corridor of Truncheons](#); Amnesty International, [Belarus: “You Are Not Human Beings.” State-Sponsored Impunity and Unprecedented Police Violence Against Peaceful Protesters](#), January 2021.

described the details during his trial; the death of Vitold Ashurak on May 21, 2021 in unclear circumstances while serving a five-year term for participating in peaceful protests; the public “confession” interviews of the journalist and blogger Raman Pratasevich, who was detained after his Vilnius-bound plane was illegally forced to land in Minsk on May 23, 2021; and the suicide attempt in a courtroom by the activist and political prisoner Stsiapan Latypau on June 1, 2021 following his torture in a pre-trial detention center.

The legislative changes introduced in 2021 have further boosted the powers of the law-enforcement agencies and entrenched impunity.

While the persecution of dissidents, independent journalists, bloggers, and human rights defenders has been regular in Belarus since 1996, it has reached the level of state policy since 2020’s presidential election. The legislative changes introduced in 2021 have further boosted the powers of the law-enforcement agencies and entrenched impunity. For example, the changes introduced to the Law on Extremism and subsequent changes to the Administrative and Criminal Code considerably widened the definition of extremism, making it easy to bring to the court any dissident. Amendments to the Laws on Ensuring National Security extended the range of situations in which weapons can be used by the police and provided that law-enforcement officials cannot be liable for damage caused as a result of the use of physical force, special means, military or special equipment, or weapons if they were acting under the provisions of the law. The changes introduced in the legislation covering mass events, the media, and Bar Associations put all of them under strict state control.¹⁶ The regime is increasingly engaging in totalitarian practices.

¹⁶ Human constanta, [Human Rights Newsletter](#), May 19–21, 2021.

Legal Analysis of the Situation

Over the last two decades the following human rights violations have systematically been carried out in Belarus as a matter of policy¹⁷ to suppress any real or suspected dissenting voices and to keep Lukashenka’s regime in power:

- Extrajudicial executions, arbitrary killings, and other violations of the right to life
- Enforced disappearances
- Torture and inhumane treatment
- Arbitrary detentions and unfair trials in administrative and criminal procedures
- Massive violations of the freedoms of assembly, association, belief, expression, and the media
- Forced deportations and violations of the freedom of movement
- Violations of political rights and freedoms
- Discrimination and violations of others fundamental rights as well as social, economic, and cultural rights

All of these violations are intentional, committed by state bodies or at their command and instigation. In 2020–2021 a majority of high-ranking state officials made public statements in support of the policy of massive human rights violations.¹⁸ The government systematically ignores the recommendations of UN bodies, including on individual cases, the OSCE, and other international organizations. Not a single violation has been recognized and remedied at the national level for the last two decades. This became especially evident in 2020–2021, when no single criminal case was opened on the facts of torture in August 2020.¹⁹ On the contrary, victims of torture are prosecuted on

¹⁷ International Partnership for Human Rights (IPHR), [The Situation in Belarus: Crimes against humanity of deportation and persecution](#), May 19, 2021; International Committee on Investigation of Torture in Belarus, [Belarus: Crimes against Humanity](#), August 2021.

¹⁸ International Committee on Investigation of Torture in Belarus, [Belarus: Crimes against Humanity](#).

¹⁹ Euroradio, [Investigative Committee Refuses to Open Criminal Case for Torture on Akrestsin Street](#), August 26, 2021.

trumped-up charges.²⁰ The situation in the country has become well-known as one of “legal default”—a concept introduced by the lawyer and member of the opposition Coordination Council Maksim Znak that holds that the violations of Belarusian legislation by state bodies are so widespread and systematic that the law has stopped functioning and is used only to serve the current regime and repression.

Since 2020, the violations have reached the level of crimes against humanity due to their severity and systematic nature.²¹ According to the Rome Statute of the International Criminal Court, the notion of crimes against humanity includes the abovementioned human rights violations, committed multiple times and being a part of a widespread or systematic attack directed against a civilian population. The notion of “attack” applies not only to military attack, but also to policy to commit massive human rights violations.²²

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The prohibition of crimes against humanity and torture represents *jus cogens* norms or peremptory norms of international law.²³ These are norms accepted and recognized by the international community of states as those from which no derogation is permitted under any circumstances. They give rise to obligations *erga omnes*—that is, owed to the international community—in which all states have a legal interest in their

compliance.²⁴ When a state violates *erga omnes* obligations, any other state may invoke responsibility for the state committing these violations. Thus, states have a legal obligation to cooperate to bring to an end through lawful means any serious breach of *jus cogens* norms and not to recognize as lawful any such situations.²⁵

One of the most recent examples is the case brought by The Gambia against Myanmar in the International Court of Justice or the initiation of the legal procedure by the Netherlands against Syria in the court due to torture taking place in the country. Although these cases are at the initial stages of the legal process, they are important examples of an attempt to hold a state responsible for crimes of genocide and torture, despite such crimes taking place thousands of kilometers away from the applicant state.

In the case of Belarus, the breach of *jus cogens* norm is serious because of its systematic nature and numerous victims. Thus, torture and other systematic human rights violations in the country harm not only its citizens but also all other states, which are legally obliged to react and bring the violations to an end.

The former president of Lithuania’s Constitutional Court, Dainius Žalimas, has described the application of this principle in respect to the situation in Belarus in the following way:

The conditions must not be created for avoiding punishment for international crimes, including those currently committed in Belarus. I mean crimes against humanity, i.e. mass torture and mass persecution for political reasons against the Belarusian people who defend the rule of law and democracy. Universal jurisdiction is based on mandatory international legal norms defining international crimes as crimes against the entire international community and, thus, against the whole of humanity. Liability for them arises irre-

20 OMCT, [Belarus: No investigation into torture allegations and arrests of human rights defenders](#), April 14, 2021.

21 OMCT, [100 days of ongoing human rights crisis](#), November 18, 2020; IPHR, [The Situation in Belarus: Crimes against humanity of deportation and persecution](#), May 19, 2021.

22 International Criminal Court, [Elements of Crimes, Article 7, Introduction](#), undated.

23 International Law Commission, [Report 2019, Chapter V, “Peremptory norms of general international law”, Annex](#), undated.

24 Ibid, “Conclusion 17”.

25 United Nations, [Responsibility of States for Internationally Wrongful Acts](#), see Article 41, [2005](#).

spective of whether the law of the state in which the crimes are committed provides for relevant criminal liability. The international community has assumed the obligation to persecute the persons who commit these crimes.²⁶

Measures by the International Community and Civil Society

Since 1994, the Office for Democratic Institutions and Human Rights of the OSCE has found that no election was free and fair in Belarus. The international community has reached similar conclusions about the country's election results during last 27 years. There have also been severe human rights violations since Lukashenka's first presidential term, including detentions, torture, and enforced disappearances of citizens.

In 2020, the rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on ending enforced disappearances on the territory of the Council of Europe expressed outrage that taking part in the repression of demonstrators in Minsk was the senior security official Dmitry Pavlichenko, who has long been identified as one of the key suspects in the disappearances and presumed murders in 1999 of former interior minister Yuri Zakharenko, former vice-president of parliament Victor Gonchar, businessman Anatoly Krasovski, and Russian TV cameraman Dmitri Zavadski.²⁷

The significant deterioration in the human rights situation after the 2010 presidential election and the crackdown on opposition leaders, human rights groups, and independent media led the UN Human Rights Council to adopt Resolution 17/24 in 2011,²⁸ which mandates the high commissioner for human rights to monitor and report on the situation in the country.

In 2012, the Human Rights Council reestablished the mandate of the special rapporteur on the situation of human rights in Belarus its Resolution 20/13, which has since then been renewed each year.²⁹

Documentation and Investigation since August 2020

Since the beginning of the crackdown in August 2020, the main activities of international organizations, backed by other states, and civil society have been concentrated on the documentation of the numerous violations of human rights.

NGOs

Belarusian human rights organizations have documented the massive violations taking place in the country. Since then, the main actors in the field of documentation—the Human Rights Center Viasna and the International Committee on Investigation of Torture in Belarus—have documented more than 3,000 cases of torture and ill-treatment.

International organizations have also contributed to the reporting and documentation of human rights violations. In January 2021, the NGO Committee against Torture (based in Nizhny Novgorod, Russia) and the World Organization Against Torture published a report providing details of cases of torture and inhuman and degrading treatment committed by members of the security forces as well as of the ploys used by the authorities to ensure complete impunity for the perpetrators.³⁰

Other major reports have been published by the Human Rights Center Viasna,³¹ the International Committee on Investigation of Torture in Belarus,³²

26 IRKT news, Dainius Žalimas: there can be no impunity for international crimes, November 4, 2020.

27 Parliamentary Assembly of the Council of Europe, [PACE Rapporteur is outraged at Dmitry Palichenko is back the street](#), September 2, 2020.

28 UN Human Rights High Commissioner, [Resolution 17/24 Situation of human rights in Belarus](#), July 14, 2011.

29 UN Human Rights High Commissioner, [Special Rapporteur on the situation of human right in Belarus](#), undated.

30 CAT Russia and OMCT, Corridor of Truncheons.

31 In addition to the Human Rights Center Viasna, other major reports after the December 9, 2020, election have come from the Belarusian Helsinki Committee, the Belarusian Association of Journalists, the International Federation for Human Rights (FIDH) and the OMCT Belarus.

32 [International Committee on Investigation of Torture in Belarus](#), undated.

and Human Rights Watch.³³ These are based on situational research and interviews with numerous witnesses and victims, and they could be used as further arguments for the urgent need for an international mechanism to combat the impunity enjoyed by the perpetrators of violations.

Civic Tech Initiatives

The 2020 presidential election became the key factor in the emergence and development of civic tech initiatives in Belarus. Independent online platforms eased participation in the election process, verified votes, helped political prisoners, and documented crimes. Civic tech helped combat the mass human rights violations before, during, and after the election. Numerous initiatives have been engaged in the documentation of human rights violations.

The 23.34 special project, August 2020, BYPOL, Consolidated Book of Documenting Crimes, and Crime Accomplices initiatives are similar in their main function of documenting the violations of national and international law in Belarus but differ in methods. For instance, BYPOL, launched by former law-enforcement officers, publishes insider information on the authorities' strategies of countering protest. August 2020 and 23.34 concentrate primarily on collecting the testimonies of the victims of political repression. Consolidated Book of Documenting Crimes, launched by the National Anti-Crisis Management organization and BYPOL, collects the testimonies of victims and witnesses, as well as reports and confessions from law-enforcement officers for the purpose of future judicial proceedings. The City in Captivity initiative collects and visualizes data about detentions. Finally, a project on the civil control of judicial systems, launched via the ZUBR platform, focuses on monitoring judicial proceedings and systematizing information about judges and punishments imposed in politically motivated cases.

Although such civic tech initiatives can hardly persuade the authorities to abandon the use of repressive mechanisms, they unite civil society around the problems of political prisoners and arbitrarily detained citizens. Receiving legal assistance from experts, maintaining communication with prisoners, and documenting the facts of repression have turned from something that is difficult to do into something that can be done with a few clicks on a user-friendly and secure online platform.

The OSCE Moscow and Vienna Mechanisms

In the context of the 2020 presidential election and its aftermath, 17 participating states of the OSCE invoked the Moscow Mechanism—a tool aimed at addressing human rights concerns.³⁴ Under the mechanism, an expert mission was tasked with establishing facts and providing advice on possible solutions to the questions raised.

Although Belarus decided not to participate in the Moscow Mechanism process, the OSCE-appointed rapporteur completed his work and submitted his report in October 2020.³⁵ First, he concluded that “there were evident shortcomings of the presidential elections which did not meet the basic requirements established on the basis of previous election monitoring.” Second, the violations of human rights “were found to be massive and systematic and proven beyond doubt.” The rapporteur communicated recommendations to the Belarusian authorities. The report also contains recommendations to the international community on liability for human rights violations—namely “to establish an independent international body for the in-depth investigation of human rights violations in the context of the presidential elections with the help of forensic experts” and to “bring perpetrators of torture and inhuman treatment among the

33 Human Rights Watch, Belarus: Systematic Beatings, Torture of Protesters; Human Rights Center Viasna, [Human Rights Situation in Belarus in 2020: Analytical review](#), January 8, 2021.

34 OSCE, [Moscow Mechanism](#), 1993.

35 OSCE, [OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus by Professor Dr. Wolfgang Benedek](#), October 29, 2021.

Belarusian security forces and their responsible superiors to justice wherever possible.”³⁶

Belarus is a participating state in the OSCE and the latter’s stance on events there does not go unnoticed by the authorities. The Moscow Mechanism produced the first report by the OSCE to document massive human rights violations committed by the Belarusian government in 2020, and openly called on the international community to pursue further investigation and justice.

On November 4, 2021, almost a year after publication of the Moscow mechanism report on Belarus, 35 OSCE participating states invoked the Vienna Mechanism in relation to Belarus. This provides for exchange of information regarding the human rights situation in a country, and obliges the state that is addressed by the mechanism to provide the information inquired within a short time.³⁷ In relation to Belarus, the OSCE participating states required information in eight areas, including investigation of human rights violations, the situation of civil society and independent media, the facilitation of irregular migration, and the implementation of international organizations’ recommendations.³⁸ The response was required within 10 days, and the government of Belarus presented its information on November 12, 2021, which at time of writing has not been published. In reaction to the Belarus response on behalf of the 35 OSCE participating states that invoked the procedure, Norway expressed “regret that the content of their letter does not indicate a material change in the approach of the Belarusian authorities,” called on “the Belarusian authorities to reconsider their current approach to this crisis”, and suggested facilitating “a true national dialogue between the Belarusian authorities and representatives of the opposition and civil society.”³⁹

The International Accountability Platform for Belarus

The International Accountability Platform for Belarus (IAPB), initiated by international and Belarusian NGOs, was established in March 2021 as follow-up to the recommendations of the OSCE Moscow Mechanism rapporteur. It aims to collect, consolidate, verify, and preserve information, documentation, and evidence of severe human rights violations committed in the run-up to and aftermath of the 2020 election. It is led by the Danish Institute Against Torture DIGNITY with the Human Rights Center Viasna, the International Committee for the Investigation of Torture in Belarus, and REDRESS (in the United Kingdom) as co-leads. The IAPB comprises 14 Belarusian and international human rights organizations and is supported by 21 states, including ten European ones.

The material collected by the IAPB will be handed over to a UN mechanism for investigation when one is established. It will be used for future independent criminal investigations and criminal proceedings, in accordance with international law standards, in national, regional, or international courts or tribunals that have or may in the future have jurisdiction over those crimes.

The OHCHR Mandate

Since 2020, the UN Human Rights Council has reacted to the situation in Belarus, adopting Resolution 45/1 on September 2020⁴⁰ and Resolution 46/20 in March 2021,⁴¹ as well as discussing reports of the high commissioner on human rights⁴² and the special rapporteur on the situation of human rights in Belarus.⁴³

In Resolution 46/20, the Human Rights Council adopted a mandate on Belarus for the Office of the

36 Ibid., page 7, paras 3–4.

37 OSCE, [Vienna Mechanism, December 1, 1989](#).

38 United Kingdom Foreign, [Commonwealth and Development Office, Human rights in Belarus: 35 OSCE states invoke Vienna Mechanism](#), November 4, 2021.

39 Norway, [The Permanent Delegation to the OSCE](#), November 18, 2021.

40 Human Rights Council, [Resolution 45/1](#), September 2020.

41 Human Rights Council, [Resolution 46/20](#), March 2021.

42 UN News, [“Belarus Human Rights Situation deteriorating further, warns UN rights chief,”](#) February 25, 2021.

43 OHCHR, [Belarus: Massive human rights violations unprecedented in scope and gravity, says UN expert](#), July 5, 2021.

High Commissioner for Human Rights (OHCHR), and tasked it with further monitoring and investigation of human rights violations with the assistance of relevant experts. The mandate is limited to the collection, consolidation, preservation, and analysis of information and evidence. In accordance with the resolution, an oral update was presented by High Commissioner For Human Rights Michelle Bachelet during the session of the UN Human Rights Council in September 2021, focusing on the continued worsening of the human rights situation in Belarus.⁴⁴ The resolution also requests a comprehensive written report be presented at the Human Rights Council's session in March 2022.

The long-term goal of the mandate is to create further steps toward accountability depending on the results of its work. The information gathered may then be used to push the issue further along in the UN system, to take it to the International Criminal Court, or to serve as evidence for cases tried under universal jurisdiction in individual states. Even if such evidence is not used immediately for prosecutions, it is still of the utmost importance that it is gathered now, before it is lost, in order to establish a thorough record of events.

Legal Proceedings Initiated by Other States

While several measures have been taken by the international community since August 2020, criminal investigations within universal jurisdiction cases are the only real legal processes that are aimed at the prosecution of those who commit crimes against humanity and serious human rights violations in Belarus. Overall, universal jurisdiction gives possibility to initiate criminal investigations regarding the situation in other countries. While the legal background of these procedures are described in detail

in the next section, here the investigations that have already started are briefly described.

In December 2020, the Prosecutor General's Office in Lithuania initiated a pre-trial investigation into crimes against humanity committed by the Belarusian police against Belarusian citizens.⁴⁵ In view of the many Belarusian victims of human rights violations now residing in Lithuania, the number of criminal complaints against the Belarusian authorities is rising there. In May 2021, after the forced landing of a Ryanair flight in Minsk that resulted in the detention of the journalist and blogger Raman Pratasevich and his partner Sofia Sapega, Lithuania's prosecutor general on the basis of his universal jurisdiction started another investigation for "hijacking of plane with terrorist intent."⁴⁶

Criminal investigations within universal jurisdiction cases are the only real legal processes that are aimed at the prosecution of those who commit crimes against humanity and serious human rights violations in Belarus.

In September 2020, a criminal case was initiated in Poland related to the detention and torture the previous month of three journalists who are Polish citizens in Belarus.⁴⁷ Poland has also announced an investigation into the case of the forced landing of the Ryanair flight

In May 2021, the Public Prosecutor's Office in Germany announced that it would initiate a prelimi-

44 Michelle Bachelet, [Interactive Dialogue on the interim oral update of OHCHR on the situation of human rights in Belarus](#), Statement by the UN High Commissioner for Human Rights, OHCHR, September 24, 2021.

45 LRT, "[Lithuanian prosecutors launch probe into regime violence in Belarus](#)," LRT Newsletter, December 9, 2020.

46 Jūratė Damulytė, Augustas Stankevičius, Margiris Meilutis, "[General Prosecutor initiated investigation on the fact of plane hijacking](#)," Delfi, May 23, 2021.

47 Malwina Zaborowska, "[Three Poles detained and tortured in Belarus. The prosecutor's office opened an investigation](#)," RMF24, September 4, 2020.

nary inquiry into offences committed in Belarus.⁴⁸ On November 1, 2021, two international organizations—the European Center for Constitutional Law and Human Rights and the World Organization against Torture—filed a complaint to the Public Prosecutor’s Office in Germany against six law-enforcement officials of Belarus.⁴⁹

International Mechanisms Applicable to the Situation in Belarus

In recent decades, the images of atrocities and human rights violations brought to every house by modern media have led to an increase in demands for interventions to stop crises in different countries. Since the late 1990s, armed humanitarian intervention became one response, as seen in Serbia, Afghanistan, and Iraq. Other responses have included individual and sectoral economic sanctions and legal proceedings at the international, regional, and national levels as well as in hybrid tribunals.

Based on the international-law principles of equality and sovereignty, states can become subject only to those judicial proceedings for which they consented previously or ad hoc. In accordance with the UN Charter, the only exception is the UN Security Council, which is entitled to take coercive actions without the consent of the state that threatens or breaches international peace and security. That is why often responsibility for massive human rights violations or international crimes is invoked when a crisis, armed conflict, or authoritarian regime is over.

Belarus is a classic example of an authoritarian regime that does not allow automatic jurisdiction for international courts and does not ratify core international treaties that may trigger international responsibility. It has not agreed to the automatic jurisdiction of the International Court of Justice and has not ratified the Rome Statute of International Criminal Court. It

is not a member of the Council of Europe and thus the European Court of Human Rights does not have jurisdiction over the situation in the country.

Belarus is a classic example of an authoritarian regime that does not allow automatic jurisdiction for international courts and does not ratify core international treaties that may trigger international responsibility.

At the same time, modern international law provides a few procedures that enable legal interventions by other states in the prolonged human rights crisis in Belarus. International crimes and human rights violations committed in the country give rise to two modes of liabilities under international law: individual criminal responsibility of perpetrators who commanded and committed violations, and state responsibility. The available legal mechanisms for each mode are described below.

Mechanisms for Individual Criminal Responsibility

Individual criminal responsibility is a relatively new and developing area of international law, within which individuals responsible for grave international crimes are being brought to justice.

The International Criminal Court

The International Criminal Court (ICC) was established as an independent judicial body in 1998 by the Rome Statute, and it started to operate in 2002. Since then, ten convictions and 35 arrest warrants have been issued, and 30 cases are before the court. Investigations are currently conducted regarding situations in 13 countries and preliminary investigations are taking place regarding eight situations.⁵⁰

48 Balkees Jarrah, “German Prosecutors Reportedly to Examine Wider Belarus Abuses,” [Human Rights Watch Dispatches](#), June 1, 2021.

49 OMCT Germany, [Complaint filed against 6 members of the Belarus security apparatus](#), November 1, 2021.

50 International Criminal Court, [Situations and cases, undated](#).

The ICC deals only with the most serious international crimes— genocide, war crimes, crimes against humanity, and the crime of aggression—committed on or after July 1, 2002. Its core mandate is to act as a court of last resort to prosecute high-ranking perpetrators when national jurisdictions for any reason are unable or unwilling to do so.

The Rome Statute provides three possibilities for the ICC to consider a situation:

- In relation to a state party, when a crime is committed in the territory of this state or by its nationals, the investigation can be initiated by the ICC prosecutor or can be referred by the state party.
- A non-state party may at any time accept the exercise of jurisdiction by the court with respect to the crime in question.
- The situation can be referred to the ICC prosecutor by the UN Security Council acting under Chapter VII of the UN Charter.

The first has been applied, for example, to the situation in Georgia in relation to crimes against humanity and war crimes in the context of the international 2008 armed conflict between Russia and Georgia.

The second has been used by Ukraine, which made a declaration permitting an ICC investigation of any alleged crimes committed on the country's territory since February 2014.

The third has been used in relation to only two situations—in Sudan and in Libya—due to the need for the consent of all five permanent members of the UN Security Council.

Belarus has not ratified the Rome Statute and it is unlikely that the current government will accept the ICC's jurisdiction. This could only change with a change of the government. While the UN Security Council discussed the human rights situation in Belarus,⁵¹ the issue of a referral to the ICC was not raised. Even if it were placed on the agenda, Russia

and China would likely block it, as they did with the situation in Syria.⁵² However, just a discussion of referring the Belarusian situation to the ICC would bring more attention to the issue and could catalyze potential actions through other mechanisms.⁵³

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In May 2021, several human rights organizations and lawyers prepared a submission on Belarus to the ICC prosecutor's office, trying to use a recent decision on the situation in Myanmar as a precedent to open an investigation on Belarus. In 2019, the court decided that it could adjudicate over forced deportation of Rohingya people from Myanmar to Bangladesh, despite Myanmar not being a member of ICC. According to court's decision, part of the crime of deportation and persecution took place on the territory of Bangladesh, which is a state party, and the investigation has been commenced on this basis.⁵⁴ Some claim that the ICC should investigate crimes committed in Belarus as the regime has forcibly displaced thousands of the Belarusians beyond the country's borders through violence, intimidation, and other forms of coercion.⁵⁵ According to the authorities in Lithuania and Poland, more than 110,000 Belarusian citizens arrived in these two countries since 2020. The government of Ukraine

51 UN Web TV, "United Nations Security Council Arria-formula meeting on the situation in Belarus," October 8, 2021.

52 UN, [Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution](#), May 22, 2014.

53 Kateryna Busol, [Can the International Criminal Court help Belarus](#), Chatham House, August 26, 2020.

54 ICC, [Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar](#), November 14, 2019.

55 IPHR, [The Situation in Belarus: Crimes Against Humanity of Deportation and Persecution](#), May 19, 2021.

has claimed that around 200,000 Belarusians crossed the border between August 2020 and August 2021.⁵⁶

This claim gives rise to a discussion on whether the crime of forced deportation in the Belarusian case has reached the needed gravity threshold and whether the ICC prosecutor's office will be willing to create a precedent for new entry points for non-member states to the ICC. At the time of writing, neither a state party to the Rome Statute nor the ICC prosecutor's office has made any public statement regarding the probability of addressing the situation in Belarus.

Ad Hoc Tribunals

Ad hoc international tribunals are another widely used instrument to bring high-ranking perpetrators of international crimes to responsibility. Within the discussions around the Belarusian crisis, the call to establish a specialized international tribunal is regularly raised.⁵⁷

The Nuremberg and Tokyo trials after the Second World War paved the way for ad hoc criminal tribunals dealing with cases against individuals having committed international crimes: war crimes, crimes against humanity, genocide, and the crime of aggression. International criminal tribunals were established by the UN Security Council in the 1990s to respond to atrocities committed during the conflict in the former Yugoslavia and the mass killings in Rwanda respectively.

These two tribunals laid the foundation for proliferation of various forms of ad hoc and "hybrid tribunals" that combine international and national elements for investigation, prosecution and adjudication for international crimes.⁵⁸ Dozens of such mechanisms have been established in the last 25 years, including

the Special Court on Sierra Leone, the Extraordinary Chambers of Cambodia, the East Timor Special Panels for Serious Crimes, the Kosovo Specialist Chambers, the Bosnia and Serbian War Crimes Chambers, the Special Tribunal for Lebanon, and the Iraqi High Tribunal. The majority of these are national courts with heightened international elements, but others were set up through agreements between a government and international organizations. In many of these cases, the political will of the governments and international organizations to cooperate is essential.

One of the key issues for establishing an ad hoc or hybrid tribunal is the basis for authority—which body or source provides official permission for its establishment. Apart from the domestic government concerned, such authority could be provided by the UN Security Council or the UN General Assembly.

Establishing of a special tribunal for Belarus by the UN Security Council would be difficult as this would require unanimity among its members.

Establishing of a special tribunal for Belarus by the UN Security Council would be difficult as this would require unanimity among its members. In 2015, Russia blocked the creation of a special tribunal to investigate the shooting down of Malaysian Airlines flight MH17.⁵⁹ The initiative to establish a tribunal could come instead from the UN General Assembly, as in the case of the tribunal for Cambodia: as China was not supportive and blocked the decision of the Security Council, the direction for the UN secretary-general to negotiate with the government of Cambodia

56 Lev Lviv, "[How many Belarusians could leave the country during the last year](#)," Thinktanks August 25, 2021.

57 Robert Muller, "[Belarus opposition leader wants international tribunal to probe Lukashenko](#)," Reuters, June 9, 2021.

58 Eric Witte and Clair Duffy, [Options for Justice, A Handbook for Designing Accountability mechanisms for Grave Crimes](#), Open Society Justice Initiative, 2018.

59 UNSC, [Security Council Fails to Adopt Resolution on Tribunal for Malaysia Airlines Crash in Ukraine, Amid Calls for Accountability, Justice for Victims](#), July 29, 2015.

to establish the tribunal came from the UN General Assembly, which later endorsed the final agreement.⁶⁰

In the case of Syria, the idea of a tribunal created by a group of states that will conclude a new treaty between themselves based on their existing jurisdictions to investigate international crimes committed in Syria is being discussed.⁶¹ This would be a “pooled jurisdiction tribunal,” meaning that several states (in this case, mainly EU members) would pool their existing jurisdiction of whatever form—active, protective, and universal—to prosecute crimes committed in Syria.

Various international investigative mechanisms also play an important role prior or during the establishment of ad hoc tribunals. The UN International, Impartial and Independent Mechanism for Syria, which is tasked with collecting evidence for international crimes and preparing files for future criminal proceedings, is an important step toward a future prosecution mechanism.⁶²

No specific model has yet been proposed by any stakeholder when it comes to Belarus. Further developments and violations of the regime with an international-security dimension, like the forced landing of the Ryanair flight in Minsk or exacerbating illegal migrant flows across the borders of the EU, may persuade some states of the necessity to act more decisively to respond to the ongoing crisis.

Ad hoc or hybrid tribunals are also often considered a part of a broader concept of transitional justice that normally addresses mass atrocities and systematic and widespread human rights violations once crises or armed conflict are over. While international hybrid or ad hoc tribunals are aimed at the prosecution of high-ranking criminals, other forms of transitional justice, like trials and investigations at the national level, are used to prosecute middle- and low-ranking execu-

tors as well as to address the consequences of massive human rights violations in at the level of society as general. This also includes truth-seeking or fact-finding processes by non-judicial bodies; individual, collective, material, and symbolic forms of reparation; and reform of laws and institutions, including the police, judiciary, military, and military intelligence.⁶³ Hopefully, an eventual democratic government in Belarus will have transitional justice as one of its first priorities.

Universal Jurisdiction

The last possible international mechanism for bringing to justice those responsible for human rights violations is universal jurisdiction. As mentioned above, the Prosecutor’s Offices of Lithuania and Poland have initiated criminal cases regarding crimes against humanity, human rights violations, and plane hijacking in Belarus.

Universal jurisdiction is an extraordinary national criminal procedure. As a rule, judicial jurisdiction—based on principles of sovereignty, equality, and non-interference in domestic affairs—is tied to territory. Each state has jurisdiction to prosecute acts committed on its territory. The jurisdiction may also be exercised in relation to foreigners for transboundary crimes (for example, drug trafficking, human trafficking, and money counterfeiting). Universal jurisdiction is an exception that provides for the prosecution of certain international crimes and human rights violations irrespective of the territory where the crime took place and of the nationality of victims or perpetrators because these crimes are regarded as offensive to the international community as a whole. Regarding torture, these obligations are laid down in the International Convention against Torture of 1984. The first and most famous case after the Second World War was the Eichmann case tried in Israel in 1961.⁶⁴ Another famous case was the attempt by Spain in the 1990s

60 Stephen J. Rapp, “SSCL Symposium: A Legal Legacy that Opens the Way to Justice in Challenging Places and Times—Part II,” *OpinioJuris*, March 15, 2021.

61 Syria Justice and Accountability Center, [Consideration of a “Pooled Jurisdiction” Tribunal on Syria](#), November 25, 2020.

62 UN International, [Impartial and Independent Mechanism](#), undated.

63 International Center for Transitional Justice (ICTJ), [What is transitional justice](#), undated.

64 International Crimes Database (ICD), [Attorney General v. Adolf Eichmann](#), 1961.

to prosecute the former Chilean dictator Augusto Pinochet, when he came to the United Kingdom for medical treatment.⁶⁵

For the last two decades, the number of universal jurisdiction cases has risen around the world. According to Trial International, the number of universal jurisdiction cases grew exponentially in 2019 with 16 countries having ongoing prosecutions, 11 accused being on trial, and over 200 suspects.⁶⁶ A landmark case on torture and war crimes committed in Syria with two accused was heard by the Koblenz Higher Regional Court in Germany. In February 2020, one of the accused was found guilty and sentenced to four and half years in prison, while the second trial continues.⁶⁷

The other recent example of bridging universal and national jurisdiction is the trial in the Netherlands over the downing of Malaysian Airlines flight MH17. After the failure of the UN Security Council to start an ad hoc tribunal, the Netherlands initiated this on the principle of passive jurisdiction: the majority of victims were citizens of the Netherlands despite the crime taking place on the territory and being committed by nationals of another state. The trial against four defendants began in 2020 in the District Court of The Hague, based on the investigation of a joint team of police officers and prosecutors from the Netherlands as well as Australia, Belgium, Malaysia, and Ukraine.⁶⁸

The procedures of universal jurisdiction differ from country to country. In the majority of countries, a citizenship or residence link for a victim or a perpetrator is required legally. In Poland, for example, universal jurisdiction cases could be initiated only if a citizen has become a victim of a crime abroad. That

is why, unless the legislation changes, thousands of Belarusian victims of human rights violations who fled to Poland cannot file complaints there. Legislation in Germany, Norway, and Sweden provides for “pure” universal jurisdiction, in which legally no link with these countries is required; however, in practice the Prosecutor’s Offices prefer to work with cases in which victims or perpetrators stay in their territories or have other connections with these states. But in these jurisdictions the mere fact of residence of a victim could become a sufficient link.

At the time of writing, universal jurisdiction is the most accessible mechanism for the victims of torture and human rights violations in Belarus.

Universal jurisdiction procedures are not limited to high-ranking officials; they can target low- and middle-ranking ones too. But there are numerous difficulties in prosecuting state officials. First, international law confers immunity to serving state officials. Furthermore, many states prohibit trials *in absentia*, meaning that suspects should be detained before a trial can start. However, these restrictions do not preclude investigations of crimes that can result in the issuing of international arrest warrants. The handing over of the suspect will then depend on international cooperation, the goodwill of states where suspects reside, and any immunity involved.

At the time of writing, universal jurisdiction is the most accessible mechanism for the victims of torture and human rights violations in Belarus, especially those now residing abroad. For the EU states, universal jurisdiction is also a relatively easy way to initiate accountability as these procedures are already laid down in legislation and the special prosecutors units and methodologies for investigation of such cases already exist. However, given the above-mentioned limitations, it might take years to arrest suspects and produce them in court.

65 ICD, [Regina v. Bartle and the Commissioner of Police for the Metropolis and others ex parte Pinochet, 1998-2000](#).

66 Valérie Paulet, [Universal Jurisdiction Annual Review \(UJAR\) 2020: Atrocities must be Prosecuted Soundly and Rigorously](#), Trial International, May 22, 2020.

67 European Center for Constitutional and Human Rights, [First criminal trial worldwide on state torture in Syria before a German court, undated](#).

68 District Court of the Hague, [The MH17 trial, November 8, 2021](#).

Mechanisms for State Responsibility

State responsibility is a well-established and fundamental principle of international law. When state officials acting in their official capacity or other persons acting under direction or control of state representatives violate international obligations of that state, an international wrongful act is committed. The state that commits the violation must end the wrongful act and compensate for the damage inflicted. These procedures always involve only states, with no direct role played by individuals.

The International Court of Justice

The ICJ is described by the UN Charter as the principal UN judicial body designed to resolve disputes between states. Only states may become parties before the court. Often the disputes before the ICJ concern land and maritime boundaries, diplomatic relations, territorial sovereignty, economic relations, armed conflicts, and human rights. As with other international judicial bodies, it can settle disputes only when a state consents to its jurisdiction. Article 36 of the charter of the ICJ provides three grounds for this:

- A state party may recognize compulsory (*ipso facto*) jurisdiction of the court in advance to all its legal disputes.
- State parties to a dispute may conclude a special agreement to submit the dispute to the court.
- A referral of a dispute to the court may be also provided by international treaties, ratified in advance by the parties to the dispute without reservations.⁶⁹

Belarus has not recognized *ipso facto* jurisdiction of the ICJ. It is also unlikely that the current government would consent to submit a dispute to the court in case of any procedure initiated by another state. Only a new, legitimate, internationally recognized government could change this position of the state of Belarus.

The only way left for now is the jurisdictional clause in the treaties ratified by Belarus. For the matter

of crimes against humanity and massive human rights violations in the country, three main treaties through which other states can sue Belarus in the ICJ are relevant: the Convention against Torture, the Convention on Racial Discrimination, and the Chicago Convention for Civil Aviation.

The Convention against Torture

Article 30 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that any dispute between two or more states parties concerning its interpretation or application could be submitted to the ICJ. Two conditions are required: a failed attempt at negotiations and a failed attempt at arbitration or if after six months the arbitration cannot be established.

At the moment of ratification of the convention in 1985, the Soviet Union, the Byelorussian Soviet Republic, and the Ukrainian Soviet Republic made reservations to Article 30 (1). However, in 1989 all three notified the UN secretary-general that they were withdrawing their reservations. This procedure is therefore applicable to Belarus.

The only case to have been adjudicated within this procedure by the ICJ was *Belgium v. Senegal* in 2012.⁷⁰ Belgium submitted a case alleging that Senegal had violated the obligation to prosecute or extradite the former president of Chad, Hissene Habré, under the Convention against Torture. The ICJ supported this position and found that Senegal had committed a violation. In this decision the court commented that any state party to the convention is entitled to initiate a dispute because it creates the obligation *erga omnes*. This led to the establishment of a special tribunal in Senegal—the Extraordinary African Chambers—regarding the crimes committed by Habré in Chad.

Another recent attempt to use this procedure for accountability for torture and crimes against humanity was made by the Netherlands in September 2020. The

⁶⁹ [Statute of the International Court of Justice, article 36, 2017–2022.](#)

⁷⁰ ICJ, [Questions relating to the Obligation to Prosecute or Extradite \(Belgium v. Senegal\)](#), July 20, 2012.

country's Ministry of Foreign Affairs announced a notification to the government of Syria "to hold Syria responsible under international law for gross human rights violations and torture in particular"⁷¹ and invited it for negotiations.

Any state could invoke the Article 30 (1) procedure in relation to Belarus under conditions that there exists some dispute on the application or interpretation of the convention, and that negotiation and arbitration were initiated but failed.

The Convention on of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women

Article 22 of the Convention on of all Forms of Racial Discrimination (CERD) prescribes in the same way as Article 30 (1) of the Convention against Torture that any dispute between two or more states parties with respect to the interpretation or application of the convention can be referred to the ICJ if it was not settled by negotiations or by the procedures provided by the convention. As with the Convention against Torture, the Byelorussian Soviet Republic made a reservation to this article at the moment of ratification, and withdrew it in 1989.

While Article 22 cannot be applied to human rights violations and crimes committed by the government of Belarus against the ethnic Belarusian population, it could be applied to persecution of the ethnic Polish minority in the country. In March 2021, five representatives of independent ethnic Polish civil society organizations in Hrodna and Brest were arrested on politically motivated grounds.⁷² Later the authorities started to collect information about all the attendees of Polish language courses and shut down some courses as well as some NGOs. All this takes place in the context of open anti-Polish state propaganda, in

which Poland is depicted as an enemy trying to destabilize Belarus.

The Article 22 procedure has been used by Georgia and Ukraine to bring to justice Russians responsible for human rights violations. In 2008 Georgia claimed that Russia violated the CERD "during three distinct phases of its interventions in South Ossetia and Abkhazia in the period from 1990 to August 2008."⁷³ However, it did not succeed in demonstrating to the ICJ that it took measures to negotiate the dispute with Russia first and the complaint was declined due to lack of jurisdiction.

In 2017, Ukraine initiated proceedings against Russia in the ICJ within the CERD, claiming that it was violating the rights of non-Russian ethnic groups in Crimea (mainly Ukrainians and Crimean Tatars). Learning from the Georgian case, Ukraine had first made an effort to initiate negotiations with Russia and the ICJ recognized the case as admissible. In April 2017, the court decided provisional measures, obliging Russia to refrain from any limitations in the functioning of the Crimean Tatars' self-governing body (the Mejlis) and to ensure the availability of education in the Ukrainian language.⁷⁴ The case is still under consideration by the ICJ.

Poland's government has called on Belarus to stop the harassment of ethnic Poles in the country.⁷⁵ However there have been no public statements indicating whether Poland or other state under *erga omnes* obligations is willing to initiate the procedure in the ICJ under Article 22 of the convention.

The same treaty mechanism for dispute settlement as the one described above for the Convention against Torture and Convention on of Racial Discrimination

71 Government of the Netherlands, [The Netherlands holds Syria responsible for gross human rights violations](#), September 18, 2020.

72 Human Rights Center Viasna, [Arrested Polish minority activists are political prisoners](#), March 31, 2021.

73 ICJ, [Georgia institutes proceedings against Russia for violations of the Convention on the of All Forms of Racial Discrimination](#), August 12, 2008.

74 ICJ, [Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the of All Forms of Racial Discrimination \(Ukraine v. Russian Federation\)](#), October 8, 2021.

75 Anna Wolska, ["Belarus takes ethnic Poles 'hostage', Polish PM says"](#), EuroActiv, March 25, 2021.

is also provided by Article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And Belarus has provided its consent for this procedure. For the moment, the violations of the rights of women in Belarus are committed within the general context of human rights violations, and women are not targeted specifically. Should this situation change, the dispute-settlement mechanisms of CEDAW could become actual.

The International Civil Aviation Organization and the Chicago Convention for Civil Aviation

On May 24, 2021, Ryanair flight 4978 transiting Belarus airspace en route from Athens to Vilnius was intercepted by a military jet and forced to land in Minsk. Upon the landing, Raman Pratasevich, a famous blogger and journalist, who had lived in exile in Lithuania and his girlfriend, Sofia Sapega, were arrested under politically motivated criminal charges.

International air law is a well-established area of international law, with the foundational Chicago Convention for Civil Aviation of 1944 and International Civil Aviation Organization (ICAO). The Chicago Convention prohibits the use of military force against passenger flights, and Belarus allegedly violated its legal obligations by dispatching a fighter jet to force the landing of the Ryanair plane. Moreover, passengers are under jurisdiction of the country where the plane is registered, in this case Poland. In the case of a forced landing, a passenger could be arrested by the local authorities only if they committed crimes harming flight or passenger security. Otherwise, the local authorities do not have jurisdiction for detention, which might be qualified as kidnapping.

Article 84 of the Chicago Convention provides that any disagreement between two or more state parties relating to the interpretation or application of the convention and its annexes is to be decided by the ICAO Council if it cannot be settled by negotiations. The decision of the council could be appealed to an ad hoc arbitration tribunal or to the ICJ. Several states parties were involved in the Ryanair incident: Lithu-

ania, as the majority of the passengers were its citizens and as the country of destination; Poland, where the plane was registered; Greece, as the country of departure; and Ireland, as the country where the airline is registered. Other EU member states might also claim injury on grounds of collective security.

The ICAO Council has initiated a fact-finding investigation into the forced landing of the Ryanair plane based on its functions, outlined in Article 55 (e) of the Chicago Convention. At the time writing, the ICAO preliminary report was being prepared,⁷⁶ and it was due to be discussed in January 2022. While it seems that the injured states are waiting for the report to provide the objective picture of what happened on board flight 4978, the U.S. nominee to the ICAO Council has called for Belarus to be suspended from the ICAO.⁷⁷ Following the report, further legal proceedings before the ICAO Council could be initiated, with a possible appeal to the ICJ if needed. Such a case could become an interesting precedent for bringing together human rights and international air law.

UN Treaty Bodies and Inter-state Procedures

As stated above, Belarus has ratified several human rights treaties—the Convention against Torture; the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on all forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child and optional protocols; and the Convention on the Rights of Persons with Disabilities. Violation of their provisions by the government of Belarus results in state responsibility for human rights violations.

76 International Civil Aviation Organization, [Update on fact-finding investigation into Ryanair flight FR4978](#), June 16, 2021.

77 Brian Whitmore, “[West seeks new ways to hold Belarus dictator Lukashenko accountable](#),” Atlantic Council, October 6, 2021.

All the conventions establish committees (UN treaty bodies) composed of independent experts to observe compliance. They consider regular state reports, complaints by individuals whose rights have been violated, inter-state complaints, and investigation/inquiry mechanisms. However, as with all other international mechanisms, a state has to give prior consent for the UN treaty bodies to consider complaints or cases.

Belarus has consented only to individual complaint mechanisms under the ICCPR to the Human Rights Committee and under the CEDAW to the Committee on the Elimination of All Forms of Discrimination Against Women. The two committees are entitled to consider cases of alleged violations of human rights of individuals when national remedies have been exhausted. Since the ratification of the Optional Protocol for ICCPR in 1992, the Human Rights Committee has considered almost 150 complaints against Belarus. Two complaints against Belarus were considered since ratification of the Optional Protocol for CEDAW in 2004. The Belarusian authorities have often ignored the decisions of the two committees.

Two inter-state complaints procedures could be applicable to Belarus: under Articles 41–43 of the ICCPR and under Articles 11–13 of the CERD. According to these procedures, any other state member to the convention concerned could submit a complaint to the Human Rights Committee or to the Committee on Racial Discrimination about the alleged violations committed by another state party. However, both procedures are designed only for finding a resolution to a dispute and result in a report prepared by the treaty body.

The other UN treaty bodies' procedures include inquiries of massive torture under Article 20 of the Convention against Torture. A submission regarding the situation in Belarus and a request to initiate an inquiry were already made by Belarusian NGOs in 2020. The procedure is initiated when massive torture takes place and it provides for the preparation of a confidential report by the committee that is shared and discussed

with the government to regulate the situation. Each year the committee takes up one or two situations for inquiry. Since 2020, its work has been seriously affected by the coronavirus pandemic, however.

The drawback of the mechanisms of treaty bodies is their focus on reconciliation and lack of enforcement mechanisms. Their application will lack effectiveness in the case of Belarus, where the government deliberately violates its international obligations. Even before 2020, the government was known for not respecting the decisions of the Human Rights Committee on individual cases. Given this, the Human Rights Committee is the only international remedy available now for the Belarusian citizens.

Other Applicable Accountability Mechanisms

There are other human-rights-related issues actual in Belarus that are regulated by specific international treaties that could trigger state responsibility. Some of the options are described below, but this is not an exhaustive list of possible mechanisms for invoking state responsibility.

International Labor Law

The repression in Belarus has also targeted workers and trade unions protesting the falsified election results and human rights violations. The International Labor Organization (ILO) has a specific complaint procedure regulated by Articles 26–34 of its constitution, in which a complaint could be brought by one member state against another, by a delegate to the International Labor Conference, or by the ILO Governing Body of its own motion. It also has a complaint procedure on freedom of association, in which employers' and workers' organizations could bring a complaint to the ILO Committee on Freedom of Association.

There have been three ILO cases regarding freedom of association in Belarus in 1995, 1996, and 2000 as well as one case under Article 26 in 2003.⁷⁸

⁷⁸ ILO, [Country Profile, Belarus](#), undated.

Since the crisis in 2020, the situation in Belarus has often been considered by the ILO, with two latest strong reports: by its Governing Body in March 2021, considering implementation of the recommendations of the Commission on Inquiry,⁷⁹ and by its Committee on the Application of Standards adopted in June 2021.⁸⁰ In case the government does not implement the recommendations of the ILO, as a last resort the Governing Body can take action under Article 33, which demands other states to take “actions as it may deem wise and expedient to secure compliance therewith.” There is no list of measures that could be taken. In the history of the ILO, Article 33 was invoked only once—to address the long-standing problem of forced labor in Myanmar in 2000.⁸¹ Then, the ILO called on all its members, including employers and businesses, to review their relations with Myanmar so that they were not supporting forced labor in that country. That resulted in large-scale sanctions and basically isolation of the country.⁸²

International Migration Law

Since June 2021, Lithuania and then Poland and Latvia started to report a significantly increased number of migrants crossing their border with Belarus irregularly. This followed the statement by Lukashenka in May reacting to the sanctions in response to the Ryanair incident, in which he threatened to allow the traffic of drugs and migrants from third countries to the EU. On June 28, 2021 Belarus unilaterally withdrew from a readmission agreement with the EU.

As of October 2021, the Lithuanian authorities had reported more than 4,100 attempts to cross the border

irregularly since January 1, 2021,⁸³ compared to 74 attempts in 2020. At the same time, the government of Poland claimed that 11,500 persons had attempted to cross the border irregularly so far in 2021, including 6,000 in September, compared to about 100 in 2020.⁸⁴ The majority of these migrants are from Middle East and African countries, transiting through Belarus.

In response, Lithuania and Poland started to build wired barriers along their border with Belarus and to strengthen border protection, including with the support of the EU Border and Coast Guard agency (Frontex). In July 2021, Lithuania declared a state of emergency and passed new legislation to ease the deportation of irregular migrants. Poland also declared a state of emergency in September 2021 and on October 14 it passed a new law allowing pushbacks of migrants. These measures and the treatment of migrants by both governments have been criticized by human rights bodies, especially after several deaths at the border.

Lithuania, Poland, and Latvia as well as EU officials have stated that the government of Belarus has used irregular migration as a “hybrid” aggression against these states and the EU. The EU governments and media have reported that Belarus’s government not only refuses to cooperate, but also encourages and helps migrants to cross the border irregularly. Belarusian state bodies have been accused of offering tourist visas via the state travel agency, of setting up flights and transporting people from Minsk to the border with the EU, of allowing migrants to cross the border—showing the way, providing instructions, and of refusing to protect the border and to detain migrants attempting to cross irregularly. Polish state border police and Frontex⁸⁵ have published videos of Belarusian state officials helping migrants to cross the border irregularly. In September 2021, Poland’s minister

79 The ILO Governing Body, [393rd Report of the Committee on Freedom of Association](#), March 24, 2021.

80 Committee on the Application of Standards, [Conclusions, 109th Session](#), Geneva, 2021.

81 ILO, [Practice on the use of article 33 of the ILO Constitution](#).

82 Beate Andrees, [The ILO: Successes, Difficulties and Problems in Reducing Forced Labour in Different Parts of the World](#), Pontifical Academy of Social Sciences, April 17–21, 2015.

83 [Monitoring of illegal migration](#) (from January 1, 2021), [undated](#).

84 Jon Henley, “[Concerns grow over Poland’s treatment of migrants stuck at Belarus border](#),” The Guardian, October 1, 2021.

85 ECHO24 and JAF, “[Frontex Captures Belarusian Border Guard acting as Migrant Smugglers: Video](#),” Remix, August 5, 2021.

of defense accused Belarusian forces of provocative actions, including firing shots into the air and aiming guns at Polish soldiers. The situation has escalated in November 2021 with thousands of migrants staying at the border between Belarus and Poland.

International Refugee law obliges states to allow asylum-seekers into their territory, to examine their claims, and to provide international protection when there is a risk of persecution in the country of origin due to ethnic origin, nationality, religion, political views, or belonging to the social group. The obligations of Lithuania, Poland, Latvia, and other EU states are not assessed here; only those of Belarus are. Based on the obligations from the International Refugee Convention of 1951,⁸⁶ ratified by Belarus, the country's government should consider the applications for international protection of migrants coming from the Middle East and Africa, and provide refugee status and protection if these applications are well grounded, instead of pushing people to neighboring countries.

Moreover, the current migration crisis may amount to the smuggling of migrants, which is recognized as a transnational organized crime, committed by private individuals. The UN Convention against Transnational Organized Crime—and especially its Protocol against the Smuggling of Migrants by Land, Sea and Air—obliges states to cooperate to address organized crime, to exchange information, to take measures on border control and other preventive actions, and to cooperate on return.⁸⁷ Belarus signed and ratified the convention and its protocols in 2003. Some commentators also claim the situation amounts to human trafficking. From the known facts so far, however, it cannot be classified as human trafficking because of the lack of use of force, coercion, and exploitation.

The Refugee Convention and its Protocol against Smuggling provide for dispute-settlement mecha-

nisms in Article 38 and Article 20 respectively. In accordance with the Refugee Convention the dispute may be referred to the ICJ if it cannot be settled by other means. The Protocol against Smuggling prescribes negotiations and further arbitration. If the states that are party to the dispute are not able within six months to agree on arbitration, the case may be referred to the ICJ. This mechanism could be used by the EU member states to seek dispute settlement via legal means regarding the situation with migration at the EU border with Belarus.

International Sport Law

Sport is another area in Belarus touched by the state's repression. On August 16–18, 2020, an open letter by Belarusian sportspersons to the government was signed by 1,000 individuals.⁸⁸ In the following months many signatories of the letter as well as any other sportspersons who had publicly criticized the state's policy faced various forms of repression, from arrests to dismissals.

Several international sport events due to be held in Belarus in 2020 and 2021, including the Ice Hockey World Championship, were cancelled by international sport organizations. This gives rise to sport-related disputes that have a human rights and political dimension.

Private disputes related to sport may be submitted to the Court of Arbitration for Sport (CAS) by any individual or legal entity with capacity to act. Most of its jurisprudence is over disputes related to challenging the decisions of sport bodies, doping, or employment. However in recent years, some CAS decisions also have also referred to human rights norms.⁸⁹ For example, the American-Polish fencer Aleksandra Shelton won a case in the CAS against Poland in 2020, on grounds of gender and age-based discrimination as well as

86 United Nations, [Convention relating to the Status of Refugees](#), July 25, 1951.

87 OHCHR, [Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime](#), November 15, 2000.

88 Free Union of Athletes of Belarus, [Open Letter condemning the falsification of the election results and violence by the security forces against protestors](#), undated.

89 Court of Arbitration for Sport, [Case by Caster Semenya and Athletics South Africa](#), April 30, 2019.

protecting her freedom of expression, following criticism of by the Polish sport authorities.⁹⁰ In 2005, 2016, and 2017, the CAS reviewed three cases regarding Belarus, though none dealt with human rights but instead with disputes regarding doping and termination of a sport employment contract.⁹¹

In August 2021, the Belarusian athlete Krystsina Tsimanouskaya, who was participating in the Summer Olympics in Tokyo, publicly criticized the Belarus Olympic Committee in the social media. The next day, she was withdrawn from the competition by Belarus and Belarusian officials attempted to forcibly send back to the country. Tsimanouskaya claimed that she was afraid to come back to Belarus and received a humanitarian visa from Poland, where she was able to go. While seeking protection in Tokyo airport, she applied urgently to the CAS with a request to cancel the decision of the Belarus Olympic Committee to stop her from participating in the games. The CAS rejected her request, stating that it did not have enough information to assess the case and this required further investigation.⁹² The International Olympic Committee also opened an investigation and on expelled from the games two Belarusian coaches who dismissed Tsimanouskaya, threatened her, and tried to force her to go back to Belarus. On September 30, 2021, the International Olympic Committee and the Athletics Integrity Unit announced they would conduct a full investigation of the case.⁹³

In September 2021, the Independent Disciplinary Board of the International Ice Hockey Federation

(IIHF) issued a five-year suspension to the president of the Belarusian Ice Hockey Association (BIHA), Dzmitry Baskau. This was based on a ten-months investigation that concluded he had violated the IIHF Code of Conduct as he abused his position and threatened and discriminated against Belarusian athletes because of their political views. The investigation also touched upon Baskau's alleged involvement in murder of activist Raman Bandarenka in November 2020 in Minsk. It was concluded that there was reasonable evidence that he could have been present at the scene of murder but there was not sufficient evidence of his active involvement.⁹⁴ The BIHA said that it would appeal the decision to the CAS, but at the time of writing it is unknown whether the appeal was submitted.

In the future, more disputes related to human rights in Belarus could be submitted to dispute-settlement and other investigative sport mechanisms.

Depending on the development of the situation in the country, other mechanisms and other fields of international law, such as international financial or environmental law, could become relevant and applicable. For example, on October 21, 2021, the parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) decided to suspend the rights and privileges of Belarus under the convention on February 1, 2022 if the government does not annul the liquidation of the country's oldest environmental NGO, Ecodom, by December 1, 2021. The government protested against this decision, threatening to leave the Aarhus Convention and calling it biased.

Ecodom was liquidated at the end of August 2021 as part of the wave of forced shutdowns of NGOs. The parties to the Aarhus Convention found this measure to constitute persecution and harassment of civil

90 Jeré Longman, "[Polish Olympian Wins Fight to Compete in Fencing for Team USA](#)," New York Times, October 14, 2020.

91 Court of Arbitration for Sport, [Database, Cases with Belarus actors involved](#), undated.

92 Court of Arbitration for Sport, [Tokyo 2020 Olympic Games, CAS OG 20/13 Krystsina Tsimanouskaya v. National Olympic Committee \(NOC\) of Belarus](#), August 2, 2021; Andy Brown, "[IOC & CAS allow Belarus to boot Tsimanouskaya out of Tokyo 2020](#)," The Sports Integrity Initiative, August 4, 2021.

93 International Olympic Committee, [Statement on the incident involving Belarusian athlete Krystsina Tsimanouskaya at Tokyo 2020](#), September 30, 2021.

94 International Ice Hockey Federation, [Baskov received five-year suspension](#), September 8, 2021.

society.⁹⁵ This decision could also draw attention to other environmental hazards caused by the Belarusian government, especially connected to launch of a nuclear power plant in Astravets.

Conclusion

With the total crackdown on civil society and any dissident voices in Belarus, international accountability mechanisms are one of the instruments left that might change the situation in the country. Since the 2020 presidential election, as throughout the 26 years of the authoritarian regime, Belarus has demonstrated that impunity invites more and graver crimes. The Lukashenka regime has started also to pose a threat to the security of neighboring states, including EU member states, as well as to Belarusian society.

The case of Belarus highlights clearly a central problem of current international law: the states that agree to the jurisdiction of international judicial and quasi-judicial mechanisms normally respect international norms and obligations while those that violate them do not consent to such jurisdiction. It is another example of a crisis happening before the eyes of an international community that is incapable or unwilling to act.

The use of any of the mechanisms described in this paper would be a meaningful intervention in the crisis and might help to change the course of events.

States should take seriously their obligations *erga omnes* to seek individual or state responsibility for violations human rights in Belarus. The use of any of the mechanisms described in this paper would be a meaningful intervention in the crisis and might help to change the course of events. It would also provide

an important background for comprehensive investigations and trials at the national or hybrid level when the regime falls and comprehensive transitional justice becomes possible.

Recommendations

For Belarusian and international civil society organizations, groups, and human rights lawyers

- Keep the documentation of human rights violations in Belarus ongoing in all the spheres including right to life, freedom from torture, right to fair trial, right to liberty and security, discrimination, right to private and family life, and violation of economic, social, cultural rights.
- Process the collected information, conduct investigations of instances of massive human rights violations and international crimes, and preserve and archive the collected information.
- Keep preparing and submitting individual cases as well as thematic submissions, results of investigations, and processed information to the applicable accountability mechanisms, including UN bodies, universal jurisdiction proceedings, the International Criminal Court, and foreign governments.
- Develop a vision and strategy for accountability for international crimes committed in Belarus for current actions and for future transitional justice processes; and enhance coordination, cooperation, and information exchange between different stakeholders.
- Develop initiatives of civil tribunals (experts' and "peoples' tribunals") on human rights violations in Belarus to raise awareness among the legal community and politicians.

For foreign governments

- React to the complaints submitted against Belarus's government and law-enforcement agencies in respective jurisdictions by initi-

⁹⁵ Michelle Langrand, "[UN convention suspends Belarus for crackdown on environmentalists](#)," Geneva Solutions, October 21, 2021.

ating criminal investigations and by creating joint investigative groups between the states that investigate cases in relation to Belarus.

- Initiate inter-state complaints against Belarus to the International Court of Justice within applicable international treaties.
- Engage in the high-level political discussion about the establishment of an ad hoc tribunal for Belarus.
- Continue supporting the UN mechanism for Belarus as well as other existing mechanisms and initiatives of international organizations and civil society aimed at accountability in Belarus.
- For intergovernmental organizations
- Continue considering Belarus within the acting mechanisms, despite the crisis being protracted, and looking for ways to enforce the recommendations and decisions addressed to the government of Belarus.

For foreign and Belarusian media organizations

- Continue to publish available information on massive human rights violations in Belarus and explain accountability mechanisms to the population of Belarus and to international audiences.

- Report widely on ongoing accountability processes and efforts, by civil society, foreign governments, and international organizations; cover the potential mechanisms that could be used; and provide platforms for public discussions of these issues.

For Belarusian political forces and groups

- Strengthen cooperation with human rights organizations and present at high-level political meetings the accountability agenda, including the establishment of an ad hoc tribunal for Belarus, inter-state complaints, and support for existing accountability mechanisms.
- Advocate with EU member states (particularly Lithuania and Poland) to use the Convention against Torture, the Convention on of Racial Discrimination, and the Chicago Convention for Civil Aviation to initiate interstate procedures in International Court of Justice.
- Support online services and procedures proposed by civic tech initiatives on accountability and data collection on human rights violations.

This work represents solely the opinion of the author(s) and any opinion expressed herein should not be taken to represent an official position of the institution to which the author is affiliated.

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