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OPEN LETTER

Calling on ICC State Parties to join Lithuania's referral to the ICC requesting an investigation into alleged crimes against humanity committed by Belarusian authorities

The undersigned civil society organisations call on State Parties of the International Criminal Court (ICC) to support and join Lithuania's referral, on 30 September 2024, to the Prosecutor of the ICC to investigate alleged crimes against humanity in Belarus.ⁱ

The undersigned organisations, as applicable within their respective mandates, in particular the International Accountability Platform for Belarus (IAPB),ⁱⁱ will make available relevant evidence and information collected in support of preliminary examinations to the Office of the Prosecutor of the ICC, and to States willing to pursue a referral.

In addition, we call on States to consider and pursue all other available avenues of accountability for the serious international crimes reported to have been and continue to be committed in Belarus, and which are not subject to the present referral.

Background

It is widely acknowledged that Aliaksandr Lukashenko and his government have, since at least May 2020, waged a violent campaign against the civilian population of Belarus which has included serious human rights violations, notably arbitrary detention; politically motivated prosecutions; unfair trials; unlawful killings; sexual violence; torture and other cruel, inhuman or degrading treatment or punishment; intimidation and harassment; forced labour; and enforced disappearance.ⁱⁱⁱ

The regime forcibly displaced hundreds of thousands of lawful residents of Belarus to neighbouring Lithuania and other State Parties, either by direct expulsion, or through the coercive circumstances outlined above. In its March 2024 report, the Office of the High Commissioner for Human Rights (OHCHR) estimated that "up to 300,000 individuals have been forced to leave Belarus since 2020 in what has been a concerted campaign of violence and repression intentionally directed at those opposing, or perceived to be opposing, the Government or expressing critical or independent voices",^{iv} referring also to a resolution of the European Parliament^v and a report of the Council of Europe Parliamentary Assembly.^{vi}

Even in exile, those who were forced to leave Belarus face severe human rights violations: politically motivated criminal charges, trials and sentences *in absentia*, threats and intimidation, including against relatives remaining in Belarus, publicly disseminated hate speech, unlawful seizure and confiscation of property, and other forms of severe deprivation of fundamental rights.^{vii}

Highlighting the widespread and systematic nature of a range of serious violations, the scale and patterns of the violations and the evidence of official policy, the OHCHR concluded that “there are sufficient indicia to warrant further assessment of the available evidence from the perspective of applicable international criminal law”.^{viii}

According to information gathered by the IAPB, residents of Belarus have now been dispersed to over 25 ICC State Parties, as well as at least 10 other States that have not ratified the Rome Statute.

Lithuania’s referral and next steps

With its referral on 30 September 2024, the Lithuanian government requested the ICC to examine whether it has jurisdiction to investigate and prosecute alleged crimes against humanity, including deportation, persecution, and other inhumane acts, committed by Belarusian senior officials since 1 May 2020.^{ix}

Under the Rome Statute, deportation or forcible transfer of population constitutes a crime against humanity when committed as part of a widespread or systematic attack against a civilian population. Deportation or forcible transfer is defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”.^x Persecution is defined as “the international and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”,^{xi} and “other inhumane acts” are those which are of a similar character to other enumerated crimes against humanity, and which intentionally cause great suffering, or serious injury to body or to mental or physical health.^{xii}

As set out in the referral, there are reasonable grounds to believe that these acts amount to crimes against humanity, have been committed against the civilian population of Belarus by senior political, law enforcement, and military leaders, and amount to a “widespread *and* systematic attack on the civilian population, pursuant to a state policy to eliminate opposition and dissent”.^{xiii} Lithuania emphasized that the crimes referred to the ICC have not been investigated anywhere to date.^{xiv}

While the Republic of Belarus is not a State Party to the Rome Statute, the ICC may exercise its jurisdiction where at least part of the conduct takes place in the territory of a State Party, under the Myanmar/Bangladesh precedent.^{xv}

Upon receipt of the referral, the ICC Prosecutor confirmed that his Office will conduct a preliminary examination to assess the request within the limits of the ICC jurisdiction, and to determine, based on statutory requirements, if there is a reasonable basis to proceed with the opening of an investigation.^{xvi}

Joining the referral

The Government of Lithuania has taken the lead as the first State to refer the Belarusian situation to the ICC, which is an important step towards ending impunity. The referral will, however, be considerably strengthened by other States joining.

A group referral regarding the situation in Belarus will solidify the support for the request to investigate the alleged crimes committed by Belarusian authorities and show that other States are willing to provide the Court with relevant materials or information that could be crucial to the investigation, such as witness evidence. Previous group referrals regarding the situations in Ukraine (2022) and Venezuela (2018) sent a strong signal to the Prosecutor that these crimes could not be overlooked.^{xvii} By joining Lithuania’s referral, ICC State Parties will send a united message that the international community will not tolerate impunity for such crimes and that the Belarusian government must immediately cease violations of international law.

Finally, by joining the referral, ICC State Parties will send a strong signal to victims and survivors of human rights violations, many of whom face continued persecution, and it will demonstrate support for Belarusian human rights defenders who are currently imprisoned. Moreover, it will honour the efforts of Belarusian and international civil society organisations and human rights defenders in documenting the alleged crimes in Belarus, and express support for their investigation and prosecution in various forums.

As outlined above, many residents of Belarus have fled to the territories of other State Parties, like they did to Lithuania. In those cases, joining the referral will allow State Parties where witnesses are located to contribute to the preliminary examination by sharing existing evidence and information.

The ongoing need for national investigations and prosecutions

In addition to a possible investigation by the International Criminal Court, there remains a pressing need for continued efforts to combat impunity also through national investigations and prosecutions under the principles of universal jurisdiction to ensure that justice is served.

While the call to investigate these crimes at international level is crucial, evidence suggests that further international crimes, which are not part of the present referral, may have been committed by the Belarusian regime. These include the crimes of imprisonment or other severe deprivation of physical liberty in violation with the fundamental rules of international law, torture, sexual and gender-based violence and enforced disappearance. In addition to joining and supporting Lithuania's referral, we call on all States to continue their national efforts in securing accountability in relation to these crimes.

The undersigned organisations, including the IAPB, reiterate their availability for support or dialogue in relation to any such investigations.

This open letter has been endorsed by the following organisations:

- 1) DIGNITY – Danish Institute Against Torture
- 2) European Center for Constitutional and Human Rights (ECCHR)
- 3) International Federation for Human Rights (FIDH)
- 4) Human Constanta
- 5) International Accountability Platform for Belarus (IAPB)
- 6) International Bar Association's Human Rights Institute (IBAHRI)
- 7) International Committee for the Investigation of Torture in Belarus
- 8) International Partnership for Human Rights (IPHR)
- 9) International Rehabilitation Council for Torture Victims (IRCT)
- 10) Norwegian Helsinki Committee
- 11) World Organization Against Torture (OMCT)
- 12) REDRESS
- 13) The Human Rights Center Viasna

ENDNOTES:

ⁱ Lithuania refers the Situation in Belarus to the Prosecutor of the International Criminal Court to investigate the crimes against humanity committed by the authoritarian regime of Lukashenko, Ministry of Justice of the Republic of Lithuania, 30 Sept 2024, [Lithuania refers the Situation in Belarus to the Prosecutor of the International Criminal Court to investigate the crimes against humanity committed by the authoritarian regime of Lukashenko - The Ministry of Justice of the Republic of Lithuania \(lr.lv\)](#).

ⁱⁱ The International Accountability Platform for Belarus (IAPB) is a coalition of independent non-government organisations (Viasna, International Committee for the Prevention of Torture in Belarus, DIGNITY and REDRESS) who collect, consolidate, verify and preserve evidence of gross human rights violations constituting crimes under international law allegedly committed by Belarusian authorities and others in the run-up to the 2020 presidential election and its aftermath, and supports investigations of national prosecutors and international accountability bodies by providing access to the collected evidence and analytical products (<https://iapbelarus.org/about/who-we-are/>).

ⁱⁱⁱ Amongst others: OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus (5 November 2020, ODIHR.GAL/68/20/Corr.1, https://www.osce.org/files/f/documents/2/b/469539_0.pdf); PACE Committee on Legal Affairs and Human Rights (1 April 2021, Doc. 15256, <https://pace.coe.int/en/files/29094/html>); Situation of human rights in Belarus Report of the Special Rapporteur on the situation of human rights in Belarus (4 May 2022, A/HRC/50/58), <https://documents.un.org/doc/undoc/gen/g22/332/24/pdf/g2233224.pdf>; United Nations High Commissioner's report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath (3 February 2023, A/HRC/52/68, <https://documents.un.org/doc/undoc/gen/g23/008/97/pdf/g2300897.pdf>); Report of the Special Rapporteur on the situation of human rights in Belarus (3 May 2023, A/HRC/53/53, <https://documents.un.org/doc/undoc/gen/g23/083/75/pdf/g2308375.pdf>); OSCE Rapporteur's Report on the serious threat to the OSCE human dimension in Belarus since 5 November 2020 (11 May 2023, ODIHR.GAL/39/23/Corr.1, https://www.osce.org/files/f/documents/d/5/543240_0.pdf); United Nations High Commissioner's report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath (25 March 2024, A/HRC/55/61, <https://documents.un.org/doc/undoc/gen/g24/045/29/pdf/g2404529.pdf>); UN Committee Against Torture, Report of the Committee against Torture (21 June 2024, A/79/44, https://digitallibrary.un.org/record/4053878/files/A_79_44-EN.pdf).

^{iv} United Nations High Commissioner for Human Rights, Report on the Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, 25 March 2024, UN-Doc. A/HRC/55/61, submitted pursuant to Human Rights Council resolution 52/29, para. 47, referring also to A/HRC/52/68 and A/HRC/52/68/Corr.1, paras. 53 and 54.

^v UN High Commissioner's report, Situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath, 25 March 2024, A/HRC/55/61, <https://documents.un.org/doc/undoc/gen/g24/045/29/pdf/g2404529.pdf>, paras. 47, 48.

^{vi} Council of Europe Parliamentary Assembly, Report "Addressing the specific challenges faced by the Belarusians in exile", 5 June 2023, Doc. 15783, https://pace.coe.int/en/files/31822/html#_TOC_d19e303.

^{vii} United Nations High Commissioner's report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and its aftermath, 25 March 2024, A/HRC/55/61, para. 48, <https://documents.un.org/doc/undoc/gen/g24/045/29/pdf/g2404529.pdf>; Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, 9 May 2024, A/HRC/56/65, paras. 3, 24-28, <https://documents.un.org/doc/undoc/gen/g24/072/84/pdf/g2407284.pdf>.

^{viii} Ibid.

^{ix} <https://tm.lrv.lt/en/news/lithuania-refers-the-situation-in-belarus-to-the-prosecutor-of-the-international-criminal-court-to-investigate-the-crimes-against-humanity-committed-by-the-authoritarian-regime-of-lukashenko/>.

^x Rome Statute, Art. 7 (2)(d), <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

^{xi} Rome Statute, Art. 7 (2)(g), <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

^{xii} Rome Statute, Art. 7 (1)(k), <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

^{xiii} Minister of Justice of the Republic of Lithuania, Press Release, Lithuania refers the Situation in Belarus to the Prosecutor of the International Criminal Court to investigate the crimes against humanity committed by the authoritarian regime of Lukashenko, 30 September 2024, para. 3, <https://tm.lrv.lt/en/news/lithuania-refers-the-situation-in-belarus-to-the-prosecutor-of-the-international-criminal-court-to-investigate-the-crimes-against-humanity-committed-by-the-authoritarian-regime-of-lukashenko/>.

^{xiv} Remarks at a meeting at the Embassy of Lithuania in the Netherlands in De Hague "On the legal responses of the international community to the crimes against humanity committed by the current authoritarian regime of Belarus" on 1 October 2024.

^{xv} The Pre-Trial Chamber of the ICC authorized the Prosecutor of the International Criminal Court (ICC) on 14 November 2019 to investigate alleged crimes related to the forced deportation of Rohingya from Rakhine State in Myanmar across the border into Bangladesh. (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, 14 November 2019, ICC-01/19-27, <https://www.icc-cpi.int/court-record/icc-01/19-27>).

^{xvi} Statement of ICC Prosecutor Karim A.A. Khan KC on receipt of a referral by the Republic of Lithuania, 30 September 2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-receipt-referral-republic-lithuania>.

^{xvii} On 2 March 2022, 39 ICC States Parties referred the Situation in Ukraine to the ICC (Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>). On 11 March 2022, Japan and North Macedonia joined the collective referral, increasing the total number of referring states to 41, while Lithuania advocated for the investigation in a separate referral (Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact portal launched for provision of information). Similarly, in 2018, six ICC State Parties referred the situation in Venezuela to the OTP, expressing their support for the ongoing investigation (Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the referral by a group of six States Parties regarding the situation in Venezuela, 27 September 2018, <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-referral-group-six-states>).