

Committee on International Control over the Human Rights Situation in Belarus

Special Rapporteur on the Events of 19 December 2010

FINAL HUMAN RIGHTS ASSESSMENT of the Events of 19 December 2010 in Minsk, Belarus

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1 The Committee on International Control

1. The Committee on International Control over the Human Rights Situation in Belarus (CIC) was created on 27 December 2010 prompted largely by the events immediately following the Presidential elections on 19 December. This civil society coalition involves more than 40 NGOs from 17 OSCE participating States.¹ These NGOs agreed to co-ordinate the permanent monitoring of fundamental human rights, and the situation of human rights defenders, in the Republic of Belarus, and to develop recommendations on bringing the situation in the country into conformity with the international human rights obligations undertaken by the Belarusian government.
2. The CIC serves to harness the expertise of its member organisations as well as a number of independent experts and practitioners. Working alongside other leading national and international human rights organisations from the OSCE region, the Committee's members include:
 - International Civil Initiative for OSCE;
 - Moscow Helsinki Group (Russia);
 - International Network for Freedom, Legality and Rights in Europe (FLARE);
 - International Youth Human Rights Movement (YHRM);
 - Helsinki Foundation for Human Rights (Poland);
 - Center for the Development of Democracy and Human Rights (Russia);
 - Center for Civil Liberties (Ukraine);
 - Lawyers for Constitutional Rights and Freedoms – JURIX (Russia) and other organisations.²
3. The CIC is particularly concerned about the human rights of those who have been tried in relation to the events of 19 December. However, the CIC also monitors the situation of human rights defenders, human rights organisations, journalists and members of the legal profession in Belarus.
4. In order to ensure a co-ordinated response, the CIC established a number of bodies to conduct particular tasks in relation to the human rights situation in Belarus. On 22 February 2011, it appointed a Special Rapporteur to investigate the events surrounding the opposition protests on 19 December 2010 in Minsk.³
5. Having regard to both the relevant domestic legislation and the international human rights obligations undertaken by the Republic of Belarus, the mandate of the Special Rapporteur is to:
 - Evaluate the events of 19 December 2010 and to analyse the assembly on 19 December from the perspective of international standards;

¹ See, <http://by-solidarity.yhrm.org/en/content/committee-international-control-over-human-rights-situation-belarus-started-its-work-minsk> and <http://www.hrwatch-by.org/en>. For additional information, please contact the CIC Secretariat at: byc@hrgroups.org

² See the list of the CIC participating organizations: <http://www.hrwatch-by.org/en/participating-organizations>

³ See, Memorandum of the CIC on the appointment of a Special Rapporteur on 19 December 2010 events: <http://hrwatch-by.org/en/special-rapporteur>

- Assess whether the use of force by law enforcement agencies – as well as the further steps taken by the authorities to prosecute the assembly participants – are proportionate and well-reasoned.
6. The work of the CIC in this regard is particularly important given the significant challenges of collecting data relating to the human rights situation in Belarus. These challenges have been noted by, amongst others, the OSCE Moscow Mechanism rapporteur, Professor Emmanuel Decaux and the UN High Commissioner for Human Rights, Navi Pillay.⁴ Notwithstanding these challenges, the coalition of NGOs who are members of the CIC have been uniquely well-placed to monitor trials, obtain first-hand testimony, and compile media and documentary evidence concerning the events of 19 December 2010.
 7. Dr. Neil Jarman, an independent international expert, and Director of the UK-based Institute for Conflict Research, was appointed as the Special Rapporteur. He is assisted by a group of experts on freedom of assembly and police response measures from OSCE countries, chaired by Dr Michael Hamilton, associate professor in the Legal Studies department, Central European University.

2 Background to the Final Report

8. This Final Report by the Special Rapporteur of the Committee on International Control over the Situation with Human Rights in Belarus is a follow-up to the earlier Interim Report published in May 2011.⁵ On the anniversary of the events of 19 December, it is highly regrettable that the human rights situation in Belarus continues to deteriorate, and that few (if any) of the recommendations or offers of assistance from international and regional organisations have been accepted by the Belarusian authorities. Indeed, the fact that Belarus chose not to cooperate with the OSCE Moscow Mechanism (by neither appointing a co-Rapporteur of its own choosing to the review, as envisaged by the Moscow Mechanism procedure, nor co-operating with Professor Decaux himself) is itself in violation of Belarus's OSCE commitments.
9. The situation is further exacerbated by the failure to implement a number of key recommendations made in the course of Belarus's Universal Periodic Review and to remedy specific deficiencies in legislation (including the Law on Mass Events and the Criminal Code). As the UN High Commissioner for Human Rights recently concluded, a number of restrictive provisions contained therein 'are excessive and go beyond the accepted conditions under international law'.⁶
10. Since its publication, the Interim Report has been presented and discussed at a number of international meetings. These include:
 - Exchange of views on the situation in Belarus, Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, Strasbourg (12 April 2011);

⁴ Oral Report by the UN High Commissioner for Human Rights, 'The Human Rights Situation in Belarus', 18th session of the Human Rights Council (Geneva, 20 September 2011).

⁵ Available at: http://www.hrwatch-by.org/sites/default/files/Interim_HRights_Assessment_of_19-12-10_in_Minsk.pdf and <http://www.osce.org/odihr/83291>.

⁶ Oral Report by the UN High Commissioner for Human Rights, 'The Human Rights Situation in Belarus', 18th session of the Human Rights Council (Geneva, 20 September 2011).

- 17th session of the UN Human Rights Council, Geneva (31 May 2011);
 - Exchange of views on the situation in Belarus, Political Affairs Committee of the Parliamentary Assembly of the Council of Europe, Strasbourg (20 June 2011);
 - Briefing 'Human Rights Situation in Belarus: 19 December 2010 and afterwards' for delegations of the OSCE participating States, Vienna (6 July 2011);
 - Exchange of views on the situation in Belarus since the presidential elections of 19 December 2010, the European Parliament Committee on Foreign Affairs jointly with the Subcommittee on Human Rights and in association with the Delegation for relations with Belarus, Brussels (13 July 2011);
 - OSCE Human Dimension Implementation Meeting, Warsaw (30 September 2011);
 - Eastern Partnership Civil Society Forum, Poznan (29 November 2011);
 - OSCE Parallel Civil Society Conference, Vilnius (5 December 2011).
11. A planned press-conference to launch the report in Minsk on 4 May 2011 was prevented from taking place by Belarusian law enforcement officers who searched the premises of the Human Rights Center 'Viasna', where the presentation was to take place, and subsequently detained six representatives of the CIC, including two representatives of the Special Rapporteur's group of experts⁷. Five of those detained were subsequently banned from entry to Belarus for the period of 2 to 3 years.
12. The findings of the Interim Report have been quoted and referenced in a number of official reports and resolutions by intergovernmental organizations, such as the OSCE Moscow Mechanism report, European Parliament resolution of 12 May 2011, information notes by the PACE rapporteur on Belarus and report of the PACE Ad hoc committee of the Bureau on recent detentions, prosecutions and convictions of members of the opposition in Belarus, as well as the OSCE/ODIHR Report on Trial Monitoring in Belarus (March-July 2011).
13. The findings of the Interim Report also served as basis for the CIC Memorandum of 4 May 2011, which stated that the trials related to the 19 December 2010 events should be considered politically motivated and those convicted are political prisoners, and thus called for additional investigation of those events and subsequent reconsideration of the criminal cases by courts⁸. Belarusian human rights defenders and lawyers attempted to use the Interim Report as evidence in court proceedings on the criminal cases of the participants of the 19 December 2010 events, and succeeded in doing so at least in the trial of Sannikov, Vasilevich, Gnedchik, Mirzoyanov and Eremenko⁹. However, the sentences given by the court demonstrate that the report findings were not taken into account while evaluating the nature of the events and the role of the accused.
14. The Interim Report documented the events of the evening of 19 December in Minsk and the immediate response by the authorities to the protests. Its analysis was premised upon four fundamental principles which, amongst others, ought to govern the legal regulation of

⁷ See: <http://www.hrwatch-by.org/en/special-operation-against-special-rapporteur-belarus-afraid-independent-assessment-human-rights-situ>.

⁸ See: <http://www.osce.org/odihr/83761>.

⁹ See: <http://www.interfax.co.uk/russia-cis-general-news-bulletins-in-english/minsk-court-attaches-report-by-european-rights-experts-to-case-against-ex-presidential-candidate-sannikov/>

the right to freedom of peaceful assembly. The four principles draw upon the OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly* (hereafter the *Guidelines*), and supplement international standards regarding the use of force by law enforcement officials. The four principles are as follows:

- The State has a positive obligation to protect and facilitate the right to freedom of peaceful assembly;¹⁰
- This positive obligation applies even in the case of technically unlawful assemblies (i.e. where no prior authorisation has been given);¹¹
- Violence on the part of a small minority of protesters – particularly where they are not shown to be members of the organising group – is not a reason to disperse a demonstration, less still to use force against peaceful demonstrators. Unless an individual can themselves be identified as having engaged in violence, their right to freedom of peaceful assembly should continue to be protected. Dispersal of those who remain peaceful in their behaviour is likely to be a disproportionate response and thus a violation of the right to assemble;¹²
- Law enforcement officials should be held liable for any failure to fulfil their positive obligations to protect the right to freedom of peaceful assembly and should also be held accountable when disproportionate force is used to control or disperse an assembly.¹³

15. These principles underpinned both the questions posed by the Interim Report and its (provisional) conclusions. Its conclusions related to three broad groups of questions (which are also used to structure the remainder of this report):

- a) Questions concerning the nature of the events on 19 December 2010 and their classification as lawful or non-lawful, and peaceful or non-peaceful;
- b) Questions concerning the policing operation;
- c) Questions concerning the charges brought against those prosecuted in respect of the protests.

16. In re-examining these same issues, this Final Report seeks to answer some of the questions posed by the Interim Report. It overviews public statements and comments made by the Belarusian authorities, and also draws on a number of additional sources. These include research undertaken by International Observation Mission of the CIC, as well as partner NGOs. In particular, the Center for Legal Transformation¹⁴ provided detailed analysis of court sentences on criminal cases related to the events of 19 December 2010. We also refer to the reports of intergovernmental organisations, and to the statements made on behalf before these organisations (see the *Annex* for a list of key official statements). Together with these documents, this report thus serves as an important record of the wider response by the Belarusian authorities to the protests against the presidential election results.

¹⁰ OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (2010), paras. 31-34.

¹¹ *Guidelines*, paras. 128-131.

¹² *Guidelines*, paras. 25-28, 71-73, 108, 164-167, 179-184.

¹³ *Guidelines*, paras. 179-184.

¹⁴ <http://lawtrend.org>

3 The Nature of the Events on 19 December 2010 and their Classification as Lawful or Unlawful, Peaceful or Non-Peaceful

17. The Interim Report concluded that the assembly on 19 December 2010 in the centre of Minsk was an unlawful event jointly organized by a number of the presidential candidates, and that the authorities initially facilitated the protesters' right to assemble.

18. Two points are noteworthy in this regard. First, as the European Court of Human Rights has noted '... a decision to disband [spontaneous] assemblies 'solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.'¹⁵ More recently, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Professor Christof Heyns) has similarly stressed that the regulatory authorities should focus first on the question of whether an event is peaceful or non-peaceful, and only secondarily on its lawfulness:

'... the central distinction made by domestic legal systems tends to be between legal and illegal protest, while international law is rather inclined to draw the line between non-violent and violent protests. The concern of the former centres around public order; the latter prioritises the preservation of peace as the objective for police or other State intervention.'¹⁶

19. Second, while the Interim Report accepted that this was technically an unlawful demonstration, it has since been documented that the organisers *did* actually seek to discuss the event with the relevant authorities in advance:

'Former presidential candidates asked for a meeting with the Minister of Internal Affairs and the State Security Committee (KGB) to discuss the planned demonstration of 19 December 2010. However, the request was dismissed and on 17 December the Chair of the KGB told the press that leaders of the opposition had asked for a meeting to discuss the safety of the demonstrators, but 'law enforcement officers cannot discuss such matters as the calls (for a demonstration) are illegal.'¹⁷

20. The evidence thus suggests that rather than seeking to facilitate and protect the right to freedom of assembly, the relevant authorities refused to even countenance the possibility of holding a demonstration on 19 December, giving precedence to questions of lawfulness rather than seeking to assess whether the organisers had peaceful intentions or to address their concerns regarding the safety of demonstrators.

21. Furthermore, regarding the question of the peaceful or non-peaceful nature of the event, the Interim Report highlighted that the violence directed at the Government House was clearly not a peaceful assembly but that many of those involved were clearly identifiable from publicly available video materials and therefore the authorities should be in a position to charge at least some of them for their violent actions. This led to the report's

¹⁵ ECHR judgment *Bukta v Hungary* (2007), para.36; *Guidelines*, para.131.

¹⁶ Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Christof Heyns), 23 May 2011, at para.135, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>.

¹⁷ OSCE Rapporteur's report on Belarus (Prof. Emmanuel Decaux), 28 May 2011, p.32.

See, http://www.belta.by/ru/all_news/politics/Otdelnye-predstaviteli--opozitsii-pytalis-zakupit-elektroshokery-i-petardy---GKB-i-535954.html ('Some representatives of the opposition tried to buy stun and firecrackers - KGB', 17 December 2010).

conclusion that there were effectively **two separate assemblies** in Independence Square on 19 December 2010 – one of which was peaceful while the other (much smaller) gathering, whose participants attacked the Government house, was non-peaceful.

22. Despite these findings, the narrative of events presented by the Belarusian authorities has consistently labelled all those who took part in the demonstration in Independence Square as having participated in a mass riot.¹⁸ This implies that there was one unlawful, non-peaceful assembly, and moreover, that those prosecuted were culpable for riotous behaviour. This account was most fully articulated in a Statement by His Excellency Ambassador Mikhail Khvostov, Permanent Representative of the Republic of Belarus, at the 18th session of the UN Human Rights Council (20 September 2011)¹⁹. It is worth highlighting some of the specific claims that have been made by the government.
23. Describing Belarus's disagreement with the EU as being about 'a definition of concepts' ('what is a peaceful demonstration and what is not'), the Ambassador emphasized that assaulting a government building should be regarded as a criminal offence rather than a peaceful event, and that the detentions and arrests were the result of 'the demonstration turning into a non-peaceful one'.²⁰
24. While we agree that the attack on the government building should be regarded as a criminal offence, the conflation of this incident (which involved a relatively small number of individuals) with the peaceful demonstration in Independence Square (which did not turn into a non-peaceful event) fails to accurately describe the nature of the events of 19 December 2010. Indeed, as we further note in section 5, the failure to attribute this violence to specific and identifiable individuals (particularly in light of the extensive video evidence available) underscores the failure of the Belarusian state to fulfil its positive obligation to protect the rights of those who remained peaceful in their conduct.
25. Moreover, while the Ambassador asserted that 'The Belarusian side has presented extensive evidence that the rally at the Government house was not peaceful' and that that it was 'supporters' of one of the Presidential Candidates who 'began assaulting the building', this assertion is flatly contradicted by the available video evidence which evidences the peaceful nature of the main demonstration in Independence Square.
26. The Ambassador also suggested that while it might have been acceptable to hold a demonstration in Oktyabrskaya Square (next to the Palace of Congresses and the Palace of Trade Unions buildings) it was not acceptable to do so in Independence Square (next to the Government House). The suitability of Oktyabrskaya Square was argued to be because the buildings there 'are interesting in their own way in terms of architecture but not of

¹⁸ See, for example, Addendum to the report of the UN Special Rapporteur on Freedom of Expression (Mr. Frank La Rue), http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27.Add.1_EFSonly.pdf (at pp.43-46); Note Verbale to the Secretariat of the UN Human Rights Council, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/160/43/PDF/G1116043.pdf?OpenElement>; Official answers of the Belarusian government to the questions by the UN Committee against Torture, http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.BLR.Q.4.Add.1_en.pdf (at pp. 15-17).

¹⁹ Available at: <https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/18thSession/OralStatements/Belarus%20Eng.pdf> (restricted access).

²⁰ The Ambassador also stated that 'It was a protest of some well-off persons with nothing in common with genuine people's needs, having everything except power.' Irrespective of the veracity (or otherwise) of this statement, such a description of the protest participants seems to us to be entirely irrelevant for the purposes of determining how the event ought to have been managed by the authorities.

political significance'. However, the OSCE/ODIHR – Venice Commission Guidelines are emphatic that:

'the state should always seek to facilitate public assemblies at the organizers' preferred location, where this is a public place that is ordinarily accessible to the public'.²¹

27. The Guidelines also state that '[p]ublic assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within "sight and sound" of their target audience.'²²

28. The Belarusian authorities have also pointed to the wording of speeches by some of the Presidential Candidates in the course of the protests, arguing that these were inflammatory or 'deliberately incendiary'. The Ambassador noted that:

'One of the former presidential candidates addressed the gathering, saying that the government had fallen, and announced the creation of a new government. This was a deception of his own supporters ...'

Furthermore, the response from the Government of Belarus to the UN Special Rapporteur on freedom of opinion and expression highlighted the following statements:

- The Presidential Candidates (Sannikov, Statkevich and Rymashevsky) stated that they 'were afraid of nothing and would stay to the end';
- Rymashevsky called for President Lukashenka to come to the Square and announced the establishment of 'an alternative government';
- Sannikov stated 'We will not allow the usurper to hold on to power. The elections were neither free nor fair. The results were rigged.'
- Statkevich and Sannikov called on demonstrators to 'hold a rally for a least two days' and to 'phone and invite friends and acquaintances to the protest.'

29. In our view, none of these statements can be regarded as incitement to violence, and they do not therefore provide sufficient grounds for the dispersal of the demonstration. It is well-established in human rights law that '[i]t is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a State is currently organised.'²³ In this light, calls for the resignation of the President, or for the overthrow of a government are not of themselves reasons for imposing prior restrictions on public events.

Summary

30. The Belarusian government's justification for the police intervention (section 4, below), the arrests and administrative detention of demonstrators, and the criminal charges and prosecutions which have followed (section 5, below), all flow from the government's flawed and misleading characterization of the main protest as non-peaceful. To date, no convincing evidence has been brought to our attention that challenges our assessment that the main demonstration on 19 December 2010 was, and remained, fundamentally

²¹ *Guidelines*, paras.19 and 30.

²² *Guidelines*, Section A, para.3.5; and Section B, para.45.

²³ ECHR judgment *Freedom and Democracy Party (Özdep) v Turkey* (Application no. 23885/94, judgment of 8 December 1999), at para.41.

peaceful. Neither the location chosen for the demonstration (Independence Square) nor the wording of speeches attributed to the Presidential candidates provide adequate grounds for the forcible dispersal of the event.

4 The Policing Operation

31. As noted above, neither failure to comply with authorization requirements nor violence on the part of a small minority of protesters – particularly where they are not shown to be members of the organising group – provides a reason to disperse a demonstration, less still to use force against peaceful demonstrators. Unless an individual can themselves be identified as having engaged in violence, their right to freedom of peaceful assembly should continue to be protected. Dispersal of those who remain peaceful in their behaviour is likely to be a disproportionate response which constitutes a violation the right to assemble.²⁴
32. The OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly* includes a chapter outlining the basic standards for the policing of public assemblies²⁵ and which highlights issues related to the positive obligation to protect freedom of peaceful assembly, the importance of proportionality in any police interventions, use of force and the dispersal or detention of participants in an assembly. Specifically the *Guidelines* note:
 180. The compliance of law-enforcement officials with international human rights standards should be closely monitored. It is good practice for an independent oversight mechanism to review and report on any large-scale or contentious policing operation relating to public assemblies ...
 181. Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law enforcement officers, an ‘effective official investigation’ must be conducted. The core purpose of any investigation should be to secure the effective implementation of domestic laws which protect the right to life and bodily integrity, and in those cases involving State agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.
 182. If the force used is not authorized by law, or more force was used than necessary in the circumstances, law enforcement officers should face civil and/or criminal liability as well as disciplinary action. The relevant law enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.
33. The Interim Report highlighted and questioned the scale and proportionality of the use of force by the Belarusian police on 19 December and raised a number of questions relating to the planning, organisation and implementation of the policing operation. For example,

²⁴ OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (2010), paras.25-28, 71-73, 108, 164-167.

²⁵ OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (2010), Chapter 6, paras.144-184

we asked specifically why no police were deployed outside the Government house building to prevent an anticipated attack, and why did it take the police some 30 minutes to respond to the disorder? The report also emphasized that there should be an independent investigation into the use of force by the police, and into the attack on Vladimir Nekliaev (Uladzimir Nyaklyaeu) and his supporters prior to the main assembly.

34. In this regard, the OSCE Rapporteur's Report also stated that an independent and impartial investigation should be conducted into the 19 December events, 'particularly the 'indiscriminate and disproportionate use for force by law enforcement officers when clearing the Independence Square' and the attack against presidential candidate Vladimir Nekliaev and his supporters.'

35. Further research has served to confirm the preliminary analysis contained in the Interim Report, and its conclusions have been corroborated by a number of other independent sources. For example, the recently published OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)* stated that:

Serious accounts of police brutality, maltreatment, and even torture at the hands of law enforcement personnel were presented during trial. The allegations appear not to have been followed up in the manner required by international standards. This state of affairs warrants serious and effective measures. Judges (and prosecutors) should have a clear obligation to refer all incidents that come to their attention to an independent authority that has a mandate to investigate such incidents. The independent authority must be able to refer for prosecution those reasonably believed to have committed violations.²⁶

36. This section sets out the limited answers we have been able to obtain to the questions posed relating to the policing of the assembly. The answers have been prepared by the Center for Legal Transformation from a review of cases before the courts of first instance and cassation court judgments relating to the events of 19 December 2010.

37. What orders were given to the police in advance of the evening of 19 December and as the events unfolded? The court did not closely analyze the nature of police actions, the grounds for any orders made or measures taken to prevent unlawful conduct. When analyzing the police actions the court did not enquire into who gave the orders. Only the testimony of the Head of the State Vehicle Inspection of the Chief Department of the Ministry of Internal Affairs of the Minsk city executive committee (the traffic police) offers some insights since the traffic police, who were responsible for road safety, were under his command. However, since his testimony only relates to the events on Oktyabrskaya Square and the march along Independence Avenue the evidence is limited in scope. The court transcripts²⁷ state: "Being questioned in the course of pre-trial proceedings witness Korzyuk D.M. – Head of the State Vehicle Inspection of the Minsk city executive committee showed that on 19.12.2010 he was on duty. Before performing their duties they were given instructions in course of which they have been tasked to ensure road safety and public order in public places on Oktyabrskaya Square. <...> About 4 p.m. traffic police officers were on duty in the Oktyabrskaya Square, where Head of the Inspection arrived about 6 p.m. to control and direct the organization of service performed. About 8 p.m. a lot

²⁶ OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)*. Warsaw, 10 November 2011, at para.266. Available at: <http://www.osce.org/odihr/84873>.

²⁷ The sentence of the Leninsky district court from 26 May 2011 on the case of Statkevich, Uss, Klaskovsky, Pozniak, Kvyatkevich, Gribkov, Bulanov.

of people gathered on the square so he gave personnel an order to stand in a chain along the roadway to prevent people going to the road.<...> At 8.30 p.m. they were ordered to strengthen the chain with people from a reserve. Roughly about 9 p.m. a group of people ... went to the side of the roadway of Avenue, so he gave an order to the police to stand closer and do not let people exit to the roadway”.

38. **How many police officers were deployed to police the assemblies on the evening of 19 December, and which units were they from?** Only two units are referred to: the Special Forces of the Chief Department of the Ministry of Internal Affairs of the Minsk city executive committee (the riot police) and the officers of the State Vehicle Inspection of the Chief Department of the Ministry of Internal Affairs of the Minsk city executive committee (the traffic police). However, the involvement of other units cannot be excluded.
39. **Were ‘plainclothed special forces’ responsible for the attack on Vladimir Nekliaev and his removal from his hospital bed? Has any investigation been initiated into this incident?** The court transcript states: “After a brief rally Nekliaev V.P. headed the column toward the roadway of Kollektornaya street to Nemiga street, where marchers were blocked by traffic police, with the help of an official vehicle, and presented with an official claim to inspect the cargo transported by the bus in the center of column. However, Nekliaev V.P., as a person leading the procession illegally refused official demands of the police officers. Following this, illegal actions were committed by the participants, including an attempt to move an official vehicle of the State Vehicle Inspection as a result of which Nekliaev was injured and hospitalized”. In one testimony the attackers are described as unidentified men in black but in the testimony by members of the traffic police the attackers are described as “10-15 employees of the Ministry of Internal Affairs’ special forces in black uniform with marks of distinction”. None of the attackers appears to have been called to give evidence in court. After the court sentence was given to him, Vladimir Nekliaev lodged a complaint with the Minsk city Prosecutor’s Office urging to conduct investigation of the attack on him, injuries caused to him and his kidnapping from the hospital and institute legal proceedings on the case of attempted murder²⁸. After checking his complaint, on 10 August 2011 the prosecutor’s office informed Vladimir Nekliaev that there would be no criminal case opened in relation to the injuries he received on 19 December 2010 as there was insufficient evidence of any crime being committed.²⁹
40. **Were any police officers injured during the events of 19 December? If so what was the nature of their injuries?** The various court cases suggest that 29 police officers received an injury during the events 19 December. In two cases the police officer received head wounds, in three cases the police officer suffered bruises. The remainder had suffered non-specific beatings or physical pain.
41. No reference appears to have been made in the court transcripts of injuries received by any of those protesting or otherwise in the vicinity of the protests.
42. **Have any complaints against the police action on 19 December been officially lodged, and if so, what stage of the process have these complaints reached?** The Addendum to the report of the UN Special Rapporteur on Freedom of Expression released

²⁸ See: http://naviny.by/rubrics/society/2011/12/19/ic_articles_116_176215/ (‘How to beat a person and avoid being tried’, 19 December 2011).

²⁹ See: <http://charter97.org/en/news/2011/8/10/41438/> and <http://euramost.org/index.php?artc=14818&lang=2>.

in May 2011 noted that 'To date none of the protesters have lodged a complaint with the Office of the Procurator-General of Belarus about the administrative measures taken against them. The Office has not received any appeal concerning the alleged use of physical or psychological coercion against representatives of the media or members of youth groups.'³⁰

43. However, according to Belarusian human rights organisations, several of those present in Independence Square attempted to make formal complaints against the injuries caused to them by the police, but apart from one case these complaints were rejected. Maya Abromchik made a complaint relating to the broken legs that she sustained as a result of the police action. This issue was raised with the Belarusian authorities by members of the UN Committee against Torture in November 2011 who responded by noting that the case was being investigated by the Minsk Prosecutor's Office.³¹ Ms. Abromchik's lawyer provided some further details of the case:

Maya Abromchik was detained by the law enforcement officers on 19 December 2010 at around 11 p.m. not far from Independence Square. In the process of detention her legs were broken (medical examination showed that this could be done by a rubber truncheon). There were witnesses who are ready to provide their testimony to the investigatory agencies (at least 2 persons were immediately observing her detention). Regardless of the fact that she could not walk, she was placed in the special vehicle, no medical help was rendered to her. Only after several hours she was driven to the hospital. The complaint was lodged on 23 December 2010 at the Minsk city Prosecutor's Office, on 3 January 2011 it was redirected to the Investigatory Department of the Minsk Chief Department of Internal Affairs to be subjoined to the materials of the criminal case initiated on 'mass riots'. After several days it was directed back to the prosecutor's office, as it was claimed that the issue of reasonableness of the use of force is not part of the fact at issue under Art. 293. In February Ms. Abromchik was informed that there was an examination carried out on her complaint. In April a criminal case was initiated under Art. 155 of the Criminal Code (causing a serious or less serious injury by negligence). In May this decision was appealed against by her lawyer claiming that the case should be initiated under part 3 of the Art. 426 (abuse of power involving the use of violence or torment), but this appeal was rejected. The person injured and the witnesses were questioned, identification and verification of the testimonies on the spot with video-recording were carried out. On 5 October 2011 the lawyer was informed that the preliminary investigation was stopped due to impossibility to identify the person to be charged. In December the lawyer was refused to consult the materials of the criminal case.

44. As yet, several centrally important questions remain unanswered, and it has not been possible to glean answers to the following questions from the court transcripts or from any other publically available materials:

1. Were any military or other security agencies involved in the policing operation on 19 December? If so, in what roles and under whose command?

³⁰ Available at:

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27.Add.1_EFOnly.pdf (p.46, paras. 325-6).

³¹ See:

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/B856F0E3D339762EC1257948005E4DC0?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/B856F0E3D339762EC1257948005E4DC0?OpenDocument) and <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11594&LangID=E>

2. Who had overall responsibility for the policing operation on 19 December 2010? Who was responsible for giving approval to the use of force by the police?
 3. What police contingency plans were put in place?
 4. What other less intrusive options (if any) were considered by the police before intervening to forcibly disperse those who were assembled, and what evidence exists for these options having been considered?
 5. Why were no police officers deployed *outside* the Government house to prevent the attack on the building?
 6. Why did it take the police around 30 minutes to respond to the violence?
 7. Have the authorities initiated any investigations into the use of force by the police on 19 December? If so, when will the conclusions of such investigations be known?
45. The Belarusian authorities offered a general overview of the chain of events relating to 19 December 2010 in a Note Verbale to the Secretariat of the UN Human Rights Council dated 13 September 2011.³² This document does not explicitly answer any of the questions set out above but does provide an official rationale for the police response. In essence the Note Verbale argues that the authorities resisted intervening against the protesters as far as possible and it was only after the violent attacks began on Government House that they were compelled to act. While the Note Verbale emphasises the use of force by some of the protesters it makes no reference to the use of force by the police, instead it states:

The law enforcement officers pushed the crowd back from Independence square and detained some most ardent participants of the unauthorized gathering in order to prevent the seizure of the House of Government, to suppress mass disorders and to ensure public security. **Neither supervising prosecutors, nor courts found those detentions unlawful.**

And, it further emphasised the restraint the authorities claim was exercised by the police:

The legislation of the Republic of Belarus provides for the use by law enforcement agencies of special means **in cases of suppression of mass disorders, group disorderly conduct or acts aimed at damage to and/or destruction of property.** Such special means as tear gas, water-cannons or plastic bullets **were not used** against participants in mass disorders on 19 December 2010.

Throughout the Note Verbale the authorities claim to have acted in compliance with national standards, the norms of the ICCPR and other international standards.

46. The Belarusian authorities also asserted, in a response to the UN Committee against Torture dated 11 October 2011,³³ that they had taken actions to encourage people to leave the areas before the police intervened:

83. During the unauthorized event on 19 December 2010, police officers regularly used loudspeakers to tell the participants to stop their acts of hooliganism and warned them of the criminality of their unlawful behaviour and of the potential use of physical force and special measures. Citizens who were in the vicinity of Independence Square were recommended to leave the area where the event was being held or to remain at a safe distance.

³² See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/160/43/PDF/G1116043.pdf?OpenElement>

³³ See: http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.BLR.Q.4.Add.1_en.pdf

84. Before the actual mobilization of the law enforcement bodies which were dispatched to suppress the unlawful behaviour and detain those persons who were violating public order, participants of the unauthorized large public event had the opportunity to leave Independence Square of their own free will, however they opted for violence. This is why the demonstration cannot be referred to as peaceful.

47. While it would be considered as good practice to warn participants in a demonstration that they should leave the area, and to allow sufficient time for them to do so, prior to any police intervention, there is no evidence that any of those who were in Independence Square were aware of such a warning.

48. The Belarusian response to the Committee against Torture also notes:

79. ... Should those taking part in the event refuse to comply with the lawful requests of authorized officials, Belarusian law stipulates that the internal affairs agencies may take the necessary steps to stop the event, as is the case in other countries.

80. Article 28 of the Internal Affairs Agencies Act outlines the use of special devices by officers and specifies that an internal affairs officer may use handcuffs, rubber truncheons, restraining devices, special chemical substances, sound and light devices for distracting attention, devices for entering rooms by force, devices for the forceful stoppage of vehicles and other special means, including service animals, for the purpose of:

- Repulsing attacks on buildings, rooms, structures and/or means of transport, irrespective of who owns them, and freeing sites that have been occupied;
- Suppressing insubordination or opposition to the lawful requests of public security officers or other persons with the same duties or fulfilling their civic duty to enforce public law and order, and prevent and suppress crimes and administrative offences;
- Preventing large-scale disturbances and violations of public order by groups, or activities aimed at damaging and/or destroying property.

49. This appears to confirm the view that the mere presence in Independence Square on the 19 December 2010 was considered to be unlawful behaviour and that the police were given the authority to use whatever means they chose to disperse or detain those involved in the protests. This might well explain the widely available video material that shows police officers using a variety of forms of force on unarmed and previously peaceful protesters.

Summary

50. The court cases have failed to reveal much detailed information about the policing operation on 19 December. This may be in part due to the limited number of witnesses being called to give evidence in any of the trials, and an over-reliance on the testimony of a small number of police officers;³⁴ in part to the limited opportunity to question witnesses and hold the police and the authorities to account, both in the court³⁵ and outside the

³⁴ See OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)*. Warsaw, 10 November 2011, para. 280.

³⁵ See OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)*. Warsaw, 10 November 2011, para. 104.

court through the media and public opinion; and in part because the Belarusian authorities did not feel they had anything to explain, despite the widespread international criticism of the use of force by the police in Minsk on 19 December 2010.

51. Similarly, notwithstanding an inquiry by the Belarusian Ministry of the Interior,³⁶ there appears to have been no independent inquiry or investigation by the Belarusian authorities into the legitimacy, necessity and proportionality of the use of force by the police on 19 December 2010. This applies both to the mass police action to clear the protesters from the vicinity of Government house and Independence Square and to the smaller scale intervention that resulted in a serious injury to Vladimir Nekliaev prior to the main demonstration.
52. Given the scale the police intervention on 19 December 2010 and the level of force that was used against people engaged in a peaceful, if unlawful, demonstration in Independence Square, it would have been reasonable to expect the state authorities to investigate complaints about the actions of their agents, whether from a domestic or an international audience. To ignore such concerns is perhaps indicative of the sense of impunity held by the Belarusian authorities and an unwillingness to have themselves held to account in the face of concerns about the egregious abuse of human rights and a disregard of the right to peaceful assembly.

5 The Charges Brought against Those Prosecuted in Respect of the Protests

53. As noted previously, the Interim Report concluded that the main assembly in Independence Square remained peaceful throughout. In this light, any prosecutions should recognize the distinction between ‘participating in’ and ‘organizing’ a *mass riot*, and ‘participating in’ and ‘organizing’ an *unlawful assembly*. Thus any person who organized or participated in the unlawful assembly should not be assumed, simply on that basis, to have organized a mass riot and the court should ensure that there was clear and verifiable evidence of the direct participation of the accused in acts of violence rather than relying on guilt by association. As this Final Report suggests, the judicial proceedings concerning those prosecuted in relation to the events of 19 December 2010 did not meet this evidential standard and therefore failed to adequately prove individual culpability for the crimes alleged.
54. It is particularly regrettable that having highlighted the failure to sufficiently distinguish between participants and organisers, the response of the Belarusian government has been to introduce amendments to the law which effectively impose strict liability for anyone who participates in a demonstration ‘that caused’ infliction of injury or damage.³⁷

³⁶ A spokesperson for the Belarusian Ministry of the Interior referred to the findings of an investigation: ‘We have found irrefutable proof of an attempted coup plotted with foreign representatives of state and foreign organisations’. <http://www.eubusiness.com/news-eu/belarus-rights.9es> ‘Belarus Inquiry Alleges Plot to Oust Lukashenko’, 6 April 2011.

³⁷ See, ‘Analysis of Amendments Initiated to be Introduced into the Legislation of the Republic of Belarus: Analytical Note by Belarusian Human Rights Defenders’ (October 17, 2011). Available at: <http://hrwatch-by.org/en/analytical-note-belarusian-human-rights-defenders>.

55. Furthermore, the OSCE Rapporteur's report made a number of concrete and constructive recommendations in this regard which have yet to be implemented. In particular, Professor Decaux recommended:
1. judicially reviewing the decisions imposing administrative liability and reviewing court judgments in cases where individuals were found guilty under provisions of the Criminal Code (relating to their alleged participation in, or organization of, the 19 December protests);
 2. investigating reported ill-treatment of those detained and taking measures for the full prohibition and elimination of torture, inhuman, cruel and degrading treatment;
 3. ensuring effective access to justice for all detainees, suspects and defendants, as well as the independence of the judiciary; and
 4. taking effective measures to guarantee freedom of association and assembly and freedom of expression.
56. This section outlines the answers we have been able to obtain to the questions posed relating to the charges brought against those accused of participation in the assembly. The answers have been prepared by the Center for Legal Transformation from an analysis of prosecutions relating to the events of 19 December 2010.
57. **Have all those who have been charged under Articles 293, 339 or 342 of the Criminal Code been positively identified as individuals who engaged in serious violence or damage to property?** There does not appear to have been any attempt to accurately identify the nature or scale of the damage caused on 19 December 2010 or to identify those who were responsible for perpetrating any acts of violence. Some individuals were charged of breaking glass, but in most cases the court was content to identify the accused as a member of a group in which some people were responsible breaking glass. Over the course of the investigations and the trials the authorities also failed to establish who was responsible for the injury caused to police officers.
58. **What evidential basis is there to distinguish between (a) 'organisers' and 'participants', and (b) those charged with mass riot offences compared with those charged with lesser public order offences?** Accusations of a breach of public order (Art 342 CC) were only made in relation to the events on Oktyabrskaya Square and the march along Independence Avenue, while charges in relation involvement in a "mass riot" (Art. 293 CC) were brought against those involved in the in Independence Square.
59. **How precisely does the Court define a 'mass riot'?** The most comprehensive assessment of the events in the Square as a "mass riot" was given by Minsk City Court in a cassation decision: "the Court came to the correct conclusion that on 19 December 2010 there have been mass riots on Independence Square in Minsk. That is, the actions of the riotous mob directed at attempt of intrusion to the Government House, accompanied by violence against persons, pogroms manifested in hand beatings, kicks, hits with hard blunt objects, rods and iron bars on various parts of the bodies of the police officers, against the shields which they were holding; throwing in their direction bottles, wooden sticks, iron bars, pieces of ice, pieces of rods, spraying in the direction of the police officers with fire extinguishers, pulling of their clothes, tearing from their heads protective helmets, pushing; resulting in infliction of physical pain and assault to the police officers, as well as destruction of property: decorative plantings, glass doors and windows, door frames and

canvases, window boxes and drain pipes³⁸”.

60. It is worth noting however, that the court concluded that the prosecution’s arguments that there was armed resistance to the police and preparations for arson were unfounded as there was insufficient evidence to support the claim.

61. **What factors does the Court take into consideration when deciding whether an individual ‘participated in’ or ‘organized’ such a riot?** The Court concluded that the definition of organising a mass riot included the following activities of individuals:

- 1) Public calls to come to Oktyabrskaya Square on 19 December 2010;
- 2) Distribution of spurious allegations of undemocratic elections and election fraud by the Central Electoral Commission;
- 3) Planning and preparation of provocation for the incitement of aggression by delivering false statements to the participants of the meeting regarding the illegitimacy of the current government and dissemination of exit-polls’ data;
- 4) Initiating and leading the march from Oktyabrskaya Square to Independence Square;
- 5) Manipulating the crowds with the objective of entering Government House;
- 6) Approaching Government House, and thus demonstrating impunity for their actions and “inciting the most active participants to violence against individuals, pogroms, and destruction of property”;
- 7) Direct leadership of the participants of the mass riots.

62. Participation in mass riots implies the following actions (either separately or jointly):

- 1) Actions within a group under prior criminal agreement with other participants;
- 2) Attacks against barriers and barricades of Government House;
- 3) Damage to windows and doors of Government House;
- 4) The destruction of the drain pipe on Government House;
- 5) Destruction of juniper bushes at the entrance of the Government House;
- 6) Active resistance to police officers, including hitting shields and protective gear;
- 7) Attempts to enter Government House;
- 8) Delivering Molotov cocktails to Government House, which were designed to inflict bodily injury (these actions were also not associated with specific individuals);
- 9) Infliction of injuries to the members of the police force (these actions were also not associated with specific individuals);
- 10) Being in a group of citizens undertaking violent acts, while having a real opportunity to leave Independence Square³⁹.

³⁸ The cassation decision of the Minsk city court on the case of Kirkevich, Vinogradov, Drozd, Protasenya, Khomichenko.

³⁹ In the cases of Doronin, Kazakov, Loban, Matsukevich, Sekret, and Fedorkevich, the appeals court concluded that “their intent in participation in the mass riots in demonstrated by the direct participation in the mass riots while having a realistic opportunity to flee Independence Square from the moment when the mass riots started”. Similar language is found in other sentences regarding cases of participation in “mass riots”.

63. **What considerations have guided the varying sentences imposed upon different individuals for the same offences?** The trials resulted in 24 individuals being sentenced for participation in the mass riots (Part 2 of Art. 293) and to prison terms of 3 to 4 years⁴⁰. Three more, under the same charges, were sentenced to three years of imprisonment, and two citizens of the Russian Federation were fined.
64. For organising a mass riot, three individuals, all presidential candidates, were sentenced to 5 to 6 years imprisonment, while 8 individuals, including 2 presidential candidates, were convicted under Part 1 of Art. 342 of the Criminal Code (organization of group activities that grossly violate public order or participation in such activities), and sentenced to suspended prison terms of 1 to 2 years. One person was given a 2 year prison sentence and one a 3 year suspended sentence.
65. In sentencing, the court stated that it took account of:
- 1) The nature and the degree of danger to society of the committed crime, motives and objectives of the offense;
 - 2) The identity of the accused;
 - 3) Any circumstances mitigating or aggravating responsibility for the crime.
66. The court also considered the possibility of the application of Art. 70 of the Criminal Code in cases where there were exceptional circumstances relating to the objectives, motives, the role of the individual and his behaviour during and after the act of the crime, which substantially reduced the degree of social danger of the act. As a result 4 persons were given non-custodial sentences. However, it should be noted that the court did not explain exactly which exceptional circumstances were taken into account.

Summary

67. The analysis of the court cases does indicate that the authorities did differentiate between those who participated in the protest in Independence Square and those who participated in protests elsewhere, with longer sentences given to those who were in Independence Square, which is adjacent to where the violent attack on the Government house took place. With those who were present in Independence Square given custodial sentences under Article 293 of the Criminal Code, while those who were convicted of offences elsewhere in the city were given suspended sentences under Article 343.
68. The court also appears to have divided people who were convicted of offences in Independence Square into 'organisers' and 'participants'; although it is not clear how far these categories reflect the actual status or activities of those convicted. Those convicted or responsibility for organising the events received harsher sentences than those simply convicted of participating in the assembly.
69. The court also determined that simple presence in Independence Square was sufficient to be convicted of participation in a mass riot and there was no expectation that any individual need be personally identified as being responsible for an act of violence.

⁴⁰ It should also be mentioned that Klaskovsky was sentenced to 5 years imprisonment, as he was found guilty on two additional crimes: Art. 382 CC of RB (unauthorized appropriation of title or power of an official), Art 269 CC or RB (insult of a government official).

70. None of those who were convicted of involvement in the assembly on 19 December 2010 appear to have been personally implicated in an act of violence. In fact, no-one appears to have been charged or convicted specifically with responsibility for any of the acts of violence at the Government House or in relation to the subsequent police intervention.
71. Whilst it is important to acknowledge that the authorities have gone some way to differentiate between the different levels of involvement of those charged and convicted, the conviction of people for participation in, or organising of, a mass riot simply because they were present in the vicinity of acts of violence would likely be considered by a human rights court as wholly lacking the requisite evidential basis (which must meet the standards of relevance and sufficiency). The prosecutions would thus not be regarded as being necessary in a democratic society, and the sentences imposed would be disproportionate. The OSCE/ODIHR – Venice Commission *Guidelines* emphasize that any punishment must be based on the actions of the individual who is charged and that a person must not be held responsible for the actions of other people in the same crowd or in the vicinity.⁴¹

6 Summary of Administrative Detentions and Sentences

72. According to official statistics at least 639 people were arrested at, or in the immediate aftermath, of the demonstration on 19 December 2010⁴², with many of these people being subjected to brief trials before being sentenced to fines or up to 15 days of administrative detention. Many of those who were detained stated that they had suffered violence and other forms of poor treatment during their initial detention.
73. A survey of 205 detainees by the Center for Legal Transformation and the CIC International Observation Mission⁴³ revealed that:
- Over half (148 out of 205) reported that the security forces had beaten them during arrest and pre-trial detention;
 - Up to 70 people were held for hours in minibuses with a 30-person capacity;
 - Several detainees stated in the temporary detention facilities they were forced to stand with their hands against the wall for up to 5 hours and were beaten when they tried to sit on the floor;
 - More than 100 respondents said that they were not given any food or water, nor allowed to use toilets during the first 10 hours of their arrest;
 - Many stated that they were not allowed to inform relatives of their whereabouts, and in some cases, the families did not have information of the whereabouts of their relatives for several days; and
 - At least 58 of the respondents said that police forced them to sign arrest reports with false information about the time, place, and circumstances of their detention, while

⁴¹ *Guidelines*, paras.109 and 111.

⁴² See: <http://hrwatch-by.org/en/belarus-survey-shows-massive-abuses-protesters-hundreds-mistreated-aftermath-december-election>.

⁴³ See 'Analytical Review upon Results of the Examination of Evidence from 205 Citizens Detained during the Public Action on December 19th, 2010 in Minsk', <http://hrwatch-by.org/en/analytical-review-4-1>

some who refused to sign were beaten.

74. The subsequent public trials of people who were involved in organising or participating in the assembly in Independence Square have overshadowed the cases of those people who were arrested or detained and subsequently tried and subjected to administrative detention immediately after the assembly was dispersed by the authorities. The issue of the ensuring that people who have been detained at assembly are treated fairly and with respect for their human rights has been highlighted in the *Guidelines*, which state:

162. Detention conditions must meet minimum standards: Where individuals are detained, the authorities must ensure adequate provision for first aid, basic necessities (water and food), opportunity to consult with lawyers, and the separation of minor from adult, and male from female detainees. Detainees must not be ill-treated whilst being held in custody. Where detention facilities are inadequate to deal with the number of individuals, arrested individuals must be freed unless doing so would pose a threat to public safety. Procedures must be established to limit the duration of detention to a strict minimum.

75. The testimony gathered from those who were detained during and immediately after the police dispersal operation suggests that there was systematic ill-treatment and abuse of detainees in the period between their arrest and their conviction by the administrative courts. As far as we have been able to ascertain there has been no investigation into the allegations of mistreatment of the detainees. However, according to a number of Belarusian human rights organisations, several attempts were made by detainees to submit formal appeals against the conditions of their detention, all of which were rejected by the courts. The issue was also raised by the UN Committee against Torture in June 2011, but this received a perfunctory, standard reply from the Belarusian authorities.⁴⁴

76. In addition to those subjected to administrative detention, 61 people faced charges or an official investigation in relation to their part in the events of 19 December 2010. The trial process has been analysed in some considerable detail by the OSCE through its trial monitoring process and report,⁴⁵ while the sentences have been outlined in some detail by the Parliamentary Assembly of the Council of Europe.⁴⁶ In addition to reviewing the trial process the OSCE report also highlights a number of associated issues which raised concern including: restricted access to lawyers while in pre-trial detention; the failure to investigate complaints of maltreatment and the use of unofficial interviews to gather evidence.

77. This section provides a brief review of those who were prosecuted and the sentences they received. In total 41 people were charged and prosecuted in 12 trials under laws relating to riot and public disorder, including five of the ten presidential candidates (Nekliaev, Sannikov, Statkevich, Rymashevsky and Uss). Ten individuals were charged under Article 343 of the Criminal Code 'organising or preparing actions that grossly violate the public

⁴⁴ UN Committee against Torture, Forty-seventh session:

http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.BLR.Q.4_en.pdf and

http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.BLR.Q.4.Add.1_en.pdf

⁴⁵ OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)*, Warsaw, 10 November 2011.

⁴⁶ PACE Ad hoc committee of the Bureau on recent detentions, prosecutions and convictions of members of the opposition in Belarus *Report on the detentions, prosecutions and convictions of members of the opposition in Belarus in the aftermath of 19 December 2010 presidential elections*. Strasbourg, October 2011. Available at: http://www.assembly.coe.int/CommitteeDocs/2011/axdoc_ahbelarus_2011%2002Rev3.pdf.

order or taking part in such actions', and 31 who were charged under Article 293, part 1 of the Criminal Code which relates to organising a mass riot, and Article 293, part 2, relating to participation in a mass riot.

78. A further six people, including another presidential candidate (Kostusev), were initially charged under Article 293, but were released on recognisance and subsequently had the charges dropped.

79. Six other people who had either been charged or who were being investigated by the police left Belarus before they could be detained or prosecuted. This includes yet another of the presidential candidates (Mikhalevich).

80. A further eight people were declared suspects under Article 293, parts 1 and 2, but had not been formally charged by October 2011.

81. An analysis of the data indicates that 28 of the 61 people who were investigated or faced charges were associated with the organised opposition to Alexander Lukashenko. Seven had been presidential candidates, while a further 21 had worked for, or were closely associated with one of the candidates. This included seven people who were associated with Andrey Sannikov's team (including his wife); five people who had worked for Vladimir Nekliaev's campaign team; a similar number who worked for Yaroslav Romanchuk's campaign; two who had worked for Nikolay Statkevich and one person each who had worked for Ales Michalevich and Vitaly Rymashevsky during their campaigns.

Candidate	Status	Team Convicted	Charges Dropped	Left Belarus
Andrey Sannikov	Convicted	5	1	1
Yaroslav Romanchuk		1	3	1
Igor Kostusev	Charges Dropped			
Vladimir Nekliaev	Convicted	5		
Victor Tereshchenko				
Vitaly Rymashevsky	Convicted	1		
Nikolay Statkevich	Convicted	1	1	
Ales Michalevich	Left Belarus			1
Dmitry Uss	Convicted			
Total	7	13	5	3

82. Although 32 of the 61 people were detained on or immediately after the events of 19 December 2010, and a further 12 were detained before the end of December, 17 of those charged were detained at various dates from January until 21 March 2011.

83. The prosecution of the 41 persons who faced trial took place in 13 separate trials between 17 February and 26 May 2011. All of the 41 people were convicted on the offences of which they were charged. Ten people were convicted under Article 342 for 'actions that grossly violate public order'. All except one of them received a suspended prison sentence. Dmitry Bondarenko received a two year prison sentence, while one person received a one year suspended sentence, eight a two year and one a three year suspended sentence.

84. Thirty one people were convicted under Article 293 of the Criminal Code. Twenty seven of them received prison sentences of between three and six years, while two received fines and one each received a two and a three year control order. Three of the four longest

sentences were given to presidential candidates: Nikolay Statkevich received a six year sentence, Dmitry Uss a five and a half year sentence, while both Andrey Sannikov and former policeman Alexander Klaskovsky received five year sentences.

85. However, 23 of the 28 persons who had been imprisoned have since received Presidential pardons and have been released. Nine were released on 12 August, four on 1 September and ten on 14 September. Dmitry Uss was released on 1 October, although it is unclear whether he received a pardon. Thus only four of the 41 persons convicted remain in prison: two of the presidential candidates, Nikolay Statkevich and Andrey Sannikov, plus Dmitry Bondarenko and Vladimir Loban, who was sentenced to three years imprisonment under Article 293.
86. The prosecutions thus appear to have focused largely on individuals associated with the political opposition to Alexander Lukashenko, and in particular on a number of presidential candidates and people who were either closely associated with them or who worked for their election campaign. However, although beyond the remit of this report, it is also worth noting that the prosecutions appear to have been part of a wider range of activities that appear to have focused on the broad civil society opposition to the Belarusian authorities.
87. In addition to those who were convicted of offences directly related to the demonstration of 19 December, a number of others with some links to the events have also been prosecuted. These include:
- Dmitry Dashkevich and Eduard Lobov who were arrested on 18 December and convicted of hooliganism (Article 339 Part 3 of the Criminal Code). They were sentenced to 2 and 4 years imprisonment respectively in a high security prison.
 - Andrey Pochobut, a journalist, served a 15 day detention after being detained on 19 December and was subsequently prosecuted for insulting the president in a newspaper article. He was sentenced to 3 years in prison with two years suspended.
 - Ales Bialiatski, president of the Human Rights Center 'Viasna', was convicted of tax evasion and sentenced to four and a half years imprisonment.
88. In addition a number of lawyers involved in the defence of those prosecuted for 'mass riot' have lost their licenses to practice law or been disbarred; there have been a number of cases where journalists were sentenced to administrative detention for their presence in Independence Square and where media outlets have been subsequently investigated and harassed; numerous examples of where human rights groups have been subject to official enquiries, received warnings, surveillance and other unwelcome attention⁴⁷; and protests and demonstrations have been suppressed and freedom of assembly has been further restricted by amendments to the law introduced in October 2011.

⁴⁷ See, for example, analytical reviews of the situation of human rights defenders, journalists and lawyers in Belarus after 19 December 2010 prepared by the CIC International Observation Mission:
http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N1-1_ENG.pdf;
http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N2-1_ENG.pdf;
http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N3-1_ENG.pdf;
http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N1-1b_ENG.pdf;
http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N2-1b_ENG.pdf;
<http://www.osce.org/odihr/83417>.

89. The issue of the continued restriction on the right to peaceful assembly, both as a result of police intervention and through restrictions to the law, will be the subject of a further report in 2012.

Summary

90. An analysis of the convictions reveals that nearly half of those who faced charges or who convicted were part of the organised opposition to President Lukashenko, which suggests that the campaign by the authorities was less about prosecuting those who were guilty of acts of violence and public disorder and more about intimidating or decapitating the political opposition.

91. Even though most of those who have been convicted were given suspended sentences or were subsequently pardoned, they retain their criminal convictions and for many there is also the threat of being returned to prison to serve their sentence should they incur the displeasure of the authorities in some way. It should also not be forgotten that a number of people have felt the need to leave Belarus following the official investigations.

92. Although most attention has focused on the criminal convictions, it is important to remember that over 600 people experienced administrative detentions of up to 15 days for their involvement in the protests on the 19 December 2010 and around half of these reported some form of abuse or ill-treatment from the state.

93. Collectively, the detentions, convictions, sentences, the acts of self-exile, the harassment of lawyers, media, human rights defenders and other sections of civil society may be seen as an attempt to repress the active and organised political opposition and to act as a deterrent towards others who might possibly choose to mobilise and protest against the regime. However, there has also been extensive evidence of continuing protests and civic mobilisation in Belarus, which suggests that the attempts to silence the independent civil society and opposition have been far from successful.

7 Conclusions

94. The Interim Report provided an analysis of the protests against the declared Presidential election results in Minsk on 19 December 2010. While acknowledging that the assembly was unlawful, the report noted that violence was limited to a small number of protesters near the Government house and the vast majority of those gathered in Independence Square remain peaceful until the police used force to disperse them. The report highlighted a number of questions in relation to the policing operation and the subsequent reaction by the authorities to those who were detained or charged with organising or participating in the assembly.

95. This Final Report notes that there has been no attempt by the authorities to provide any information on the police operation or to hold any enquiry into the accusations of a disproportionate use of force in dispersing the protesters or the use of violence towards Vladimir Nekliaev, one of the presidential candidates, prior to the main demonstration.

96. This report argues that given the level of force used against people engaged in a peaceful demonstration in Independence Square, it would have been reasonable to expect the state

authorities to investigate complaints about the police. Their failure to do so highlights the sense of impunity held by the Belarusian authorities to respond to accusation of an egregious abuse of human rights of those exercising the right to peaceful assembly.

97. Analysis of the trials and prosecutions has highlighted a number of concerns about the abuse of human rights and the failure to uphold the international standards that the Belarusian authorities have ratified. Similarly, there has been a failure by the authorities to investigate a number of complaints of maltreatment and physical abuse by detainees.
98. The analysis of the court cases suggests that the authorities differentiated between those prosecuted depending on where they were detained and whether they were considered to be 'organisers' and 'participants'. However, the court also appears to have accepted that simple presence in Independence Square was sufficient to warrant conviction of 'mass riot' but there was no expectation that an individual need personally be identified as responsible for an act of violence.
99. It is perhaps surprising, given that the violent attack on the Government House triggered the police intervention, that none of those convicted was personally implicated in any act of violence. Furthermore, no-one appears to have been charged or convicted specifically with responsibility for any of the acts of violence at the Government House.
100. Approximately half of those who faced charges or were convicted for the events of 19 December were part of the organised opposition to President Lukashenko. This suggests that the response by the authorities was primarily intended to intimidate or incapacitate the political opposition in Belarus.
101. Collectively, the detentions and prosecutions, and the ongoing harassment of Belarusian civil society appears to be an attempt to repress political opposition and deter others who might protest against the regime. However, there continues to be widespread use of imaginative forms of protest and civic mobilisation in Belarus, which suggests that the attempts to silence the independent civil society and opposition will not be successful.

ANNEX: KEY OFFICIAL REPORTS

- Professor Emmanuel Decaux, *OSCE Rapporteur's Report on Belarus* (the Moscow Mechanism Report), Vienna, 28 May 2011. Available at: <http://www.osce.org/odihr/78705>;
- UN High Commissioner's Oral Report on Belarus to the Human Rights Council (18th Session of the UN Human Rights Council, Geneva, 20 September 2011). Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/Oral_report-on_Belarus20Sep2011.pdf;
- PACE Ad Hoc Committee of the Bureau on Recent Detentions, Prosecutions and Convictions of Members of the Opposition in Belarus, *Report on the Detentions, Prosecutions and Convictions of members of the opposition in Belarus in the aftermath of 19 December 2010 Presidential Elections*, Strasbourg, October 2011. Available at: http://www.assembly.coe.int/CommitteeDocs/2011/axdoc_ahbelarus_2011%2002Rev3.pdf;
- OSCE/ODIHR *Report on Trial Monitoring in Belarus (March-July 2011)*. Warsaw, 10 November 2011. Available at: <http://www.osce.org/odihr/84873>;
- UN Committee against Torture, Concluding observations on the fourth periodic report of Belarus (advance unedited version), Forty-seventh session, Geneva, 31 October–25 November 2011. Available at: http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.BLR.CO.4_en.doc;
- PACE Political Affairs Committee, Report 'Situation in Belarus' (rapporteur Mr. Andres Herkel), provisional version. Strasbourg, 14 December 2011. Available at: http://assembly.coe.int/Communication/14122011_SituationBelarus_E.pdf.

Neil Jarman (Special Rapporteur on the Events of 19 December 2010 of the Committee on International Control over the Human Rights Situation in Belarus)

Neil Jarman is Director of the Institute for Conflict Research in Belfast, Northern Ireland, U.K. His academic interest is primarily in peace-building activity and conflict mitigation, with specific focus on public assemblies and their policing, and community-based responses to violence and public disorder. He is the author of numerous publications on issues such as policing public order, human rights and conflict resolution, and combating hate crime. He is the chair of the OSCE/ODIHR Expert Panel on Freedom of Assembly.

Special Rapporteur's Group of Experts:

Michael Hamilton (Chair of the Group) is an Associate Professor in the Legal Studies Department, Central European University, Budapest. He teaches on the Human Rights and Comparative Constitutional Law programmes, including courses on Freedom of Expression and Assembly. Before moving to Budapest, he was co-Director of the Transitional Justice Institute at the University of Ulster. His research has focused on the legal regulation and mediation of public protest. He is a member of the OSCE/ODIHR Expert Panel on Freedom of Assembly.

Sergey Dikman (until 30 June 2011), expert of the non-governmental organization "Lawyers for Constitutional Rights and Freedoms" (JURIX), Moscow, Russia. He is an author of more than 20 articles on international human rights law, including those on the functioning of the UN human rights treaty bodies, and on implementation of freedom of peaceful assembly and freedom of expression in the framework of international standards.

Yuri Dzhibladze is the President of the Center for the Development of Democracy and Human Rights, Moscow, Russia. His expertise includes freedom of assembly and freedom of association, security of human rights defenders, development of international human rights standards, implementation of international obligation at the national level, interaction between NGOs and international organizations, strategies of the human rights work. He is a member of the Council on Civil Society Development and Human Rights with the President of the Russian Federation and a member of the Expert Council of the Ombudsman of Russia.

Alexey Kozlov is a PhD, associate professor, director of the Foundation "For environmental and social justice", member of the Expert Council of the Russian Federal Ombudsman, one of the authors of the methodology for monitoring the freedom of assembly in Russia, author of a number of reports and recommendations on freedom of assembly, editor of the web-portal www.article20.org.

Volodymir Chemeris is a Ukrainian human rights defender and civil society activist. Founder and member of the Board of the Institute of Economic and Social Problems "Respublica". His recent activities are mainly aimed at countering the curtailment of civil liberties in the Ukraine. Developer of the draft law "On the freedom of peaceful assembly".

Yevgeniy Zhovtis is a Kazakh human rights activist, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, an NGO, as well as a member of the Board of Directors of the Interlegal Foundation. He has an extensive track record as a defence lawyer. His primary interest is in civil liberties. He is a member of the OSCE/ODIHR Expert Panel on Freedom of Assembly.

**MEMORANDUM on the appointment of a Special Rapporteur
on 19 December 2010 events**

22 February 2011

<http://www.hrwatch-by.org/en/special-rapporteur>

The Committee on International Control over the Human Rights Situation in Belarus announces an appointment of a Special Rapporteur to investigate the events related to the opposition protests on 19 December 2010 in Belarus.

The Committee on International Control over the Human Rights Situation in Belarus (<http://hrwatch-by.org>) is a coalition of NGOs from OSCE countries, created for the goals of permanent monitoring and control of fundamental rights situation and the situation of human rights NGOs and defenders in Belarus as well as developing recommendations for the government of Belarus and international actors. Established by the Committee, the International Observatory Mission has been present in Minsk since 27 December 2010 (<http://hrwatch-by.org/o-missii>). A Special Rapporteur for 19 December 2010 events will become a separate body of the Committee, independent on the Mission.

The opposition rallies in Minsk on 19 December last year, as well as a wave of detentions and arrests of citizens that followed, caused a variety of reactions in the Belarusian society and international community. An objective impartial assessment of these events and, primarily, the public gathering at Independence Square, would be a task of the Rapporteur. The Special Rapporteur would evaluate whether the assembly on 19 December was peaceful from the perspective of international standards, whether the use of force by the law enforcement agencies as well as the further steps of the authorities to prosecute the participants were justified and proportionate. First of all, the assessment will be guided by the domestic legislation, and also by international fundamental human rights obligations undertaken by the Republic of Belarus.

Neil Jarman, an independent international expert, director of the UK-based Institute for Conflict Research and the Chairman of the OSCE/ODIHR Panel of Experts on Freedom of Assembly, has been named the Special Rapporteur for those purposes. He will be assisted by a group of experts on freedom of assembly and police response measures from OSCE countries, chaired by Michael Hamilton, Jarman's colleague and the professor of the Central European University.

Video records, statements by observers, witnesses and officials, media materials and public materials of criminal cases will be used for conclusions.

The Committee is addressing the public and political associations of Belarus, journalists, media, embassies of OSCE countries in Belarus, as well as the authorities of Belarus, with a request to provide all the information available on the actions of the 19 December protest participants and measures taken by the law enforcement agencies, to ensure a non-partisan and unbiased assessment of the events.

Please feel free to contact us with any questions regarding the handover of materials or the activities of the Special Rapporteur in Russian or English via e-mail:

BYC-SR@hrgroups.org