

Viešoji įstaiga «Teisinė iniciatyva»

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To the Working Group on Enforced or Involuntary Disappearances

Call for contributions for a thematic study by the Working Group on Enforced or Involuntary Disappearances on “Elections and Enforced Disappearances”

Legal Initiative is a non-profit non-governmental human rights organization, protecting human rights in Belarus since 1996. The organization primarily works in five main areas of expertise: human rights education, documentation and investigation of torture in Belarus, legal help to victims of human rights violations, improvement of legislation and change in law enforcement practice and international advocacy. We continue our work on behalf of VŠĮ «Teisine iniciatyva», now registered in the Republic of Lithuania.

We want to share information on enforced disappearances in the context of elections in Belarus.

<p>1. What are the distinctive features of electoral violence when compared to other forms of political violence?</p>	<p>The situation with forced disappearances and electoral violence in Belarus has been relevant for about 25 years. In 1999-2000, Viktor Hanchar, Yury Zakharanka, Dmitry Zavadski, and Anatol Krasouski were kidnapped in Belarus. It was established that these people were victims of enforced disappearances¹.</p> <p>Nowadays, elements of enforced disappearance have become a routine practice. Many detentions were like enforced disappearances, in which law enforcement officials deliberately did not inform relatives/lawyers about the detainees, did not provide any public information, and misled relatives. Incommunicado detention has also become a common practice.</p> <p>Electoral violence: all alternative candidates are either sentenced to long prison terms or forced to leave Belarus under pain of criminal prosecution.</p>
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¹ Concluding observations on the 5th periodic report of Belarus: Human Rights Committee: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR/C/BLR/CO/5&Lang=ru

	<p>The massive nature of enforced disappearances: numerous cases of detention of people who did not participate in protests and were abducted on the street when, for example, they were walking home from work; went outside to smoke.</p>
<p>2. Do enforced disappearances in the context of elections follow a pattern? If so, please describe.</p>	<p>In Belarus, the electoral process is always associated with previous and subsequent detentions of presidential candidates and activists. At the same time, detention is often carried out in the form of enforced disappearance. There are patterns of enforced disappearances in the context of elections based on:</p> <ol style="list-style-type: none"> 1) circle of victims of enforced disappearances. The most dangerous opponents of Lukashenka are eliminated before the start of the elections themselves (Viktar Babaryka, Siarhei Tsikhanouski), but after the elections, the scale of illegal actions increases. Thus, Babaryka was detained on June 18, 2020, lawyers were not allowed to see him, and his relatives were not informed of his whereabouts, Maryia Kalesnikava, who was kidnapped on September 7, 2020; 2) structures that carry out enforced disappearances. In Belarus, the main perpetrators of enforced disappearances during the election period are the KGB, GUBOP, MIA, and DFR. 3) ignoring by the judiciary and prosecutorial authorities any complaints about the actions of security forces in the context of elections; 4) periods of activity. Approximately 3 months before the election date, security forces begin a purge of activists and civil society; 5) methods used. Since 2020, Belarus has actively used the mechanism of bringing to administrative responsibility with the imposition of administrative arrest as punishment to conceal enforced disappearance. Administrative detainees are kept in a temporary detention facility, where lawyers and relatives are not allowed in, letters are not given, and often relatives are not even informed whether the person is there, why he was detained, or when he will be released. People are repeatedly convicted on administrative charges, such as hooliganism, disobedience to the demands of a police officer, and as a result, people spend months in temporary detention centers, without any guarantees provided by criminal law, and being at the complete mercy of their captors.
<p>3. Who are the victims of enforced disappearances in the context of elections? If possible, provide examples.</p>	<p>The massive nature of enforced disappearances in the context of elections is characterized by the fact that absolutely all groups of the population were affected. Human rights activists, volunteers, journalists, members of NGOs, lawyers, football fans, priests, medical workers, former law enforcement officers, etc..</p> <p>Among well-known opposition figures, the kidnapping of Maryia Kalesnikava can be highlighted. On the morning of 09.08.2020, people in masks put Maryia in a minibus with the inscription “Communication” and took her away in an unknown direction. The regime denied that she had been detained, and only a few days later information appeared that Maryia had been detained and was in a pre-</p>

	<p>trial detention center in Minsk.</p> <p>Similarly, Kalesnikava’s lawyer, Lyudmila Kazak, was kidnapped in the center of Minsk.²</p> <p>In case of politically motivated detentions, agencies do not provide lawyers and relatives with any information about the detainees; lie about the fact that the detainees are not in their police department.</p> <p>Often the abduction process was carried out as follows: a minibus drove up to people on the street, unmarked people in civilian clothes armed with batons ran out of it and pushed people into these cars. After which contact with people is lost for an indefinite period.</p>
<p>4. What is the rationale for committing enforced disappearances in the context of elections?</p>	<p>The official authorities deny in all their statements the connection between enforced disappearances and the elections. They accuse the disappeared of a wide variety of crimes, and justify their actions only by the fact that sometimes there is “no time for the laws”: <i>“Although when almost brazen intervention is carried out, as I call it, from the outside and it is fueled from within and directed from the outside, there is sometimes no time for the laws, we need to take tough measures to stop all the muck that claims to do this,”</i> citizen A. Lukashenka.³</p>
<p>5. What are the consequences of electoral violence? More specifically, how does the occurrence of electoral violence - including enforced disappearance – impact peoples’ perception of the electoral process and their willingness to participate in future elections?</p>	<p>People’s participation in the electoral process and their voting rights are significantly limited. People are intimidated. Enforced disappearances and electoral violence in general influenced the forced leaving of opposition-minded citizens, as well as the desire to exercise their rights in the field of voting: the right to vote and to be elected. Any manifestation of disagreement with the regime will be suppressed.</p> <p>For the upcoming elections, representatives of the regime are already beginning to carry out preliminary work with the population. On February 19, 2024, they published a video showing how the detention of a person who tried to photograph his ballot would take place.⁴ Those present in the video include Kachanava (Chairman of the Council of the Republic of the National Assembly) and Kubrakou (Minister of Internal Affairs).</p>
<p>6. Have there been any enforced</p>	<p>In Belarus, civil society supporters of the electoral process are among the main risk groups for enforced disappearances, arbitrary detentions, and wrongful convictions. On the eve of the elections, they kidnapped</p>

² https://defendersbelarus.org/lyudmilakazak_persecution

³ <https://www.belta.by/president/view/lukashenko-vlast-ne-dlja-togo-daetsja-chtoby-ee-vzial-brosil-i-otdal-406208-2020/>

⁴ <https://t.me/viasna96/24473> <https://elections2024.spring96.org/be/news/114432>

<p>disappearances of actors who provide support to the electoral process? If so, how does it reflect on the electoral process?</p>	<p>members of the initiative groups of presidential candidates, and independent observers were kidnapped during the elections. Then the purge of civil society was carried out in waves: human rights defenders, journalists, activists, lawyers. Any detentions have a negative impact on people's awareness of their legal personality. People stop believing they can influence elections, and an atmosphere of powerlessness and fear arises.</p>
<p>7. Is there any particular phase of the electoral cycle when enforced disappearances are more likely to occur? Do enforced disappearances committed prior, during or after the elections have different purposes?</p>	<p>The main goal is to prevent the opposition from coming to power. Before and during the elections, the regime needs to prevent opposition candidates from participating in the elections; and reduce their support from the population. After the elections, the struggle continues with people who do not agree with the regime and the falsification of election results. The goal at this stage is revenge and intimidation.</p>
<p>10. Provide any example of legislation that has been adopted with the view of hindering the access to justice and redress to victims of human rights violations, including enforced disappearances in the context of elections.</p>	<p>Since 2020, changes have been made to the Criminal legislation 16 times, the vast majority of them were introduced to criminalize actions related to protests by Belarusians during and after the 2020 elections. Amendments were also made to the administrative legislation. Now, the only reason for which an administrative arrest can be 30 days is repeated participation (organization, holding) of a mass event not approved by the authorities. For all others – 15 days max. This provision allowed the state to cover up enforced disappearances with administrative penalties for up to 30 days. Civil legislation does not allow in practice to get compensation. It is impossible to prove that the actions or decisions of the regime representatives were illegal. Thus, for example, a person who has served an administrative arrest due to a subsequently canceled court decision still cannot demand compensation for damage. Since the courts, when canceling the decision, send the case for revision, the body conducting the administrative process retains the material until the expiration of the period for bringing to justice, and then the court simply dismisses the case due to the expiration of the period. It turns out that the result is the termination of the case not due to the illegality of the actions, but due to the expiration of the term, and accordingly, there are no grounds for compensation for damage. However, the main problem is not the laws, but the form of their</p>

	implementation.
11. Provide example of legislation that has facilitated the practice of enforced disappearance in the context of elections.	<p>Since 2020, Belarus has been in a state of “legal default”. Unprecedented violence prompted citizens to file nearly 5,000 complaints about violations of their rights, as well as potential crimes committed by officers against people⁵. To this day, not a single criminal case has been initiated on the stated facts.</p> <p>Therefore, when law enforcement is carried out arbitrarily, legislation does not play a big role. In this regard, we can say that the increased level of repression and impunity for law enforcement officers have contributed to the lack of access to justice and the corresponding facilitation of the practice of enforced disappearances.</p>
12. What are the main obstacles for domestic and international accountability for enforced disappearances committed in the context of elections? Provide concrete examples of challenges encountered in the investigation and prosecution of such crimes.	<p>In total, the investigative authorities of Belarus received about 5,000 complaints from citizens regarding illegal actions of employees of internal affairs bodies, military personnel of the internal troops, and other law enforcement agencies committed on the day of the election of the president and after the election campaign⁶ during the participation of citizens in mass protests, including 640 people who appealed. In response to all applications, decisions were made to refuse to initiate criminal proceedings⁷. The government states that “the results of the audits show that the majority of statements were nothing more than disinformation carried out to inflame the situation in the country, as well as influencing the opinion of foreign officials, ..., to push for a severance of relations with legal authorities of Belarus and the introduction of sanctions.”⁸.</p> <p>However, these statements are striking in their cynicism. Thus, the High Commissioner has reasonable grounds to believe that during the period from 1 May 2020 to 31 December 2022, many violations of international human rights law, including torture, were committed in Belarus⁹.</p> <p>OHCHR found that by May 2021 alone, approximately 37,000 people had been detained in Belarus in connection with the elections, including approximately 13,500 people between 9 and 14 August 2020. These arrests and detentions, accompanied by the unlawful use of force resulting in serious bodily injury and damage to health, and subsequent acts of torture and ill-treatment, including rape, were widespread and had the effect of putting pressure on the population to suppress dissent and public protests against the current president. Given the scale and nature of the violations identified in this report, their widespread and systematic nature, and the evidence of national policy, awareness, and direction regarding their collective perpetration by multiple government agencies, in particular concerning mass</p>

⁵ para.121, CAT/C/BLR/6

⁶ CAT/C/BLR/6

⁷ para. 116, 119 CAT/C/BLR/6

⁸ CAT/C/BLR/6

⁹ A/HRC/52/68, n.53

	<p>arbitrary detentions between 9 and 14 August 2020, there are sufficient grounds to conduct a further assessment of the available evidence from the point of view of applicable international criminal law¹⁰.</p> <p>In addition, Belarus denounced the Optional Protocol to the ICCPR of December 16, 1966, which made it impossible for Belarusians to appeal to the Human Rights Committee with individual complaints. The UN HRC stopped accepting applications from Belarusians after February 8, 2023.</p>
<p>13. What has been the role of the judiciary in safeguarding the rights of victims of enforced disappearances in the context of elections? Provide any examples of lack of judicial independence as well as attacks to judicial actors as a consequence of their work in this specific context.</p>	<p>Expert opinions from international initiatives and organizations highlight the lack of independence and impartiality of the judicial system in Belarus. In the case of Vital Brahinetz, the Working Group on Arbitrary Detention mentioned that in 2022, the Special Rapporteur on the situation of human rights in Belarus noted in her report that in 2021, the authorities had further strengthened their control over the judiciary and the court system.¹¹ Judges in Belarus, ..., are not independent and impartial....¹²</p> <p>TrialWatch initiative of the Clooney Foundation for Justice (CFJ) analyzed the case of Viktor Babaryka and came to the same conclusions about the system's dependence on Lukashenka.¹³</p> <p>Notable is the case of judge Aliaksei Patsko, who fled Belarus because he refused to pass sentences on people detained for political reasons.¹⁴ Aliaksei's case is practically the only one.</p> <p>During court hearings, judges refused to provide relatives with information about detainees when they knew nothing about their fate. Judges also kept court hearings closed, explaining this by public safety or the dissemination of personal data of the participants in the hearing.</p>

¹⁰ A/HRC/49/71, п.85, 86

¹¹ para 52, A/HRC/WGAD/2023/64

¹² para 44, A/HRC/WGAD/2023/64

¹³ https://cfj.org/wp-content/uploads/2021/10/ENG-Babariko_Fairness-Report-26-October-2021.pdf

¹⁴ <https://charter97.org/en/news/2020/10/22/397907/>

<p>14. How can impunity for enforced disappearances committed in the context of elections be addressed more effectively?</p> <p>15. What measures could be put in place to prevent or reduce the risks as well as address the practice of enforced disappearances, including so-called “short-term” enforced disappearances in the electoral context?</p>	<p>Enforced disappearances are usually accompanied by other crimes against humanity. Therefore, we believe that the modern world is faced with the problem of the impotence of the international community in preventing, stopping, and punishing CAH. Today, for Belarusians, the last operating mechanism remains to bring criminals to justice in cases initiated by other states under universal jurisdiction. Such a case was opened in Lithuania. However, we believe that such cases should be initiated in every state, and not just in one of them.</p>
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