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# INTERIM HUMAN RIGHTS ASSESSMENT

## The Committee on International Control (CIC)<sup>1</sup>

1. The ‘Committee on International Control over the Human Rights Situation in Belarus’ (CIC) was created on December 27, 2010 prompted largely by the events immediately following the Presidential elections on 19 December. Currently, this civil society coalition involves more than 40 NGOs from 15 OSCE participating States. These NGOs have agreed to co-ordinate 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. At present, the CIC is particularly concerned about the human rights of those who have been tried, and those who are awaiting trial, in relation to the events of 19 December. CIC, however, also monitors more generally the situation of human rights defenders and human rights organisations, as well as journalists and members of the legal profession, in Belarus.

3. The CIC serves to harness the expertise of its member organisations as well as a number of independent experts and practitioners (among them, members of the OSCE/ODIHR Expert Panel on Freedom of Assembly). 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<sup>2</sup>.

4. In order to ensure a co-ordinated response, the CIC has established a number of bodies to conduct particular tasks in relation to the human rights situation in Belarus. On February 22 2011, it appointed a Special Rapporteur to investigate the events surrounding the opposition protests on 19 December 2010 in Minsk<sup>3</sup>. 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:

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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](mailto: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://hr-watch-by.org/en/special-rapporteur>>

- evaluate the events of 19 December 2010 and to analyse the assembly on 19 December from the perspective of international standards,
- 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.

Dr. Neil Jarman, an independent international expert, and Director of the UK-based Institute for Conflict Research, has been 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.

## **Background**

5. In this Interim Report, the Special Rapporteur of the CIC has attempted to document in factual terms both the events of the evening of 19 December, and the subsequent response by the authorities. In doing so, he aims to provide as complete a picture of the situation as possible. The report examines specifically whether the implementation of the laws governing freedom of assembly in Belarus can be regarded as compliant with international human rights standards. Importantly, the report does not attempt to evaluate the results of the Presidential election or the operation of the electoral process. Moreover, the compilation of this interim assessment has been based only on available documentary and journalistic sources. Thus, while it identifies a number of specific and concrete conclusions, these should be regarded as provisional – a basis for further discussion – at this interim stage.

6. The Interim Report identifies a number of key questions which remain outstanding. The answers to these will be important to a full and final evaluation of the concerns outlined here. To this end, the CIC calls upon both governmental authorities and local and international non-governmental organisations to engage in an open dialogue about this Interim Report. In particular, the CIC requests that the Belarusian authorities urgently provide answers to the questions identified.

## **The Law on Mass Actions and related provisions of the Criminal Code**

7. The Interim Report does not attempt to review the laws governing freedom of peaceful assembly in Belarus in abstract. Nonetheless, it is useful to overview key aspects of the relevant legal framework since this provides the context for the exercise of the right

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1 - For an assessment of the elections, see OSCE/ODIHR Election Observation Mission Final Report, (Warsaw, February 22, 2011). Available at: [www.osce.org/odihr/75713](http://www.osce.org/odihr/75713)

to peacefully assemble in Belarus. International and regional human rights standards and case-law provide the benchmark against which these laws and their application will be evaluated. In particular, Article 21 of the International Covenant on Civil and Political Rights (ICCPR), as ratified by Belarus<sup>1</sup>, provides that:

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others<sup>2</sup>.*

8. In interpreting this provision, since Belarus is an OSCE participating state, the report also relies upon the OSCE-ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd ed., 2010)<sup>3</sup>. These Guidelines draw – amongst other sources – upon jurisprudence deriving from the European Convention on Human Rights (ECHR). Whilst not itself binding upon Belarus, the ECHR should certainly be regarded as aspirational, and Article 11 ECHR (which protects freedom of peaceful assembly) mirrors the text of Article 21 ICCPR. At a minimum, the European Court of Human Rights (ECHR) case-law therefore provides international examples of recognized good practice, and on this basis, we have included references to several key ECHR cases in this Interim Report.

9. Article 35 of the Constitution of the Republic of Belarus enshrines the right to freedom of peaceful assembly. This constitutional protection is supplemented by the Law on Mass Actions in the Republic of Belarus (2003, as amended), and a number of further offences and penalties are contained in the Code of Administrative Offences and in the Criminal Code.

10. Organisers of an assembly must comply with an affirmative application procedure, rather than merely notifying the authorities of their intention to hold an assembly (Article 5)<sup>4</sup>;

11. The legislation makes no provision for the facilitation of spontaneous assemblies (i.e. where an assembly is organised in response to a recent occurrence and the organiser is thus unable to meet the timeframe prescribed by the authorization procedure);

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1 - Signed by Belarus on 19 March 1968, and ratified on 12 November 1973. See <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en#16](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#16)>

2 - Article 21, ICCPR.

3 - Available at: <<http://www.osce.org/files/documents/4/0/73405.pdf>>

4 - We welcome, however the possibility of a move towards the replacement of a permission-based procedure with a two-day notification procedure prior to staging a public assembly. See Interim Report of the Election Observation Mission of the OSCE (15 – 24 November 2010). Available at: <<http://www.osce.org/odihr/elections/73960>> at 3.

12. The law imposes financial burdens on organisers with regard to guaranteeing public order, providing medical services and cleaning-up costs (Articles 6 and 10). These are costs that should instead be borne by the State in satisfaction of its positive obligation to facilitate and protect the exercise of the right to freedom of peaceful assembly<sup>1</sup>;

13. The law contains a blanket restriction on the holding of assemblies in particular locations and outside the hours of 8.00-22.00 (Article 9). The imposition of such blanket restrictions precludes individual assessment of the proportionality of any restrictions on fundamental rights, which should always be narrowly tailored to achieving a legitimate aim (as listed exhaustively in Article 21 ICCPR).

14. Article 15 of the law sets out the liability for violation of its provisions. It states, *inter alia*, that: 'Political parties ... and other organisations whose authorized persons have not secured the proper order of organisation ... and (or)<sup>2</sup> ... holding of a ... street rally, [or] demonstration .... that causes a large amount of damage [defined in Article 2] ... can be liquidated ...' This is an exceptionally broad and punitive sanction which potentially violates the requirement that the authorities distinguish between those who remain peaceful and those who actually engage in violence or damage to property. The occurrence of violence and/or property damage at a demonstration should never be cause to prosecute the organisers of participants of an assembly unless there is specific reliable and corroborated evidence that they themselves engaged in such behaviour.

15. Participants in the December 19 assembly have been charged (or have already been convicted) with an array of offences under both the Code on Administrative Offences and the Criminal Code. These include:

- Article 23.34 Code on Administrative Offences (violation of the procedure for organising or conducting a mass event or demonstration);
- Article 342(1) Criminal Code (organisation and preparation of actions that seriously violate public order);
- Article 339(3) Criminal Code (malicious hooliganism);
- Article 369 Criminal Code (insulting a representative of the authorities);
- Article 382 Criminal Code (unauthorized appropriation of the title or the authority of an official);
- Article 293 Criminal Code: (1) 'organisation of mass riot' and (2) 'participation in mass riot' (with imprisonment terms of 5-15 years and 3-8 years respectively). See further below.

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1 - See para.32, 'Explanatory Notes', OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, (2nd ed., 2010).

2 - It is not clear from the text of the legislation whether this is an 'and' or an 'or' requirement. Our concerns would be even greater if this provision could be invoked in situations where an assembly organiser had simply not properly followed the prescribed authorization procedure, but at which no violence or damage occurs.

16. In our view, the combination of an affirmative authorization procedure, the blanket bans on particular locations and times, the imposition of onerous financial obligations on assembly organisers, and the serious and potentially far-reaching consequences (for both individuals and organisations) of being found in breach of the law creates a significant chilling effect which undermines the practical and effective protection of the right to freedom of peaceful assembly in Belarus.

17. It is noteworthy that similar concerns regarding the Law on Mass Actions were voiced by several State parties and NGOs in the course the UN Universal Periodic Review (UPR) of Belarus's human rights commitments (completed in 2010). For example:

18. 'Amnesty International [amongst others] reported that 'Belarus continues to violate freedom of assembly by refusing to grant permission to hold demonstrations and public events, and peaceful demonstrators are frequently detained for short periods, prosecuted under the administrative code or subjected to disproportionate use of force by police officers and riot police.'<sup>1</sup>

19. 'In 2006, the Special Representative of the Secretary-General on human rights defenders noted that the Law on Mass Events and other laws and regulations strictly control the organisation of public protests and meetings. In 2007, the Special Rapporteur on the situation of human rights in Belarus expressed a similar view.'<sup>2</sup>

20. The final Report of the UPR Working Group requested that Belarus:

*98.9 'Review its national legislation in order to ensure its compliance with freedom of expression, assembly and association, as guaranteed in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights ...*

*98.11. Bring its Law on Mass Events into line with the requirements of the International Covenant on Civil and Political Rights;*<sup>3</sup>

21. The Belarusian government, however, rejected both recommendations as 'not acceptable'. It replied that "Belarus' legislation on freedom of expression, assembly and association, peaceful action and demonstration fully meets the country's international commitments, enshrined, in particular,

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1 - A/HRC/WG.6/8/BLR/3, Summary of 29 stakeholders' submissions prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 (17 February 2010) at para.44.

2 - A/HRC/WG.6/8/BLR/2 Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Belarus (17 February 2010) at para.46 citing E/CN.4/2006/95/Add.5, para 193, and A/HRC/4/16, para. 21.

3 - A/HRC/15/16, Report of the Working Group on the Universal Periodic Review: Belarus (21 June 2010).

in the International Covenant on Civil and Political Rights”, and that “Belarus’ Mass Events Act is compatible with the International Covenant.”<sup>1</sup>

## ‘Peaceful assembly’

22. Article 21 ICCPR (and Article 11 ECHR) recognizes only a right to peaceful assembly. Where an assembly is peaceful, the authorities have a positive obligation to protect and facilitate it – even if it is technically unlawful (Plattform ‘Ärzte für das Leben’ v Austria 1988; Bukta v Hungary 2007).

23. ‘Peaceful’ has been held to exclude assemblies where the organisers and participants ‘have violent intentions’ (G v Federal Republic of Germany 1989). However, in Christians Against Racism and Fascism v UK 1980, the report of the European Commission on Human Rights stated that:

*‘... the right to freedom of peaceful assembly is secured to everyone who has the intention of organising a peaceful demonstration ... The possibility ... of extremists with violent intentions, not members of the organising association joining the demonstration cannot as such take away that right. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it, such procession does not for this reason alone fall outside of the scope of Article 11’.*

24. Similarly, it was noted by the European Court of Human Rights in Ziliberg v Moldova (2004) that ‘an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.’<sup>2</sup> Thus, ‘[i]t is not necessary to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights’ (Ezelin v France, 1991). These rulings have particular significance for the interpretation of Article 293 of the Belarusian Criminal Code: participation in, or organisation of, a mass riot. In this regard, we are particularly concerned that the accounts of the court proceedings thus far do not provide any detail about what precisely the Courts regards as a ‘mass riot’, what factors the Courts have taken into consideration when deciding whether an individual ‘participated in’ or ‘organised’ such a riot, and what considerations have influenced the (varying) sentences imposed.

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1 - A/HRC/15/16/Add.1, Addendum to the Report of the Working Group on the Universal Periodic Review: Belarus – ‘Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review’, at paras. 22 and 27 respectively. Available online at: <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/A.HRC.15.16.Add.1\\_BELARUS\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/A.HRC.15.16.Add.1_BELARUS_eng.pdf)>

2. – See also Gasparyan v. Armenia (No.1) (2009), para.43; Galstyan v. Armenia (2008), para.115; Ashughyan v. Armenia (2008), para.90; and Cetinkaya v. Turkey (2006, in French only).

## Interpretation of ‘Mass Riot’

25. ‘Riot’ is commonly viewed as the most serious of public order offences. It is contrasted, for example, in Belarus with the lesser offence in Article 342(1) of the Criminal Code (organisation and preparation of actions that seriously violate public order). Similarly, in other jurisdictions, riot is distinguished from the less serious offences of ‘violent disorder’ or ‘affray’. The fact that the Belarusian law allows for the imposition of custodial sentences of up to 15 years for organizing a mass riot underscores the grave nature of this offence.

26. The offence of ‘riot’ derives its gravity from the fact that the persons concerned act in numbers and use those numbers to achieve their purpose.<sup>1</sup> This element of ‘weight of numbers’ is accentuated in the Belarusian law through the use of the term ‘mass’ riot. ‘Mass riot’ should not therefore be interpreted as coterminous with a ‘mass action at which some violence or riotous behaviour occurs’. Indeed, where separate incidents occur simultaneously or over a period of time, these should be regarded as separate – not as a single ‘mass riot’ (see further below in relation to the events of December 19).

27. In addition, there is a full spectrum of non-peaceful behaviour – not all of which should be regarded as ‘riotous’ even where the persons involved might be said to have been acting in numbers to achieve a common purpose. It is the degree of violence – its viciousness, duration, numbers involved, and the extent of injuries or value of the damage caused, that ought to determine whether the threshold of ‘mass riot’ has been met. Actions at the lower end of this spectrum might include shouting abuse at the police, or kicking or banging with fists on the barriers erected by police, and should never of themselves be deemed to constitute riotous behaviour. Towards the other end of the spectrum are actions such as throwing missiles at the police or police vehicles capable of causing serious injury or damage, using weapons, and causing serious damage to property (including the smashing of windows). These actions may constitute ‘mass riot’ where they are carried out by a significant number of people, such that a person of reasonable firmness would fear for their safety. Again, however, where only a small number of individuals is involved in such activity, it is difficult to see how this could constitute a ‘mass riot’.

28. The question of what constitutes ‘participation’ is inevitably fact sensitive. Critically, too, therefore, the Courts must provide sufficient reasons and evidential detail regarding the actual individual behaviour which is held to constitute participation in, or organisation of, a mass riot.

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1 - Thornton et al, *The Law of Public Order and Protest* (OUP: 2010) at 1.09, citing the UK Law Commission Report, *Offences Relating to Public Order*, Law Com. 123, 24 October 1983, Cmnd 9510).

This must include careful examination of evidence taken from any victims or witnesses (other than the arresting police officers). In the absence of such detail, the arrest and detention of individuals for this most 'reprehensible' of conduct, cannot have credibility, and detention on this basis gives rise to serious human rights concerns (Ashughyan v. Armenia, 2008 paras.99-101) <sup>1</sup>.

29. The distinction between 'participating in' and 'organizing' a mass riot, and 'participating in' and 'organizing' an unlawful assembly must also be carefully observed:

- a person who has an organisational role in relation to an 'unlawful assembly' at which some violence occurs must not be assumed, on that basis, to have organised a 'mass riot'. Unless there is concrete and demonstrable evidence of an individual themselves actually using, or calling upon others to use, unlawful and serious violence, it cannot be said that that person 'organised a mass riot'.

- likewise, a person who participates in an 'unlawful assembly' cannot be assumed, on that basis alone, to have participated in a 'mass riot'. Unless there is concrete and demonstrable evidence of an individual themselves actually using unlawful and serious violence it cannot be said that that person 'participated in a mass riot'.

## **Analysis of the Events of 19 December 2010**

30. The following section of the report analyses the events that unfolded in the evening of 19 December 2010 in Minsk when thousands of people assembled in the centre of the city in order to protest against what they considered to be fraudulent results of the Belarusian Presidential Elections. The Belarusian President Alexander Lukashenko had announced in advance that the 'reaction of law enforcement and military personal should be adequate and tough' <sup>2</sup>, and although the authorities initially appeared to tolerate most of the public protests, the events ultimately provoked a massive response by the state security bodies both against the crowd of protesters and against a variety of individuals and organisations in the days and weeks that followed.

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1 - It is noteworthy that in relation to protests in the aftermath of the April 2009 elections in Moldova (when 200 persons were arrested and detained, inter alia, on charges of large-scale disorder) the government accepted there had been a violation of the right to liberty under Article 5 ECHR. On this basis, a friendly settlement was reached between the government and the applicants, and the applications were struck out. See, Application no. 29837/09 by Radu Popa against Moldova, lodged on 8 June 2009; Application no. 24163/09 by Sergiu Mocanu against Moldova, lodged on 11 May 2009; Application no.19828/09 by Stati and Marinescu against Moldova, lodged on 16 April 2009. See also, Applications nos. 43546/05 and 844/06 by Boris Hmelevschi and Vladimir Moscalev against Moldova lodged on 1 and 8 December 2005 (includes issue of unregistered insignia).

2 - <http://spring96.org/en/news/40799>

31. The analysis is based on a review of a wide range of reports in the Belarusian and international media, of documents produced by human rights groups, and of extensive video footage filmed both by participants at the assembly and by representatives of the mass media. The array of materials is in turn interpreted in the context of a detailed timeline of the events of that evening, which is drawn from information presented by Radio ‘Svaboda’<sup>1</sup>, the newspaper ‘Salidarnasc’<sup>2</sup>, the Human Rights Center ‘Viasna’<sup>3</sup>, Belarusian Helsinki Committee<sup>4</sup> and the Belarusian Association of Journalists<sup>5</sup>.

32. From this timeline we consider that there are six main elements to the events of 19 December 2010:

1) Those activities specifically related to the assembly that took place in the run-up to 19 December 2010.

2) The police action against Vladimir Nekliaev (Uladzimir Nyaklyaeu) and his supporters in the early evening of 19 December.

3) The initial rally in Octyabrskya (Kastrychnitskaya) Square – hereafter, October Square – and the subsequent movement of protesters to a rally in Nezavisimosti (Nezalezhnasci) Square – hereafter, Independence Square.

4) The violent attack on the House of Government adjacent to Independence Square and the police response to that violence.

5) The actions taken by the police and state security officials to disperse the main body of demonstrators in Independence Square.

6) Actions taken by the state authorities in the period after 19 December 2010.

33. The analysis that follows reviews each of these events separately in order to assess the extent to which (a) the actions of protesters should be considered as protected by international human rights standards, and (b) the extent to which the actions of the Belarusian state served to protect or to violate their human rights.

## **1) Events in advance of the Assembly**

34. The first issue to consider is the legal status of the assembly of 19 December. As noted above (paragraphs 9-13), according to Article 5 of the Belarusian ‘Law on Mass Actions’ the organisers of an assembly with more than 1,000 participants (mass actions) are required to provide 15 days advance notice of an assembly, or in the case of assemblies associated with elections the organiser should provide 5 days advance notification to the local authorities. Furthermore, Article 9 states that mass public assemblies can only take place between 8am and 10pm, and the law does not provide for any possibility of a spontaneous assembly.

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1 - <http://www.svaboda.org/content/article/2252428.html>

2 - <http://baj.by/m-p-viewpub-tid-1-pid-9501.html>

3 - <http://spring96.org/en/vybary2010>

4 - <http://www.belhelcom.org/en/node/12366>

5 - <http://baj.by/?newlang=eng>

35. It was reported that several of the Presidential candidates had called in advance of the election day for their supporters to gather in the evening of 19 December at October Square in Minsk to protest against what they considered to be unfair elections. According to the Independent Observation Report produced by the Belarusian Helsinki Committee and Viasna: ‘Most candidates had invited citizens to join the meeting in their pre-election presentations on state TV’<sup>1</sup>, while the OSCE’s Final Election Observation Report notes: ‘From the outset of the election campaign, opposition candidates Vladimir Nekliaev, Vital Rymasheuski, Andrei Sannikov and Nikolai Statkevich called on their supporters to ‘defend their vote’ peacefully on Oktyabrskaya Square in Minsk on 19 December’<sup>2</sup>.

36. This suggests that it is reasonable to consider several of the presidential candidates to be joint organisers of the subsequent assembly since they each called on people to assemble and they each specified the date and the location where they wanted people to gather to protest. As far as we can ascertain, no formal notification was provided to the authorities, and on this basis the assembly can therefore be considered as an unlawful assembly.

37. However, it is worth highlighting that the European Court of Human Rights has ruled that ‘an unlawful situation does not justify an infringement of freedom of assembly’ (*Oya Ataman v Turkey* 2007, para 39) and that where there is no danger to public order and ‘where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain tolerance towards peaceful gatherings’ (para 42). The Court has argued that peaceful unlawful assemblies should be policed in the same way as a peaceful lawful assembly rather than being dispersed or subjected to police use of force simply because it is unlawful (although the organisers and participants may still subsequently be subject to proportionate legal sanctions).

38. In the Belarusian context the authorities appeared to offer warnings about how they might react to any unlawful assemblies after the election. The Independent Observation Report notes that various state officials had responded to the calls to assemble by warning against ‘provocations and terrorist attacks prepared by the opposition for the demonstration’. The report also noted that the authorities detained a number of individuals in advance of the planned assembly in cities across Belarus. However, from the information we have it is not clear whether these ‘preventative’ detentions were specifically associated with the proposed assembly, or whether they were related more specifically to the election process.

39. Furthermore, according to the Independent Observation Report: ‘On the election day, presidential candidates Uladzimir Nyaklyaeu, Ryhor Kastusyov, Vital Rymasheuski, Alyksei Mikhalevich and Yaraslau Ramanchuk reiterated their intention to conduct the demonstration in an exclusively peaceful manner.

At 16:00, they handed over an appeal to the Prosecutor General in which they urged him to stop preventive detentions and requested him to personally come to

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1 - <http://spring96.org/files/misc/finalhrdmonitoringreportonpresidentialelectioninbelarus-en.pdf> at page 32.

2 - <http://www.osce.org/odihr/75713> at page 23.

Kastrychnitskaya [October] Square to assess actions of law enforcement officials and demonstrators<sup>1</sup>. This suggests that the presidential candidates aimed to ensure that the assembly was a peaceful event to protest about aspects of the election process and the election results. However, the statement also indicates that they were concerned about how the authorities might react to any such form of public protest.

## 2) The Attack on Vladimir Nekliaev (Uladzimir Nyaklyaeu) and his Supporters

40. The first indication of how the authorities might respond to any public activity by the various election candidates occurred in the early evening of 19 December. The report of the OSCE Election Observation Mission notes that ‘candidate Nekliaev was prevented from reaching Ochyabrskaya [October] Square and was severely beaten. He was hospitalized and subsequently removed from hospital by unidentified individuals’<sup>2</sup>. This event is described in more detail in the Independent Observation Report<sup>3</sup>:

*At 19:10, a group of Uladzimir Nyaklyaeu’s [Vladimir Nekliaev’s] supporters which was moving towards Kastrychnitskaya [October] Square was attacked by plainclothed special forces who used stun grenades. All journalists accompanying the column were put faces down on snow, and their cameras damaged by intention. The candidate was beaten and badly injured. He was brought to the Minsk City Emergency Hospital, but later was taken from there by unidentified persons in plain clothes. The sound equipment, which was planned to be used at the square, was removed.*

41. This incident raises a number of human rights concerns. First, there does not appear to be any legitimate reason for this use of force by the ‘special forces’ (see below for a discussion of who was involved in the attack). There is no suggestion that Nekliaev (Nyaklyaeu) and his supporters were behaving in an aggressive or disorderly manner and the intervention appears to have been overly aggressive, while the use of stun grenades seems to have been a disproportionate response to what at worst might have been an unauthorized (but entirely peaceful) demonstration. As noted earlier the European Court of Human Rights has highlighted on a number of occasions that where an unlawful assembly remains peaceful the police should refrain from any use of force to intervene or disperse participants (*Oya Ataman v Turkey*, 2007; *Balsik v Turkey*, 2007).

Second, one individual was badly injured and taken to hospital, but was subsequently removed by what have been described as ‘plainclothed’ security officials. The European Court of Human Rights has emphasized that where allegations of inhuman or degrading treatment

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1 - <http://spring96.org/files/misc/finalhrdmonitoringreportonpresidentialelectioninbelarus-en.pdf> at page 32.

2 - <http://www.osce.org/odihr/75713> at page 22.

3 - <http://spring96.org/files/misc/finalhrdmonitoringreportonpresidentialelectioninbelarus-en.pdf> at page 32.

are made against law-enforcement officials, ‘particularly thorough scrutiny’ is called for ‘even if domestic proceedings and investigations have already taken place’ (Muradova v. Azerbaijan, 2009, para.99). It is not clear whether any attempt has been made by the authorities to investigate the allegations of violence and the ill-treatment of participants. This failure itself constitutes a violation of the procedural limb of the right to freedom from inhuman or degrading treatment (Saya and Others v Turkey, 2008; Гълес v Turkey, 1998). Moreover, the fact that non-uniformed law enforcement officials were deployed fundamentally undermines the principle that the authorities should be clearly and individually identifiable in order that accountability may ensue<sup>1</sup>.

43. Third, the intervention by the ‘special forces’ appears to have involved the use of force towards the journalists who were accompanying the protesters and the police caused deliberate damage to the journalists’ equipment. The OSCE has highlighted the legitimate role of journalists in reporting at public assemblies<sup>2</sup>, including at ‘unsanctioned’ assemblies, and has argued that ‘The media is impartial to the circumstances under which an event takes place, be it planned or spontaneous. Simply, it is their duty as media professionals to provide coverage and should be afforded the same privileges by the police as if the demonstration were ‘sanctioned.’ The action by the ‘special forces’ appears to have deliberately flouted the states’ responsibility to protect the freedom of the media in reporting public events<sup>3</sup>.

44. **This incident appears to have been an isolated act of intervention by the authorities in advance of the later dispersal of the main assembly. However, it raises a number of human rights concerns. There is some uncertainty who exactly was involved in the attack on Nekliaev (Nyaklyaeu) and his supporters. The Independent Observation Report describes them as ‘plainclothed special forces’ and as far as we are aware this has not been challenged by the authorities. If the attackers were members of the security forces then the state should investigate fully the incident and the proportionality of the use of force. If the incidents did not involve state agents then the authorities should clearly state this and should investigate who was responsible both for the attack in the street and the removal of Vladimir Nekliaev (Uladzimir Nyaklyaeu) from his hospital bed.**

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1 - See ‘Explanatory Notes’, OSCE-ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, para.153.

2 - Representative on Freedom of the Media (Miklós Haraszti), Handling of the media during political demonstrations: Observations and Recommendations (21 June 2007). Report can be found at <[http://www.osce.org/documents/rfm/20-07/06/25176\\_en.pdf](http://www.osce.org/documents/rfm/20-07/06/25176_en.pdf)> in English and at <[http://www.osce.org/documents/rfm/2007/06/25176\\_ru.pdf](http://www.osce.org/documents/rfm/2007/06/25176_ru.pdf)> in Russian.

3 - The Belarusian authorities continued to target journalists in the aftermath of the events of 19 December, see <<http://www.hrwatch-by.org/en/analytical-review-2-1>>

### 3) The Assembly on 19 December

45. According to our chronology, by about 17.00 on 19 December there were approximately 20 police vans, plus buses with special police forces and breakdown trucks in the vicinity of October Square, that cars had been stopped from parking in the area and the police had erected barriers around the Palace of the Republic. People were allowed to continue to use the skating rink that had been erected in the square. This suggests that the authorities had made some preparations for the expected assembly. However, the levels of policing do not suggest that the police were expecting there to be a large crowd gathering that evening, nor that there might be extensive disorder in the city centre.

46. Reports indicate that at approximately 19.30, a group of between 500 and 2,000 people, led by the presidential candidate Vital Rymasheuski, had began to move from Privokzalnaya Square in the direction of October Square. There does not appear to have been any attempt by the police to prevent this demonstration.

47. It was reported that by 20.30 there were about 15,000 people in October Square and at least four of the presidential candidates were also present: Yaroslau Ramanchuk, Rychor Kastusyou, Andrei Sannikov and Vital Rymasheuski. Sound amplification equipment had been installed and each of the candidates spoke to the crowd, which continued to grow. There were no police officers visible in the area, except for traffic police, and no attempt appears to have been made to interrupt the gathering or to prevent people from reaching the square.

48. By 21.00, the still growing numbers of protestors blocked Independence Avenue as they began to move towards Independence Square, where the House of Government, and the headquarters of the Central Election Commission, are located. A small group of traffic police are reported to have made a vain attempt to block the way, but proved ineffectual at preventing people from reaching the square. The crowd was estimated to have been between 20,000 and 40,000 people strong. Independence Square was filled and the crowd extended along the main roads in the area. All this time the crowd were reported to have been good humoured and peaceful. In Independence Square, several of the presidential candidates made further speeches calling for new and fair elections and for the release of political prisoners.

49. Throughout this time the police appear to have largely respected the rights of the people to protest peacefully. The police do not appear to have been particularly visible or numerous up until this point, they do not appear to have been intrusive nor did they aim to prevent the crowd gathering or moving from October to Independence Square. Rather, the police appear to have focused on controlling the traffic to enable the assembly to take place in a reasonable manner and in a way that limited the disruption to the rights of others.

50. For the period between 19.30 and 22.00 the police appear to have responded to the protests in a manner that respected the principles of freedom of peaceful assembly. The available evidence suggests that the authorities tried to facilitate the right to freedom of peaceful assembly even though the event was technically an unlawful assembly.

#### 4) The Attack on the House of Government

51. At around 21.45 on 19 December a small number of people began to attack the House of Government, which is located at one side of Independence Square. The video evidence shows that the attackers used their fists, their feet and a variety of objects to smash windows and glass doors in an attempt to try to gain entry to the building. The attack on the building is reported to have lasted for some considerable time and attracted substantial media attention before the police responded to the incident.

52. It is unclear whether the people who attacked the House of Government had been part of the peaceful demonstration in Independence Square and who had become over-excited by the events; whether they were people who came to the assembly with a deliberate intention of causing or provoking violence; or whether they were agents provocateurs, as has been suggested by some commentators. In many ways this does not matter. The important fact is that the attack on the building was an act of violence and therefore cannot be considered as a legitimate part of a peaceful protest.

53. It is worth noting that many of those who were involved in acts of violence made no attempt to hide their identities and they were clearly visible on the extensive video footage of the violence. It should therefore be possible for the state authorities to identify the perpetrators and prosecute them for their actions. As noted previously (paragraphs 23-24 above), the European Court of Human Rights has previously ruled that people should only be held accountable for their own actions and that simply by being present when an assembly turns violent should not give rise to liability for the violent actions of others (*Ezelin v France*, 1991).

54. The police appear to have been rather slow to respond to the attack on the House of Government, which continued for some thirty minutes before the first police intervention. It is perhaps surprising that there were no police officers or other form of security outside of the building while the assembly took place in the adjacent square, and that it took the police quite so long to respond to the violence. There have been suggestions that there were police officers inside the building while the attack took place, and some footage appears to show shields similar to those used by the police to be blocking some of the windows and doors after the glass had been broken.

55. When the police did eventually respond to the violence the video footage shows a number of officers, who were wearing full riot gear, using their batons aggressively and indiscriminately on anyone close to the building. Whilst it might be considered reasonable for the police to use some level of force against protesters who are acting violently, there is no indication that any of those involved in the acts violence attempted to attack the police as they arrived, nor is there any evidence that all or most of the people near the building

were actively involved in the violence. In fact many of the people closest to the building appear to have been media representatives recording what was taking place. It may well therefore have been possible for the police to have moved the crowd away from the front doors of the building simply by pushing them away with their shields, rather than through the use of their batons.

56. The video footage shows that a number of people suffered head wounds during the police intervention at this time, which is evidence that a number of police officers must have used substantial force against those close to the building.

57. Having moved the crowd away from the doors, the police formed a solid line between the building and the crowd. The video shows that the police were well equipped with rectangular metal shields, helmets with visors, and boots with shin-guards as well as the batons. Their equipment contrasts with the members of the crowd who are wearing civilian clothing.

58. During the period that the police held their line, a number of civilians approached and spoke to individual police officers. Some video footage suggests that police officers struck individual protesters with their batons if they came too close to their line.

**59. The attack on the House of Government and the response by the police raises a number of questions. Why were there no police deployed outside the building to prevent the attack? Why did it take the police around 30 minutes to respond to the violence? Some use of force by the police may have been considered necessary, but there is also evidence of an indiscriminate and disproportionate use of force. There is therefore an obligation on the authorities to conduct a prompt, independent and transparent investigation in relation to the proportionality of the police response. Moreover, a related question arises as to whether all those who have been charged under Articles 293, 339 or 342 of the Criminal Code have been positively identified as individually engaging in serious violence or damaging property.**

#### **5) The Dispersal of the Main Assembly**

60. After intervening to stop the attack on the House of Government, many more police officers in riot gear were deployed in the vicinity. However, the police appeared to have waited for approximately 30 minutes before taking any further action and began to disperse the crowd in Independence Square.

This suggests that the two events in the two adjacent locations were interpreted as two separate and distinct events and that this time was used by the authorities to consider their next steps and to organise the subsequent police action against those participating in the larger, peaceful assembly in Independence Square.

61. It should be reiterated at this point that Article 9 of the Law on Mass Actions prohibits any assembly from continuing beyond 22.00, while Article 12 outlines how the authorities might respond in such a situation. Article 12 states that in the case of a refusal of participants to meet the demands of the authorities to stop the event, then the police may take the necessary measures to terminate the assembly. This suggests that it is incumbent on the authorities to inform the organisers and participants of the need to disperse, before they intervene to terminate the assembly.

62. At this stage the main assembly in Independence Square might therefore be considered as unlawful, first because no advance notification had been provided and second because the event had continued beyond the legally specified end time for all assemblies. While the authorities appear to have been willing to facilitate the initial unlawful assembly, they clearly decided that they were not willing to tolerate an ongoing public protest that might continue for an indefinite period of time.

63. Although the authorities might be able to justify clearing the main body of the demonstration, under the law they are required to ask the participants to disperse before they intervene. However, none of the reports gives any indication that the authorities either attempted to engage with the organisers to ask them to encourage the crowd to disperse, or used their own amplification equipment to communicate directly with the assembly participants.

64. At approximately 23.15 the police began to act to disperse the larger crowd as they formed a series of lines which trapped approximately 300 people in the square immediately in front of the House of Government. Police officers began banging their shields and forced people back using their batons. Those who were caught between the police lines appear to have been beaten indiscriminately. Some people were able to escape through the police lines; those who did not were detained and put into police vans.

65. The police also moved against the main group of the demonstration and used shields and batons to push people towards Independence Avenue. Video footage shows that numerous people were hit indiscriminately. Some fought back, but most tried to leave the area. It was during this period that most people were detained by the police. Some were detained after they had been beaten, others as they tried to leave the Square and some were detained some distance from the Square as they tried to leave the area. The various reports suggest that the operation to clear Independence Square lasted between 20 and 30 minutes.

66. The video evidence suggests that when the police began the operation to clear Independence Square area the crowd was peaceful. There is no evidence of any physical aggression towards the police prior to their intervention. There is no evidence that any order was given to people to leave the area, nor is there any evidence that people were warned that if they did not leave they risked being detained. Rather, the police appear to have decided to clear the area by force and to detain as many people as possible who had been participating in the assembly, simply because they had been participating in the assembly.

67. The use of force by the police towards the participants in the assembly appears to have been completely disproportionate to the situation. Video footage shows police officers, both in uniform and in plain clothes, striking people who are walking away, hitting people who are on the ground, hitting women and elderly people as well as kicking people. There is little, if any evidence of anyone offering any significant resistance to the police or behaving in an aggressive manner towards the police.

68. In contrast to the disciplined and orderly manner in which the police arrived in the square, the action to clear the square appears as little more than an ill-disciplined attack on a peaceful crowd.

69. International standards on policing clearly set out the parameters for the use of force. The United Nations 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' makes it clear that force should only be used in limited situations:

*4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.*

70. *The Basic Principles* also provides guidance for the policing of unlawful assemblies. It states:

*12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.*

*13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.*

71. **The video and documentary evidence indicates that the main assembly in Independence Square in Minsk was still peaceful when the police operation to clear the area began. The violence associated with the attack on the House of Government appears to have been brought under control well before this time and there is no evidence that the main body of the crowd participated, supported or encouraged the violence. It is therefore difficult to conclude that this assembly was a 'mass riot' as claimed subsequently by the Belarusian authorities. It was clearly an unlawful assembly under the terms of the Law on Mass Actions, but all the evidence suggests that the main body of the assembly remained peaceful throughout.**

72. Under Belarusian law the authorities had a legal right to disperse such an unlawful assembly. However, the UN Basic Principles clearly state that in such circumstances force shall be avoided wherever possible and where this is not the case, force should be kept to a minimum. The video and documentary evidence suggest that the use of force by the police was not kept to a minimum and it would also be difficult to argue that the use of batons against peaceful civilians who are trying to leave the area was a necessary or proportionate response to the situation.

## **6) One Event or Two?**

73. It is worth considering at this point in the analysis whether it is appropriate to view the events of 19 December 2010 as one mass action or whether the large assembly in Independence Square and the attack on the House of Government should be considered as separate events. This may appear to be simply an academic point, but given the subsequent reaction by the Government to those protesting on 19 December, and the charges that have been brought for organizing or participating in a ‘mass riot’, it is an important point to consider.

74. Although the two events took place at the same time and were adjacent to each other, the video footage suggests that the attack on the House of Government was effectively a separate event involving only a small number of people and there was some distance between the main body of peaceful protesters and the smaller violent group. There does not appear to have been any encouragement from the people on the platform for those attacking the building and in fact there is some evidence of people speaking against the violence. Furthermore, the violent attack attracted a relatively small number of participants and the main peaceful assembly continued as before, while the attack took place. Finally, when the police did eventually intervene, their activity was focused very discretely, initially at least, on those in close proximity to the building, and the main assembly was allowed to continue.

**75. Our analysis suggests that the peaceful protest and the violent attack should be considered as two separate and distinct simultaneous assemblies (as the police action appears at least implicitly to acknowledge). The larger event in Independence Square must be regarded as a peaceful, if unauthorized, mass rally. In contrast, the smaller protest involving violent activity at the House of Government cannot be considered as a peaceful assembly and therefore was not a protected activity. It is only this element of the protests on the evening of 19 December 2010 that might legitimately be considered as a ‘mass riot’. Even then, however, the small number of people actually engaged in violence calls into question the characterization of this assembly as a ‘mass’ riot (see paragraph 27 above).**

## 7) Actions by the State Authorities after December 19, 2010

76. The decision to disperse the crowd of protesters from Independence Square was not the end of the state response to the protests. Many people were arrested during the action to clear the square and in the immediate aftermath of the police intervention, while the authorities continued to detain and harass individuals and organisations in the weeks after the event.

77. The Independent Observation Report compiled by the Belarusian Helsinki Committee and the Human Rights Center 'Viasna' notes:

*During the violent dispersal of the rally, presidential candidates Vital Rymasheuski, Andrei Sannikau and Ryhor Kastusyou were beaten and detained. In total, about 700 rally participants were detained. During the night from 19 to 20 December, four presidential candidates, Uladzimir Nyaklyaeu, Mikalai Statkevich, Alyaksei Mikhalevich and Dzmitry Uss, were also detained. The police also detained BHC chair Aleh Hulak who monitored the rally and was going to take part in the final press conference of "Human Rights Defenders for Free Elections" campaign which was scheduled for 20 December. Later that night, the office of Human Rights Center "Viasna", co-sponsor of the campaign, was raided by the KGB and ten staff members of the centre were detained for a short period, including coordinators of the campaign Uladzimir Labkovich and Valiantsin Stefanovich.*

78. Numerous reports by Belarusian and international human rights organisations, the international media and international organisations have documented the actions of the Belarusian state authorities over the following days and weeks against those who had participated in some way in the protests against the presidential elections. It is beyond the remit of this report to describe and analyse in detail the scale and extent of the repression. However, the International Observation Mission of the CIC has documented in some detail the actions taken against human rights organisations<sup>1</sup>, against journalists<sup>2</sup>, and against members of the legal profession<sup>3</sup>, while the full range of issues have been documented recently by the Parliamentary Assembly of the Council of Europe<sup>4</sup>.

79. In the immediate aftermath of December 19, 2010 it is estimated that some 700 people were subject to brief summary trials and sentenced to fines or to administrative detention of between 5 and fifteen days for participation in an illegal demonstration. Many of those detained and/or sentenced complained of abuse by the police immediately after they were detained or subsequently whilst awaiting trial. Many complained that their trial was no more than a formal process, in which the judges were presented with standardised evidence and the accused had no defence counsel nor any real opportunity to defend themselves. Some complained that their request for an appeal had been ignored.

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1 - [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_N1-1_ENG.pdf)> and < [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_N1-1b_ENG.pdf)

2 - [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_N2-1_ENG.pdf)> and <[http://www.hrwatch-by.org/sites/default/files/IOM\\_Analytical\\_Review\\_N2-1b\\_ENG.pdf](http://www.hrwatch-by.org/sites/default/files/IOM_Analytical_Review_N2-1b_ENG.pdf)

3 - [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_N3-1_ENG.pdf)

4 - <http://assembly.coe.int/CommitteeDocs/2011/Apdoc09.pdf>

80. The report (of 12 April 2011) by Mrs. Sinikka Hurskainen for Political Affairs Committee of the Parliamentary Assembly of the Council of Europe notes that 29 people (including 4 of the presidential candidates) have been charged with the organisation of and participation in a mass riot<sup>1</sup>. These charges carry a punishment of up to 15 years in prison. A further 10 people (including 2 of the presidential candidates) were charged with offences of gross violations of public order, which carry a sentence of up to 3 years in prison<sup>2</sup>. We note that subsequent to this report, the charges against a number of individuals have been changed from Article 293 to lesser offences under the Criminal Code. According to our data at the time of writing, 18 people remain charged under Article 293, 9 people face trial in relation to Article 342 (actions seriously violating public order), and 2 people are charged under Article 339 (malicious hooliganism<sup>3</sup>). The reasons for such a change remain unclear, and no clarification has been given by the authorities in relation to the important distinctions between these offences.

81. It is perfectly within the right of the state authorities to prosecute people for participation in an unlawful assembly, and for committing or encouraging acts of violence during an assembly. However, the information available to date suggests that the authorities have chosen to convict people on the basis of limited and formulaic evidence and with little opportunity for the defendants to challenge the evidence against them.

82. The most serious charges remain those of organizing or participating in a mass riot. A number of individuals have already been sentenced under this provision. However, the analysis presented above of the events of December 19, 2010 suggests that any violent disorder was limited to a small number of participants who remained close to the House of Government, thus the characterization of this event as a ‘mass riot’ is highly questionable (see paragraphs 27 and 75 above). Furthermore, those who have been charged with the offences appear to have been chosen because of their high public profile and presence at the larger assembly in Independence Square.

**83. As we have noted above, the distinctions between ‘participating in’ and ‘organizing’ a mass riot, and ‘participating in’ and ‘organizing’ an unlawful assembly must be carefully observed and a person who has organised or participated in an unlawful assembly at which some violence occurs must not be assumed, on that basis, to have organised or participated in a mass riot. There needs to be concrete and demonstrable evidence that the individual themselves actually used, or called upon others to use, unlawful and serious violence, and that they acted in concert with a significant number of others – in order to convict someone of either organisation of or participation in a mass riot.**

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1 - AS/Pol (2011) 09rev, 12 April 2011. Political Affairs Committee (PACE) Situation in Belarus: Information note on developments following the adoption of PACE Resolution 1790 (2011) on 27 January 2011, Rapporteur: Mrs Sinikka Hurskainen (Finland, Socialist Group), at para.12.

2 - Ibid., at paras.13-14.

3 - See further the various offences listed at paragraph 15 of this interim report.

**84. As further trials take place, it is vital that the authorities base their case on clear and verifiable evidence of the direct participation of the individual accused in acts of violence or serious property damage. Neither participation in, nor organisation of, an unlawful assembly can never, of itself, be sufficient to constitute participation in or organisation of a mass riot.**

## **Conclusions**

85. This Interim Report briefly reviewed the legal situation relating to freedom of assembly in Belarus and the key international human rights principles associated with freedom of assembly. It then considered the main events associated with the assembly on 19 December 2010 in Minsk and identified six key inter-related sets of activities.

86. Based on a number of announcements by different individuals, the assembly may be considered as being jointly organised by a number of the presidential candidates. No formal advance notification was given to the authorities and therefore the assembly can legitimately be considered as an unlawful event. However, the organisers also made it very clear that their aspirations were for a peaceful assembly.

87. The first noted response by the authorities was the attack on Vladimir Nekliaev (Uladizmir Nyaklyaeu) and his supporters at approximately 19.10. This incident raises a number of questions and human rights concerns. There is some uncertainty whether the attack was carried out by 'plainclothed special forces' or some other group. If the attackers were members of the security forces then the state should investigate fully the incident and the proportionality of the use of force. If the incidents did not involve state agents then the authorities should clearly state this and should investigate who was responsible both for the attack in the street and the removal of Vladimir Nekliaev from his hospital bed.

88. In relation to the main assembly between 19.30 and approximately 22.00, we have concluded that police responded to the protests in a manner that respected the rights of those participating. The available evidence suggests that the authorities tried to facilitate the right to freedom of peaceful assembly even though the event was an unlawful assembly.

89. The attack on the House of Government and the response by the police, between approximately 21.45 and 22.30, however raises a number of questions. Why were there no police deployed outside the building to prevent the attack, and why did it take the police some 30 minutes to respond to the disorder? Although some use of force by the police may have been considered necessary, there is evidence of a degree of indiscriminate and disproportionate use of force. A prompt, independent and transparent investigation should examine this apparent oversight or failing.

90. The available evidence suggests that the main assembly in Independence Square was peaceful when the police operation to clear the area began sometime between 23.00 and 24.00. This was clearly an unlawful assembly under the terms of the Law on Mass Actions, but all the evidence suggests that the main body of the assembly remained peaceful throughout. The UN Basic Principles on the Use of Force clearly state that use of force shall be avoided wherever possible when dispersing an unauthorised assembly. The available evidence suggests that the force used by the police was neither a necessary nor proportionate response to the situation.

91. Further, the distinction between ‘participating in’ and ‘organizing’ a mass riot, and ‘participating in’ and ‘organizing’ an unlawful assembly must be carefully observed and a person who has organised or participated in an unlawful assembly at which some violence occurs must not be assumed, on that basis, to have organised a mass riot. There needs to be concrete and demonstrable evidence that the individual themselves actually uses, or calls upon others to use, unlawful and serious violence in order to convict someone of organisation or participation in a mass riot.

92. Similarly, many of those who were involved in the attack on the House of Government are clearly identifiable from publicly available video materials. Such incontrovertible evidence must be produced in Court where individuals are charged with participating in or inciting serious violence under other provisions of the Criminal Code. As a general rule, it is vital that the court bases their judgment on all charges brought on clear and verifiable evidence of the direct participation of the individual accused in unlawful acts.

93. The peaceful protest in Independence Square and the violent attack on the House of Government should be considered as two separate and distinct simultaneous assemblies. The evidence suggests that the event in Independence Square was a peaceful, if unauthorized, mass rally. In contrast, the attack on the House of Government cannot be considered as a peaceful assembly and therefore was not a protected activity. It is only this element of the activity on the evening of 19 December 2010 that might legitimately be considered as a ‘mass riot’. However, the relatively small number of individuals actually involved in the attack on the House of Government – which could itself have been anticipated and prevented by a suitable prior police deployment – raises questions about whether it is appropriate to charge anyone at all with the offence of ‘mass riot’ (where other lesser offences, which do not imply the involvement of a significant number of participants, might be more suitable). Any prosecutions for organizing or participating in the events of 19 December should recognize these distinctions.

## **The list of questions of the Special Rapporteur to the Belarus authorities about the events of December 19th, 2010**

The Interim Report of the Special Rapporteur of the Committee on International Control over the Human Rights Situation in Belarus identifies several specific and concrete conclusions. It emphasizes, however, that these should be regarded as provisional – and as a basis for further discussion. The Report draws attention to a number of key questions that remain outstanding. The answers to these will be important to a full and final evaluation of the concerns outlined in the Report.

To this end, the Committee on International Control (CIC) calls upon both governmental authorities and local and international non-governmental organizations to engage in an open dialogue. In particular, the CIC requests that the Belarusian authorities urgently provide answers to the following questions:

- What instructions/orders were given to the police both in advance of the evening of 19 December, and as the events unfolded? It will be important to ascertain what orders were given to police officers both in relation to the facilitation of peaceful assembly, and with regards to the use of force.
- 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?
- How many police officers were deployed to police the assemblies on the evening of 19 December, and which units were they from?
- Were any military or other security agencies involved in the policing operation on 19 December? If so, in what roles and under whose command?
- What police contingency plans were put in place?
- 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?
- Why were no police officers deployed outside the House of Government to prevent the attack on the building?
- Why did it take the police around 30 minutes to respond to the violence?
- 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?
- 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?
- Were any police officers injured during the events of 19 December? If so what was the nature of their injuries?
- 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?

While the following questions may be answered by the forthcoming report of the OD-IHR trial observation mission, they are nonetheless vital to monitoring and ensuring the rights of those charged in relation to the events of 19 December:

- 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?
- 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?
- How precisely does the Court define a 'mass riot'?
- What factors does the Court take into consideration when deciding whether an individual 'participated in' or 'organized' such a riot?
- What considerations have guided the varying sentences imposed upon different individuals for the same offences?

Responses to following questions should be send in russian or eanglish to the Secretariat's e-mail [BYC-SR@hrgroups.org](mailto:BYC-SR@hrgroups.org)

# **The Committee on International Control over the Situation with Human Rights in Belarus**

The decision to establish the Committee on International Control over the Situation with Human Rights in Belarus was taken on December 27th, 2010 by a coalition of non-governmental organizations from the OSCE region.

It was motivated by continuing reports on flagrant and systematic human rights violations in the Republic of Belarus following the presidential elections on December 19th, 2010, as well as pressure and persecution of civil society in the country (primarily actions towards human rights defenders, journalists, lawyers and trade union activists).

The Committee is convinced that the Republic of Belarus should observe the international commitments which were undertaken by it, thus supporting the international human rights standards.

## **THE MAIN OBJECTIVES of the Committee work are:**

1. permanent monitoring and control over the observance of fundamental human rights and the situation of human rights defenders and human rights organizations in the Republic of Belarus;
2. developing recommendations for the national authorities and intergovernmental organizations on normalizing the situation in the country and bringing it to conformity with the national legislation and international obligations undertaken by the Belarusian government.

## **The main work of the Committee**

### **is carried out through its specialized bodies:**

- *International Observation Mission in Belarus*, which provides a permanent presence in the country for collecting and analyzing data on cases of fundamental rights violations and disseminating the information about the situation in the country among various international structures, as well as information about their position and reaction – inside Belarus;
- *Special Rapporteur for the events of December 19th, 2010*, whose task is to carry out independent investigation of those events from the perspective of the freedom of assembly and actions of the law enforcement;
- *Special Commission on the issues of entering the Republic of Belarus*;
- *Contact group on Moscow Mechanism*;
- *Task Force on investment issues, etc.*

The Committee does not provide evaluation of the results of presidential elections and the organization of the electoral process in general.

At the moment the Committee comprises more than 45 national, regional and international human rights and civil society organizations and networks active in the OSCE region.

#### **CONTACTS:**

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## **Declaration of the Committee on International Control over the Situation with Human Rights in Belarus**

We the representatives of non-governmental organizations from the OSCE area and international civil networks and organizations,

- taking into consideration that reports about grave and systematic violations of human rights, including freedom from torture, inhuman and degrading treatment, freedom of assembly and association and freedom of expression, the right to a fair and impartial trial continue to come from the Republic of Belarus;
- without making any judgments on the results of Presidential elections and on the electoral process;
- being concerned about reports of cases of pressure and persecution of human rights defenders and human rights organizations;
- underlining that in accordance with the OSCE principles reinforced at the OSCE Summit of heads of states and governments which took place in Astana on 1-2 December 2010, human rights are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned;
- and deeply believing that public accord and development in the Republic of Belarus, as in any other country, are impossible without the rule of law, observance of all international human rights standards and continuation of active work of human rights defenders, environmental, youth and other civil organizations;

We declare the establishment of the Committee on International Control over the Situation with Human Rights in Belarus (further - the International Committee).

The main aims of the International Committee are:

- 1) permanent monitoring and international control over the situation with observance of fundamental human rights and the situation of the human rights defenders and human rights organizations in the Republic of Belarus;
- 2) development and promotion of recommendations to national authorities of Belarus and international intergovernmental organizations on normalization of the situation in Belarus and bringing situation in the country into conformity with international obligations undertaken by the government of the Republic of Belarus and the national legislation of the Republic of Belarus.

For working on the territory of the Republic of Belarus the International Committee has formed the long-term International observation mission, which includes members of human rights organizations from around the OSCE area, representatives of the international organizations, as well as independent experts. Mission will conduct monitoring of both of the actions of Belarus authorities in case of violations of human rights by them or any radical society groups potentially able to create threat to its observance.

We appeal to our colleagues from civil society organizations in Belarus to cooperate actively with the International Committee and assist it in realizing its goals.

We appeal to the authorities of the Republic of Belarus to assist the International Committee in forming an objective assessment of the situation with human rights in Belarus.

We urge colleagues from human rights and civil society organizations of CIS countries, Western Europe, as well as other countries of the OSCE area to join the initiative.

27.12.2010  
*BYC@hrgroups.org*

**MEMORANDUM of the Committee on International Control  
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 of 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 of 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 on the 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***

## Group of experts for the Report

### **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 peacebuilding 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 (as of 31 August 2011):**

**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** is the 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 Dzhibladsze** 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 Development of Civil Society and Human Rights with the President of the Russian Federation and a member of the Expert Council of the Ombudsman of Russia.

**Volodymyr 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".