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RESPONSIBILITY OF LUKASHENKA'S REGIME FOR CRIMES AGAINST HUMANITY AND MIGRANT CRISIS: PROSPECTS FOR INTERNATIONAL JUSTICE

International Conference

RESPONSIBILITY OF LUKASHENKA'S REGIME FOR CRIMES AGAINST HUMANITY AND MIGRANT CRISIS: PROSPECTS FOR INTERNATIONAL JUSTICE

Vilnius Communiqué 2023

Upon invitation of the Ministry of Justice of the Republic of Lithuania and the Law and Democracy Centre (Justice Hub), and with the patronage of the Prime Minister of the Republic of Lithuania Ms Ingrida Šimonytė, and the Head of the United Transitional Cabinet of Belarus and the National Leader of Belarus Ms Sviatlana Tsikhanouskaya, an international conference titled "Responsibility of Lukashenka's Regime for Crimes against Humanity and Migrant Crisis: Prospects for International Justice" was held in Vilnius, Lithuania, on the 12th of June, 2023.

The Conference was attended by over a hundred esteemed participants, including experts in international law, human rights law, and criminal law, as well as politicians and notable public figures from diverse countries, leaders of the Belarusian democratic forces and representatives of Belarusian civil society. The conference was opened by welcome remarks by the Minister of Justice of the Republic of Lithuania Ms Ewelina Dobrowolska and the Head of the Law and Democracy Center Mr. Dainius Žalimas. Keynote speeches were delivered by the National Leader of Belarus, Ms Sviatlana Tsikhanouskaya, and the UN Special Rapporteur on the situation of human rights in Belarus, Ms Anais Marin.

During the Conference, experts of the Law and Democracy Centre presented a new report on crimes against humanity perpetrated by the Lukashenka's regime, along with the assessment of the potential avenues for attaining justice. The report will be released to the public following this *Communiqué*. Conference participants welcomed the report as the substantial foundation for subsequent endeavors aimed at holding the perpetrators of repressions by the Lukashenka regime accountable and providing redress to the victims. Participants of the Conference also expressed their gratitude towards the National Anti-Crisis Management for the side-event on

the role of Lukashenka's regime and the Union State of Belarus and Russia in the illegal transfer and re-education of Ukrainian children.

The subject of the Conference was divided into four sub-topics:

- 1) policy of repressions by Lukashenka's regime in the light of the concept of crimes against humanity;
- 2) types of the crimes against humanity, which can be established in the activity of Lukashenka's regime;
- 3) the most appropriate options for achieving justice and effective accountability for the crimes against the Belarusian people;
- 4) responsibility of Lukashenka's regime for the migrant crisis caused by the direct involvement of Belarusian state institutions in the initiation and maintenance of sharply increased irregular entries into Lithuania, Poland, and Latvia.

Each sub-topic was discussed in designated panels throughout the Conference. In the concluding session, a comprehensive summary of the discussion held within each panel was presented. This *Communiqué* has been prepared based on those discussions. While the organizers have made their best to present the conclusions at the panels, this document does not necessarily reflect views of each panelist.

Over the course of numerous decades, the Belarusian people have endured violent suppression and gross human rights violations by Lukashenka and his regime. Since May 2020, in the context of the campaign towards the 9 August 2020 presidential election, the Belarusian authorities have unleashed a widespread and unprecedentedly brutal repression upon the civilian population, which persists to this very day. Belarus has become the scene of protracted mass violence, in which the total number of victims of the unfolding repressions and terror has already exceeded 100,000 individuals.

There are reasonable grounds to believe that serious human rights violations in Belarus amount to the crimes against humanity, as defined in international customary law. These transgressions align with the essential contextual, mental, and other specific components requisite for crimes against humanity, being a part of a widespread and systematic attack directed at civilian population in pursuance of the policy of Lukashenka's regime, with knowledge of the attack by the perpetrators.

The widespread and systemic nature of the attack is unequivocally evident through the substantial number of victims throughout the entire Belarusian territory, while similar and even uniform means and methods of the attack demonstrate its systemic nature. This concerted endeavor reflects the prevailing policy of terror conducted by the Lukashenka's regime against the Belarusian people with the aim to preserve and strengthen the dictatorship. The focal point of this assault is the Belarusian civil society – a collective encompassing all those who dissent against the regime's policies or are perceived as critical of the dictator and his regime. It is imperative to acknowledge that, in broader terms, the policy of the regime is also aimed at undermining the rule of law, democratic principles, and human rights, which serve as the foundational pillars of the European public order. This policy further manifest itself through the fact that Lukashenka's regime is a co-aggressor in the ongoing Russian war against Ukraine and is an accomplice in commission of other crimes against the Ukrainian population, including the illegal transfer of children from Ukraine.

The participants of the Conference noted several types of crimes against humanity that have been committed by the Lukashenka's regime. Predominantly, these crimes can be assessed as torture and other forms of inhuman and degrading treatment, unlawful deprivation of liberty, and systematic persecution based on political or national grounds. There are also instances of murder, rape and other severe forms of sexual violence, enforced disappearance, deportation and forcible transfer of population. Notably, the latter category encompasses *inter alia* the organization of massive irregular entries into the territory of neighboring States.

The participants of the Conference further observed that the crimes against humanity in Belarus predominantly have been and are being committed by the officials and other agents of the State. It is crucial to underscore

the individual responsibility of Mr. Lukashenka, who assumes the role of the regime's leader and issues orders to the perpetrators to commit the crimes, incites the commission of these crimes, or does not prevent them. Even though under international law Heads of State are granted immunity from the jurisdiction of foreign States, the application of this rule to Mr. Lukashenka is rather questionable. The international community's ability to recognize him as a legitimate Head of State remains a matter of contention and thus casts doubt on the application of such immunity.

It is deplorable that the majority of law enforcement officers and prosecutors in Belarus are directly implicated in the perpetration of crimes against humanity. Even more deplorable is the involvement of numerous judges within the ordinary jurisdiction, who bear significant responsibility for those crimes, particularly concerning unlawful deprivation of liberty and persecution on political or national grounds. Meanwhile, the Constitutional Court exacerbates the gravity of the situation by actively facilitating and endorsing the regime's repressive legislation, thus playing a pivotal role in enabling the commission of these crimes. Consequently, it is evident that all the judges of the Constitutional Court, by virtue of their complicity in attempts to legitimize the regime and bestow a *carte blanche* for the persecution of the opponents, also share responsibility for these crimes. In light of the broader context, the instrumentalization of the both law enforcement and the judiciary in the commission of crimes against humanity makes it impossible to hold the perpetrators accountable at national level in Belarus.

Crimes against humanity are grave threat to global peace, security, and well-being. Therefore, the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*) and they are among the most serious crimes of concern to the international community as a whole. According to the UN International Law Commission, under Article 1(1) UN Charter the international community has to take effective collective measures to prevent and eradicate such threats to peace. Thus, the international community as a whole extending beyond individual States has to be interested in the effective persecution and prevention of the crimes against humanity, including those committed in Belarus.

Considering the lack of effective remedies in Belarus, alternative avenues to achieve justice than the recourse to national measures in Belarus have been explored. First, the option of prosecuting the perpetrators in foreign national courts, which have established universal jurisdiction over international crimes, has been examined. Though a small number of countries have resorted to this possibility, the potential of universal jurisdiction remains limited to the situations when either a suspect or a victim is present on the territory of that foreign State.

Second, the International Criminal Court does not have the jurisdiction in respect of the majority of the crimes against humanity committed in Belarus, as Belarus is not a party to the ICC Rome Statute and has not made any declaration on the recognition of the ICC jurisdiction. However, it is worth considering that the ICC may exercise jurisdiction over crimes such as deportation and persecution, drawing from the precedent set by the Bangladesh/Myanmar situation. In this context, it is plausible to assert that part of this crime take place within the territories of Lithuania, Latvia and Poland, all of which are States Parties to the Rome Statute.

Third, under the prevailing circumstances, the most effective option to achieve justice could be the establishment of a special *ad hoc* international tribunal for the crimes against humanity in Belarus. This could be realized through the negotiation and implementation of a multilateral treaty among like-minded states, with the involvement of the United Transitional Cabinet of Belarus and the endorsement of either the United Nations General Assembly or the Council of Europe. The critical matters of jurisdiction and procedural framework pertaining to the potential tribunal have to be further discussed. Furthermore, the idea of the People's Tribunal was raised, presenting a concept that merits consideration as a means to increase international awareness regarding the crimes against humanity transpiring in Belarus.

Irrespective of the chosen or viable avenue for ensuring accountability, the importance of ongoing efforts in the collection and secure preservation of evidence was underlined. In this field the important role of the

International Accountability Platform for Belarus, implemented by international and Belarusian NGOs, was also highlighted.

Lastly, involvement of Lukashenka's regime into organization of the migrant crisis at the borders with Lithuania, Latvia, and Poland by orchestrating massive irregular entries to those States was discussed. Such activity has to be condemned as being in breach of international law, in particular of the obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air to the UN Convention against Transnational Organized Crime. The efforts of the Republic of Lithuania to seek responsibility of the Lukashenka regime by the resort to arbitration or judicial proceedings in the International Court of Justice have to be supported.

The Conference yielded the following key conclusions and proposals:

- *Emphasis* on the importance for present and future generations of ending impunity for international crime, including the crimes against humanity in Belarus;
- *Highlighting* the importance of a continued proper collection and safe storage of evidence in cases of the crimes against humanity in Belarus for any further investigation and prosecution of perpetrators as well as the role of the International Accountability Platform for Belarus in this respect;
- *Support* to national legal efforts undertaken to investigate, under the principle of universal jurisdiction, the crimes against humanity in Belarus and to prosecute the individuals responsible for those crimes, including the leader of the regime Mr. Lukashenka;
- *Call* to expedite and coordinate national investigations carried out under the principle of universal jurisdiction, with a view of naming concrete suspects and issuing arrest warrants in respect to them, as well as not to apply immunity to Mr. Lukashenka who should not be recognized as having the position of the head of a State;
- *Proposal* to the authorities of Lithuania, Latvia and Poland as well as other concerned States Parties to the Rome Statute to consider making a referral to the International Criminal Court, in accordance with the Bangladesh/Myanmar precedent, of the situation with the crimes of deportation and persecution of the Belarusian nationals who have fled to those countries;
- *Recommendation* to national parliaments and governments as well as the relevant international organizations to intensify discussions on the establishment of a special *ad hoc* international tribunal for the crimes against humanity in Belarus as the most effective and comprehensive mechanism to ensure accountability and justice in Belarus;
- *Encouragement* to create an active international network of lawyers, including academics and practitioners, to support the research and prosecution of the crimes against humanity in Belarus;
- *Call* on Latvia and Poland as the countries affected by the migrant crisis to support and consider joining Lithuania in the efforts to seek responsibility of Lukashenka's regime for the smuggling of migrants under the existing international instruments, such as the Protocol against the Smuggling of Migrants by Land, Sea and Air to the UN Convention against Transnational Organized Crime;
- *Encouragement* to the international community to consider more efficient modes of responsibility for the instrumentalization of migration as a means of pressure on other States.

Vilnius, Lithuania, 12 June 2023