

SYSTEMIC ISSUES THAT PREVENT THE EXHAUSTION OF LOCAL REMEDIES IN BELARUS, AND THE INABILITY TO DEMONSTRATE INFORMATION ABOUT EXHAUSTION TO THE UN HUMAN RIGHTS COMMITTEE

Legal Briefing

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BACKGROUND

On 8 February 2023, Belarus withdrew from the individual complaints procedure before the UN Human Rights Committee (HRC), by denouncing the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). No more individual complaints against Belarus can be reviewed by the Human Rights Committee (HRC) if filed beyond this date. This has deprived victims of human rights violations in Belarus, who continue to be denied justice domestically, from bringing their cases before the HRC, the only treaty body for which Belarus had accepted an individual complaints procedure apart from the Convention on the Elimination of All Forms of Discrimination Against Women.

Belarus is one of the leaders in the number of cases submitted against it before the HRC. In 2022, Belarus was the most often implicated State under the Optional Protocol complaints procedure, with 60 complaints filed in 2022 and 63 in 2021.¹ Prior to the Protocol's denunciation, many human rights defenders (HRDs) and lawyers from Belarus filed complaints before the HRC seeking justice at the international level, given the difficulty of having complaints effectively addressed in domestic courts in Belarus.

Since the 2020 presidential election, the human rights crisis has significantly worsened, with some violations amounting to crimes against humanity, as "part of a campaign of violence and repression."² Due to the ongoing human rights crisis in the country, it is crucial that complaints submitted to the HRC before 8 February 2023 are considered on their merits. This will contribute to the documentation and condemnation of the mass human rights violations and deliver some justice to victims in terms of establishing state responsibility for violations. However, Belarusian applicants have been experiencing difficulties at the registration and the admissibility stages of the individual complaints procedure, with the Petitions and Urgent Actions Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR). These difficulties mainly relate to the impossibility to exhaust domestic remedies in Belarus.

The undersigned organizations have prepared the present brief in view of the large number of complaints that were submitted to the HRC before the denunciation of the Optional Protocol took effect, and might encounter similar difficulties at the registration and admissibility phases. The brief describes the most common systemic problems that make it difficult, and in some cases impossible, for complainants to exhaust domestic remedies or to provide information about exhaustion. These include the instrumentalization of closed hearings and non-disclosure notices, which bars lawyers from submitting supporting documents to the HRC, as well as continuing repression and retaliation against lawyers and victims who seize international quasi-judicial bodies in so-called "political" cases. The brief demonstrates the lack of effective remedies available in these instances and highlights why it is important for the HRC to ensure such cases are examined on their merits.

¹ OSCE, [Report on the serious threat to the OSCE human dimension in Belarus since 5 November 2020](#), 11 May 2023.

² Report of the United Nations High Commissioner for Human Rights, [Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath](#), A/HRC/52/68, 3 February 2023, para. 54.

Impossibility to provide information about exhaustion of domestic remedies in communications to the HRC: instrumentalisation of non-disclosure notices and closed hearings in cases of torture and politically motivated charges

Non-disclosure notices

Since 2020, it is common practice in Belarus for investigators in politically motivated criminal cases to make defence counsel, witnesses and all parties to the procedure sign non-disclosure notices at the stage of the preliminary investigation. While Article 198 of the Code of Criminal Procedure of the Republic of Belarus already prohibits all participants from disclosing information related to pre-trial investigations, signing a non-disclosure notice changes the type of liability for disclosing such information from administrative to criminal.³ This generally covers *any* information related to the case. In 2021 and 2022, the number of lawyers who were made to sign such notices covering information related to preliminary investigations significantly increased. According to a survey conducted by Right to Defence, 31,4% of lawyers report being asked to sign them exclusively in so-called political cases and 88,8% of lawyers believe that in such cases, this practice is used more often than in other cases.⁴ According to the UN Special Rapporteur on the situation of Human Rights Defenders Mary Lawlor, in Belarus, this practice “de facto criminalises the sharing of information on human rights.”⁵ Disclosure of information from a preliminary investigation or a closed hearing constitutes a criminal offence and is punishable by a fine or arrest under article 407 of the Criminal Code.⁶ Human rights groups have indeed documented cases of lawyers representing political prisoners being charged with violating these provisions, even though the specific reasons for bringing such charges have not been disclosed.⁷

Confidentiality of criminal investigations is not an unusual feature of domestic judicial systems and usually serves to preserve due process rights and the right to presumption of innocence.⁸ However, in Belarus, sharing documents related to the proceedings (such as a court filing, a court decision or even lawyers’ complaints) with the HRC in the context of a communication, to illustrate the steps taken to exhaust local remedies, can result in the criminal prosecution of the legal representatives of the victims, as they may be considered in breach of article 407 of the Criminal Code and consequently charged with a criminal offence. Communications of applicants’ lawyers with the HRC are subject to professional confidentiality and should consequently not be viewed as breaking the confidentiality of a judicial investigation. This demonstrates that, in practice, non-disclosure notices are being used in Belarus as a means to intimidate the accused and their counsel, to prevent public discussions around political cases, to impede the right to prepare their client’s defence and deter them from filing human rights complaints.⁹ This has a direct impact on the right to petition recognised in Article 2 of the First Optional Protocol to the ICCPR.

³ Article 198, Code of Criminal Procedure of the Republic of Belarus. Available at: https://kodeksy-by.com/ugolovno-protssesualnyj_kodeks_rb/198.htm

⁴ Right to Defence, 2022. *Results of the study of restrictions on the rights of lawyers in the exercise of the defense*. Available at https://www.defenders.by/rezultaty_ogranicheniya

⁵ Belarus: Crackdown on human rights defenders deepens – expert, 19 March 2021. Available at: <https://www.ohchr.org/en/press-releases/2021/03/belarus-crackdown-human-rights-defenders-deepens-expert>

⁶ Article 407, Criminal Code of the Republic of Belarus. Available at: https://kodeksy-by.com/ugolovnyj_kodeks_rb/407.htm

⁷ Right to Defence, 2022. Dmitry Pigul (the Defender in the Busly Iiaciac Case) Was Detained. Available at: <https://www.defenders.by/tpost/stjih5hg71-dmitry-pigul-the-defender-in-the-busly-i>; Another lawyer, Mikhail Makarov, was detained on the same grounds but ultimately charged with “participating in activities that grossly violate public order” (art. 342). Considering that mass disbarments and persecution of lawyers have resulted in an atmosphere of fear in the legal community and that violating the ban on disclosing information related to pre-trial investigation is easily instrumentalised by the authorities to punish lawyers for their activities, such cases have a significant chilling effect on lawyers who try to avoid disbarment or detention on these grounds.

⁸ European Court of Human Rights (EctHR), Note d’information sur la jurisprudence de la Cour, *Bédat c. Suisse* [GC] - 56925/08, p. 3.

⁹ Right to Defence, 2022. *Results of the study of restrictions on the rights of lawyers in the exercise of the defense*. Available at https://www.defenders.by/rezultaty_ogranicheniya

Closed hearings

In addition to the use of non-disclosure notices, closed hearings are also being used to restrict access to trials in a manner contrary to international law. The right to a public hearing in the context of criminal proceedings is guaranteed under Article 14 of the ICCPR. While this right can be subject to limitations, this is only in exceptional circumstances as set out in Article 14 of the Convention.¹⁰ Even if there are legitimate grounds for certain parts of the hearing to be closed to the public, the State still has an obligation to justify why it is necessary to close all and not only some parts of the proceedings.¹¹ Failure to adequately justify the decision to close a hearing to the public amounts to a violation of the right to a fair trial.¹² In Belarus, the Code of Criminal Procedure sets out the legal grounds for holding a closed hearing.¹³ However, the analysis of politically motivated cases where closed hearings were imposed demonstrates that such cases generally do not contain any circumstances that can qualify as legitimate grounds provided for by this article, and closed hearings are imposed in an arbitrary manner.¹⁴ The hearings are often closed on essentially political grounds, for instance, when the case materials feature “extremist context”, a term that has been widely used to arbitrarily brand the work of journalists, HRDs, and NGOs as illegitimate.¹⁵

When closed hearings are imposed, lawyers and victims on whose behalf individual communications have been submitted are unable to provide court documents related to these hearings - including court decisions - to the HRC. For similar reasons as described above, doing so would be considered a crime under article 407 of the Criminal Code by the State, which could take criminal action against those disclosing the information upon receiving the HRC communication. This deprives lawyers and victims of the possibility to provide information on the remedies attempted at domestic level to comply with the Committee’s procedural rules.¹⁶

Jurisprudence

In cases where the State was exercising pressure on applicants’ lawyers to impede their ability to communicate with the Commission or the Court, the European Court of Human Rights (ECtHR) has considered that threats of criminal proceedings against applicants’ lawyers,¹⁷ complaints by authorities in domestic proceedings against lawyers,¹⁸ and disciplinary and other measures being taken against applicants’ lawyers,¹⁹ constituted an interference with the exercise of an applicant’s right of individual petition. The Court also highlighted the chilling effect these actions may have on the exercise of this right. In those cases, the Court considered the cases admissible, and in one of them, invited the Government to explain the reasons for the measures taken against the lawyers.²⁰

Similarly, State Parties to the ICCPR have an obligation not to hinder access to the HRC for any person who may wish to submit a communication.²¹ State Parties also have a duty to cooperate with the HRC.²²

While new communications are no longer accepted by the HRC due to Belarus’ withdrawal from the Optional Protocol, Belarusian authorities are still under the obligation to cooperate with the Committee regarding the

¹⁰ UN Human Rights Committee (HRC), General Comment No. 32, para. 29.

¹¹ UN Human Rights Committee (HRC), Communication No. 2680/2015: Views of 4 April 2018, CCPR/ C/122/D/2680/2015, para. 9.3.

¹² UN Human Rights Committee (HRC), Communication No. 2129/2012: Views of 29 March 2016, CCPR/15/D/2077/2011, para. 11.3.

¹³ Article 23.2 of the Code of Criminal Procedure of the Republic of Belarus: “The hearing of a criminal case in closed session shall be permitted only in the interests of protecting state secrets and other secrets protected by law, as well as in cases of crimes committed by persons under the age of sixteen, in cases of sex crimes and other cases in order to prevent the disclosure of information about intimate aspects of the lives of those involved or information that degrades their dignity, and when the safety of the victim, witnesses or other participants so requires”.

¹⁴ Practice of the Viasna Human Rights Centre.

¹⁵ Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, 3 February 2023, paras 31-37.

¹⁶ Rules of Procedure of the Human Rights Committee, Rule 90 (e)

¹⁷ ECtHR, *Kurt v. Turkey*, paras.159-65.

¹⁸ ECtHR, *McShane v. the United Kingdom*, para. 151.

¹⁹ ECtHR, *Khodorkovskiy and Lebedev v. Russia*, para. 929-33.

²⁰ *Ibid.*

²¹ HRC, General Comment No. 33: Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para 4. Available at: <https://www2.ohchr.org/english/bodies/hrc/docs/ccpr.c.gc.33.pdf>

²² Vienna Convention on the Law of Treaties, 1969, article 26.

complaints submitted before the denunciation of the optional protocol took effect on 8 February 2023. In principle, this obligation extends to providing the evidence requested by the HRC,²³ where the applicant provides a justification for the failure to provide evidence due to their legal obligations under domestic law.

Conclusion

Due to the limitations outlined above, victims and those representing them are limited in their ability to provide evidence related to the exhaustion of domestic remedies to the HRC. Thus, the HRC must consider this when examining the admissibility of the case and request documents from the State directly, in cases where representatives of complainants indicate that they were forced to sign a non-disclosure notice or the hearings in victims' cases were closed and sharing of such documents may result in criminal prosecution.

Cases in which remedies manifestly have no prospect of success

In Belarus, hundreds of complaints have been filed domestically by victims of torture, but the authorities have failed to prosecute and punish any acts of torture and ill treatment related to and following the 2020 crackdown.²⁴ According to the most recent OHCHR report on Belarus, "the courts do not appear to a reasonable observer to be impartial and [...] victims of human rights violations are effectively denied their right to appeal or other remedies."²⁵ In previous reports, the High Commissioner noted the existence of an active policy to shield perpetrators and prevent accountability for human rights violations in Belarus.²⁶

According to the International Accountability Platform for Belarus (IAPB), which gathered over 2,300 interviews of survivors of torture and other serious human rights violations committed in Belarus in the context of the August 2020 presidential election and its aftermath, no single case where survivors successfully achieved justice through local remedies in such cases has been documented.²⁷ As documented by the IAPB, those who attempted to file complaints to the Investigative Committee, the state body responsible for preliminary investigations and pretrial criminal proceedings, received formal refusals to initiate criminal proceedings "due to the absence of corpus delicti in the acts of the law enforcement agents."²⁸ An analysis of such decisions demonstrates a clear pattern of State-orchestrated impunity, in which applicants who brought their complaints to the Investigative Committee branches in different regions of Belarus saw their complaints rejected in almost identical terms.²⁹ In particular, the Investigative Committee branches of Minsk, Brest, and Homel regions refused to initiate criminal cases in relation to torture committed against peaceful protesters, claiming that while law enforcement officers could use physical force during the performance of their official duties "with the aim of suppressing an administrative offense," it was

²³ ECtHR, Practical Guide on Admissibility Criteria, para. 81.

²⁴ Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, 3 February 2023, para 21; Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, 4 March 2022, para 54-57; Report of the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, Situation of human rights in Belarus, 4 May 2022, para 71-77; Committee Against Torture (Russia) and the World Organisation Against Torture, "Corridor of Truncheons. How Popular Demonstrations are Met with Massive Police Violence and Denial of Justice," January 2021, pp. 43-44.

²⁵ Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, A/HRC/52/68, 3 February 2023, para. 27

²⁶ Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath, 4 March 2022, para 57.

²⁷ The IAPB is a civil society platform that collects, preserves and analyses information and evidence of serious human rights violations constituting crimes under international law committed in Belarus in the context of the August 2020 presidential election and its aftermath, with the aim of supporting criminal prosecutions. URL: <https://iapbelarus.org/>

²⁸ Article 29 of the Code of Criminal Procedure of the Republic of Belarus:

"Circumstances precluding proceedings in a criminal case.

1. A criminal case may not be instituted, except for the cases provided for by paragraph 1, items 3 and 4 of this Article, and the instituted case shall be subject to termination:

[...]

2) for absence of corpus delicti in the act."

²⁹ The IAPB is available to provide the Human Rights Committee with direct access to such cases and further information upon request.

impossible to identify the officers involved in the specific events indicated in the complaint due to the conditions of “spontaneous emergence of mass centres of disobedience” and, thus, impossible to establish whether the officers were acting “in excess of their authority.”³⁰

Attempting to exhaust domestic remedies in torture-related cases in Belarus may entail real threats to the freedom, security and physical integrity of the victim. In the context of severe repression and a State policy of intimidation and punishment of dissidents, reporting torture to State institutions can lead to the victim’s imprisonment, deterioration of conditions of detention, and/or repeated exposure to torture.³¹

Exhaustion of local remedies also entails risk for lawyers. This is illustrated by the growing use of intimidation and judicial harassment, including the practice of disbarment as a deterrent in cases of torture, arbitrary detention, excessive use of force, and other human rights violations. Over 100 lawyers were arbitrarily stripped of their status since August 2020 for exercising their profession.³² Lawyers are also at risk of criminal prosecution and deprivation of liberty for their work. From September 2020 to February 2023, at least 23 lawyers representing opposition figures or human rights defenders were arbitrarily deprived of their liberty, and some became defendants in politically motivated criminal cases themselves.³³ Such policies aimed at harassing and intimidating lawyers have led to the development of an environment triggering a ‘generalized fear in the legal community,’ which negatively affects the victims’ ability to retain legal counsel and access domestic remedies.³⁴

To be considered effective, domestic remedies must offer a reasonable prospect of success to victims of violations.³⁵ The HRC has previously stated that domestic remedies might be considered futile if demonstrated that they are unable to bring effective relief due to the general malfunctioning of the State’s legal system and absence of judicial independence.³⁶ Further, the HRC has held in the past that fear of reprisals from the authorities can justify an applicant’s inability to exhaust all available local remedies.³⁷ Finally, in cases of torture, the HRC has found that only the criminal prosecution of those responsible can constitute an effective remedy.³⁸

It is clear from the above that for many combined reasons, many victims of human rights violations are unable to exhaust domestic remedies in Belarus and that such an attempt would be futile and involves serious risks to those representing victims.

Conclusion

As outlined above, attempting to exhaust domestic remedies in certain cases has manifestly no prospect of success. The HRC might exercise particular caution and consider the context and circumstances of victims in Belarus, in cases of torture and threats to the freedom, security and physical integrity of the victims, when considering arguments on inaccessibility or ineffectiveness of domestic remedies.

³⁰ Materials provided by the IAPB.

³¹ Amnesty International, 27 January 2021. *Belarus: “You Are Not Human Beings”*. *State-Sponsored Impunity and Unprecedented Police Violence Against Peaceful Protesters*, p. 10. [Available at <https://eurasia.amnesty.org/wp-content/uploads/2021/01/belarus-you-are-not-human-beings.pdf>]

³² *The Crisis of the Legal Profession in Belarus: How to Return the Right to Defense*, (2022), Center for Constitutionalism and Human Rights, Human Constanta, Right to Defense, Helsinki Foundation for Human Rights, p. 1. https://drive.google.com/file/d/1M6xC_U1Q1kGASKZJc6xOzaRDdYEEtIYz/view

³³ Report of the United Nations High Commissioner for Human Rights, *Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath*, 3 February 2023, para 29.

³⁴ IACtHR, ‘Exceptions to the Exhaustion of Domestic Remedies,’ Advisory Opinion of 10 August 1990, OC-11/90, para 19.

³⁵ Pereira on behalf of Thompson v. Panama, HRC, Views of 21 October 1994, CCPR/C/52/D/438/1990, para. 5.2

³⁶ See also, e.g., *Kroumi v. Algeria* (UN Human Rights Committee (HRC), Communication No. 2083/2011: Views of 7–31 October 2014, CCPR/C/112/D/2083/2011, para 7.4, available at <http://undocs.org/CCPR/C/112/D/2083/2011>); *Berzig v. Algeria* (UN Human Rights Committee (HRC), Communication No. 1781/2008: Views of 17 October–4 November 2011, CCPR/C/103/D/1781/2008, para. 7.4, available at <http://undocs.org/CCPR/C/103/D/1781/2008>).

³⁷ *Phillip v. Trinidad and Tobago*, HRC, Views of 20 October 1998, CCPR/C/64/D/594/1992.

³⁸ *Vicente et al. v. Colombia*, HRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 5.2.

Inability to access domestic remedies in cases of administrative detention

There is a systemic practice in Belarus of not allowing lawyers to access places of administrative detention.³⁹ Administrators of detention centres create various obstacles to prevent lawyers from seeing their clients – from COVID-19 risks to technical difficulties. As a result, detainees, many of whom did not have a lawyer at the administrative hearing stage, are unable to seek legal advice to appeal the lawfulness of their detention for the length of said detention.

In addition to denying access to counsel, detainees in Belarus are often not provided with a copy of administrative decisions, nor are they given basic means to draft a complaint, such as paper and a pen.⁴⁰ Routine searches and privacy intrusions into detainees' space often lead to guards confiscating any means that could help the individuals in question to submit complaints, whether it be domestic or international.

Article 14(3)(d) of the ICCPR explicitly guarantees the right to legal assistance in criminal proceedings, and the HRC has confirmed that this extends beyond criminal proceedings.⁴¹ The HRC has consistently affirmed that individuals have the right to be granted prompt access to counsel, and applicants should be able to meet in private and communicate with counsel in conditions that fully respect the confidentiality of their communications.⁴²

The ECtHR has found violations of the right of individual application in cases of refusal to provide an imprisoned applicant with copies of documents required for their application to the Court,⁴³ as well as unjustified omissions and delays in providing the prisoner with writing materials for their correspondence and with the documents necessary for applications to the Court.⁴⁴

Conclusion

Taking into account the context in Belarus, caution should be exercised in cases where the argument of ineffectiveness of local remedies is due to the State authorities' intentional actions and omissions that prevent the exhaustion of local remedies.

Partial exhaustion of domestic remedies as of 8 February 2023

Article 5(2) (b) of the OP requires that the applicant must have exhausted available domestic remedies before the Committee considers the communication.⁴⁵ The Committee usually decides on admissibility at the time of the examination on the merits and follows the practice of other international bodies, examining whether domestic remedies have been exhausted at the time of considering the matter, rather than at the time the communication was submitted.⁴⁶

³⁹ Report of the United Nations High Commissioner for Human Rights, [Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath](#), 3 February 2023, paras 26-29.

⁴⁰ Report of the United Nations High Commissioner for Human Rights, [Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath](#), 3 February 2023, paras 26-29. See also Frontline Defenders, [Woman Human Rights Defender Nasta Loika Sentenced To Seven Years In Prison](#), 20 June 2023.

⁴¹ HRC, General Comment No. 32, Equality before Courts and Tribunals.

⁴² General Comment No. 32, para. 34 and Communications No. 1117/2002, *Khomidova v. Tajikistan*, para. 6.4; No. 907/2000, *Siragev v. Uzbekistan*, para. 6.3; No. 770/1997, *Gridin v. Russian Federation*, para. 8.5.

⁴³ ECtHR, *Naydyon v. Ukraine*, para. 68; ECtHR, *Vasiliy Ivashchenko v. Ukraine*, paras. 107-10.

⁴⁴ ECtHR, *Gagiu v. Romania*, para 94.

⁴⁵ Article 5 (b): The Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies.

⁴⁶ HRC, *Devi Maya Nepal*, 15 July 2021, para 6.4.; HRC, *Rebeca Elvira Delgado Burgoa*, 28 March 2018, para 10.2. Both applicants submitted complaints to the HRC while their appeals to the Supreme Court and the Constitutional Court, respectively, were still pending. The HRC took into consideration that the decisions issued after the submission supported the previous judgements issued by first- and second-instance judicial authorities.

Also see interpretation adopted by the Inter-American Court of Human Rights in the case of *Wonf Ho Wing vs. Peru*, 30 June 2015, para 25: "As mentioned by the State, the decisions that exhausted domestic remedies according to the Commission were adopted after the presentation of the initial petition. However, the Court notes that Article 46 of the American Convention, by

In relation to complaints from Belarus, it is important to note that within the three months that lapsed between the notification of Belarus' denunciation of the Optional Protocol to the UN Secretary-General and the denunciation taking effect on 8 February 2023, a number of communications were submitted by applicants from Belarus who were still in the process of exhausting domestic remedies. As described in Section II, in some instances domestic remedies are likely to be futile, in particular in cases related to torture and other serious human rights violations committed in the context of the 2020 elections and the crackdown on peaceful protesters that followed. Moreover, waiting to exhaust domestic remedies, with no prospect of success, would have deprived the applicants of the possibility to seek justice through the HRC. Given this context, the Committee might exercise particular caution and follow its practice of examining the issue of exhaustion at the time of the examination on the merits in relation to complaints submitted by or on behalf of Belarusian survivors in cases of torture and so-called "political" cases. This approach would ensure the right to petition for the victims in Belarus and allow survivors of torture and other serious human rights violations to access justice, despite Belarus' denunciation.

CONCLUSION

Given the ongoing human rights crisis in the country, it is crucial complaints submitted before 8 February 2023 are considered on their merits, and that the issue of exhaustion of domestic remedies is considered at the admissibility stage. The HRC is clear in its jurisprudence that remedies must be both "available" and "effective" in order for the rule of exhaustion of domestic remedies to apply.⁴⁷ To be available and effective, remedies must ensure procedural guarantees for "a fair and public hearing by a competent, independent and impartial [court]."⁴⁸ The instrumentalisation of non-disclosure notices and closed hearings in the Belarus context to bar lawyers from seizing the HRC severely hampers victims' right to an effective remedy and to a fair trial. Moreover, access to counsel is often denied and persons in administrative detention are often not provided with a copy of administrative decisions, nor are they given the basic means to draft a complaint and be able to exhaust domestic remedies. The HRC has also established that when domestic remedies have no chance of success, the requirement to exhaust domestic remedies does not apply. The fact that not one single criminal case has been opened into allegations of torture in Belarus clearly demonstrates that such complaints have no chance of success and are indeed futile. The HRC has also considered that where pursuing exhaustion of domestic remedies is dangerous, individuals are not expected to comply with the rule on exhaustion.⁴⁹ The clear pattern of intimidation of lawyers, the high number of disbarments of lawyers involved in "political" cases, as well as the fact that mere submission of documents to the HRC could amount to a criminal offence, is a clear indication that exhausting domestic remedies would put individuals and their advocates at risk in the context of Belarus.

requiring said exhaustion to take place "[f]or a petition or communication [...] to be admitted by the Commission" (...), must be interpreted in the sense that it requires the exhaustion of remedies by the time the petition is admissible and not by the time it is filed."

⁴⁷ UN Human Rights Committee (HRC), Communication No. 2077/2011: Views of 19 October-6 November 2015, CCPR/15/D/2077/2011, para. 6.6.

⁴⁸ In the case of *Randolph v. Togo*, the author, who had been arrested and tortured, would have needed to file a complaint with the gendarmerie, which was the institution responsible for his ill-treatment. The author claimed that Togo lacked judicial independence (para 5.6), that threats to his attorneys violated his due process rights (para. 5.8) and that "any attempt to secure a remedy that presupposes an impartial judicial system is impossible so long as the State has a dictatorship at the helm" (para 7.6). The HRC found that Togo had not "responded satisfactorily to the author's contention that there was no effective remedy in domestic law" (para 8.6). See also, e.g., *Kroumi v. Algeria* (UN Human Rights Committee (HRC), Communication No. 2083/2011: Views of 7-31 October 2014, CCPR/C/112/D/2083/2011, para 7.4, available at <http://undocs.org/CCPR/C/112/D/2083/2011>); *Berzig v. Algeria* (UN Human Rights Committee (HRC), Communication No. 1781/2008: Views of 17 October-4 November 2011, CCPR/C/103/D/1781/2008, para. 7.4, available at <http://undocs.org/CCPR/C/103/D/1781/2008>).

⁴⁹ In *Phillip v. Trinidad and Tobago*, the HRC agreed that the individual who did not complain about the conditions of his detention to the authorities, while still in detention, due to fear of reprisals from the administration, did not need to exhaust domestic remedies. The Inter-American Court of Human Rights stated in an advisory opinion that applicants are not required to exhaust domestic remedies where there is a generalized fear in the legal community which impairs applicants' ability to retain legal counsel (IACtHR, 'Exceptions to the Exhaustion of Domestic Remedies,' Advisory Opinion of 10 August 1990, OC-11/90, para 19).

COALITION

Barys Zvozkau Belarusian Human Rights House

The Barys Zvozkau Belarusian Human Rights House in Vilnius is a human rights organization, which aims to protect and develop the Belarusian human rights movement. The BHRH was created in 2006 by Belarusian human rights organization and the Human Rights Houses Foundation (Norway). The BHRH works in four strategic directions: human rights advocacy; human rights education; capacity building of human rights defenders and their organizations, as well as protection of human rights defenders and providing support for victims of repression.



Belarusian association of human rights lawyers

Belarusian Association of human rights lawyers represents interests of Belarusian lawyers including those who were deprived of their right to profession. We provide assistance to colleagues in Belarus, increase professional competencies and maintain high standards of legal profession.



Belarusian Helsinki Committee

Founded in 1995, the Belarusian Helsinki Committee (BHC) is one of the oldest human rights defending organization in Belarus. The BHC works to reanimate the meaning of human rights and to ensure that human rights are included in all spheres of life. BHC promotes human rights as a paramount element of economic and human development and works with the entire scope of human rights mainly concentrating on the next topics: discrimination, international human rights mechanisms, business and human rights, human rights-based approach, analysis of trends in public policy on human rights of Belarus, human rights education. Among other things, BHC works a lot with capacity building of Belarusian NGOs, helping them to use UN mechanisms through training, support, and creating special web resources for NGOs. The main products of BHC are Belarus Human Rights Index, Human Rights in Belarus: Key Trends in Public Policy, Country Guide on Business and Human Rights, The Human Rights Standards Database for Lawyers and Project Managers.



DIGNITY – Danish Institute Against Torture

DIGNITY is an international human rights and development organization. We have worked for a world without torture and violence since 1982. We prevent torture and violence, rehabilitate traumatized victims and document serious human rights violations so the perpetrators are held accountable.



Human Constanta

Human Constanta is a Belarusian human rights organization, working to promote public interests and joint actions in response to modern challenges in the field of human rights. The organization primarily works in three main areas of expertise – rights of migrants and foreigners, digital rights, and anti-discrimination.



International Committee for the Investigation of Torture in Belarus

International Committee for the Investigation of Torture in Belarus is a coalition of independent non-government organizations who have joined forces to collect, consolidate, verify, and preserve evidence of human rights violations, amounting to crimes under international law, allegedly committed by the Belarusian authorities and others in the run-up to the 2020 presidential election and its aftermath.



Federation for Human Rights

FIDH was established in 1922, and today unites 188 member organizations in 116 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level. FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights. FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.



Legal Initiative

Legal Initiative is a non-profit non-governmental human rights organization, protecting human rights in Belarus since 1996. The organization primarily works in four main areas of expertise: human rights education, legal help to victims of human rights violations, improvement of legislation and change in law enforcement practice, international advocacy.



REDRESS

REDRESS is an NGO that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights. We empower survivors to access justice through human rights cases against governments, civil cases against individuals, and criminal cases where we advocate for law enforcement bodies to prosecute perpetrators under the principle of universal jurisdiction.



Respect - Protect - Fulfill

Respect - Protect - Fulfill is a Lithuania-based human rights organization. We promote human rights in Belarus and beyond through impact litigation in public interest. We work with the UN and other international mechanisms prioritizing issues, which have not been under their scrutiny.

Respect-Protect-Fulfill

Right to Defense

Right to Defense is an initiative of independent lawyers in the Republic of Belarus which was created in order to provide independent information about lawyers in Belarus, to promote international standards of the legal profession, to collect and to public information about repression, to store information about illegal action of Belarusian authorities and managing bodies of bars. Right to Defense provides trusted and comprehensive information about lawyers for various reports about human rights violations in Belarus.

 right to defense

Viasna Human Rights Centre

Human Rights Center "Viasna" is a non-governmental human rights organization, created in 1996 during mass protest actions of the democratic opposition in Belarus. The main goal of Viasna is to contribute to development of the civic society in Belarus, based on respect to human rights, described in the Universal Declaration of Human Rights and the Constitution of the Republic of Belarus.



World Organisation against Torture

World Organisation against Torture works with 200 member organisations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are. Together, we make up the largest global group actively standing up to torture in over 75 countries, including leading organizations in Central and Eastern Europe. The OMCT works to protect the most vulnerable members of our societies, including children, indigenous peoples, migrants, women, and other marginalized communities. To achieve this, it advocates with governments to change or implement their laws and policies, helps victims seek justice, and strives to hold perpetrators to account.

OMCT
SOS-Torture Network