

OHCHR examination of the human rights situation in Belarus

Template for submitting information

OHCHR, in the context of its examination of the human rights situation in Belarus, is interested in receiving information related to all alleged human rights violations committed in Belarus since 1 May 2020, including the possible gender dimensions of such violations.

Name of submitting individual/entity	The American Bar Association Center for Human Rights (ABA CHR) and Lawyers for Lawyers
Contact of submitting individual/entity	<p>The American Bar Association Center for Human Rights Email(s): justicedefenders@americanbar.org Telephone/WhatsApp/Signal/Other: +1(312) 988-5000 Web Address: https://www.americanbar.org/groups/human_rights/ Agree to be contacted by OHCHR Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Lawyers for Lawyers Email(s): info@lawyersforlawyers.nl Telephone/WhatsApp/Signal/Other: +31 20 717 16 38 Web Address: https://lawyersforlawyers.org/ Agree to be contacted by OHCHR Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>
Relationship of submitting entity/individual to the alleged victim/s	
Violation/s alleged to have occurred	<ul style="list-style-type: none"> ➤ Unlawful killings/ Extrajudicial executions/ Arbitrary deprivation of life <input type="checkbox"/> ➤ Enforced disappearances <input type="checkbox"/> ➤ Arbitrary expulsion from the country <input type="checkbox"/> ➤ Violation of freedom of movement, and arbitrarily deprivation of the right to enter one's own country <input type="checkbox"/> ➤ Arbitrary detention, including of children <input type="checkbox"/> ➤ Torture and cruel, inhumane or degrading treatment <input type="checkbox"/> ➤ Excessive use of force <input type="checkbox"/> ➤ Violation of the right to liberty and security; ➤ Harassment/intimidation of members or supporters of the political opposition, lawyers, members of civil society, including human rights defenders, activists, journalists and media workers <input checked="" type="checkbox"/> ➤ Violation of the right to freedom of peaceful assembly <input type="checkbox"/>

	<ul style="list-style-type: none"> ➤ Violation of the right to freedom of opinion and expression (including access to information online and offline) <input type="checkbox"/> ➤ Violation of the right to freedom of association <input type="checkbox"/> ➤ Sexual or gender-based violence (against persons of all gender/age/sexual orientation) <input type="checkbox"/> ➤ Violation of the right to fair trial and due process <input checked="" type="checkbox"/> ➤ Violation of the right to work (e.g. unfair or politically motivated dismissals), to strike, and to form / join trade unions. <input type="checkbox"/> ➤ Violations of social and economic rights <input type="checkbox"/> ➤ Violations of cultural rights (e.g. access to education in Belarusian language, freedom of expression in the cultural sphere etc.) <input type="checkbox"/> ➤ Other human rights violations (please indicate) <input type="checkbox"/> ➤ Information on broader issues not related to specific violations, including information on the rule of law <input type="checkbox"/>
Date of incident/time period	
Place of incident	Village/township/city: Municipality:
Name/s of alleged victim/s gender, age	Name: Gender: Age: Father's name: Nationality: Profession: Contact:
Membership of a minority group, including gender minorities, indigenous peoples and ethnic groups (according to the principle of self-identification)	Yes/No (please specify if yes)
Identification of those allegedly responsible	Name of alleged perpetrator if known: Entity with which perpetrator is affiliated, if any:

	<p>Any identifying marks of the perpetrator which indicate their affiliation, such as the colour or pattern of their uniform and uniform's insignia:</p>
<p>Description of the incident(s)/allegations (2000-word limit)</p>	<p>Detailed description of:</p> <ul style="list-style-type: none"> - the incident(s) or alleged violation(s), including dates, specific locations (e.g. street, building) and number and types and name(s) of victim(s) - the context in which they took place - alleged perpetrators - alleged motive, such as political opposition <p>Please also include information on the impact of these violations, as well as age and gender-sensitive considerations (e.g. how these violations affected women and men, girls and boys differently).</p>
<p>Description of the State's response (500-word limit)</p>	<p>Indicate whether the incident was reported to the authorities: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, which authorities: _____</p> <p>Detailed description of any investigations, judicial processes, decision/judgements and sentences, including reparations, in response to the incident.</p>
<p>Consent</p>	<p>Please indicate whether OHCHR may include the following information in the public report submitted to the Human Rights Council and/or use it for other official UN purposes:</p> <p>The information provided: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The name/s of the source of the information: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The name/s of the alleged victims (any consent given must be provided by the victim or by relatives or legal representatives on their behalf, or by a parent/legal guardian in case of a child): Yes <input type="checkbox"/> No <input type="checkbox"/>; consent provided by: _____</p> <p>If necessary, please explain: _____</p> <p>Please indicate whether you, the person submitting the information, agree to be contacted regarding the manner in which OHCHR may use the information provided:</p> <p>The information provided: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The names and contacts of the source of the information: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The names of the alleged victims (any consent given must be provided by the victim or by relatives or legal representatives on their behalf, or by a parent/legal guardian in case of a child): Yes <input type="checkbox"/> No <input type="checkbox"/>; consent provided by: _____</p> <p>If necessary, please explain:</p>

	<p>Please indicate whether you, the person submitting the information, agree that OHCHR share the information with:</p> <ol style="list-style-type: none"> 1. National authorities Yes <input type="checkbox"/> No <input type="checkbox"/> 2. International tribunals (incl. ICC) Yes <input type="checkbox"/> No <input type="checkbox"/> 3. Transitional Justice mechanisms Yes <input type="checkbox"/> No <input type="checkbox"/> 4. Courts of 3rd States Yes <input type="checkbox"/> No <input type="checkbox"/> 5. Broader UN bodies (e.g., sanctions committees) Yes <input type="checkbox"/> No <input type="checkbox"/> <p>The information provided: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The names and contacts of the source of the information: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>The names of the alleged victims (any consent given must be provided by the victim or by relatives or legal representatives on their behalf, or by a parent/legal guardian in case of a child) Yes <input type="checkbox"/> No <input type="checkbox"/>; consent provided by: _____</p> <p>If necessary, please explain:</p>
<p>Description of any broader issues not related to specific violations, including information on the rule of law in Belarus (2000-word limit)</p>	<p>Description should be succinct, highlighting issues of relevance to the mandate of OHCHR, and include concrete examples whenever possible.</p> <p>Please also include information on the impact of these violations, as well as age and gender-sensitive considerations (e.g. how these violations affected women and men, girls and boys differently) as relevant.</p> <p><i>Introduction</i> <i>Since the August 2020 presidential elections, lawyers in Belarus working on sensitive cases have been the subject of judicial harassment, arbitrary arrests, detention, administrative sanctions, criminal prosecution, and disciplinary sanctions – including disbarment.</i></p> <p><i>Belarusian authorities not only have failed to fulfil their duty to protect lawyers from such harassment and sanctions for performing their professional activities but also appear to be the source of the harassment and sanctions against lawyers. As a result, lawyers in Belarus are effectively prohibited from carrying out their professional duties independently. A legal profession controlled, manipulated, or unduly influenced by politicians or any other third party cannot effectively carry out its duty to ensure the fair and effective administration of justice and adherence to the rule of law.</i></p>

	<p><i>Arrest, detention and criminal prosecution of lawyers</i> <i>Criminal charges against lawyers were increasingly brought in the context of post-election protests.¹</i></p> <p><i>Disbarment and other disciplinary measures</i> <i>In recent months, there also has been an unprecedented increase in the disbarment of lawyers.² Lawyers defending cases involving human rights violations or politically sensitive cases face disbarment or disciplinary sanctions by the Bar Association.³</i></p> <p><i>It should be noted that disciplinary proceedings in Belarus are not independent of the executive; rather, they are conducted by the Qualification Commission, which operates under the Ministry of Justice (MOJ). The Qualification Commission is established by the MOJ and only 8 out of the Commission's 17 members are lawyers.⁴</i></p>
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¹ One of the lawyers that was recently sentenced is Maksim Znak.¹ The Minsk Regional Court sentenced Maksim Znak to 10 years of imprisonment for “calls for action aimed at causing harm to national security”, “conspiracy to seize power by unconstitutional means” as well as “creation and leading of an extremist organization” on 6 September 2021. Maksim Znak is a Belarusian lawyer who has represented and provided legal assistance to several potential candidates running for the presidency in Belarus, among which Viktor Babaryko and Svetlana Tikhanovskaya. Further, Maksim Znak provided legal assistance to Maria Kolesnikova, co-leader of the Coordination Council. Maksim Znak was arrested on 9 September 2020. Moreover, on 3 November 2021, after a hearing behind closed doors, the Centralny District Court of Homiel found lawyer Leanid Sudalenka¹ guilty of “organizing and preparing actions that grossly violate public order” “training and preparation of persons for participation in such actions, as well as their financing or other material support”. Mr. Sudalenka is the Chairman of the Homiel branch of the Viasna Human Rights Centre and 2018 winner of the French Republic’s “Liberty-Equality-Fraternity Prize” for his human rights work.

² It has been reported that at the time of writing this report 18 lawyers have been disbarred. For more information: Defenders.by, ‘Persecution of lawyers in Belarus after the elections in 2020’, last accessed 10 December 2021: https://defenders.by/persecutionoflawyers_2020

³ Together with other international lawyers’ organizations, Lawyers for Lawyers expressed concern about the ongoing disbarment of lawyers in Belarus. In the statement it is noted that the disbarments also appear to have designed a chilling effect on the legal profession by intimidating independent lawyers and punishing those who carry out their duties diligently and independently in accordance with the international standards on the role of lawyers. In the statement the cases of lawyers Natalia Matskevich and Dmitry Layevsky were also highlighted. Belarusian lawyer Natalia Matskevich was disbarred by a decision of the Bar Association on 27 October 2021, following disciplinary proceedings initiated by the Ministry of Justice of Belarus and the decision of the Disciplinary Commission of the Minsk City Bar Association earlier the same month. The case against Natalia Matskevich is related to her representation of Victor Babariko, a former presidential candidate, who was sentenced to 14 years of imprisonment on 6 July 2021. On 9 July 2021, a lawyer representing Viktor Babariko, Dmitry Layevsky, was disbarred by the Bar Association. The statement can be found here: Lawyers for Lawyers, ‘Joint statement: Bar Association of Belarus should reinstate disbarred lawyer Natalia Matskevich’, 28 October 2021: <https://lawyersforlawyers.org/en/joint-statement-bar-association-of-belarus-should-reinstate-disbarred-lawyer-natalia-matskevich/>

⁴ This has been laid down in Article 14.2 of the Law of the Republic of Belarus On the Bar and Advocate Activity in the Republic of Belarus 334-3 (2011) [hereinafter Law on the Bar and Advocacy in Belarus], available at: <https://rka.by/about/zakon-respubliki-belarus/>

	<p><i>Extraordinary certification of lawyers</i> <i>Moreover, we have received reports of lawyers who were called before the Qualification Commission to undergo an examination to re-certify their qualification to practice law in Belarus on the basis of their alleged “improper fulfillment of their professional duties”.⁵ There are reasons to believe that the lawyers that were called in for extraordinary certification by the Qualification Commission were targeted for working on human rights cases as means of reprisal.⁶</i></p> <p><i>Harassment of lawyers</i> <i>In addition to criminal prosecutions, procedures leading to disbarment, and other disciplinary proceedings Belarusian lawyers have been harassed by government authorities in other ways.</i></p> <p><i>In October 2020, the International Bar Association’s Human Rights Institute (IBAHRI) communicated its “grave concern over ongoing attacks and intimidation tactics deployed against lawyers in Belarus for carrying out their professional roles.”⁷ In March 2021, the UN Special Rapporteur on the Situation of Human Rights Defenders similarly conveyed her concern over the “increasing crackdown against human rights defenders in Belarus,” including lawyers working to promote human rights.⁸</i></p> <p><i>According to the UN Special Rapporteur, “raids on offices, arrests of human rights defenders[,] and the hampering of lawyers’ work have become common practice.”⁹ n addition, lawyers have recently been forced into non-disclosure agreements. As described by the UN Special Rapporteur on the Situation of Human Rights Defenders,</i></p>
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⁵ At the time of writing this report, 18 lawyers have been called in for examination and were subsequently deprived of their license. For more information: Defenders.by, ‘Persecution of lawyers in Belarus after the elections in 2020’, last accessed 10 December 2021: https://defenders.by/persecutionoflawyers_2020

⁶ See Int’l Comm’n of Jurists, Belarus: stop politically motivated prosecution and disbarment of lawyers (13 April 2021), <https://www.icj.org/belarus-stop-politically-motivated-prosecution-and-disbarment-of-lawyers/> (noting that the Qualification Commission’s extraordinary certification procedure “appears to target lawyers working to defend human rights, as a means of harassment or reprisal”); Roman Vasyukovich, “Оставят без куска хлеба за исполнение своих обязанностей”. Десятки адвокатов Беларуси лишились лицензий из-за защиты протестующих [‘They will be left without a piece of bread for fulfilling their duties.’ Dozens of Belarusian lawyers lost their licenses over the protection of protestors], НАСТОЯЩЕЕ ВРЕМЯ [CURRENT TIME] (3 May 2021), <https://www.currenttime.tv/a/desyatki-advokatov-lishilis-licenzii-za-zashitu-protestuyushih/31232068.html> (noting that one of the lawyers who lost her right to practice in March 2021 as a result of the extraordinary certification process believes it was due to “the fact that in the courts she defended participants in peaceful protests and publicly condemned violence and repression”).

⁷ IBAHRI, Belarus: harassment and intimidation of lawyers is of great concern and must end (29 Oct. 2020), <https://www.ibanet.org/article/3bac5c3d-eaf1-45f2-a422-c7d503c2c47d>.

⁸ UN Belarus, Belarus: crackdown on human rights defenders deepens – expert (19 March 2021), <https://belarus.un.org/en/122675-belarus-crackdown-human-rights-defenders-deepens-expert>.

⁹ Id.

“[n]on-disclosure agreements de facto criminalise the sharing of information on human rights.”¹⁰

Amendments to the Law on the Bar and Advocacy in Belarus

In April 2021, amendments were proposed by the Lukashenko administration to the Law on the Bar and Advocacy in Belarus. The bill was since adopted in May 2021¹¹ and will come into force at the end of November 2021.

The amendments prohibit individual lawyers and private firms from representing individuals charged with criminal or administrative offences. This entails these type of cases can only be dealt with by so-called legal consultations governed by the regional bar associations.¹²

The amendments also increase the power of the MOJ over the legal profession. For example, the amendments require each candidate lawyer to be approved by the MOJ and empower the MOJ to develop the rules for the professional ethics of lawyers.¹³ It can monitor lawyers, law firms and bar associations on their compliance with these professional ethics and subject them to disciplinary procedures in case of violation.¹⁴ These disciplinary proceedings take place before the Qualification Commission, which also falls under the control of the MOJ.¹⁵

Furthermore, candidates for chair of the bar associations have to be approved by the MOJ. If all candidates proposed by territorial bar association are rejected twice by the MOJ, the MOJ proposes its own candidate. If the MOJ candidate is rejected twice by the members of the territorial bar, the candidate is nonetheless automatically “elected.”¹⁶ It also can dismiss these chairs if the Qualification Committee is of the opinion that they violated professional ethics.¹⁷ Under the amendments, MOJ officials also would have the right to participate in the activities of the bar associations and request any

¹⁰ UN Belarus, Belarus: crackdown on human rights defenders deepens – expert, supra note 113.

¹¹ Office Life, Адвокатских бюро в Беларуси не будет с октября 2021 года [There will be no law offices in Belarus from October 2021] (29 May 2021), <https://officelife.media/news/25945-advokatskikh-byuro-v-belarusi-ne-budet-s-oktyabrya-2021-goda/>.

¹² See Law on Amendments to the Law on the Bar and Advocacy in Belarus, Law of the Rep. of Belarus No. 113-3 (27 May 2021) [hereinafter Amendments], Art. 3(24) and 3(25).

¹³ See id., Art. 3(27).

¹⁴ See id.

¹⁵ See id.

¹⁶ See id., Art. 3(31)

¹⁷ See id.

	<p><i>documents from the bar associations or individual lawyers to be able to fulfil these powers, subject to attorney-client privilege.¹⁸</i></p> <p><i>The heightened control granted to the MOJ over the regional and national bar associations in the amendments undermines their independence and the independence of the legal profession in Belarus.</i></p>
<p>Any other human rights NGOs to whom you reported the incident</p>	<p>If appropriate, please provide name and contact information of any other person or organization to whom the incident was reported.</p>
<p>Additional materials (documents, images, videos, etc) relevant to the incident(s)/allegation(s)</p>	<p>Please indicate, if you are aware of, or in possession of, any additional materials from other sources (including the media and NGOs) in which the above incident(s)/allegations are cited, that are deemed relevant/useful. The OHCHR may follow-up at a later date in order to receive the material(s) indicated.</p> <p>Date of publication: July 2021 Title: Lawyers Under Threat: Increasing Suppression of the Legal Profession in Belarus Source (author/organisation): Lawyers for Lawyers, the American Bar Association Center for Human Rights (ABA CHR), and the International Bar Association’s Human Rights Institute (IBAHRI) Web link; https://lawyersforlawyers.org/wp-content/uploads/2021/07/belarus-coalition-lawyers-report-english.pdf Type of material: Documents <input checked="" type="checkbox"/>; Images <input type="checkbox"/>; Videos <input type="checkbox"/>; Other (please specify):</p> <p>The joint report titled “Lawyers Under Threat: Increasing Suppression of the Legal Profession in Belarus”, analyzes 24 cases of retaliatory acts against lawyers who represent defendants in politically sensitive cases or publicly speak about human rights abuses in Belarus following the contested August 2020 presidential election.</p>

¹⁸ See id.