

Right to defence: A gender perspective

Introduction

1. The organisations Helsinki Foundation for Human Rights, World Organisation Against Torture, and ARTICLE 19 welcome the opportunity to draw the international community's attention to the human rights situation in Belarus by making this submission.
2. Helsinki Foundation for Human Rights is a human rights organisation whose mission is promoting the development of a culture based on the respect of freedom and human rights. Helsinki Foundation for Human Rights has a consultative status within the United Nations Economic and Social Council (ECOSOC).¹ The World Organisation Against Torture is a human rights organisation with a mission of preventing torture.² ARTICLE 19 is a global organisation working to advance freedom of expression in five areas: civic space, digital, media, protection, and transparency.³
3. The present submission is dedicated to the violation of the rights of women lawyers, women human rights defenders, and women representatives of the legal profession in Belarus. Despite the submission's focus on the violation of these particular groups' rights, the authors of the submission note that, against the backdrop of an unprecedented political crisis in Belarus, some elements of human rights defence work may be performed by not only lawyers but also specialists in other fields – journalists, bloggers, and professionals in the fields of culture and sports.

Political persecution and violation of the rights of women lawyers, human rights defenders, and representatives of the legal profession

4. The presidential election campaign of 2020 became the starting point for what has become the most serious political and human rights crisis in the history of modern Belarus. Belarusian authorities responded to protests, including to women-only protests,⁴ with brutal force and political repression. Mass human rights violations in Belarus were happening during the pre-, mid-, and post-election period.⁵ The persecution of the current regime's opponents has continued up to the present day. By 8 June 2021, there are 471 political prisoners in Belarus⁶ and approximately 3,000 open criminal cases on 'mass riots'.⁷

¹ [Helsinki Foundation for Human Rights](#).

² [World Organisation Against Torture](#).

³ Article 19, [About Us](#).

⁴ Human Rights House Foundation, [Women-only protests in Belarus](#).

⁵ Tatsiana Ziniakova, World Justice Project, [Belarus: Rule of Law Dimensions of 2020 Presidential Elections](#).

⁶ Human Rights Center "Viasna," [List of Political Prisoners](#).

⁷ Human Rights Center "Viasna," [Human Rights Situation in Belarus: May 2021](#).

5. The human rights crisis in Belarus negatively affects various groups – journalists, civil society activists, athletes, people with disabilities, children. Some groups are subject to state pressure on several grounds simultaneously. Women lawyers and representatives from similar professions are subjected to discrimination and fundamental rights violations both on the basis of their sex and on the basis of their professional activities. Multiple forms of discrimination that women from the legal professions are subjected to require the application of intersectional approaches⁸ when analysing relevant human rights violations and providing legal remedies.
6. The role of women human rights defenders has often been noted at the international level.⁹ United Nations General Assembly Resolution 68/181 of 18 December 2013 (hereinafter, Resolution 68/181) is dedicated to the protection of women human rights defenders.¹⁰
7. Resolution 68/181 mentions a worrying global tendency of women human rights defenders being persecuted, women who “frequently face threats and harassment and suffer insecurity as a result of those activities, including through the curtailment of freedom of association or expression or the right to peaceful assembly or the abuse of civil or criminal proceedings”. Resolution B 68/181 also highlights that women human rights defenders often fall victim to “systematic violations and abuses of their fundamental rights to life, liberty and security of person, to psychological and physical integrity, to privacy and respect for private and family life and to freedom of opinion and expression, association and peaceful assembly, and in addition can experience gender-based violence, rape and other forms of sexual violence, harassment and verbal abuse and attacks on reputation, online and offline, by State actors, including law enforcement personnel and security forces...”
8. The persecution of women human rights defenders in Belarus was noted and condemned by several United Nations Special Rapporteurs. In a joint statement the rapporteurs highlighted the vulnerable position of women human rights defenders during the process of suppressing peaceful protests in Belarus and concluded that human rights work in Belarus was effectively criminalised “at a time when the work of human rights defenders is more essential than ever”.¹¹ The persecution of women lawyers was also mentioned in the American Bar Association’s reports and publications.¹²

⁸ Office of the High Commissioner for Human Rights, [Human rights council holds annual panel discussion on the integration of a gender perspective in its work](#).

⁹ Global Fund for Women, [Who are women human rights defenders?](#).

¹⁰ United Nations General Assembly, [Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders](#), A/RES/68/181; Office of the High Commissioner for Human Rights, [Women human rights defenders](#).

¹¹ Office of the High Commissioner for Human Rights, [Belarus: UN experts decry threats against women human rights defenders](#); UN News, [Belarus targets women human rights defenders after disputed August elections](#).

¹² American Bar Association, [Belarus: Analysis of Arbitrary Disbarments of Liudmila Kazak, Konstantin Mikhel, Maxim Konon, and Mikhail Kirilyuk](#); American Bar Association, [The Critical Role of Belarusian Lawyers in Country's Recent Events: Must Read Interview with Natalia Matskevich and Dmitry Laevsky](#).

9. The expert report under the Moscow Mechanism of the Organization for Security and Co-operation in Europe also notes the state policies of intimidation, persecution, and harassment of political activists and candidates, lawyers, companies, labour activists, and human rights defenders,¹³ as well as intimidation of women activists,¹⁴ ill treatment of women, sexual or gender-based violence,¹⁵ and pressure applied on women through their family members.¹⁶

10. For as long as women remain at the forefront of the protest movement in Belarus,¹⁷ ensuring their right to defence by women human rights defenders and women lawyers is especially important. Women who are put in prison for political reasons often face forms of gender discrimination and violence, which could only be shared with a defender of the same sex. Gender sensitivity in realising the right to defence allows the victims of political persecution to formulate legal defence strategies in an atmosphere of mutual trust.

11. While Belarusian authorities exert pressure on lawyers and human rights defenders of all sexes and genders, especially if they defend political prisoners,¹⁸ some aspects of the authorities' repressive policies disproportionately affect women's rights. Examples of women human rights defenders' and lawyers' communities being persecuted include:
 - *Liudmila Kazak's case*: Lawyer Liudmila Kazak, who was representing the interests of one of the leaders of the Belarusian democratic forces, Maryia Kalesnikava, was kidnapped and later detained by Belarusian authorities, put in jail, and fined for resisting law enforcement officers in September 2020. In February 2021, according to a decision by the Qualification Commission under the auspices of the Ministry of Justice of the Republic of Belarus, Kazak was disbarred. Such a decision by the Qualification Commission – an institution fully controlled by the Belarusian authorities – is one of the many decisions on the disbarment of lawyers, directly or indirectly connected to the defence of political prisoners;¹⁹
 - *Laevskis' case*: In April 2021 the senior leadership of Belarusian State University decided not to extend an employment contract with Elena Laevskaya – a legal professional, a professor of civil law at the university's law faculty, and the mother of

¹³ Wolfgang Benedek, OSCE, '[OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#)', p. 32;

¹⁴ Wolfgang Benedek, OSCE, '[OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#)', pp. 34-35;

¹⁵ Wolfgang Benedek, OSCE, '[OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#)', pp. 46-48;

¹⁶ Wolfgang Benedek, OSCE, '[OSCE Rapporteur's Report under the Moscow Mechanism on Alleged Human Rights Violations related to the Presidential Elections of 9 August 2020 in Belarus](#)', pp. 34-35;

¹⁷ Amnesty International, [Belarus: Women at the forefront of human rights struggle](#).

¹⁸ Office of the High Commissioner for Human Rights, [Human Rights Council: United Nations High Commissioner for Human Rights urges government of Belarus to end ongoing human rights violations](#).

¹⁹ Human Rights Center "Viasna," [Kalesnikava's lawyer detained](#); Lawyers for Lawyers, [Concerns about disbarment Liudmila Kazak](#); RadioFreeEurope/ Radioliberty, [Lawyers In Belarus Face Disbarment, Arrest Just For Representing Opponents Of Lukashenka](#).

Dmitriy Laevski – a lawyer, defending the interests of a former presidential candidate and now a political prisoner, Viktor Babaryka. Based on the rule laid out in the Labor Code of the Republic of Belarus on the obligatory extension of employment contracts with workers of pre-retirement age, a failure to extend the contract after 22 years of work constitutes a violation of the Labor Code and an act of political persecution.²⁰ When challenged, the decision on firing Laevskaya was upheld by the court.²¹ Laevski also faced pressure from state authorities because of his professional duties; he was reprimanded by the disciplinary commission under the auspices of the Minsk City Bar Association for making statements and expressing his views on the proposed amendments to laws regulating legal practice;²²

- *Marfa Rabkova's case:* The volunteer groups coordinator of Human Rights Center “Viasna” and political prisoner, Marfa Rabkova, was detained in September 2020. Currently, Rabkova remains in detention, charged with organising “mass riots” and “incitement of hatred towards state officials”;²³
- *Tatsiana Hatsura-Yavorska's case:* Human rights defender and director of civil society organisation “Zvyano”, Tatsiana Hatsura-Yavorska was arrested by Belarusian law enforcement officers in April 2021 on suspicion of taking part in “mass riots”. Despite being released from the detention center, she remains a suspect in a criminal case. Hatsura-Yavorska's husband, Volodimir Yavorski, was beaten up, blackmailed by Belarusian law enforcement officers, and, under pressure from state authorities, was forced to leave Belarus together with his son;²⁴
- *Tatsiana Lasitsa's case:* A volunteer at Human Rights Center “Viasna” and political prisoner, Tatsiana Lasitsa was detained in January 2021 on suspicion of taking part in “mass riots”. She remains in detention;²⁵ and
- *Liliya Ulasava's case:* A partner at the Vlasova Mikhel & Partners law firm, a member of the Presidium of the Coordination Council of Belarusian opposition, and a former political prisoner, Liliya Ulasava was detained in August 2020 on suspicion of tax evasion and put under house arrest until October 2020.²⁶

12. An additional factor in suppressing the rights of women lawyers, human rights defenders, and legal profession representatives is that the majority of decisions concerning their rights are made by men. It is often men who perform surveillance activities and arrests, conduct

²⁰ Euroradio, [Мать адвоката Дмитрия Лаевского увольняют с юрфака БГУ](#); Reform.by, [С Еленой Лаевской, сын которой защищает Бабарико, не продлили контракт в БГУ](#).

²¹ Вмопеслоў, Dmitry Laevski's Personal Blog, [Post of 28 May 2021](#).

²² Defenders.by, [Адвокату Дмитрию Лаевскому объявлен выговор](#).

²³ Human Right Center “Viasna,” List of Political Prisoners, [Marfa Rabkova's profile](#); OMCT World Organization against Torture, [Belarus: Marfa Rabkova, imprisoned for documenting human rights violations](#); International Federation for Human Rights, [Belarus: New charges against Viasna coordinator Marfa Rabkova](#); Amnesty International, [Belarus: Further Information: Marfa Rabkova Charged with a False Crime](#).

²⁴ Front Line Defenders, [Беларусь: Задержана правозащитница Татьяна Гацура-Яворская](#).

²⁵ Human Rights Center “Viasna,” List of Political Prisoners, [Tatsiana Lasitsa's profile](#).

²⁶ Human Rights Center “Viasna,” List of Political Prisoners, [Liliya Ulasava's profile](#); International Bar Association, [IBAHRI urges release of detained Belarusian lawyer Liliya Vlasova](#).

interrogations and searches, and chair lawyers' disbarment hearings. The dynamic when men are in positions of power and making decisions that affect women's rights is evident at all stages in the political persecution of women lawyers, human rights defenders, and representatives of the legal profession.

13. The Law on amending the Law on Legal Practice (hereinafter, the Law), which substantially changes the way the legal profession is regulated, was adopted on 27 May 2021.²⁷ The newly introduced changes to the Law may affect the inclusion of women in decision-making processes. For instance, the extension of the Ministry of Justice's powers in forming the self-governing bodies of the lawyers' community by approving candidates for the positions of heads of regional legal consultancies, territorial legal collegiums, and the head of the Belarusian Republican Collegium of Lawyers may lead to a lack of access of independent women lawyers to leadership positions in self-governing bodies of the lawyers' community. The ability of the Ministry of Justice to conduct lawyers' attestations and disbar them without consulting the lawyers' community may affect the number of women in the legal profession.
14. Repressive Belarusian laws and their arbitrary application affect the position of women in the legal profession. Their exclusion from decision-making processes, disbarments, arrests, detentions, and inhumane treatment in jails and prisons affects not only their individual rights and freedoms – including the freedom of expression, the freedom of association, the right to liberty and security, and the freedom from torture – but also their clients' right to defence, especially when defence by a person of the same sex impacts the level of mutual trust and mental health of the defendants.

Recommendations

15. We suggest the adoption of several recommendations to a range of actors.
16. **Belarusian government**
 - a. Immediately free all political prisoners;
 - b. Immediately stop the intimidation and disbarment campaign against lawyers who represent political prisoners;
 - c. Review the amendments made to the Law on Legal Practice upon consulting the professional community of lawyers;
 - d. Bring the laws regulating legal practice in Belarus into compliance with international standards;
 - e. Exclude the provisions on the competence of the Ministry of Justice in regulating legal practice and transfer the Ministry's functions to self-governing bodies from the lawyers' community;

²⁷ Newgrodnob.y, [Смерть для адвокатских бюро \(и не только\). Лукашенко одобрил поправки в закон об адвокатуре.](#)

- f. Repeal the Ministry of Justice's function as a body issuing law practice licences and transfer this function to self-governing bodies from the lawyers' community;
- g. Exclude all executive branch representatives from the Qualification Commission under the auspices of the Ministry of Justice and transfer all functions of running the Qualification Commission to self-governing bodies from the lawyers' community;
- h. Ensure conditions for lawyers to perform their professional duties without fear of intimidation, persecution, or pressure; and
- i. Conduct consultations with both registered and unregistered non-profit organisations, as well as with other civil society actors, with the aim of identifying areas of legal practice that need to be reformed, as well as with an aim of preparing and implementing recommendations on improving the judicial system in accordance with international standards.

17. Professional communities of lawyers and human rights defenders

- a. Express solidarity with repressed colleagues in Belarus through making public statements, submitting appeals to competent bodies, and holding awareness campaigns; and
- b. Support the community of lawyers and human rights defenders in Belarus.

18. Other states

- a. Condemn the Belarusian authorities' repressive policies related to persecution of lawyers and human rights defenders; and
- b. Develop programmes to support and aid lawyers and human rights defenders who are suffering from repression in Belarus, including those who had to leave Belarus.

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