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**Human Rights Council**

**Forty-six session**

22 February–19 March 2021

Agenda item 6

**Universal Periodic Review**

Written statement[[1]](#footnote-2)\* submitted by International Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2021]

International Bar Association Human Rights Institute (IBAHRI) Universal Periodic Review of Belarus - Written Statement

In light of the UPR review of Belarus, the IBAHRI would like to comment on the outcome document and strongly condemn the numerous and widespread human rights violations committed by the de facto government in Belarus in the run-up to and after the 2020 Presidential election.

In particular, we are deeply concerned about the lack of the judiciary independence in Belarus. For this reason, we urge Belarus to accept the recommendation encouraging Belarus to “Take measures to guarantee, both in law and in practice, the total independence of the judiciary (Albania)”, as well as other recommendations in relation to torture and ill-treatment practices by the authorities, and the mass restrictions and violations on the freedom of expression and media freedom.

Judicial Independence

UN Basic Principles on the Independence of the Judiciary provide that ‘the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason’.

The IBAHRI is concerned that since assuming power, President Lukashenko has sought to maximize executive power and minimize that of the legislature and the judiciary by systematically ignoring rulings by the Constitutional Court, declaring presidential decrees unconstitutional, and ordering the Cabinet of Ministers and other government institutions to ignore such rulings.

The excessive control of the executive branch over the judiciary and the court system is reflected through the procedures for the appointment, tenure, and removal of judges that violate the principles guaranteeing the independence of judges.

Belarusian legislation also significantly limits the independence, and curtails the freedom of expression, of lawyers. The executive branch tightly controls the licensing and activities of lawyers, who often exercise their profession under threat of being arbitrarily disbarred or have their licenses revoked – notably, if they are critical of the Government or when they defend clients who are perceived to be expressing dissenting views.

The Special Rapporteur on the Human Rights Situation in Belarus, Anaïs Marin, has repeatedly highlighted the significance of the independence of the judiciary in Belarus. In her second thematic report to the UN General Assembly, she highlighted that ‘For almost three decades, Belarus has failed to ensure the independence of its judiciary, implying that the rule of law remains unguaranteed, and human rights unprotected.’

The IBAHRI notes that the human rights situation has significantly worsened in the run-up to and after the 9 August presidential election. Post-electoral mass protests, which have been largely peaceful, have been violently repressed by the police. In these circumstances, the judiciary and court system continued selectively using the legislation to intimidate or harass dissenting voices, while rubber-stamping systematic human rights violations perpetrated by state agents.

The IBAHRI submits its deep concern over the lack of the judiciary independence in Belarus which we deem to contradict international standards. The IBAHRI calls on Belarus to accept the recommendations issued by the UN Human Rights Council and to implement with immediate effect.

Prohibition of torture

IBAHRI is also concerned about the reports of the Belarusian security forces’ disproportionate use of force against peaceful protestors, arbitrary arrest and detention of thousands of people and systematic torture and ill-treatment of hundreds either immediately following arrest or during detention. We are also deeply concerned about reports of enforced disappearances and widespread denial of detainees’ access to a lawyer.

The IBAHRI calls on the Belarusian authorities to comply with their international human rights obligations, including by:

1) Immediately and unconditionally releasing all those arbitrarily detained.

2) Undertaking impartial, independent, effective, prompt and thorough investigations into allegations of human rights violations.

3) Bringing perpetrators to justice.

4) Ensuring the right to an effective remedy and reparation for victims.

5) Adopting judicial, legislative and administrative measures to prevent human rights violations.

In this context, we further call on Belarus to ensure that its Criminal Code includes and defines torture in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to ratify the Optional Protocol thereto and the International Convention for the Protection of All Persons from Enforced Disappearance.

The IBAHRI welcomes reports that the Belarusian parliament is due to consider legislative amendments that remove capital punishment from the Criminal Code. We urge Belarus to establish a moratorium on executions, to adopt the necessary national legislative amendments without delay and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Freedom of information, expression and media freedom

The IBAHRI recognises that the practice of freedom of expression in Belarus has been severely restricted in recent years. Freedoms associated with this right deteriorated further in the aftermath of the contested August 2020 presidential elections. The IBAHRI opposes that the Belarusian government had taken “all the measures available to it to create the internal and international order necessary for the full exercise of the rights and freedoms of its citizens” (para.107) and strongly denounces claims that all illegal and arbitrary restrictions to fundamental rights and freedoms, including the right to peaceful assembly, free expression and access to information, following the disputed elections were valid in the interests of national security and public order, occasionally under the guise of Covid-19 restrictions.

The IBAHRI is deeply concerned to learn of the violent targeting of journalists and media workers covering unprecedented wave of protests in the country. In 2020, the Belarusian Association of Journalists (BAJ) recorded an extortionate number of attacks against the media, with more than 500 incidents of harassment, detention, fines and temporary arrests of journalists documented. Media outlets faced censorship, and dozens of journalists working for foreign outlets were stripped of their accreditation.

Further, in a crackdown on fundamental freedoms and the right to know, the government instituted nationwide internet shutdowns with private, multinational companies playing a direct role in enabling the internet disruptions and censorship in the country. A1 Belarus reported complicity and concerns of the governments targeted content blocking after calls from rights groups. During mass protests in August 2020, Belarus blocked over 70 international and independent news websites, reportedly in response to their coverage of the protests at the time; dozens of sites had been blocked for access by journalists and media outlets and authorities appeared to be blocking censorship circumvention services such as virtual private networks (VPNs), used by millions in Belarus to access the blocked websites.

The IBAHRI reminds the Belarusian government that its own constitution guarantees the right to information, freedom of expression and media freedom and its ratification of international treaties that enshrine these fundamental rights. We ask the authorities to comply with their international human rights obligations by:

1) Respecting and fulfilling its obligations under the international human rights treaties regarding the right to information, freedom of expression, press freedom, peaceful assemblies, and protection against reprisals, detention, ill-treatment or torture;

2) Allow independent journalists and the media to conduct their work without fear of targeting, intimidation, harassment, arbitrary attacks and arrest;

3) Undertaking full, impartial, independent and effective investigations into allegations of human rights violations against all, including journalists and media workers attacked in the course of executing their professional duties;

4) Take immediate measures to lift restrictions on freedoms of association, peaceful assembly and expression, including on independent media and the Internet and to refrain from future use of such interference and censorship;

5) Ensure respect and practice for human rights, including freedom of expression online and offline and provide unconstrained access to a free and open internet and information for all;

6) Enable pluralism and diversity, and respect the role of the independent media, and to refrain from restrictions on the work of journalists and the press, including accreditation rules for the foreign media; and

7) Strengthen and amend legislative, constitutional, and other provisions to prevent violations of the rights to freedom of information, expression, media freedom and other fundamental rights and ensure the safety of journalist and improve press freedom.

1. \* Issued as received, in the language(s) of submission only. [↑](#footnote-ref-2)