

# UN Special Rapporteur on the Human Rights Situation in Belarus

## Call for Inputs Pursuant to UN Human Rights Council Resolution 44/19

19 February 2021

### Introduction

1. Access Now, Agora, Article 19, Human Constanta, International Media Support (IMS), and Internet Protection Society (O3И) welcome the opportunity to make a submission to the United Nations (U.N.) Special Rapporteur on the human rights situation in Belarus to inform the Special Rapporteur's report on the situation of human rights in Belarus pursuant to the Human Rights Council Resolution A/HRC/RES/44/19 (23 July 2020).<sup>1</sup> We acknowledge the efforts of the Special Rapporteur to address and shed light on the human rights violations in Belarus.
2. Access Now is an ECOSOC accredited non-governmental organization that works to defend and extend the digital rights of users at risk around the world through policy, advocacy, and technology support, grants, legal interventions, and global convenings like RightsCon.<sup>2</sup> Agora International Human Rights Group (Agora) is an association of more than 100 lawyers working on landmark human rights cases in Russia and post Soviet states.<sup>3</sup> Article 19 is a global freedom of expression organisation, working on five interacting areas: civic space, digital, media, protection, and transparency.<sup>4</sup> Human Constanta is a Belarusian human rights organization with a mission to promote public interests and joint actions in response to contemporary challenges for human rights.<sup>5</sup> IMS is a global non-profit organisation, working in more than 30 countries across four continents to promote press freedom, good journalism, and safety for journalists.<sup>6</sup> O3И is a Russian non-profit organization that aims to protect the internet from censorship, excessive regulation, and administrative arbitrariness.<sup>7</sup>
3. In our submission, we focus on internet shutdowns and website blocking and the use of anti-extremism laws, which have been occurring in the context of a larger effort to stifle the freedom of expression and peaceful assembly in Belarus.

### Internet shutdowns and website blocking

4. It has been 194 days since the Belarusian people rushed to the streets to protest against the August 9, 2020 election results. The government responded with violence, internet shutdowns,

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<sup>1</sup> OHCHR, United Nations Special Rapporteur on the human rights situation (including the right to education) in Belarus, [Call for contributions on the human rights situation \(including the right to education\) in Belarus for the report of the Special Rapporteur on the situation of human rights in Belarus to the Human Rights Council](#).

<sup>2</sup> Access Now, [About Us](#).

<sup>3</sup> [Agora on Telegram](#) (Agora [website](#) is currently inaccessible).

<sup>4</sup> Article 19, [About Us](#).

<sup>5</sup> Human Constanta, [About Us](#).

<sup>6</sup> International Media Support, [About Us](#).

<sup>7</sup> Общество Защиты Интернета, [О6 О3И](#).

and blocking of hundreds of websites.<sup>8</sup> Belarusian authorities used Deep Packet Inspection (DPI) equipment provided by a U.S. company Sandvine<sup>9</sup> through the Russian Jet Infosystems to block social media and messaging platforms, including YouTube, WhatsApp, Telegram, Viber, Vkontakte, and filter services like TOR, Virtual Private Networks (VPNs), App Store, and Google Play Services.<sup>10</sup> From August 9 through August 12, Belarus experienced a complete three-day outage.<sup>11</sup> For the next 120 days — and especially during the regular protests on Sundays — the Belarusian authorities continued shutting down mobile internet and blocking websites and social media.<sup>12</sup> December 6, 2020, was the first Sunday without a mobile internet shutdown, although DPI equipment was still likely used to throttle Telegram and VPNs.

5. While the Belarusian National Center for Response to Computer Incidents claimed that the network disruption was due to a distributed denial-of-service (DDoS) attack,<sup>13</sup> no official data is supporting this claim. Austrian company A1, a major mobile network operator in Belarus, stated that the shutdowns were ordered by the Belarusian authorities.<sup>14</sup>
6. These actions by the Belarusian government violate Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) and the General Comments 34 and 37, which highlight the impermissibility of internet shutdowns to suppress the rights to freedom of expression and assembly,<sup>15</sup> as well as Articles 33 and 35 of the Belarusian Constitution.<sup>16</sup>
7. Technology companies, such as internet service providers and companies like Sandvine, have a responsibility under the U.N. Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines)<sup>17</sup> to respect human rights, prevent or mitigate potential harms, and provide remedy for harms they cause or contribute

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<sup>8</sup> Felicia Antonio and Peter Micek, Access Now, [Belarusian election tainted by internet shutdown and state-sponsored violence](#).

<sup>9</sup> Natalia Krapiva and Peter Micek, [Francisco Partners-owned Sandvine profits from shutdowns and oppression in Belarus](#); Ryan Hallgher, Bloomberg, [U.S. Company Faces Backlash After Belarus Uses Its Tech to Block Internet](#).

<sup>10</sup> Net Observatory, [Internet Shutdown in Belarus](#). Access to at least 86 websites have been blocked, including websites of leading independent media and human rights organisations (Maria Xynou and Arturo Filastò, OONI, [Belarus protests: From internet outages to pervasive website censorship](#)). Belarusian legislation adopted in 2014 authorizes the Information Ministry to compel internet providers to block access to websites without judicial review ([Закон Республики Беларусь 20 декабря 2014 г. No 213-3 О внесении дополнений и изменений в Закон Республики Беларусь “О средствах массовой информации”](#)).

<sup>11</sup> Net Observatory, [Internet Shutdown in Belarus](#).

<sup>12</sup> Maria Xynou and Arturo Filastò, OONI, [Belarus protests: From internet outages to pervasive website censorship](#).

<sup>13</sup> Meduza, [Bye bye, Bynet Belarusian officials say foreigners are responsible for the country’s sudden Internet outages, but I.T. experts suspect the government is to blame](#).

<sup>14</sup> A1, [О работе мобильного интернета 3G в Минске 23 августа](#).

<sup>15</sup> [International Covenant on Civil and Political Rights](#); U.N. Human Rights Committee, [General Comment no. 34, Article 19, Freedoms of opinion and expression](#); U.N. Human Rights Committee, [General Comment no. 37, Article 21, Right to peaceful assembly](#). See their application and interpretation with regard to shutdowns in U.N. General Assembly Resolution 17 December 2018, [Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association](#); U.N. Human Rights Council, [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), 30 March 2017; U.N. Human Rights Council, [Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association](#), 17 May 2019; U.N. Human Rights Council, [Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression](#), 23 April 2020.

<sup>16</sup> [Конституция Республики Беларусь](#).

<sup>17</sup> UN Office of High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights](#); Organisation for Economic Co-operation and Development, [OECD Guidelines for Multinational Enterprises](#).

to. Facilitating and aiding internet shutdowns and website blocking which help cover up egregious human rights violations, such as excessive use of force, arbitrary arrest, and detentions of journalists, activists, and protesters, run contrary to those principles.

### Anti-extremism laws

8. The Belarusian government has been actively resorting to anti-extremism laws to censor and intimidate independent media and voices critical of the regime, online and offline. As outlined in the last submission by Human Constanta and Article 19,<sup>18</sup> such laws use excessively vague terminology, which allows overbroad interpretation and misuse. In determining if a given statement is a form of “extremist” expression or hate speech, no consideration is given to the speaker’s intent, the expression’s context, its audience, or the likelihood of harm to occur.
9. In the run-up to the 2020 presidential election and its aftermath, Belarusian authorities initiated more than 1000 criminal cases against peaceful protesters, opposition leaders, attorneys, and bloggers. The cases were brought on politically motivated charges of mass riots; calls to actions to undermine national security; incitement of hatred; and rehabilitation of Nazism.<sup>19</sup>
10. Some of the latest most notable cases of using anti-extremism laws as a tool of political repression include:
  - a. *NEXTA’s case*: Popular Telegram channel NEXTA<sup>20</sup> remains on the list of “extremist” materials.<sup>21</sup> Anyone who reposts or shares NEXTA materials can be penalized. Belarusian authorities have also added two NEXTA creators Stepan Putilo and Roman Protasevich to a list of individuals involved in terrorist activities<sup>22</sup> and charged them with “inciting hatred and bias.”<sup>23</sup> A request for their extradition has been sent to Poland.<sup>24</sup>
  - b. *Pavel Spirin’s case*: On February 5, 2021, Minsk municipal court sentenced blogger Pavel Spirin to 4,5 years in prison for “inciting hatred on the basis of race, nationality, religion, or other social status” by publishing two videos about police brutality and drug trafficking.<sup>25</sup> The videos criticised Belarusian law enforcement and other state authorities. One of these films was previously included on the list of “extremist

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<sup>18</sup> Human Constanta and Article 19, [Submission pursuant to Human Rights Council resolution 45/1](#).

<sup>19</sup> *Id.*

<sup>20</sup> [NEXTA on Telegram](#).

<sup>21</sup> Radio Free Europe/Radio Liberty, [Belarus Labels Popular Telegram Channel 'Extremist.'](#)

<sup>22</sup> Meduza, [Belarusian KGB adds creators of opposition Telegram channel 'Nexta' to terrorism list](#).

<sup>23</sup> Meduza, [Belarusian authorities open criminal case against creators of opposition Telegram channel 'Nexta.'](#) On February 15, 2021, the State Security Committee (KGB) also added 17 Belarusians to the list of those connected to terrorist activities (Mediazona Belarus, [КГБ внес 17 беларусов в список причастных к террористической деятельности](#)).

<sup>24</sup> TUT.BY, [Следственный комитет направил в Польшу документы на экстрадицию Степана Путило и Романа Протасевича](#).

<sup>25</sup> Radio Free Europe/Radio Liberty, [Belarusian Blogger Gets Prison Term For Online Videos He Says Investigate Illegal Drugs, Protests](#). Sergey Tsikhanovskiy, detained in May 2020, was charged with the same crime (BBC, [Belarus unrest: President Lukashenko accuses opposition of staging coup](#)). The European Court of Human Rights has rejected a similar argument used by authorities in Russia that police officers constitute a “social group” requiring special protection (European Court of Human Rights, [Savva Terentyev v. Russia](#) case of August 28, 2018 (Application No. 10692/09)).

materials.”<sup>26</sup> The court disregarded an expert opinion which did not find “extremism” in the videos.<sup>27</sup>

- c. *Cases against the opposition:* On February 12, 2021, Belarusian opposition Coordination Council member Maria Kolesnikova and her lawyer Maxim Znak, who have been imprisoned since September 2020, were charged with new offences - “plotting to seize state power in an unconstitutional manner” and “organizing and controlling an extremist group.”<sup>28</sup> Previously, Maria was charged with “publicly calling for actions threatening national security.”<sup>29</sup> Lukashenko’s key rival Svetlana Tsikhanovskaya, as well as other exiled opposition leaders, including Pavel Latushko, Olga Kovalkovskaya, Sergey Dylevskiy, were charged under the same crimes.<sup>30</sup> Alexey Leonchik, the founder of By\_Help, an initiative mainly aimed at helping protesters pay for administrative fines, is charged with “financing of an extremist group.”<sup>31</sup>
- d. *Marfa Rabkova’s case:* Marfa Rabkova, a famous human rights defender of “Viasna” human rights center was charged with two more “extremist” offences — “inciting hatred or bias” and “organizing a criminal group or joining it.”<sup>32</sup> Previously, Marfa was charged with “training and other preparation of persons to take part in mass riots or financing such activities.”<sup>33</sup>
- e. *Julia Mitskevich’s case:* In October 2020, Julia Mitskevich, director of the Center for Development of Effective Communication ABF, was sentenced to 15 days in prison for organizing and participating in protests.<sup>34</sup> She was visited by the Organized Crime and Corruption officials who threatened to prosecute the Center’s members for “extremism.”<sup>35</sup>
- f. *Cases against anarchists:* Anti-extremism laws are used to exert pressure on various anarchist movements. On January 29, 2021, anarchists detained for “mass riots” were additionally charged with “creating a criminal group to unlawfully seize power.”<sup>36</sup>
- g. *Outlawing the symbols of the revolution:* On February 13, 2021, the Prosecutor General’s office proposed a new draft law “On amending laws on preventing extremism,” qualifying white-red-white flag as extremist and including provisions on responsibility for taking part in extremist organization.<sup>37</sup> Such measures may lead to persecution of individuals who possess or share images of a white-red-white flag on social media.

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<sup>26</sup> Belsat, [За видео – в тюрьму.](#)

<sup>27</sup> *Id.*

<sup>28</sup> Matthias Williams, Reuters, [Two opponents of Belarus leader face more jail time as he floats reform.](#)

<sup>29</sup> Meduza, [Belarusian opposition leader Maria Kolesnikova charged with threatening national security.](#)

<sup>30</sup> Meduza, [Светлану Тихановскую объявили в розыск в России.](#)

<sup>31</sup> Юлия Стасюк, Human Constanta, [Обзор борьбы с «экстремизмом» в Беларуси за ноябрь-декабрь 2020.](#)

<sup>32</sup> TUT.BY, [Белорусской правозащитнице Марфе Рабковой предъявлено обвинение еще по двум статьям УК. Ей грозит до 12 лет.](#)

<sup>33</sup> *Id.*

<sup>34</sup> Юлия Стасюк, Human Constanta, [Overview of the fight against “extremism” in Belarus for July-October 2020.](#)

<sup>35</sup> *Id.*

<sup>36</sup> TUT.BY, [Задержанных в Минске анархистов обвиняют в создании преступной группы для “захвата власти.”](#)

<sup>37</sup> TUT.BY, [Законопроект о БЧБ-символике направлен в парламент. Комментарий юриста.](#)

11. Repressive anti-extremism laws and their application violate the freedom of expression and peaceful assembly, as well as the freedom from arbitrary detention and arrest, guaranteed by both the ICCPR and the Belarusian Constitution. These laws are arbitrarily used to silence political dissent and disproportionately affect civil society actors.

## **Recommendations**

12. We therefore request that the Special Rapporteur make the following recommendations for the upcoming report to be presented at the 47th session of the Human Rights council:

### **13. Belarusian Government**

- a. Immediately stop and refrain from all future interference with the access to the internet, including mobile internet and specific websites, and provide information concerning the orders and implementation of internet shutdowns; and
- b. Bring national laws and their enforcement in compliance with international standards in order to prevent arbitrary limitations on the rights to freedom of expression, peaceful assembly and association, and revoke “anti-extremism” laws in their current form.

### **14. Technology Companies**

- a. Immediately stop facilitating internet shutdowns and censorship in Belarus and comply with UNGPs and OECD Guidelines, including through contesting the legality of government orders, preserving and providing evidence, and providing effective remedies for past disruptions; and
- b. Join civil society and peer companies to push back against government censorship and repression.

### **15. Other Member States**

- a. Immediately stop providing censorship technologies to the Belarusian government; and
- b. Ensure that companies in their jurisdictions that facilitate and aid censorship, shutdowns, and other abuses abroad are held accountable.

*For more information, please contact:*

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