

# CSO METER

Assessing the civil society environment in the Eastern Partnership countries

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## Belarus Country Update

2020

The bottom half of the page features a large, abstract graphic design. It consists of several overlapping shapes: a large white semi-circle on the right side, a smaller white shape on the left, and a green shape at the bottom left that resembles a stylized arrow or a checkmark. The background is a solid teal color.



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The development of this country report has been supervised by an Advisory Board that consists of representatives of Belarusian civil society organisations.

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# ABBREVIATIONS

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AML/CTF	Anti-money laundering/Counter-terrorist financing
BRYU	Belarusian Republican Youth Union ( <i>Belorusskij respublikanskij sojuz molodeži</i> )
BSA	Belarusian Students' Association ( <i>Zadzinochanne Belaruskih Studentau</i> )
BYN	Belarusian Ruble
BYSOL	Belarus Solidarity Foundation
COVID-19	Coronavirus disease 2019
CSO(s)	Civil society organisation(s)
DPI	Deep packet inspection
EAG	The Eurasian Group on Combating Money Laundering and Financing of Terrorism
EaP	Eastern Partnership
ECNL	European Center for Not-for-Profit Law
EUR	Euro
FATF	Financial Action Task Force
FRT	Facial recognition technology
GONGO(s)	Government-organised/operated non-governmental organisation(s)
NGO(s)	Non-governmental organisation(s)
NOC	National Olympic Committee of the Republic of Belarus ( <i>Nacyjanałny alimpijski kamitet Respubliki Bielaruś</i> )
NPO(s)	Non-profit organisation(s)
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
USD	United States Dollar

# I. EXECUTIVE SUMMARY

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This report is an update to the CSO Meter Belarus Country Update presented in November 2019. This report reviews the events and trends significantly affecting the areas of operation of civil society organisations (CSOs) in Belarus which have been observed during the period from November 2019 to December 2020. This update allows an assessment of the current environment for CSOs in Belarus in accordance with the CSO Meter methodology in 10 key areas, including legislative regulation and practice. This report also formulates priority recommendations for the improvement of the CSO environment for 2021.

CSO Meter is a tool developed to assess the civil society environment in the Eastern Partnership (EaP) countries. It consists of a set of standards and indicators in 10 different areas that measure both law and practice. The CSO Meter was developed within the framework of the 'Monitoring Progress, Empowering Action' project funded by the European Union and implemented by the European Center for Not-for-Profit Law Stichting (ECNL) and a group of non-governmental organisations (NGOs) from the EaP countries. The Belarusian non-governmental organisations are the partners responsible for the preparation of both the published November 2019 full CSO Meter Report and this additional update in cooperation with ECNL.

This update is a result of analysis and monitoring of legislation, analysis of advocacy outcomes, legal assistance and consultative actions of partner organisations, interviews with civil society leaders, as well as the study of monitoring, analytical and informational materials prepared by Belarusian CSOs (including materials presented to the international community and within the UN and OSCE international procedures following the Belarusian presidential election of 9 August 2020).

While analysing events within the period under review, the authors have concluded that there have been deteriorations in 8 out of the 10 study areas. There were no significant changes in conditions observed in two areas. There were no improvements or approximations to international standards observed in any of the 10 areas.

Areas	1	2	3	4	5	6	7	8	9	10	Overall
	Freedom of Association	Equal Treatment	Access to Funding	Freedom of Peaceful Assembly	Right to Participation in Decision-Making	Freedom of Expression	Right to Privacy	State Duty to Protect	State Support	State-CSO Cooperation	
Belarus	↓	↔	↓	↓	↓	↓	↓	↓	↔	↓	↓

The main drivers of comprehensive negative changes under the majority of indicators were the following:

- The impact of COVID-19 on public life and the economy (including negative consequences of measures taken by the authorities as a response to COVID-19); and
- The dramatic spate of violence following the presidential election of 9 August 2020, when the state responded to the largest mass peaceful protests in the recent history of Belarus with numerous political repressions targeted at political opponents of the authorities, participants in peaceful protests, human rights defenders, election observers, journalists and certain media, CSO leaders and activists.

The key role played by communication technologies and the growth of internet usage, in which Belarus is one of the leaders in the region,<sup>1</sup> were characteristic of both trends. New communication channels facilitated the inclusion of CSOs in the response to the challenges posed by COVID-19 (especially via the use of electronic communication platforms for the collection of donations). Furthermore, internet communications (in particular, the messenger application Telegram)<sup>2</sup> became a means for protesters to mobilize in the aftermath of the presidential election. The authorities responded to this mobilization with an almost total internet disruption in the first days following the

<sup>1</sup> According to the International Telecommunication Union (ITU), the UN's specialised agency for information and communication technologies, among the countries of the Baltic region Belarus outperformed Lithuania and the Russian Federation in the level of internet usage. In 2020, the share of citizens in Belarus using the internet is above 82 per cent, <https://www.itu.int/net4/ITU-D/icteye/>

<sup>2</sup> Centre for European Transformation. 2020. 'Telegram messenger as a communication and self-organisation tool in a situation of political crisis in Belarus' (in Russian), [https://cet.eurobelarus.info/files/userfiles/5/DOC/2020\\_TG\\_Belarus-1.pdf](https://cet.eurobelarus.info/files/userfiles/5/DOC/2020_TG_Belarus-1.pdf).

presidential election<sup>3</sup> and, subsequently, with sporadic intrusions into personal data privacy via the detection of the identities of bloggers and verification of the subscribers to and administrators of certain Telegram channels.

This report concludes without doubt that the external conditions for the activities of CSOs in Belarus drastically changed for the worse in 2020. This is particularly the case in relation to the issues of freedom of association, access to funding, freedom of peaceful assembly, freedom of expression, and state duty to protect rights and freedoms. As a result of mass repression and the creation of a climate of fear, a significant proportion of CSOs lost the ability to conduct their activities and to perform their missions. Some CSOs have had to fully or partially cease their activities, withdraw from entire areas of activity in cooperation with the state, or move parts of their activity to other jurisdictions due to the unfavourable environment or because of threats to personal safety of CSO leaders and employees.

The question of how permanent this negative situation will be remains open to debate. The following key priorities identified by this report aim to overcome these negative impacts and restore the basic conditions under which CSOs' activities are possible:

- The release of all individuals recognised as political prisoners,<sup>4</sup> the review and lifting of all sentences imposed on them and pending decisions on their liability;
- the cessation of unmotivated and disproportionate violence against participants and organisers of any peaceful protest action, as well as an end to the use of torture and police violence;
- the cessation of all forms of repression and discrimination against protesters, representatives of the opposition and CSOs, including the cessation of mass civil and criminal prosecution, searches, seizures of data and communication devices, fines, arrests, the freezing of assets;
- the cessation of threats to separate children from their families and the cessation of unlawful intrusions into private houses;
- the carrying out of investigations into all deaths of protesters and other opposition representatives, bringing those guilty of murder to criminal justice, as well as thorough investigation of all allegations of torture;
- the cessation of all forms of pressure on CSOs, lawyers and human rights defenders, journalists and independent media, including the cessation of the campaigns to discredit these groups in the state media, as well as the elimination of the practice of internet disruption and the blocking of certain websites;

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<sup>3</sup> Assembly of NGOs of Belarus. 16 August 2020. 'Belarus: Internet disruption, arrests and violence in the context of the presidential election', <https://belngo.info/2020.belarus-internet-disruption-arrests-and-violence-in-the-context-of-the-presidential-presidential-election.html>.

<sup>4</sup> List of current political prisoners from Viasna Human Rights Center: <https://prisoners.spring96.org/en> and guidelines on the definition of a political prisoner: [https://spring96.org/files/misc/politprisoner-guidelines-final\\_en.doc](https://spring96.org/files/misc/politprisoner-guidelines-final_en.doc).

- the cessation of the misuse of legislation on combating extremism to restrict freedom of expression and freedom of thought, as well to restrict access to funding for charities and human rights and humanitarian CSOs;
- the cessation of legislative initiatives aimed at restricting freedom of speech and freedom of association; and
- cooperation with the national human rights movement, as well as with the UN Human Rights Council and OSCE (the Moscow Mechanism) in documenting human rights violations and restoring violated rights, as well as in the investigation into all such cases and the prevention of impunity for human rights violations and abuses committed against human rights defenders and CSOs.

Only after the above priority steps are taken, will it be possible to realise any positive effects from implementation of the previous recommendations as laid out in the full edition of the CSO Meter Report (November 2019).



## II. KEY TRENDS

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### Basic data

**Capital:** Minsk

**Population:** 9,408,400 (2020)<sup>5</sup>

**GDP per capita (PPP):** \$6.663,295<sup>6</sup>

**Freedom in the World:** 19/100 (Not Free)<sup>7</sup>

**World Press Freedom Index:** 49.75 (153 out of 180)<sup>8</sup>

**Number of CSOs per 10,000 inhabitants:** around 3.5

**Registration fee:** 13.5 BYN for private institutions/135 BYN for local foundations and local public associations/270 BYN for national and international public associations and for national and international foundations (approximately 4 EUR/45 EUR/89 EUR), registration period is one month for public associations and foundations, one day (or a few days in practice) for institutions

**Number of CSOs:** 25 trade unions, 3,025 public associations (229 international, 791 national and 2,005 local), 224 foundations<sup>9</sup> and several hundred private institutions that meet the criteria of a CSO

### Key events and developments that have affected civil society since the last report

As in other EaP countries and countries around the world, in Belarus the COVID-19 pandemic became an important factor that has shaped the situation in the country in general and in the CSO sector in particular. The pandemic has had a formative influence on the environment for Belarusian CSOs in the first half of 2020 and it continues to affect CSOs. As a global factor, the pandemic has become a challenge for both the CSO sector and the state in general. The COVID-19 pandemic has negatively impacted the environment for Belarusian CSOs both directly via the blocking of social connections

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<sup>5</sup> National Statistics Committee of Belarus. Preliminary population size as of 1 January 2020 with regard to the results of the 2019 census (in Russian), <https://www.belstat.gov.by/ofitsialnaya-statistika/solialnaya-sfera/naselenie-i-migratsiya/naselenie/godovye-dannye/>.

<sup>6</sup> IMF. World Economic Outlook Database (October 2020), <https://www.imf.org/en/Publications/WEO/weo-database/2020/October/weo-report?c=913.&s=NGDPD,PPPGDP,NGDPDPC,PPPDC,&sy=2020&ey=2020&ssm=0&scsm=1&sc=0&ssd=1&ssc=0&sic=0&sort=country&ds=.&br=1>.

<sup>7</sup> Freedom House. Freedom in the World 2020, <https://freedomhouse.org/countries/freedom-world/scores>.

<sup>8</sup> Reporters Without Borders. World Press Freedom Index 2020, <https://rsf.org/en/ranking>.

<sup>9</sup> Data of the Ministry of Justice of the Republic of Belarus as of 1 July 2020, [https://minjust.gov.by/directions/compare\\_coverage/](https://minjust.gov.by/directions/compare_coverage/).

and a narrowed economic base for CSOs' activities and indirectly via inadequate, disproportionate, discriminatory and often ungrounded responses to this threat by state authorities. CSOs have been suffering from the double effect of the negative impacts of the pandemic and the irrational measures taken as part of the state's response to it. At the same time, despite the fact that Belarus did not impose a state of emergency, many new restrictive measures, based on and purportedly justified by the threat of COVID-19, had the character of emergency restrictions for CSOs. These measures are still in force.

In Belarus, withholding information about coronavirus infection rates has become one of the most serious problems that has led to an increase in mortality. Information on morbidity and mortality during the first wave of the pandemic, which the government announced in the spring and summer of 2020, seems to have been understated. According to official data, around 1,400 patients died from the consequences of COVID-19 for the whole of 2020. However, as found by journalists of a local online news outlet *Nasha Niva*, the government did pass monthly data to the UN, which made the data available at the UN's data portal.<sup>10</sup> Based on that data, journalists concluded that the cumulative excess death toll during the COVID-19 outbreak in April-June 2020 comprised of around 5,500 victims, as compared to the average mortality in April-June of the previous five years. *Nasha Niva* argues that this is a far more realistic estimate of the COVID-19 impact than the number of victims reported by the Belarusian government.<sup>11</sup>

However, to a greater extent than the COVID-19 pandemic, it is the public response to the purported results of the 9 August 2020 presidential election and the mass use of violence and repression against protestors<sup>12</sup> that followed this response that has been the most prominent factor in determining the current environment for CSOs in Belarus and in the immediate future.

The initial rise of public activity in the period of struggle with COVID-19, which was perceived warily and in a moderately negative light by the authorities, shifted its focus to the presidential election campaign starting from June/July 2020. The state responded to this new strand of public activism with extremely negative corrective measures including mass beatings of peaceful protesters, the arrest of more than 31,000 people (in the period August-November 2020), the bringing of around 1,000 criminal cases related to the presidential election, more than 160 prisoners being recognised as political prisoners, numerous searches and seizures of hardware, dismissals and

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<sup>10</sup> UN Statistics Division. 'Deaths by month of death', [http://data.un.org/Data.aspx?q=deaths+by+month&d=POP&f=tableCode%3A65&fbclid=IwAR3DXVT1fLKLb8j0V4gdFaJXFQ\\_D4s-Fw\\_07VIWRGMwKlnWOIZEfR099gk](http://data.un.org/Data.aspx?q=deaths+by+month&d=POP&f=tableCode%3A65&fbclid=IwAR3DXVT1fLKLb8j0V4gdFaJXFQ_D4s-Fw_07VIWRGMwKlnWOIZEfR099gk).

<sup>11</sup> Medium.com. 'Estimating COVID-19 excess deaths in the Republic of Belarus', <https://medium.com/ai-in-plain-english/estimating-covid-19-excess-deaths-in-the-republic-of-belarus-316ca80481ed>.

<sup>12</sup> Belarus in Focus. 'Seeking Justice: Stories of Violence in Belarus', [https://www.belarusinfocus.info/sites/default/files/seeking\\_justice\\_web.pdf](https://www.belarusinfocus.info/sites/default/files/seeking_justice_web.pdf).

expulsions from universities, and smear campaigns against protesters and specific CSOs and their leaders in state media. Specific state media attacks were directed at Belarusian foundations and centres located abroad that help the victims of torture, beatings, arrests and dismissals, and no searches or other forms of repressions in the foreign jurisdictions.

As with its response to COVID-19, in order to stifle protests, the authorities used both measures stipulated by oppressive legislative norms (to which the newly-introduced laws have been added) and negative practices which are not stipulated by law (including some prohibited by international law, such as torture and threats of sexual violence).

Changes in legal regulations were also a negative factor for the civil society environment, although less significant in comparison with these two drivers. The amendments to legislation recorded during the review period were negative for CSOs.

The proposed recommendations in the CSO Meter Report 2019 regarding amendments to legal norms and practices were not implemented, with one exception.

Draft laws, identified in the CSO Meter Report 2019 as a chance to change the situation for the better, were either postponed (such as a new edition of the Law on Public Associations) or adopted in an unsatisfactory manner (such as the amendments to the Law on AML/CTF). The few positive steps and initiatives in the field of legal regulations for CSOs (such as the establishment of the procedure for drafting of a plan of governmental bylaws for a future period, draft law 'On volunteer activity' which does not restrict CSOs and justification of which contains ECNL recommendations)<sup>13</sup> do not have the intended impact owing to the dramatic deterioration of the situation in general.

## Important trends related to civil society

The general decline in economic activity during the first wave of the COVID-19 pandemic (winter-spring 2020) negatively impacted CSOs' opportunities for obtaining financial resources. The few recovery measures and benefits, introduced for businesses by the government, remained unavailable to CSOs. The problem of the reduction of CSOs' material resources was aggravated by the economic crisis that followed the presidential election of 9 August 2020 and the second wave of the pandemic (autumn-winter 2020).

Criminal cases against members of certain organisations, including the Coordination Council for the Transfer of Power, the Belarusian Students' Association (BSA), the

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<sup>13</sup> Draft Law of the Republic of Belarus 'On Volunteer Activities' – public discussion (in Russian), <https://forumpravo.by/forums/npa.aspx?forum=15&topic=15851>.

Hrodna Children's Hospice, Press Club and other CSOs, were part of severe restrictions on freedom of association.

Confrontations between the authorities and the opposition resulted in bloody clashes, caused by the heavy-handed actions of law enforcement and the army against peaceful protesters, led to the disproportionate use of force and firearms,<sup>14</sup> attacks, searches and pressure on CSOs, whose leaders and activists were engaged in opposition candidates' campaigns or were participants in peaceful protest actions.

Many CSOs moved their activities abroad due to the fact that their leaders and key activists had to leave the country due to the reasonable fear of persecution from the authorities. The advocacy activities of CSOs significantly decreased as a result.<sup>15</sup>

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<sup>14</sup> 'In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary' – from the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

<sup>15</sup> Many participants of the coordination meeting 'Belarusian civil society after presidential election – priorities and joint actions', organised on 24 August 2020 in Minsk, announced the suspension of their advocacy activities and the total cessation of their cooperation with governmental authorities.

# III. KEY UPDATES

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This section provides an analysis of the new developments in each of the 10 areas and any progress related to the recommendations from the previous report.

## 3.1 Freedom of Association

***The environment has deteriorated. The right to free establishment and participation in CSOs, as well as the right to free withdrawal from state-led CSOs are significantly limited both at the legislative and practical levels. The toughest new types of restrictions on freedom of association related to criminal prosecution and imprisonment were added to existing negative practices.***

Article 23.88 of the Code of Administrative Offences remains in force, which provides for a fine for participation in the activities of an unregistered CSO. Although there is no information on whether this article has ever been applied in practice, the authorities use a broad range of other articles from criminal and civil legislation in order to restrict freedom of association for unwanted organisations.

In particular, the political leadership declared that the Coordination Council for the Transfer of Power, created by former presidential candidate Sviatlana Tsikhanouskaya was unlawful. All members of the Coordination Council's presidium were either imprisoned on criminal charges or forced to leave the country under the threat of criminal prosecution under Article 361 of the Criminal Code ('Calls for actions aimed at causing harm to the national security of the Republic of Belarus'). Dozens of Coordination Council members were also interrogated as witnesses.<sup>16</sup>

Criminal case of the unregistered BSA also has signs of prosecution due to affiliation with a public association. Alana Gebremariam, one of members of the BSA leadership who was also a representative of former presidential candidate Sviatlana Tsikhanouskaya, and members of the governing board of the BSA (one of the oldest youth associations in the country, refused registration in the early 2000s) were put into the KGB pre-trial detention centre. Many BSA activists have had to leave the country. After searches and the resulting relocation of BSA governing board members, the BSA's office has been moved to Kyiv, Ukraine.

Belarusian citizens are subject to involuntary membership of 'pro-government' public associations known as government-organised/operated non-governmental organisations (GONGOs). These include the Belarusian Republican Youth Union

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<sup>16</sup> Viasna Human Rights Center. 'Human Rights Situation in Belarus: September 2020', <http://spring96.org/en/news/99793>.

(BRYU), the public association 'Belaya Rus' and trade unions belonging to the Federation of Trade Unions of Belarus. Many people wanting to withdraw from these GONGOs face difficulties and obstacles as unlawful demands are made, for example that special forms must be filled in. Other bureaucratic restrictions have been introduced, or citizens' intentions to withdraw are simply ignored.

As of 1 July 2020, there were 15 registered political parties and 25 trade unions in Belarus, as well as 3,025 public associations (229 of which are international, 791 national and 2,005 local), 42 unions of public associations, 224 foundations (18 of which are international, seven national and 199 local). From January-June 2020, 51 new public associations were registered in Belarus (of which two are international, six national and 43 local), as well as two unions of public associations and nine foundations (one national and eight local).<sup>17</sup>

At the same time, the procedure for registration of new public associations remains complicated and provides state agencies with broad opportunities to block the registration of new organisations. In particular, in 2020 the authorities refused to register the youth public association Dzeya for the third time, this time due to objections to the legal address of the organisation. The refusal to register was backed by a decision of the Supreme Court. There are also examples of other public associations which have been denied registration.

The procedure for offline registration of institutions has been restricted. Because of the pandemic, it has become possible to go through the procedure for approval of name only online or by post, but not in-person. This measure was introduced by the Order of the Council of Ministers of the Republic of Belarus of 22 May 2020, No. 305 ('On measures to combat the spread of infection caused by COVID-19')<sup>18</sup>. Despite the intention of this restriction being stated as temporary, a special governmental decision on the cancellation of the suspension has not as yet been adopted.

CSOs will be affected by the draft of the new Law of the Republic of Belarus 'On state registration and liquidation (termination of activity) of economic entities'. It is intended that this law will be directed at regulating the establishment and registration of legal personalities now regulated by the Decree of the President of the Republic of Belarus of 16 January 2009, No. 1 ('On state registration and liquidation (termination of activity) of economic entities'). Such legal personalities include CSOs such as institutions and associations (but not unions of public associations). At the same time, the declarative principle stipulated by the Decree No. 1 for state registration of economic entities will

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<sup>17</sup> Ministry of Justice of the Republic of Belarus, as of 1 July 2020, [https://minjust.gov.by/directions/compare\\_coverage/](https://minjust.gov.by/directions/compare_coverage/).

<sup>18</sup> Order of the Council of Ministers of the Republic of Belarus of 22 May 2020, No. 305 ('On measures to combat the spread of infection caused by COVID-19'), <https://cis-legislation.com/document.fwx?rgn=124884>.

be retained. According to the official substantiation of this draft law, when it comes into force, the Decree No. 1 will expire.

Public discussion of the above-mentioned draft law, in which anyone was able to send their proposals and comments, took place online from November to December 2019. The draft received a broad response from both citizens and the legal community. Thirty participants in public discussions provided their proposals and comments to the draft law, including six teams from law faculties of universities (who also expressed views on CSO interests and freedom of association). However, summarising the results of the discussion, the Ministry of Justice stated that issues of state registration of an institution as an asset group and the content of legal entities' founding documents were beyond the scope of the proposed law and could not be taken into consideration. This means that proposals on what has long been a gap in the legislation, the lack of provision for the founders of institutions to be changed after their registration, remain unaccounted for in this specialised law.

Many discussion participants expressed doubts that it would be reasonable for the draft law to abolish the procedure for approval of legal entities' names and to introduce additional grounds for refusals of state registration in instances where proposed names were incongruent with the requirements of legislation. In practice, the proposed amendment could become an additional barrier to the establishment of CSOs via the facilitation of the misuse of technical procedures to prevent 'unwanted' institutions from being registered. Objections by the registering authorities to names of institutions are already widely used as grounds for refusal to register CSOs which is currently subject to a separate procedure (comparatively simple and available online). If the law is adopted in the proposed form, the possibilities for registration of institutions will shrink, institutions currently being the most popular and easy legal form of CSO in Belarus.

As stated by the Ministry of Justice, a range of questions received during public discussion of the draft law require additional consideration with stakeholders. This includes consideration of the procedure for electronic registration of legal entities, the ability to locate legal entities' legal addresses in residential premises for not only private unitary enterprises and peasant (farm) households, but also for other organisational forms (currently unavailable to CSOs in the form of institutions and associations/unions of legal entities), as well as maintenance of the State Register in two state languages.<sup>19</sup>

State bodies have created obstacles to the implementation of activities aimed at providing assistance to victims of human rights violations. Among other methods, this occurs by prohibiting the collection of funds for these purposes. Criminal cases on

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<sup>19</sup> Public discussions of the draft Law ('On state registration and liquidation (termination of activity) of economic entities') are summarised (in Russian), <http://pravo.by/novosti/novosti-pravo-by/2019/december/43846/>.

charges of ‘financing extremism’ have been filed against those who have provided targeted financial support to Belarusians who have suffered from police brutality, beatings and torture.

The criminal prosecution and arrest of members of the opposition Coordination Council by the authorities was purportedly justified only in connection with their goal of changing the political regime and enabling a transfer of power.

More than 900 criminal cases have been brought after the presidential election against protesters, human rights defenders, election observers, journalists and media, CSO leaders and activists. A range of these cases are related to citizens’ participation in associations and CSOs’ activities, which evidence the extremely negative development of the grave restrictions that are being placed on freedom of association.

On 21 December 2020, the Belarusian Prosecutor General’s Office stated that it had launched criminal cases against members of the opposition Coordination Council due to the creation of an ‘extremist group’ and financing its activities in order to seize state power in an unconstitutional way. The Prosecutor General’s Office named Sviatlana Tsikhanouskaya, Maria Kolesnikova, Maksim Znak, Pavel Latushko, Olga Kovalkova, Sergei Dylevsky and other persons among the suspects. Criminal cases on charges of ‘financing extremism’ were filed against those who have provided targeted financial support to Belarusians who suffered from police brutality, beatings and torture.

A criminal case on financial irregularities charges was launched against Volha Vialichka, director of the Hrodna Children’s Hospice, after the activist had been detained during protests. A criminal case was also launched against Alena Shimolina, the head of the Palessie Kindness Foundation, who assisted victims of beatings by militia on 9-11 August 2020, when she was charged under Article 342 of the Criminal Code for ‘organisation and preparation of actions that grossly violate public order or active participation in them’ and, after a search was conducted, has been forced to flee the country. Dozens of other CSO leaders and activists have left Belarus, fearing criminal prosecution on similar grounds.

Crowdfunding platforms *MolaMola* and *Ulej*, both affiliated with Belgazprombank, were among the first victims of politically-motivated criminal prosecutions during the election campaign. The founders of these services were charged with financial irregularities (including tax evasion and money laundering) as part of the criminal case against members of the former head of Belgazprombank Viktor Babaryka’s team, launched shortly after the start of his presidential nomination campaign. The operations of crowdfunding platforms, which had played the key role in the mobilization of financial resources for combating COVID-19, were blocked under the law ‘On measures to prevent the legalisation of criminally-obtained income, the financing of terrorist activity and the financing of the proliferation of weapons of mass



destruction', and their bank accounts frozen.<sup>20</sup> The funds raised by crowdfunding projects via these websites were also frozen, with *Ulej* announcing the suspension of payments due to bank faults for 14 projects in the amount of 91,234 BYN (around 29,600 EUR). On 21 June 2020, Eduard Babaryka, the son of the banker and *MolaMola* manager Viktor Babaryka, was charged under Part 2 of Article 243 of the Criminal Code ('tax evasion in a particularly large amount'). Following this, *MolaMola* declared that they had moved their activity to Ukraine.<sup>21</sup>

Further representatives of CSOs targeted include Maria Rabkova, a volunteer for the Viasna Human Rights Center, who was arrested and charged with a criminal offence under Article 293 of the Criminal Code ('training or other preparation of persons for participation in mass riots, or financing of such activities'). In addition, Andrei Chapiuk, another of the organisation's volunteers, was charged under Part 2 of Article 293 of the Criminal Code ('participation in mass riots').

During 2020, a duty to publish mandatory and voluminous financial reports for Anti-money laundering/counter-terrorist financing (AML/CTF) purposes, that are disproportionate given the current terrorism threat, was introduced for non-commercial organisations in Belarus. The measures introduced were not discussed with the CSO sector either during the preparation of the new law, during the introduction of the measures (January-May 2020)<sup>22</sup> or during the preparation of the form of the mandatory report to be submitted by CSOs that was approved by the Ministry of Justice (June-November 2020). The amendments were developed by the State Control Committee jointly with the National Bank, the Ministry of Justice and other state bodies.

Shortly before, in February 2020, the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG) and the Financial Action Task Force (FATF) published a 'Mutual Evaluation Report of the Republic of Belarus' which analysed the effectiveness of the national AML/CTF system.<sup>23</sup>

The broad circle of Belarusian con-governmental organisations was of the opinion that the risk-based approach on FATF Recommendation 8 (that requires that the laws and regulations that govern non-profit organisations (NPOs) be reviewed so that these organisations cannot be abused for the financing of terrorism) was not well

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<sup>20</sup> Nasha Niva. 'Belgazprombank suspends *MolaMola* service created by Babaryka's son, which collected money for doctors and victims of repressions' (in Belarusian), <https://nn.by/?c=ar&i=253418>.

<sup>21</sup> Dev.by. 'MolaMola is launched in Ukraine' (in Russian), <https://dev.by/news/mola-mola-ukraine>.

<sup>22</sup> The Law On amendments to the Law of the Republic of Belarus ('On measures to prevent legalization of criminally obtained income, financing of terrorist activity and financing of proliferation of weapons of mass destruction') was adopted on 13 May 2020, published on 19 May 2020 on the National Legal Internet Portal and entered into force in November 2020, <http://kgk.gov.by/en/news-press-center-en/view/important-innovations-in-the-field-of-combating-money-laundering-and-the-financing-of-terrorism-were-110910/>.

<sup>23</sup> EAG. 'Mutual Evaluation Report of the Republic of Belarus 2019', <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/EAG-Mutual-Evaluation-Report-Belarus-2019.pdf>.

implemented into national legislation. This was not based on a risk assessment specific to CSOs, but on a general national risk assessment as a result of which the risk to NPOs is regarded low. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 FATF Methodology. The evaluation was based on information provided by the country and information obtained by the evaluation team during its 2019 on-site visit to Belarus (the amount of contact that the evaluation group had with CSOs was extremely small, however). The findings of this assessment have been reviewed and endorsed by the FATF, but without any consultation with the broad circle of CSOs as direct stakeholders.

The Belarusian government has published only a summary of the national assessment.<sup>24</sup> The law introduced an additional type of reporting for CSOs, despite the fact that the risk of CSOs being involved in the above-mentioned activities is low. In particular, according to the final report summary of the national assessment of money laundering and financing of terrorism risks, the absence of cases in which CSOs have been used to commit acts relating to money laundering is evidence of the low risk of their involvement in criminal activity. Activities of international terrorist organisations, their branches or members has not been recorded in the Republic of Belarus. There have been no cases of presence on the territory of the Republic of Belarus of individuals or organisations, included those on the UN sanctions list, and the presence of either their property or other assets was not detected. Organisations have not been recognised as terrorist organisations by decisions of courts of the Republic of Belarus and, overall, there have been no occurrences of the use of CSOs for the funding of terrorist activity in the Republic of Belarus.

Nevertheless, on 7 November 2020, the Ministry of Justice suddenly and unexpectedly issued Decree No. 153-1 ('On information about the activities of public associations and foundations').<sup>25</sup> The Decree stipulates that public associations and foundations will be required to **publish a report on their activities, together with a financial report, by 1 March of each year.**

The list of information that must be published by foundations and public associations in the new report consists of two blocks:

- **Report on the activities of the organisation.** This should include information on the number of members of the public association, its organisational structure, the location of its governing body and the activities carried out during the preceding year.

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<sup>24</sup> Pravo. 'Interagency Commission has approved the final report on the National Assessment of risks of money laundering and terrorist financing' (in Russian), <https://pravo.by/novosti/obshchestvenno-politicheskie-i-v-oblasti-prava/2019/january/32184/?fbclid=IwAR0wP4czzBwTY1-ZYbf-x1BurEqsp3O4LP1fWeNqFGfIr2SzFIVvPIUMCzU>.

<sup>25</sup> Resolution of the Ministry of Justice of the Republic of Belarus on 30 October 2020, No. 153-1 ('On information on the activities of public associations and foundations') (in Russian), [https://pravo.by/upload/docs/op/W22036030\\_1604696400.pdf](https://pravo.by/upload/docs/op/W22036030_1604696400.pdf).

- **Statement of income and expenditure of cash and property.** Information on the total amount of funds and other property must be noted here; on entrance and membership fees (if the fees are provided by statute); on income from lectures, exhibitions, sports and other events held for statutory purposes; on income from entrepreneurial activity (from enterprises founded by a public association); on voluntary donations; on income from foreign states, foreign and international organisations; and on income from other sources. Regarding expenditure, it will be necessary to indicate the total amount of expenditure, the number of employees of the organisation, details of the payment for their work, expenditures for logistical support, and use of funds and other property.

Alongside the introduction of new reporting, the state directly interferes in CSO activity through the conducting of special inspections. In particular, in August/September 2020, a large number of CSOs that had received international aid and then registered this aid at the Department on Humanitarian Activity received inquiries from the Ministry of Internal Affairs' Department for Combating Economic Crimes about the use of the funds from foreign sources,<sup>26</sup> even though control powers in this field rest with the Department on Humanitarian Activity (which registers foreign grants). These and many other inspections of the financial activities of CSOs (including with the involvement of the Ministry of Internal Affairs) evidence the pressure on CSOs and interference in their statutory activities. Inspections are carried out predominantly on CSOs that criticize the government or participate in protests. In some cases, inspections last for several months and make it impossible for CSOs to work normally (as stated by Kraina Zamkaŭ Foundation).<sup>27</sup>

## 3.2 Equal Treatment

***There is no substantial change in this area. There is still unequal treatment of CSOs compared to commercial organisations, including a lack of access for CSOs to the measures that the government has put in place for businesses to overcome the consequences of COVID-19. The preferential treatment of GONGOs remains, and the legal conditions for CSOs depend on their attitude to the current political situation following the presidential election.***

In particular, in the spring 2020, the government introduced benefits and assistance to businesses that suffered from economic difficulties as a result of the COVID-19 pandemic, however these were left unavailable to CSOs. Those CSOs that appealed to local authorities with requests to introduce tax and other payment deferments (for

<sup>26</sup> Green Belarus. 'Grant recipients are summoned to the OBEP for a 'conversation'' (in Russian), <https://greenbelarus.info/articles/04-09-2020/poluchateley-grantov-vyzyvayut-v-ubep-na-besedu>.

<sup>27</sup> Nasha Niva. 'The State Audit Office came to the Land of Castles Foundation. The director assisted the press service of the Coordinating Council' (in Belarusian), <https://nn.by/?c=ar&i=258739>.

example, payments related to rent of state-owned or communally-owned premises) were met with refusals.

There are public associations with a variety of focuses of activity registered in Belarus. At the same time, all sports federations, being public associations on sports from a legal point of view, are extremely dependent on the state because of state funding and the fact that the National Olympic Committee of the Republic of Belarus (NOC) is built into the political power system. For instance, the president of Belarus Alexander Lukashenko is the president of the NOC, one of his sons, Viktor, is the first vice-president of the NOC<sup>28</sup> and another of his sons, Dmitry, is the chairman of the Central Council of the President's Sports Club (through which large amounts of funds go towards the funding of sports, including in the form of targeted stipends to sportspersons).<sup>29</sup> The result of this system was the pressure put on numerous sportspeople who had voiced criticism of the authorities and condemned the violence in the wake of the crisis following the presidential election.<sup>30</sup>

As is the case every year, direct funding of the BRYU, a GONGO, has been provided for by the laws on the state budget for 2020 and 2021 as a separate article. The Law 'On the Republican Budget for 2021', proposed by the Ministry of Finance and adopted by the House of Representatives on 18 December 2020 establishes a direct subsidy from the state budget for the BRYU in the amount of 9,273,540 BYN (around 3 million EUR).<sup>31</sup>

### 3.3 Access to Funding

***The environment has deteriorated in this area. CSOs are significantly restricted in their opportunities to seek, receive and use financial and material resources for achieving their goals. Restrictions are also imposed on both foreign donations and donations from Belarusian corporate donors. These restrictions became even more severe in the run-up to the presidential election.***

In May 2020, the obligatory publication of reports on AML/CTF was introduced for public associations and foundations (the form of the reports to be approved by the Ministry of Justice).<sup>32</sup>

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<sup>28</sup> NOC (in Russian), <https://noc.by/noc/structure/guide/>.

<sup>29</sup> President's Sports Club (in Russian), <http://www.sportclub.by/rukovodstvo/rukovodstvo.html>.

<sup>30</sup> Pressball (in Russian), <https://www.pressball.by/pbonline/other/87900>: For example, 'athlete of the year', world freestyle skiing champion Aliaksandra Ramanouskaya was dismissed and her coach was deprived of a stipend (in Russian), <https://gazetaby.info/post/sportsmenku-goda-uvolili-za-to-hto-povezla-v-boln/169611/>.

<sup>31</sup> Draft Law of the Republic of Belarus 'On the Republican Budget for 2021' (in Russian), <http://www.minfin.gov.by/ru/news/854c58f7b78a44a0.html>.

<sup>32</sup> Assembly of NGOs of Belarus. 'Belarus has introduced reporting for CSOs based on AML/CTF measures', <https://belngo.info/2020.belarus-has-introduced-reporting-for-csos-based-on-aml-ctf-measures.html>.

Banks do not grant loans to CSOs in Belarus. In certain cases this is directly stipulated by banks' internal operating procedures.<sup>33</sup>

In order to receive donations from abroad, CSOs must obtain special approval, in the form of registration, from the Department on Humanitarian Activity, regardless of the amount of the aid received. Moreover, in accordance with general procedure, aid is subject to taxation (tax exemption is rare and almost never applies to the full amount of the aid received).

In May 2020, on the eve of the presidential election and at the initiative of the current president,<sup>34</sup> a new decree on foreign gratuitous aid was adopted, which tightened government control and narrowed even further the opportunities for CSOs to attract funds.

Donations from foreign donors can be received only with the prior consent of the Department on Humanitarian Activity in the presidential administration and only for purposes specified by the Decree of the President of 25 May 2020, No. 3 ('On foreign gratuitous aid'), which has replaced the previous Decree of the President of 31 August 2015, No. 5 and has further shortened the list of purposes allowed for foreign funding. At the same time, this exhaustive list does not include, for instance, such purposes as human rights, the development of democracy, or gender equality. In December 2020, the Department on Humanitarian Activity refused to register assistance to the CSO 'Imena', which in turn prevented the allocation of 89,117 BYN (around 29,000 EUR) to help the victims of police actions during the dispersal of demonstrations.<sup>35</sup> The same organisation was forced for the same reason to return 26,400 BYN (around 8,500 EUR), which the Lithuanian Embassy had allocated as a grant to cover the costs of two projects: 'Future Professions for Orphans' and 'Lessons for Children with Autism'.

There is a newly introduced fee for the registration of foreign aid, which is 0.5 per cent of its amount. Receipt of foreign aid without registration, or with other violations, is a civil offence (punished with a fine under Article 23.23 of the Code of Administrative Offences), while repeated violations are a criminal offence punishable with imprisonment for up to three years pursuant to Article 369 of the Criminal Code.<sup>2</sup>

Similarly, CSOs can receive donations from Belarusian organisations only for purposes stipulated by the Edict of the President of 1 July 2005, No. 300 ('On the provision and use of gratuitous (sponsor) aid'). This list of purposes is also exhaustive and in practice does

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<sup>33</sup> Lawtrend. 'Report of the research 'Access of non-profit organisations to banking services: Top-10 best banking practices' (in Russian), <https://www.lawtrend.org/freedom-of-association/issledovanie-dostup-nekommercheskih-organizatsij-k-bankovskim-uslugam-top-10-luchshih-bankovskih-praktik>.

<sup>34</sup> Naviny. 'Lukashenko called for tougher control over foreign aid' (in Russian), <https://naviny.media/new/20200430/1588236327-lukashenko-prizval-uzhestochit-kontrol-nad-inostrannoy-bezvozmездnoy>.

<sup>35</sup> Svaboda.org. 'Lukashenko's administration has blocked foreign aid to victims of violence by security forces' (in Belarusian), <https://www.svaboda.org/a/31015383.html>.

not allow CSOs to receive donations for the activities specified in their charters. Entrepreneurial activity is forbidden for public associations.

In Autumn 2020, banks froze the accounts of citizens who had been detained or beaten by OMON, the Belarusian riot police, or those that were dismissed and that received aid from the Belarus Solidarity Foundation (BYSOL). State media launched a smear campaign against BY SOL and other foundations providing assistance to victims of state oppression.

On 22 December 2020, law enforcement searched the employees of the CSO Press Club Belarus. The founder of the organization, Yuliya Slutskaya, was detained at the airport on her arrival back in Belarus following a holiday<sup>36</sup> and the office and apartments of several managers of the organisation were searched. The Department of Financial Investigations is investigating alleged tax law violations in relation to officials of Press Club and other business entities, related, among other things, to the receipt of large sums of money from abroad. The European Federation of Journalists has condemned the government's attack on Press Club<sup>37</sup> and sees it as a counter-strike in response to the imposition of sanctions by the European Union against Belarusian government officials. This was evidenced by the fact that the Belarusian Foreign Minister, Vladimir Makei, announced<sup>38</sup> retaliatory measures against Belarusian organisations supported by foreign embassies in Belarus. Yuliya Slutskaya, founder of Press Club, was charged under Part 2 of Article 243 of the Criminal Code (tax evasion on an especially large scale). Charges were also brought against Press Club's financial director Siarhei Alsheuski, its programme director Ala Sharko, and videographers Piotr Slutski and Dzianis Sakalouski. Siarhei Yakupau, head of the Press Club Academy, who holds Russian citizenship, has been released and deported to Russia without any charges.<sup>39</sup>

In September 2020, the institution 'Center for Promotion of Women's Rights – Her Rights', whose mission is the strengthening of women's and girls' potential through the eradication of gender discrimination, was targeted by state media.<sup>40</sup> The pretext for stigmatizing this NPO was its legal operations to obtain foreign funding, in connection with which the organisation was accused of financing women's protests in Belarus (the founder's husband was imprisoned, while she herself fled the country). Many other CSOs, foundations and crowdfunding initiatives have also been targeted by propaganda attacks and campaigns to discredit them in the media, including by active members of

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<sup>36</sup> Assembly of NGOs of Belarus. 'The wave of new criminal cases against CSOs in Belarus is growing' (in Belarusian), <https://belngo.info/2020.the-wave-of-new-criminal-cases-against-csos-in-belarus-is-growing.html>.

<sup>37</sup> EFJ. 'Belarus: EFJ demands the immediate release of Yulia Slutskaya', <https://europeanjournalists.org/blog/2020/12/22/belarus-efj-demands-the-immediate-release-of-yulia-slutskaya/>.

<sup>38</sup> TUT.by. 'Makei on retaliatory EU sanctions: We will limit the activities of a number of political foundations operating under the auspices of embassies', <https://news.tut.by/economics/712372.html?c>.

<sup>39</sup> Viasna Human Rights Center. 'Press Club leaders charged in 'tax evasion' case', <http://spring96.org/en/news/101168>.

<sup>40</sup> TASS. 'Media: PandaDoc finances opposition women's marches' (in Russian), <https://tass.ru/mezhdunarodnaya-panorama/9437679>.

the government (both at the local level and at the level of the central administration, including the Ministry of Justice<sup>41</sup> up to the prime minister, Roman Golovchenko).

### 3.4 Freedom of Peaceful Assembly

***The environment has deteriorated in this area. The legal organisation of assemblies in 2020 in Belarus has become de facto impossible in the period after the presidential election. Peaceful meetings of the opposition are prohibited (including under the pretext of the COVID-19 pandemic), stopped with the widespread use of force and arrests of thousands of participants, while the most-favoured regime has been created for meetings of supporters of the current government.***

In April 2020, shortly before the presidential election, an order of the government introduced the obligation to conclude preliminary contracts with militia, ambulance services and cleaning services before submitting applications for the holding of mass events (or notifications when it comes to places that are subject to the notification-based procedure). There is no information available on whether such a contract has ever been concluded by the Ministry of Internal Affairs. This new procedure has meant a de facto total ban on lawful mass events (with the exception of election signature-collecting pickets and candidates' meetings with voters which, nevertheless, were dispersed by the authorities or disrupted in other ways).

In the months preceding the presidential election, several hundred participants in peaceful protests were arrested. However, after the presidential election on 9 August 2020, protests flared up again and were accompanied by unlawful and disproportionate violence by the militia and OMON, the riot police. The authorities continued the practice of forcibly dispersing peaceful protests and using violence against demonstrators.<sup>42</sup> The military were also drawn into the dispersals in which water cannons, stun grenades, teargas, and rubber bullets were used<sup>43</sup> (these were also aimed at journalists and at people simply watching the protests from their homes). More than 31,000 people were arrested for their participation in peaceful protests. Typically, an arrest was for up to 15 days, but sometimes for longer with certain defendants spent up to two months behind bars due to their repeated participation in protests). In addition, thousands of people were seriously injured.<sup>44</sup> According to the source consulted,

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<sup>41</sup> Ministry of Justice of the Republic of Belarus. 'On the activities of unregistered foundations' (in Russian), [https://www.minjust.gov.by/special/press/news/o\\_deyatelnosti\\_nezaregistrovannykh\\_fondov/](https://www.minjust.gov.by/special/press/news/o_deyatelnosti_nezaregistrovannykh_fondov/).

<sup>42</sup> Viasna Human Rights Center. 'Human Rights Situation in Belarus: November 2020', <https://spring96.org/en/news/100777>.

<sup>43</sup> Novy Chas. 'What kind of weapons did the security forces use against the people in Minsk?' (in Belarusian), <https://novychas.by/hramadstva/jakuju-zbroju-vykarystouvajuc-silaviki-suprac-ljud>.

<sup>44</sup> TUT.by. 'August protests: with what injuries were they taken to hospitals from the streets, the district police department and Akrestsina prison' (in Russian), <https://news.tut.by/society/699761.html?c>.

between 2,000 and 4,000 arrested people submitted appeals against beatings, torture,<sup>45</sup> and the denial of medical care, but not a single criminal case has been brought as a result of these appeals.<sup>46</sup> The number of victims could be much higher, as many fled abroad after being released and the persons who had initiated these appeals were often charged with new criminal charges of participation in mass riots.

The human rights community is particularly concerned about the violations of the rights of political prisoners held in pre-trial detention centres and other detention facilities, notably systematic bans on meetings with lawyers on the grounds of anti-pandemic measures and cruel and inhuman treatment.<sup>47</sup> There is numerous evidence of threats of sexual assault against men and women while detained or in detention centres, as well as numerous and documented evidence of torture, including physical torture and deliberate mutilation.<sup>48</sup>

It is known for a fact that there were at least six protestors who were killed, some of whom were shot by riot police directly during the dispersal of peaceful protests. These protest participants' deaths remain without proper investigation and the guilty have not been brought to justice.

In relation to CSOs more specifically, CSOs whose leaders have been prosecuted for participation in protests have been targeted. There were leaders and activists from prominent CSOs among the detained. For example, Iryna Sukhii, Maryna Dubina, Ales Zhuchkou, Volha Autushka, Olga Smolianka, Aleg Grableuski, Andrei Yahorau, Vladimir Kavalkin, Leanid Marhotka, Volha Vialichka and others. On 22 October 2020, a week after Volha Vialichka, director of the Hrodna Children's Hospice, had been detained and fined for participation in a protest, the Hospice was searched under the pretext of a tax inspection due to 'evidence of the misreporting of its tax base and tax evasion'. The authorities also demanded that the organisation leave the rented premises in which it was located.

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<sup>45</sup> FIDH. 'Belarus - Human Rights NGOs call on torture and arbitrary arrests of peaceful protesters to stop', <https://www.fidh.org/en/region/europe-central-asia/belarus/belarus-human-rights-ngos-call-on-torture-and-arbitrary-arrests-of>.

<sup>46</sup> Viasna Human Rights Center. 'Belarusian human rights activists presented a report 'On Human Rights Violations in Belarus in the Post-Election Period' addressed to a rapporteur appointed under the OSCE Moscow Mechanism' (in Belarusian), <http://spring96.org/be/news/99869>.

<sup>47</sup> Viasna Human Rights Center. 'Human Rights Situation in Belarus: June 2020', <https://spring96.org/en/news/98021>.

<sup>48</sup> International Committee for the Investigation of Torture in Belarus. 'Mass Torture in Belarus 2020 - First Interim Report on State Response and Measures Taken to Investigate Mass Torture August 9-13, 2020' (in Russian), <http://www.legin.by/documents/Belarus-tortures-2020-first-report>.



## 3.5 Right to Participation in Decision-Making

***The environment has deteriorated in this area. In an environment of mass arrests and torture, as well as criminal cases and other forms of repression, opportunities for CSOs' participation in decision-making have narrowed. This has occurred despite the fact that, in a period of acute political confrontation, the state was inviting CSOs to participate in various informal dialogue platforms to discuss reforms of local self-governance, constitutions, etc.***

Many CSOs deliberately gave up on advocacy and cooperation with the authorities in the atmosphere of repression, declared the suspension of their advocacy activities or their total cessation of cooperation with government authorities.<sup>49</sup>

The emergence of more distinct regulation of the procedure for bringing up draft legislation for public discussion in accordance with the new law 'On normative legal acts', which came into force in 2019, has promoted a significant increase in the number of such discussions. This, in particular, can be seen by the growth of the number of discussions of proposed legislation via the official Legal Forum:

Year	2013	2014	2015	2016	2017	2018	2019	2020
No. of legislative acts brought up for public online discussion in Legal Forum	1	1	6	12	26	76	165	195
Number of comments	3	1	34	488	709	1,557	3,021	7,437
Average number of comments to a draft	3	1	5.6	40.6	27.2	20.4	18.3	38.1

Despite a significant broadening of the practice of draft normative legal acts being brought up for public discussion in 2019-2020, the level of public involvement in decision-making and the level of communication between civil society with state agencies remains low.

Among other things, proposed amendments to the Law on Volunteering were twice brought up for public discussion. First, CSOs were invited to express common opinions

<sup>49</sup> Assembly of NGOs of Belarus. 'A coordination meeting of non-governmental organisations took place in Minsk' (in Belarusian), <https://belngo.info/2020.u-mensku-prajshla-kaardynatsyjnaya-sustrecha-nyauradavyh-organizatsyj.html>.

about the need for such a law, then the draft was provided for comments. In general, the resulting draft law has merit: it takes into account CSOs' remarks and refers to the approaches listed in the materials provided by ECNL, including on a participatory drafting process being undertaken at an early stage and the avoidance of over-regulating volunteerism.<sup>50</sup> However, the draft law has not yet been submitted to parliament.

CSOs were disappointed by the absence of dialogue with the Ministry of Justice relating to measures on AML/CTF reporting, which were stipulated by a law adopted in May 2020. Despite requests from CSOs to hold consultations and proposals to publish draft reporting instructions for public discussion, this was not done. In November 2020, the order of the Ministry of Justice on the reporting procedure was adopted without regard to the opinions of the parties concerned.

In November 2020, a new edict of the President provided for obligatory annual plans for draft governmental bylaws,<sup>51</sup> which is a partial fulfilment of a recommendation laid out in the CSO Meter 2019. However, presidential decrees and edicts are still not subject to open planning.

It is unsatisfactory that there is no clarity in the situation regarding the new edition of the law 'On public associations'. The draft law was submitted to parliament in December 2019. However, in January 2020 it was withdrawn from parliament 'for improvement' and it remains unknown in what state and at what stage the draft is currently. This deprives CSOs of the opportunity to participate in discussion of the draft law that will directly affect them.

### 3.6 Freedom of Expression

***The environment has deteriorated in this area. A general review shows that both previous and new measures to restrict freedom of speech are broadly used in Belarus. Severe restrictions on freedom of speech are extended both to journalists (with numerous arrests and criminal cases on charges of inciting riots having been brought) and to the media (with bans on newspaper printing, print runs, blocking of internet sites), but also to bloggers, members of election commissions and whistle-blowers. Criminal charges relating to defamation and insult to the president, inciting violence***

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<sup>50</sup> Forum Pravo. Draft Law of the Republic of Belarus 'On Volunteer Activities' - public discussion (in Russian), <https://forumpravo.by/forums/npa.aspx?forum=15&topic=15851>. The accompanying justification document to the draft law refers to the ECNL policy paper 'Volunteering: European practice of regulation' elaborated at the request of the Belarusian non-governmental organisations in 2014,

<sup>51</sup> Pravo.by. Edict No. 415 'On improving the efficiency and quality of rule-making activities' (in Russian), <https://pravo.by/document/?guid=12551&p0=P32000415&p1=1&p5=0>.

***against the police, insult to the symbols of the state, and the spread of extremism are widely used as a pretext to prevent the spread of unwanted opinions.***

The media has been subject to crushing repression with the arrests of a large number of journalists, of which several are imprisoned on criminal charges. Cases of gun shots being aimed at individuals wearing clothing that identified them as ‘press’ have been recorded.

According to Article 38 of the Media Law, it is forbidden in Belarus to spread information on behalf of organisations that do not have state registration either in the media or online.

Internet disruption is broadly used with mobile internet being generally disrupted during mass demonstrations and websites blocked, including media websites. On presidential election polling day, 9 August 2020, and in the days following it, internet access was almost fully disrupted all around the country.<sup>52</sup> Blockings were either total or concerned specific internet services, websites, social networks and messaging services, whether local or global. It is alleged that the Belarusian authorities decided not only to use deep packet inspection (DPI), but also to block data transfer protocols, which led to the disruption of connectivity of Belarusian networks. All foreign traffic was directed through one channel only to allow for DPI making VPN services ineffective.<sup>53</sup> On 21 September 2020, Belarus restricted access to three websites: BY SOL, the charitable foundation ‘Belarus of the Future’ and ‘Dapamazhy.by’.<sup>54</sup>

A1 Telekom Austria Group (one of the major cellular operators in Belarus) has published its financial report for the third quarter of 2020. The report complains about restrictions on internet access by the state monopoly providers. Subscribers of all mobile operators in the country suffered as a result. It is mentioned that the operators were ordered to reduce the bandwidth of their mobile network in Minsk. The situation has led to an increase in customer complaints. In addition, SMS notification functions have been used as a regular government channel to inform citizens about ‘national security violations’.<sup>55</sup>

Of the criminal cases launched following the presidential election, the proportion of criminal cases on facts of libel and insult of a representative of the authorities, including militia and the president, is very high. Judgments on some of these cases have already been delivered, with deprivation of freedom as the sentence. Individuals who made

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<sup>52</sup> Assembly of NGOs of Belarus. ‘Belarus: Internet disruption, arrests and violence in the context of the presidential election’, <https://belngo.info/2020.belarus-internet-disruption-arrests-and-violence-in-the-context-of-the-presidential-presidential-election.html>; Bloomberg. ‘Belarusian Officials Shut Down Internet With Technology Made by U.S. Firm’, <https://www.bloomberg.com/news/articles/2020-08-28/belarusian-officials-shut-down-internet-with-technology-made-by-u-s-firm>.

<sup>53</sup> NetObservatory.by. ‘Internet Blocking in Belarus’, <https://netobservatory.by/belarus-shutdown-2020-en/>.

<sup>54</sup> TUT.by. ‘Three sites of charitable foundations were blocked in Belarus’ (in Russian), <https://42.tut.by/701229?c>.

<sup>55</sup> A1 Telekom Austria Group. ‘Results for the Third Quarter and First Nine Months 2020’, <https://cdn1.a1.group/final/en/media/pdf/results-qu3-2020.pdf>.

inscriptions (for example, 'we will not forget') in the place where riot police had shot an unarmed protester to death have also been sentenced to deprivation of freedom.

The following journalists are imprisoned as at 24 December 2020: Katsiaryna Barysevich, Katsiaryna Andreyeva, Daria Chultsova, Aliaksandra Pilipovich-Sushchyts, Siarhei Hardzievich, Yuliya Slutskaya, Alla Sharko, Siarhei Alsheuski, Siarhei Yakupau and Petr Slutski.<sup>56</sup>

The authorities in Belarus have arrested and opened criminal proceedings against the medical doctor Artsyom Sarokin and journalist Katsyaryna Barysevich who published information about the recent death of a peaceful protester, and exposed what appears to be an official cover-up of his killing. According to Amnesty International, they are both prisoners of conscience, detained solely for the exercise of their right to freedom of expression.<sup>57</sup>

The parliament and state officials, as well as the state media, inflame hatred against opposition representatives. Among other things, the authorities constantly draw comparisons between the opposition and Nazi criminals of the Second World War era, with a legislative initiative being announced to prohibit the national white-red-white flag, widely used by the opposition during the protests, on the grounds that it has some historical connection with pro-Nazi collaborators. More generally, the state media publish direct calls for violence against those protesting against the disputed outcome of the presidential election.

### 3.7 Right to Privacy

***The environment has deteriorated in this area. Violations of the right to privacy by state authorities are not investigated and not prosecuted, despite the constant and widespread use of surveillance, wiretapping and the interception of personal correspondence.***

Torture with the aim of obtaining a password for a smartphone or a chat group and examination of smartphones during arrests and detentions is broadly used.<sup>58</sup> The presence of opposition websites or channels in the Telegram messenger application being among a person's viewed data resources can become grounds for arrest and beating. Seizure of all data storage and communication devices is broadly used during

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<sup>56</sup> Belarusian Association of Journalists. 'Repressions against journalists in Belarus, 2020 (chart), <https://baj.by/en/analytics/repressions-against-journalists-belarus-2020-chart>.

<sup>57</sup> Amnesty International. 'Belarus: Whistle-Blower doctor and Journalist who exposed disinformation both prosecuted', <https://www.amnesty.org/en/documents/eur49/3384/2020/en/>.

<sup>58</sup> Media Zona. 'Violent hacking. How the authorities are fighting opposition channels and chats in Telegram', (in Russian), <https://mediazona.by/article/2020/12/25/telega>.

both searches in homes and arrests. Typically, phones and laptops are not returned to their owners.

In the context of the investigation of criminal cases on mass riots and others, the authorities hunt out protest coordinators, forcibly de-anonymizing and arresting the administrators of local protest chats and Telegram channels. The personal data of arrested persons and those accused in political cases, as well as information about the administrators and subscribers of opposition and protest Telegram channels, are regularly published. The preliminary disclosure of details of political criminal cases in an accusatory and biased manner is widely practiced by the state media.<sup>59</sup>

In 2020, a new practice has emerged in which those who previously donated money to charitable projects through crowdfunding are summoned for interrogation by investigators.<sup>60</sup> Businesses that supported the protests (including through donations) are also faced with pressure and inspections. From time to time, CSOs' rejected applications for receiving and registering foreign funding become public in state media or via other pro-government sources.

The draft law 'On Personal Data' did not pass the second reading in parliament and was not adopted.

At the current time, it is not clear whether the authorities are using technology to carry out surveillance on streets protests, but facial recognition technology (FRT) is already in place. Police in Belarus have been using Kipod FRT platform cameras installed by the IT company Synesis. According to a law signed by Lukashenko in 2017, every business controlled by the state must install cameras and join the surveillance system.<sup>61</sup> Several detained protesters have reported the use of FRT tools. A bank has stated that its division was included by the Ministry of Internal Affairs in the list of places that must be equipped with the Ministry's video surveillance systems. The bank believes that the transfer of footage from video surveillance systems installed in bank divisions to third parties may serve as a prerequisite for the unlawful dissemination of information containing bank secrets, which contradicts the requirements of Article 121 of the Banking Code.<sup>62</sup>

The Ministry of Internal Affairs has announced the creation of a unified database of participants in unauthorised demonstrations on the basis of resolutions aimed at

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<sup>59</sup> Human Constanta. 'What is wrong with the publication of the personal data of Viktor Babaryka?' (in Russian), <https://humanconstantaby.by/hto-ne-tak-s-publikaciej-personalnyx-dannyx-viktora-babariko/>.

<sup>60</sup> Ej.by. 'Investigative Committee began to summon for questioning people who donated money for the investigation of Sergei Satsuk' (in Russian), <https://ej.by/delo-satsuka/2020/06/08/sk-nachal-vyzyvat-na-dopros-lyudey-zhertvovavshih-dengi-na.html>.

<sup>61</sup> Cybernews. 'From BLM to the Belarus Revolution – why is facial recognition so scary?', <https://cybernews.com/security/from-blm-to-the-belarus-revolution-why-is-facial-recognition-so-scary/>.

<sup>62</sup> Infobank.by. 'A war lost in advance? Banks against the connection of internal video surveillance systems to the police' (in Russian), <https://infobank.by/infolineview/zaranee-proigrannaya-vojna-banki-protiv-podklyucheniya-vnutrennix-sistem-videonablyudeniya-k-milicejskim/>.

bringing participants to civil and criminal justice. This system can automatically prepare reports on ‘rioters’. On the basis of the database, it is possible to decide the question of ‘response measures’ in relation to both a specific person and a group united by one or more criteria.<sup>63</sup>

### 3.8 State Duty to Protect

***The environment has deteriorated in this area. Courts do not serve as a means to restore violated rights. Killings and torture remain unpunished, but the use of hate speech and incitement to violence, including the justification of torture, are widely broadcast by state media.***

Recorded cases in which individuals charged with participation in the protests have been acquitted are few. The courts deliver judgments on civil cases via Skype, examination of a case can take only several minutes and almost always culminate in a sentence to a civil. In the case of the mass arrest of hundreds of protesters, the courts work in a ‘conveyor-belt’ mode.<sup>64</sup> Under the pretext of the COVID-19 pandemic, many civil and criminal cases are heard behind closed doors. Under the same pretext, many lawyers are unable to meet with their clients which hinders their right to a defence. With thousands of citizens detained by security forces, many lawyers, including Aliaksandr Pylchanka, Yuliya Levanchuk, Maxim Znak, Lyudmila Kazak, Ilya Salei and Liliya Vlasova, are facing disbarment and/or detention for their work on defending opposition figures and other arrested citizens.<sup>65</sup>

The killings and torture (including those filmed live with clearly identified killers and victims) go unpunished, and the complainants themselves become accused in criminal cases of riot or libel. There is only one known case in which the murderer of a political opponent was prosecuted.<sup>66</sup> The volume of cruel violations of human rights in Belarus in the second half of 2020 is similar to a de facto state of emergency in which the normal laws do not apply, or apply only to the extent that would give the mass repression the appearance of legality.

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<sup>63</sup> Dev.by. ‘A database of protesters has appeared in the Ministry of Internal Affairs: monitored around the clock’ (in Russian), <https://dev.by/news/v-mvd-poyavilas-baza-uchastnikov-protestov>.

<sup>64</sup> Viasna Human Rights Center. ‘Belarus. August 2020: ‘Justice’ for Protesters’, [https://spring96.org/files/book/en/2020\\_belarus\\_august\\_justice\\_for\\_protesters\\_en.pdf](https://spring96.org/files/book/en/2020_belarus_august_justice_for_protesters_en.pdf).

<sup>65</sup> The International Bar Association’s Human Rights Institute (IBAHRI) has expressed grave concern over ongoing attacks and intimidation tactics deployed against lawyers in Belarus for carrying out their professional roles, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=3bac5c3d-eaf1-45f2-a422-c7d503c2c47d>.

<sup>66</sup> Belsat.eu. ‘A KGB guard from Salihorsk was given 10 years for killing a Belarusian worker. The dispute was over politics (in Belarusian)’ <https://belsat.eu/news/vartauniku-kdb-z-saligorsku-dali-10-gadou-za-zabojstva-rabochaga-belaruskaliyu-sprechka-byla-z-za-palityki/>

Politicians and government officials engage in hate speech towards human rights CSOs, opposition groups, independent trade unions and CSOs receiving foreign funding.

Laws and policies to tackle COVID-19 that relate to the public health or other emergency measures are adopted without public discussion or without due public information about the actual state of affairs. The state uses emergency measures as a pretext to purposefully limit citizen's participation and human rights. This was evidenced by the ban on the participation of CSOs in meetings of the bodies for the formation of election commissions, and in the restriction on the number of observers at polling stations to only representatives of GONGOs.<sup>67</sup>

Legislation on extremism is used both to justify blocking sites on the internet and to bring political opponents of the government to criminal liability. The same applies to AML/CTF regulations, which were also unreasonably used to introduce financial reporting for CSOs (see section 3.1 above). AML/CTF measures apply to all CSOs of two legal forms, public associations and foundations, regardless of the level or risk posed, are not in line with the FATF risk-based approach and are not based on the official risk assessment.<sup>68</sup> The introduction of these measures at the current moment, when Belarus is in a state of acute political turmoil, raises particular concern about possible abuses and violations of human rights.

### 3.9 State Support

***There is no substantial change in this area. Mechanisms for state support of CSOs are not developed and state support is available to only certain CSOs close to the authorities. The draft law on volunteering was discussed and is still in the preparatory stage in parliament.***

State support for CSOs is allocated on a non-competitive basis due to direct political decisions. The system of targeted tax preferences to certain CSOs under the list is deficient and harms the development of civil society and charity culture.

Insignificant economic relaxations and benefits (for example, instalment payments for the rent of premises), developed by the government in early spring 2020 as measures to support business during the COVID-19 pandemic, appeared unavailable to CSOs. Local authorities refused to provide CSOs with benefits, instalment or deferred payments,

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<sup>67</sup> Right to Choose 2020. 'Observation campaign of the presidential election in the Republic of Belarus 'Right to Choose': Preliminary report on findings of observation',

[https://pvby.org/sites/default/files/r2c\\_preliminary\\_report\\_en.pdf](https://pvby.org/sites/default/files/r2c_preliminary_report_en.pdf).

<sup>68</sup> Assembly of NGOs of Belarus. 'Belarus has introduced reporting for CSOs based on AML/CTF measures',

<https://belngo.info/2020.belarus-has-introduced-reporting-for-csos-based-on-aml-ctf-measures.html>.

despite the significant decrease in private donations and sponsor aid being received by them.

However, the authorities have developed a positive draft law on volunteering that takes into account the recommendations of CSOs. The draft law is at the development stage.

### 3.10 State-CSO Cooperation

***The environment has deteriorated in this area. Many CSOs deliberately gave up on advocacy and cooperation with the authorities in the atmosphere of repression.***

Many participants in the coordination meeting ‘Belarusian civil society after the presidential election – priorities and joint actions’, organised on 24 August 2020 in Minsk by Belarusian non-governmental organisations, declared the suspension of their advocacy activities and the total cessation of their cooperation with government authorities.<sup>69</sup>

### 3.11 Other New Developments

***Hundreds of politically-motivated criminal cases have been brought, with thousands of defendants and suspects, many of whom have received criminal sentences resulting in deprivation or restriction of freedom. Others have been held in custody for several months without any investigations being conducted. All of these factors seriously contribute to an atmosphere of fear in society. Together with restrictions on freedom of assembly and freedom of speech, this has become one of the factors determining the environment for CSOs.***

Since the start of the 2020 presidential election campaign in Belarus, over the course of seven months more than 900 criminal cases have been brought against participants in the presidential race, activists from their teams, and participants in peaceful protests which took place after the election campaign. The most common articles of the Criminal Code under which criminal cases were brought are as follows:

- Article 293 of the Criminal Code (mass riots). The Viasna Human Rights Center has identified at least 180 defendants in cases under this article.<sup>70</sup>

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<sup>69</sup> Assembly of NGOs of Belarus. ‘A coordination meeting of non-governmental organisations took place in Minsk’ (in Belarusian), <https://belngo.info/2020.u-mensku-prajshla-kaardynatsyjnaya-sustrecha-nyauradavyh-organizatsyj.html>.

<sup>70</sup> Viasna Human Rights Center. ‘Criminal cases after protests. What is known to ‘Viasna’ at the moment?’ (in Belarusian), <https://spring96.org/be/news/99143>.



- Article 342 of the Criminal Code (organisation or active participation in group actions that grossly violate public order). Cases under this article were brought *en masse* against activists in May and July 2020 (for example, ‘Tikhanouski’s case’, the ‘Hrodna case’, and the ‘case of July 14’).<sup>71</sup> Also, following the Dziady action in November 2020 in Minsk, the Investigative Committee stated that it had launched 231 criminal cases under Article 342 of the Criminal Code at once.
- Article 363 of the Criminal Code (resistance to a law enforcement officer or other person that guards public order).
- Article 364 of the Criminal Code (violence or threat of violence against a law enforcement officer).
- Article 243 of the Criminal Code (tax evasion). Activists of the initiative group on the nomination of Viktor Babaryka as a presidential candidate, employees of companies that assisted opposition candidates’ teams or victims hurt in protests, employees of the *MolaMola* and *Ulej* crowdfunding platforms and the leadership of the Hrodna Children’s Hospice were detained or charged under this Article.

It is also known that that there were criminal cases launched on libel (Article 188 of the Criminal Code), hooliganism (Article 339 of the Criminal Code), desecration of state symbols (Article 370 of the Criminal Code) and under other articles of the Criminal Code.

The Viasna Human Rights Center collects information about people whose criminal prosecution is related to the events of the election campaign and its aftermath. As of 30 December 2020, Viasna has collected more than 640 names of such people from different Belarusian cities and towns. 169 persons from this list are political prisoners at the end of 2020 and this number is growing.<sup>72</sup>

The current Belarusian administration fails to take the necessary measures to prevent the spread of the communicable disease COVID-19 in prisons and temporary detention centres.<sup>73</sup> Belarusian doctors have been raising awareness of the widespread physical and mental torture of thousands of individuals from the more than 30,000 people that have been arrested for political reasons since the presidential election of 9 August 2020. Doctors have publicly expressed their concerns about the mistreatment of prisoners and of those awaiting their court decisions. This mistreatment has led to many severe immediate and long-term health problems, and even deaths. The situation is exacerbated when, despite the national COVID-19 response and prevention policy,

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<sup>71</sup> Viasna Human Rights Center. ‘Detentions within the framework of “criminal cases” for the events of July 14 in Minsk continue. Already at least 13 people involved’ (in Belarusian), <https://spring96.org/ru/news/98540>.

<sup>72</sup> Viasna Human Rights Center. ‘Criminal prosecution since the beginning of the election campaign’ (in Belarusian), <https://spring96.org/be/news/99638>.

<sup>73</sup> Open letter of the BNR Council. ‘COVID-19 in Belarusian prisons: letter to WHO Director-General’, <http://www.radabnr.org/en/covid-19-in-belarusian-prisons-letter-to-who-director-general/>.

COVID-19-positive detainees are placed together with other individuals in overcrowded and often unventilated cells, exposing these others to COVID-19.<sup>74</sup>

At the same time, in the run up to the 2020 presidential election, on the basis of civil society mobilization against the COVID-19 pandemic and during the further political crisis after the presidential election, we have observed a serious growth of civil activity of all social groups, the emergence of new civil initiatives (including local and charity initiatives) and mutual support groups in Belarus.

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<sup>74</sup> Svaboda.org. 'Man leaves with coronavirus after 10 days in prison and dies soon after' (in Belarusian), <https://www.svaboda.org/a/31006991.html>.

# IV. KEY PRIORITIES

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The following key priorities cited in this update aim to overcome these negative impacts and restore the basic conditions under which CSO activity is possible:

- The release of all individuals recognised as political prisoners,<sup>75</sup> the review and lifting of all sentences imposed on them and pending decisions on their liability;
- the cessation of unmotivated and disproportionate violence against participants and organisers of any peaceful protest action, as well as an end to the use of torture and police violence;
- the cessation of all forms of repression and discrimination against protesters, representatives of the opposition and CSOs, including the cessation of mass civil and criminal prosecution, searches, seizures of data and communication devices, fines, arrests, the freezing of assets;
- the cessation of threats to separate children from their families and the cessation of unlawful intrusions into private houses;
- the carrying out of investigations into all deaths of protesters and other opposition representatives, bringing those guilty of murder to criminal justice, as well as thorough investigation of all allegations of torture;
- the cessation of all forms of pressure on CSOs, lawyers and human rights defenders, journalists and independent media, including the cessation of the campaigns to discredit these groups in the state media, as well as the elimination of the practice of internet disruption and the blocking of certain websites;
- the cessation of the misuse of legislation on combating extremism to restrict freedom of expression and freedom of thought, as well as to restrict access to funding for charities and human rights and humanitarian CSOs;
- the cessation of legislative initiatives aimed at restricting freedom of speech and freedom of association; and
- cooperation with the national human rights movement, as well as with the UN Human Rights Council and OSCE (the Moscow Mechanism) in documenting human rights violations and restoring violated rights, as well as in the investigation into all such cases and the prevention of impunity for human rights violations and abuses committed against human rights defenders and CSOs.

Only after the above priority steps are taken, will it be possible to realise any positive effects from implementation of the previous recommendations as laid out in the full edition of the CSO Meter Report (November 2019).

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<sup>75</sup> List of current political prisoners from Viasna Human Rights Center: <https://prisoners.spring96.org/en> and guidelines on the definition of a political prisoner: [https://spring96.org/files/misc/politprisoner-guidelines-final\\_en.doc](https://spring96.org/files/misc/politprisoner-guidelines-final_en.doc).

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