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Situation of human rights in Belarus

Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

In her report pursuant to Human Rights Council resolution 41/22, the Special Rapporteur on the situation of human rights in Belarus, Anaïs Marin, describes the situation of human rights in Belarus. The report analyses the situation of civil and political rights and pays special attention to economic, social and cultural rights. The findings of the Special Rapporteur indicate the absence of significant improvements and the necessity for the Government to clearly demonstrate its commitment to address long-standing issues by introducing concrete durable changes. On the basis on the identified human rights concerns, the Special Rapporteur provides recommendations to the Government of Belarus on how to promote and protect the human rights of all in Belarus.



I. Introduction

A. Executive summary

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established in 2012 by the Human Rights Council in its resolution 20/13, on the basis of a report by the United Nations High Commissioner for Human Rights (A/HRC/20/8). The Council requested the mandate holder to report to it and to the General Assembly on an annual basis. The Council has since renewed the mandate seven times, for one year each time, in resolutions 23/15, 26/25, 29/17, 32/26, 35/27, 38/14 and 41/22.

2. While Belarus has established a comprehensive national framework for the implementation of the 2030 Agenda for Sustainable Development and the achievement of the Sustainable Development Goals, the framework lacks human rights components and the commitment to “leave no one behind” in its national programmes for sustainable development. The Special Rapporteur notes that development cannot be sustainable if it is not inclusive and fair, or if it fails to address existing bias and discrimination patterns in society.

3. The present report, submitted to the Council pursuant to its resolution 41/22, covers the period from 1 April 2019 to 31 March 2020 and is prepared on the basis of information received up to the latter date.

4. In spite of her attempts to engage constructively with the Government of Belarus, the Special Rapporteur notes that, as in previous years, the latter has not recognized her mandate. The Special Rapporteur can only regret this and encourages the Government to review its position on the mandate. The Special Rapporteur welcomes the Government’s engagement with the Senior Human Rights Adviser as part of the wider United Nations system in Belarus, especially as Belarus is rolling out its United Nations Sustainable Development Cooperation Framework in 2021.

5. Based on the information collected, the Special Rapporteur cannot attest to any major improvements in the legal and regulatory protection of human rights in Belarus. The systemic and systematic human rights violations that she highlighted in her previous reports remain present in law and practice. The Constitution and legislative acts continue to provide inadequate protection of the rights enshrined in the International Covenant on Civil and Political Rights, and Belarus has not made meaningful progress toward the establishment of a national human rights institution.

6. During the reporting period, five death sentences were handed down and at least two executions were carried out in Belarus. Belarus continued to be the only country in Europe that imposed and executed the death penalty, and also continued to deny access to information about death penalty cases. However, the increased readiness of the Government of Belarus to engage in international and national dialogue on the issue of capital punishment is a welcome development. The Special Rapporteur reiterates that Belarus must promptly implement a moratorium on executions as a first step towards full abolition of the death penalty.

7. There has been no systemic improvement in the prevention of torture and ill-treatment, although a small number of cases could suggest positive developments. Torture remains undefined in the Criminal Code of Belarus, and the Government has not addressed the necessity to prevent it in practice.

8. Arbitrary detention continued to be targeted towards civil society activists, peaceful protesters and independent journalists throughout the reporting period. While the decriminalization of activities undertaken by members of an unregistered association is a welcome step, the Special Rapporteur is extremely wary of the fact that the legislation now provides for administrative liability and heavy fines instead. Disproportional and discriminatory restrictions on freedom of opinion and expression, freedom of assembly and freedom of association highlighted in the last report of the Special Rapporteur to the General Assembly (A/74/196) attest to the persisting pressure on fundamental freedoms. Previous recommendations meant to establish an enabling environment conducive to the exercise of the right to participate in public affairs and the holding of pluralistic elections have remained unaddressed.

9. Civic space remains constrained in Belarus. The legal and institutional environment remains hostile to dissenting opinions and unduly restricts the enjoyment of civil and political rights. Laws designed to prevent libel and the spread of extremist ideology continue to be used as repressive tools. Religious freedoms remain limited and space for genuine civic engagement and free expression is further restricted as a result. The Special Rapporteur emphasizes that the free flow of information and ideas about public and political issues among citizens is essential, especially ahead of the presidential elections that are due to take place before the end of August 2020.

10. While Belarus has made certain strides in combating HIV, these improvements have not always been in alignment with the State's human rights obligations. In particular, the Special Rapporteur expresses her concern that mandatory reporting policies in the medical profession discourage vulnerable groups from seeking medical advice and support. As a result of the lack of appropriate awareness-raising policies and an anti-discrimination law, people living with HIV and their families continue to suffer from discrimination and social stigma. The quality of health care available to persons deprived of their liberty remains a concern.

11. Discrimination in employment remains an issue in Belarus, most notably with regard to discrimination against women, persons with disabilities and persons living with HIV. Belarus has developed a draft law to better protect persons with disabilities. While this is a positive step, the Special Rapporteur remains concerned about the prevalence of structural discrimination and the lack of inclusive, accessible working environments for persons with disabilities. She deplores that the Roma community continues to face systemic discrimination in employment, which increases social exclusion and stigma.

12. Despite its prohibition in legislation, forced labour continues to be systematically used in Belarus, notably in detention centres and in so-called labour treatment centres. This has a negative effect on vulnerable communities. The Special Rapporteur noted with concern that children are not spared by this illegal practice. In addition, Belarus continued its suppressive policies towards trade unions during the reporting period, and also continued to systematically discriminate against unemployed persons.

13. Discrimination also continues against speakers of the Belarusian language, particularly in higher and secondary education. Alongside threatening the language's survival, this also negatively impacts cultural life in Belarus. Whereas Belarusian is a constitutional State language, speakers and promoters of Belarusian continue to be discriminated against. The same holds true for speakers of Polish: they represent a sizeable minority in Belarus, but are left with little opportunity to educate their children in their mother tongue.

14. Belarus continues to censor cultural expression, including by considering one-person happenings in public spaces as "mass events" requiring notification or authorization. The Special Rapporteur notes with particular concern limitations on the freedom of expression of LGBTQI artists and the continued use of homophobic language by State authorities in their official capacity.

15. Given the observations detailed in the present report, the Special Rapporteur maintains her opinion that continued attention should be paid to the human rights situation in Belarus. She reiterates her availability to contribute to the improvement of the situation.

B. Methodology

16. The Special Rapporteur's mandate is guided by the principles of independence and impartiality, as well as the independence of sources. The Special Rapporteur is committed to fulfilling her mandate in compliance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. She continues to pay special attention to protecting her sources of information.

17. As was the practice in previous years, on 4 December 2019, the Special Rapporteur submitted a request to visit Belarus in her official capacity. Her request remained unanswered. The Special Rapporteur would welcome opportunities to constructively engage with the Government of Belarus, and encourages the Government to review its position towards her mandate.

18. Being unable to visit Belarus, the Special Rapporteur relied on the information available from various sources, including Government statements and official publications; reports received from civil society, human rights defenders, and victims and witnesses of human rights violations; the diplomatic community; and international and regional organizations, including reports of United Nations treaty bodies.

II. Legal framework and related developments

19. During the reporting period, no progress has been made in terms of establishing an independent and pluralistic national human rights institution in Belarus. The Special Rapporteur notes that the establishment of such an institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), could play a crucial role in promoting and monitoring adherence to human rights standards at the national level.

20. While the Constitution of Belarus and other legislative acts include non-discrimination provisions, the Special Rapporteur is concerned that the existing legal framework does not provide for comprehensive protection against discrimination on all the grounds prohibited under the International Covenant on Civil and Political Rights. The Special Rapporteur stresses that equality and non-discrimination are central to the implementation of the 2030 Agenda for Sustainable Development and the achievement of the Sustainable Development Goals. Unless Belarus adopts comprehensive anti-discrimination legislation, vulnerable groups, including women, persons with disabilities, ethnic and religious minorities, and LGBTQI persons, will remain vulnerable to discrimination.

21. The Special Rapporteur strongly encourages the Government of Belarus to adopt a new inter-agency Human Rights Action Plan, as the previous Plan expired in 2019.

III. Human rights concerns

A. Right to life and physical integrity

1. Death penalty

22. As of 2020, Belarus remains the only country on the European continent that imposes and executes the death penalty as the highest measure of criminal punishment. The recommendations of the United Nations human rights mechanisms, the Council of Europe and numerous international non-governmental organizations on the abolition of death penalty have not yet resulted in any change in law or in practice. Since 1990, more than 400 persons have been sentenced to death, and only one has been subsequently pardoned.¹

23. According to the President of Belarus, Aleksandr Lukashenko, the question of abolishing capital punishment can only be decided through a national referendum and Belarus is moving forward in this direction.² The last referendum on abolishing capital punishment in Belarus was held in 1996, and a majority voted for maintaining it. The Special Rapporteur reiterates that many countries succeeded in banning the death penalty in law, or at least in practice, without recourse to a referendum. Moreover, it is up to the State to engage in education and advocacy in favour of abolition.

24. Belarusian law classifies information on the death penalty as a “State secret”. It makes it impossible for relatives to know about the date of a convicted person’s execution, and prevents the return of human remains to the families. This also has implications for the monitoring and reporting of death penalty cases. The Special Rapporteur underlines that the traumatic experience of not knowing the date and place of execution, or the place of burial,

¹ See <https://belsat.eu/en/news/just-before-european-games-another-prisoner-executed-in-belarus/>.

² See www.svaboda.org/a/30266503.html (in Belarusian).

amounts to inhuman treatment in violation of article 7 of the International Covenant on Civil and Political Rights.³

25. During the reporting period, five death sentences were handed down in Belarus. Viktor Paulau was sentenced to death on 30 July 2019 for a double murder; the Supreme Court upheld the decision on 12 November 2019.⁴ Mr. Paulau's execution is reportedly imminent.⁵ The second death sentence was issued to Viktor Serhil on 25 October 2019,⁶ and on 31 January 2020 his conviction and death sentence were upheld by the Supreme Court.⁷ On 10 January 2020, two brothers, Illia and Stanislau Kostseu, were sentenced to death.⁸ It has been reported that Stanislau Kostseu was forced to wear a marked death row uniform prior to his court hearing.⁹ On 6 March 2020, the Minsk Regional Court sentenced Viktor Skrundik to death after finding him guilty of murder and attempted murder.¹⁰ The sentence may be appealed to the Supreme Court.

26. According to the information available, at least two, possibly three, executions were carried out in Belarus during the reporting period.¹¹ The Supreme Court upheld the death sentences issued to Aliaksandr Zhylnikau and Viachaslau Sucharko.¹² It has been reported that Mr. Zhylnikau was executed on or around 13 June 2019, while the fate of Mr. Sucharko, convicted on the same charges, is unknown. The practice in Belarus, however, is that sentences in relation to all convicted persons within one case are executed simultaneously, which gives reason to suspect that Mr. Sucharko was executed as well.¹³ Mr. Zhylnikau was executed while his complaint was still pending before the Human Rights Committee.¹⁴ Aliaksandr Osipovic, sentenced to death on 9 January 2019, was executed on 17 December 2019 in Bobruysk. The petitions of Mr. Osipovic to the Supreme Court and to the President of Belarus for clemency were discarded.

27. The Special Rapporteur notes with concern that, by executing individuals while their cases are under consideration by the Human Rights Committee, Belarus is failing to respect the obligations undertaken by virtue of being party to the International Covenant on Civil and Political Rights.

28. The Special Rapporteur welcomes the participation of the Government of Belarus in a dialogue with its international counterparts on the abolition of death penalty¹⁵ and also welcomes the timid efforts to launch a debate on the issue at the national level.¹⁶ The readiness of the Government to start a public conversation on the matter of the death penalty, including through the work of the parliamentary working group on the death penalty, is a positive step.¹⁷ Nevertheless, these developments do not in and of themselves constitute a discontinuance of the practice widely considered as an inhumane and ineffective disincentive to crime. The Special Rapporteur encourages the Government of Belarus to consider the experience of abolitionist countries and to undertake concrete measures, such as the introduction of a moratorium on all executions, as a first step towards full abolition of death penalty.

³ A/HRC/41/52, para. 22.

⁴ See <https://dp.spring96.org/en/news/94940>.

⁵ See www.amnesty.org/en/documents/eur49/1493/2019/en/.

⁶ See <https://dp.spring96.org/en/news/94680>.

⁷ See www.amnesty.org/en/documents/eur49/1845/2020/en/.

⁸ See <http://spring96.org/be/news/95680> (in Belarusian).

⁹ See <http://spring96.org/en/news/95829>.

¹⁰ See <http://spring96.org/ru/news/96169> (in Russian).

¹¹ There are three cases, if one counts the alleged but unconfirmed execution of Viachaslau Sucharko.

¹² See <http://spring96.org/en/news/90005>.

¹³ See <https://dp.spring96.org/ru/news/93191> (in Russian).

¹⁴ www.amnesty.org/download/Documents/EUR4905352019ENGLISH.pdf; and Office of the United Nations High Commissioner for Human Rights, "Belarus: UN human rights experts denounce execution", press release, 1 July 2019.

¹⁵ See www.house.gov.by/ru/news-ru/view/1-oktjabrja-goda-parlamentskaja-delegatsija-v-sostave-zamestitelja-predsdatelja-postojannoj-komissii-61977-2019/ (in Russian).

¹⁶ See www.house.gov.by/ru/interview-ru/view/vopros-ob-otmene-smertnoj-kazni-v-belarusi-dolzhenreshatsja-s-uchetom-mnenija-ljudej-5959/ (in Russian).

¹⁷ See <https://dp.spring96.org/ru/news/95644> (in Russian).

2. Torture and other cruel, inhuman or degrading treatment or punishment

29. The Criminal Code of Belarus does not define torture as a separate offence. Torture is only mentioned as a part of the list of offences enshrined in article 128, on crimes against the security of humanity, of the Criminal Code. Numerous cases of torture and other cruel, inhuman or degrading treatment or punishment were brought to the attention of the Special Rapporteur during the reporting period.

30. According to information received, the situation with regard to torture and other cruel, inhuman or degrading treatment or punishment of detained persons did not improve in 2019. Such cases are rarely investigated, with investigations substituted by preliminary checks, which often do not encompass investigative actions. This approach, together with an absence of oversight institutions, distrust in law enforcement bodies and courts, weak institutions and a fear of retaliation, makes it rare for cases to be heard.¹⁸

31. According to standard practice in Belarus, law enforcement authorities are inactive or refuse to open investigations on alleged cases of torture, inhuman or degrading treatment or punishment. This is not owing to a lack of cases: victims and their relatives have sought prosecutions of police and prison staff for misconduct, abuse, negligence and threats. Despite this, authorities have continually refused to investigate the situation of Aleh Bahdanau, who died in prison in 2016 as the result of the alleged negligence of medical staff.¹⁹ The conditions in detention facilities remain unsatisfactory, with reported cases including the intentional blocking out of natural light in prison cells, a lack of cell ventilation²⁰ and a lack of drinkable water. There have also been cases of cruel treatment of detainees and their relatives by detention officers, in the form of forcibly preventing them from complaining about other instances of mistreatment or abuse.²¹

32. The Special Rapporteur notes certain progress in the investigation and trial of cases of ill-treatment conducted by State officials or enforcement officers. In the case of Dzmitry Serada, the court found that his rights and those of his family had been violated.²² Mr. Serada was treated brutally by the police when he was detained in his apartment, beaten in the police bus and kept in detention facilities without being served any meals. The court ordered the authorities to pay compensation to the victims for damages, including broken doors and windows, as well as therapy costs. Nevertheless, the damages were levied against the Ministry of Finance, not the Belarusian police. The investigation was opened three years after the incident occurred, after President Lukashenko publicly criticized the methods used by law enforcement, in particular the use of police brutality and the violation of human rights.²³ Following the President's criticism, in August 2019 an investigation into the treatment of Barys Zmitrovish, who was beaten and suffered eye burns from pepper spray at the time of his arrest, was also reopened.²⁴

33. The Special Rapporteur welcomes the reopening of a criminal case against police officers who allegedly subjected a representative of the LGBTIQ community to homophobic ill-treatment in 2017.²⁵ The Special Rapporteur hopes that investigations into the case will be conducted effectively and impartially, and that those responsible will be punished in accordance with the law.

34. The Special Rapporteur is concerned about reported cases of failure by authorities to provide detainees with access to lawyers, and the frequent use by penitentiary administration of cancellation of family visits as a disciplinary measure against those who protest against the detention conditions. Allegations about degrading, unsanitary conditions in places of detention have been reported, notably in pretrial detention centres and in relation to children and women, including elderly women. The Special Rapporteur is also concerned about the testimonies of women who were denied feminine hygiene products during their detention. One woman who was sentenced to administrative detention for

¹⁸ See <http://spring96.org/be/news/95699> (in Belarusian).

¹⁹ See <http://spring96.org/ru/news/92520> (in Russian).

²⁰ See <https://mspring.online/ru/un-prison/> (in Russian).

²¹ See <https://charter97.org/en/news/2019/8/21/345597/>.

²² See <http://spring96.org/en/news/94031>.

²³ Ibid.

²⁴ See <http://spring96.org/en/news/93904>.

²⁵ See <http://spring96.org/ru/news/94371> (in Russian).

participating in an unauthorized assembly alleged that when a cellmate managed to obtain hygiene products, she was sanctioned for having shared some of them with other inmates.

35. The treatment of non-violent drug offences committed by minors remains a major concern. Since 2014, children have been sentenced to prison terms for non-violent and minor drug-related offences – including with regard to first offences. They are being imprisoned in degrading conditions for such offences, despite the fact that, according to legislation, children in Belarus are eligible for alternatives to detention. The Special Rapporteur deplores the fact that article 328 of the Criminal Code – which pertains to trafficking in narcotic drugs, psychotropic substances, their precursors and analogues – is applied to individuals who were children at the time of the offence, without taking into consideration their specific needs as children. Underage convicts serving a sentence for drug-related offences (referred to as “Children-328”) reportedly experience several rights violations, including denial of medical care and, in one case, psychological trauma from the discovery of the body of an inmate who had committed suicide. One inmate also reported harassment and threats of solitary confinement if his mother did not stop submitting complaints about the conditions of detention.²⁶ The Special Rapporteur urges the Government of Belarus to amend its approach to underage drug offenders and to adopt a rights-based approach, compliant with the international obligations enshrined in the Convention on the Rights of the Child, to which Belarus is a party.²⁷

36. The Special Rapporteur welcomes the amendment by Belarus to article 328, by which the minimum sentence was decreased from five to three years for the illegal circulation of narcotic drugs, psychotropic substances, and their precursors and analogues, and from eight to six years for the same offence, when committed by a group of persons, State officials or persons with prior convictions for drug-related offences.²⁸ She encourages the Government of Belarus to extend this mitigation of sentence or grant amnesty to all the children falling in the “Children-328” category who have been sentenced to disproportionately long prison terms (from 8 to 12 years) pursuant to parts 3 and 4 of article 328.

37. To date, the issue of domestic violence has not been adequately regulated by law in Belarus. The Special Rapporteur hopes that the Government of Belarus will progress with developing legislation on the criminalization of domestic violence by introducing a new provision into its Criminal Code. According to available statistics, around 120,000 calls are received annually regarding family and household conflicts.²⁹ In the majority of cases, perpetrators are held to administrative liability and victims, who in their overwhelming majority are children and women, are left without any adequate means of protection.³⁰

3. Arbitrary arrest and detention and enforced disappearances

38. Throughout the reporting period demonstrators who participated in peaceful gatherings and protests were frequently subjected to arbitrary arrest and detention, in violation of the rights to freedom of peaceful assembly and freedom of opinion, as contained in articles 19 and 21 of the International Covenant on Civil and Political Rights.³¹

39. Arbitrary arrests of environmental activists protesting against the construction of the battery plant in Brest continued during the reporting period. In April 2019, a total of 18 environmental activists were arrested.³² Some of them were released a few hours later, while others were detained for up to three days in temporary detention facilities and consequently fined. These activists were arrested under article 23.34 of the Code of Administrative Offences of Belarus, which regulates the organizing and holding of mass

²⁶ See <https://nash-dom.info/58409> (in Russian).

²⁷ Communication AL BLR 6/2019, 28 October 2019, available at spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24893.

²⁸ See <http://pravo.by/novosti/novosti-pravo-by/2019/june/36281/> (in Russian).

²⁹ See <https://belarus.unfpa.org/en/news/dialogue-problematic-domestic-violence-has-been-revived-belarus>.

³⁰ See <http://npbelarus.info/d0-bc-d0-b0-d1-80-d0-b8-d0-bd-d0-b0-d0-ba-d0-be-d1-80-d0-b6/> (in Russian).

³¹ Articles 19 and 21 of the International Covenant on Civil and Political Rights.

³² See <https://spring96.org/en/news/92722>.

events. Another environmental activist was detained with his son and charged with trafficking in ammunition. The prosecution was later terminated owing to a lack of evidence.³³ The Special Rapporteur is concerned that arbitrary arrests are used as a tool to intimidate civil society and to prevent people from exercising their legitimate right to freedom of peaceful assembly.

40. The protests around the parliamentary elections in November 2019 and against “deeper integration” with the Russian Federation in December 2019 provoked another wave of arrests and detentions. Unauthorized meetings in support of the territorial integrity of Belarus had a peaceful character and were not forcibly stopped by the police during the protests. The organizers and participants were neither detained during the protests nor immediately afterwards. However, a total of 109 court rulings were handed down under article 23.34 of the Code of Administrative Offences for illegal protesting, resulting in 87 persons being fined and 5 being sentenced to administrative detention.³⁴ Suppressive tactics are not only applied to protesters, but also to journalists, bloggers and those expressing critical opinions. The repeated arrests of the activist and blogger Dzmitry Kazlou, who faced a total of eight charges under article 23.34 and was sentenced to a total of 120 days in detention,³⁵ testify to the intimidation tactics applied by the Belarusian authorities. The detention of journalists and activists for an indefinite period of time on renewed charges implies that persecuted persons are made to live under constant distress and fear of retaliation.³⁶

41. The Special Rapporteur deplores the fact that several journalists and bloggers continued to be detained systematically for participating in activities that were critical of the Government. Andrei Pavuk was arrested on 20 March 2019 for allegedly sending a fake bomb threat to the local government via email.³⁷ He was later cleared of the charges. Siarhiej Piatruchin, a blogger, was heavily fined and found guilty of defamation and insult under the articles 188.2 and 189.2, respectively, of the Criminal Code of Belarus.³⁸ These charges were filed against Mr. Piatruchin for uploading videos to the Internet of the alleged involvement of police officers in the beating of Pavel Kaminski in 2016. Another blogger, Aliaksandr Kabanau, was charged under article 211.1 of the Criminal Code for embezzlement, involving the alleged misappropriation of 440 Belarusian roubles (approximately \$200) in 2017, while serving as a chairperson of a housing cooperative. The charges against Mr. Kabanau were dropped in December 2019 for a lack of corpus delicti.³⁹ These charges are considered by human rights activists to be acts of intimidation.

42. The Special Rapporteur strongly condemns the alleged cases of arbitrary arrest and detention, and inhuman treatment, of Roma people by law enforcement officers in Mogilev on 16 May 2019, following claims that a police officer had been murdered.⁴⁰ These include allegations of the mistreatment of women, children and the elderly. According to available information, approximately 100 Roma were apprehended, of whom 50 were subsequently detained. The detentions were conducted with the use of excessive force, alongside threats and intimidation.⁴¹ The detained remained in custody for three days and were later released with no charges.⁴² It was reported that the Roma community of Belarus received informal apologies from the Head of the Administration of the President, Natalia Kachanova, who promised that all the complaints and appeals against police actions would be reviewed.⁴³

³³ See <https://charter97.org/en/news/2019/10/9/351237/>.

³⁴ See <http://spring96.org/en/news/95897>.

³⁵ Ibid.

³⁶ See <http://spring96.org/en/news/95785>.

³⁷ See <https://baj.by/ru/content/po-faktu-lzheminirovaniya-v-oktyabrskom-zavedeno-ugolovnoe-delo-blogger-andrey-pauk-zaderzhan> (in Russian).

³⁸ See <https://naviny.by/new/20190820/1566290643-sudebnye-ispolniteli-arestovali-imushchestvo-blogera-sergeya-petruhina> (in Russian).

³⁹ See <http://spring96.org/en/news/93408>.

⁴⁰ Communication AL BLR 7/2019, 21 October 2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24895>.

⁴¹ See <https://naviny.by/new/20190531/1559300498-massovye-zaderzhaniya-cygan-v-mogileve-delom-zanyalas-genprokuratura> (in Russian).

⁴² See <http://spring96.org/ru/news/93339> (in Russian).

⁴³ See <https://naviny.by/new/20190523/1558638773-kochanova-po-vsem-zhalobam-mogilevskih-cygan-budet-provedeno-razbiratelstvo> (in Russian).

However, on 25 June 2019, a representative of the General Prosecutor's Office of Belarus announced that the law enforcement officers proceeded correctly and proportionately during the operation. The Special Rapporteur notes that this case is a clear example of racial profiling by law enforcement against Roma through such measures as arbitrary detention, and she deplores the lack of accountability and legal redress mechanisms for such violations.

43. The Special Rapporteur remains concerned that enforced disappearances are still not prohibited by the Criminal Code of Belarus. Such cases are investigated either as murders or regular cases of missing persons, and victims are considered missing or are not afforded any legal status. Criminalizing enforced disappearances would establish a specific legal status for victims of the crime, and allow for procedures that are sufficiently serious, given the gravity of the offence. This issue is relevant today in relation to the enforced disappearance of Yuriy Zakharenko, who has neither been declared missing nor presumed dead. Such criminalization would also entitle his family members to certain rights, as the disappearance of the family member entails a violation of civil, political, economic, social and cultural rights. To date, Belarus has not signed the International Convention for the Protection of All Persons from Enforced Disappearance.

44. On 18 December 2019, criminal investigations were resumed in the cases of enforced disappearance of Mr. Zakharenko, Victor Honchar and Analoliy Krasovskiy. Those investigations had previously been suspended because suspects could not be identified. The reopening of the investigations followed the publication on 16 December 2019, by *Deutsche Welle*, the German public broadcaster, of an interview with a former member of the Belarusian special rapid response unit. That person, now in exile, disclosed that in the period 1999–2000, agents of the unit had abducted and killed Mr. Zakharenko, Mr. Krasovskiy, Mr. Honchar and Dmitriy Zavadski. The Special Rapporteur regrets that the Investigative Committee refused to resume the investigation into the alleged enforced disappearance of Mr. Zavadski. She is concerned by the apparent lack of independent, impartial and effective investigation into these allegations of enforced disappearances and reiterates that relatives of the victims have the right to the truth, and to a prompt, effective remedy and reparation.

B. Civic space and fundamental freedoms

1. Freedoms of peaceful assembly and of association

45. During the reporting period, the freedom of peaceful assembly remained highly restricted. While amendments to the Law on Mass Events that came into force on 26 January 2019 introduced a notification procedure for assemblies, de facto they failed to liberalize the procedures. According to the Law, notification procedures apply only to events organized in previously designated remote areas, whereas the authorization of local authorities is still required for holding an event in places that are more central or visible to the wider public. Moreover, organizers of assemblies have to bear all costs related to holding an assembly, including costs for security, cleaning, medical assistance and other services.⁴⁴ This acts as a disincentive that effectively limits freedom of peaceful assembly. The Special Rapporteur is extremely concerned about the fact that this approach contradicts the State's positive obligation to facilitate and protect the exercise of the right to freedom of peaceful assembly, which as she stressed in her previous report is particularly important during a pre-election period. She encourages the Government of Belarus to adopt a more tolerant approach during the upcoming election campaign, so as to guarantee that all presidential candidates and their supporters have an equal standing in terms of presenting their programmes to voters.

46. The Law on Mass Events includes certain discriminatory provisions. Only adult citizens of Belarus who have the right to vote are entitled to organize a mass event. This means that children, foreigners, immigrants and people who do not have legal capacity

⁴⁴ The following costs for public order protection were established by the Council of Ministers: involvement of police in a mass event with 100 to 1,000 participants costs approximately \$1,700, and an event with more than 1,000 people costs approximately \$2,800. If public events are held in places that are not listed by authorities as appropriate, the rates are increased by 50 per cent.

cannot organize a peaceful assembly. Individuals who violate the restrictive legislation on mass events are forbidden from taking part in the organization of mass events for one year thereafter, which effectively constrains the possibility for protesters to exercise their right to freedom of peaceful assembly.

47. Before, during and after the parliamentary elections, held on 17 November 2019, the number of unauthorized, yet peaceful, protests in the city centre of Minsk increased.⁴⁵ During that period, the authorities continued the practice of preventive detentions and the issuing of warnings to potential participants of peaceful assemblies. Following the assemblies, at least 70 protesters were charged with fines totalling more than \$25,000, and 12 protesters were subjected to administrative detention of 5 to 15 days.⁴⁶ Some protesters were charged repeatedly. In response, civil society mobilized and organized crowdfunding campaigns to cover fines for those who could not pay. In at least two cases, legal representatives of administrative detainees were not allowed to visit them, allegedly owing to a lack of available premises for such meetings. The Special Rapporteur stresses that this practice has a chilling effect on civil society and discourages people from exercising their legitimate rights.

48. At the same time, the Special Rapporteur welcomes the fact that, on 31 August 2019, LGBTIQI activists were able to hold a demonstration in Minsk, which was the first time since 2014. While the demonstration was not authorized by the authorities, the police did not disrupt this mass event, and no one was reported to have been apprehended or fined as a result of participating in it.

49. In terms of the right to freedom of association, the Special Rapporteur welcomes the amendments to the Criminal Code of Belarus that repealed article 193.1, which imposed criminal liability for participation in an unregistered organization. However, the introduction of an administrative liability for this activity still significantly restricts freedom of association. According to article 23.88 of the Code of Administrative Offences, participation in an unregistered organization results in an administrative penalty in the form of a fine in excess of \$500, which could be a significant financial burden for civil society organizations.

50. The Special Rapporteur remains concerned that registration procedures remain cumbersome and hinder non-governmental organizations and their activities. While the number of registered organizations increased in 2019, compared with 2018, the number of registered human rights organizations, youth groups and political parties remained low, and some applicants continued to experience arbitrary obstacles and discrimination upon trying to register their associations. The Special Rapporteur remains particularly concerned about the fact that despite repeated attempts, no new political party has been registered in Belarus since 2000.⁴⁷

51. In 2019, the number of registered youth organizations significantly decreased as a result of the restrictive governmental approach. Some civil society organizations were forcefully shut down, including the Belarusian National Youth Council (“RADA”), the Belarusian Student Alliance, and Gay Belarus. Despite this, some organizations continue their work with or without official registration and are still fully recognized internationally, thanks to the support of the international community and international bodies.

2. Freedom of opinion and expression

52. During the reporting period, freedom of opinion and expression continued to be severely restricted in Belarus. Article 17.11 of the Code of Administrative Offences

⁴⁵ On 15 November 2019, approximately 200 protesters participated in the so-called “Meeting of Free People”. Police did not disrupt the protest but four activists were apprehended by police ahead of the protest. In addition, in Minsk on 8, 9, 20 and 21 December 2019, there were protests against closer integration between Belarus and the Russian Federation. The largest of the four protests, held on 20 December 2019, was attended by over 1,500 people. Before it began, police warned people against participation in the unauthorized protest, and activists were apprehended before and after the event.

⁴⁶ See <http://spring96.org/en/news/95744>.

⁴⁷ The Belarusian Communist Party of Workers had seven failed attempts to register; the Party of Freedom and Progress had five; and the Belarusian Christian Democracy had seven, the last of which was made in April 2018.

penalizes the distribution, production, storage or transportation of extremist information. The Special Rapporteur is concerned about the systematic practice of applying this article to activists, journalists and bloggers who criticize the Government and voice dissenting views. According to reports, in 2019 there were 13 documented cases of suppression of expression of political views that were not in conformity with the political line of the Government.⁴⁸

53. Prosecution and persecution of independent journalists, bloggers and journalists working for foreign media continued during the reporting period. The Minsk office of the “Belsat” television channel, which is officially registered in Poland and is considered to be one of the independent Belarusian television networks, endured targeted attacks in April 2019. The Belsat office was searched as part of an investigation on charges of libel.⁴⁹ The Special Rapporteur is concerned that the charges brought against the channel are intended to silence it and pressure its journalists into self-censorship.

54. Also of concern are reports that independent journalists cooperating with and working for foreign media are prosecuted under article 22.9 of the Code of Administrative Offences. Under this article, it is illegal to receive financial rewards from media that are not duly registered and accredited in Belarus. Two journalists working for Belsat were fined for “illegal production” and “distribution of media products” on the basis of article 22.9.⁵⁰ According to reports, in 2019 there were at least 45 cases of arbitrary imposition of administrative penalties against journalists and bloggers under that article, with penalties totalling over \$20,000.⁵¹ In a separate case, two independent journalists were reportedly fined for coverage of the protests against the construction of a battery plant in Brest, and for interviewing locals, thereby contributing to the “illegal production and distribution of media products” for Belsat.⁵² The Special Rapporteur is concerned that the current legislation in Belarus is being used to shrink the space for dissenting views and to prevent journalists, bloggers and whistle-blowers from reporting on unwanted topics in the future.

55. During the reporting period, law enforcement authorities arbitrarily applied the anti-extremist legislation, which regulates the distribution of extremist materials, against journalists. Individuals whose posts on their personal social media pages are considered as “anarchist” or “extremist” are sanctioned with fines. Since 2007, the Ministry of Information of Belarus has been responsible for maintaining a list of extremist materials; the list was last updated in December 2019 and now consists of 153 items.⁵³ Sharing any content from websites included in the list of extremist materials, even if it does not include any signs of extremism, constitutes an offence. The Special Rapporteur notes that the term “extremist” lacks legal certainty and that the legislation is being instrumentalized to silence dissenting views.

3. Freedom of religion and belief

56. According to the Law on Freedom of Conscience and Religious Organizations, religious communities are required to register a religious organization in each city where 20 or more members of the community reside. Otherwise, the religious activity is considered illegal. The Special Rapporteur is concerned about cumbersome regulation and extensive control over the registration and activity of religious communities. The fact that members of minority religious communities are subject to administrative limitations, while foreign priests – notably Catholic ones – are threatened with expulsion in cases of minor infractions, is particularly worrying.

57. The Special Rapporteur notes that the current registration requirement of religious organizations appears to be used to limit the right to freedom of religion or belief of members of certain religious communities. As at 1 January 2019, a total of 3,375 religious

⁴⁸ “Human rights situation in Belarus in 2019: analytical review”, p. 13. Available at <http://spring96.org/en/news/95744>.

⁴⁹ See <https://baj.by/en/content/minsk-police-raid-and-search-belsat-office-slander-charges-office-has-been-crushed>.

⁵⁰ See <https://charter97.org/en/news/2019/5/16/334236/>.

⁵¹ See <http://spring96.org/en/news/95744>.

⁵² See <https://baj.by/en/content/belarus-authorities-set-make-us-stop-contributing-belsat-journalist>.

⁵³ See <http://mininform.gov.by/documents/respublikanskiy-spisok-ekstremistskikh-materialov/>.

communities were registered in Belarus within 25 religious denominations.⁵⁴ Certain communities, such as the Jehovah's Witnesses, continued to face rejections in registration, on dubious formal or technical grounds. Denial of registration implies that members of the said religious community have to organize meetings in private homes, which are deemed unauthorized and therefore illegal.⁵⁵ According to reports, one Minsk Pentecostal Church received its ninth rejection of registration in July 2019.⁵⁶

58. The Special Rapporteur is concerned about the amendments to the regulation of participation in religious activities, including meetings for worship, that came into force on 18 July 2019. The former article 193.1 of the Criminal Code, which punished the participation in unregistered religious activities, was abandoned. The newly introduced article 28.88 of the Code of Administrative Offences prohibits the illegal organization of an activity by an unregistered political party, foundation, civil or religious organization, and also prohibits participation in such an activity. The article allows law enforcement bodies to issue summary fines of up to \$630 without court hearings.⁵⁷ The Special Rapporteur stresses that such a punitive approach interferes with the enjoyment of the right to freedom of religion or belief, which is not limited to registered religious groups and must be guaranteed to all without discrimination.

C. Economic, social and cultural rights

1. Right to health

People living with HIV

59. Within the framework of the Sustainable Development Goals and Agenda 2030, Belarus supported the Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030, and committed itself to work with the international community towards that goal. In order to act on that commitment, the Government developed a programme entitled "Health of the nation and demographic security for 2016–2020", which was aligned with the Sustainable Development Goals and indicators. The Special Rapporteur notes that Belarus made great strides in preventing the transmission of HIV from mothers to children, with no new cases in 2016.⁵⁸ According to available data, during the period January–September 2019, the number of new cases of HIV decreased by 9.7 per cent compared with the same period in 2018.⁵⁹ However, Belarus still rates high in terms of the number of new incidents, and some categories of persons are particularly vulnerable owing to delayed diagnosis and lack of treatment.

60. While acknowledging progress in combating the spread of HIV, the Special Rapporteur is concerned that certain practices and policies lack a human rights-based approach. The prevalence of prejudice, stigma and discrimination towards people living with HIV continues to discourage people from seeking a diagnosis or receiving health assistance, including from official health-care providers. In particular, the Special Rapporteur is concerned about the lack of informed consent and medical confidentiality, mandatory testing for HIV for certain groups, and policies that oblige health-care workers to report certain groups, such as sex workers and people who use drugs, to law enforcement authorities. Furthermore, criminal and administrative penalties for vulnerable groups, including sex workers and people who use drugs, discourage them from receiving the necessary medical assistance in case of HIV infection.

⁵⁴ See www.belarus21.by/Articles/kolichestvo-religioznyh-obshhin-v-respublike-belarus-na-1-yanvary-2019-g (in Russian).

⁵⁵ "Belarus: religious freedom issues – statement by the European Association of Jehovah's Witnesses", pp. 4–5. Available at <https://osce.org/ru/odihr/431009?download=true>.

⁵⁶ See http://forum18.org/archive.php?article_id=2507.

⁵⁷ Ibid.

⁵⁸ Joint United Nations Programme on HIV/AIDS, "WHO validates elimination of mother-to-child transmission of HIV and syphilis in Armenia, Belarus and the Republic of Moldova", press release, 7 June 2016.

⁵⁹ See www.belaid.net/epidsituaciya-po-vichspid-v-belarusi/ (in Russian).

61. Of particular concern is the continuous practice of criminalization of HIV transmission. While the Government partly addressed this issue on 19 July 2019, when the notorious article 157 of the Criminal Code of Belarus on the transmission of HIV was amended,⁶⁰ the number of prosecutions for transmission in Belarus remains worryingly high. The amended article 157 still includes a provision on criminal liability for knowingly exposing another person to HIV, even in cases where there was only a perceived risk of transmission but no transmission actually occurred. The Special Rapporteur stresses that the criminalization of HIV does not change behaviours or the rate of transmission, and disproportionately affects vulnerable categories of people.

Access to adequate health care in detention facilities

62. According to article 45 of its Constitution, Belarus is committed to the principle of universal access to health care, in particular free treatment at State health-care institutions. However, people held in detention facilities do not have adequate access to quality health care. The Special Rapporteur is concerned about the lack of qualified medical staff, as well as the lack of independence and impartiality of medical staff, in detention facilities.

63. In Belarus, medical services and staff at detention facilities are segregated from mainstream health-care practitioners. This is because they fall under the jurisdiction of the penitentiary system and, ultimately, of the Ministry of Interior (Department of Sentence Enforcement), and not under the jurisdiction of the Ministry of Health. Therefore, decisions on health-care matters are made by penal administrators instead of independent health-care actors. The Special Rapporteur was informed of cases when, owing to the low quality of medical assistance in detention facilities, the health of prisoners had deteriorated and had resulted in disability.⁶¹ The Special Rapporteur stresses that being deprived of their liberty, prisoners rely fully on the State's provision of health care, and it is the responsibility of the State to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

64. Of particular concern is access to health care for children in detention facilities. The Special Rapporteur received first-hand information about extremely poor hygiene and nutrition, including the unavailability of basic nutrients, including milk products and animal proteins, that are necessary to a child's healthy development. The penitentiary authorities forbid families from providing inmates with medicine and vitamins, and this limitation extends to detained minors, in violation of their right to be treated in a manner that takes into account the needs of persons of their age.

Access to adequate health care for members of armed forces

65. According to reports, the quality of health care provided for members of the armed forces is low. Of a separate concern are the health assessments of potential recruits and the practice of recruiting persons who are in poor health. The Special Rapporteur was informed that in some cases, recruits with serious health conditions did not receive a waiver and were recruited to the armed forces, which led to the deterioration of their health and, in one case, led to death. The Special Rapporteur notes that the State is responsible for providing adequate health care for members of its armed forces, including quality medical assistance, adequate living conditions and appropriate food, in line with the international human rights obligations of Belarus.

2. Right to work

Women

66. Women continued to face gender discrimination and stereotyping at work throughout the reporting period. According to recent studies, 89.6 per cent of women in

⁶⁰ The revised article 157 of the Criminal Code of Belarus decriminalized the transmission of HIV or exposure of a person to HIV by another person when the person exposed or infected had been warned in advance that the other person had HIV and, having been advised, knowingly agreed to acts that led to HIV exposure.

⁶¹ See <https://timeact.org/platon-mne-drug.-no-zhizn-lyudej-dorozhe.html>.

Belarus are subjected to various forms of discrimination in the employment sphere.⁶² Even though the gender pay gap decreased to 24 per cent in 2019, compared with 25 per cent in 2017, it continued to be high.⁶³ This is because women are traditionally overrepresented in such sectors as social security, catering, and culture and arts, which offer lower wages than sectors such as science, technology and engineering, which are predominantly occupied by men. According to available data, Belarusian women are most often discriminated against when applying for a job. The most vulnerable categories are childless women under 35 years old, including both married and single women; women with children under the age of 10; and women on maternity leave.⁶⁴

67. Moreover, in Belarus women are discriminated in terms of access to certain sectors of employment.⁶⁵ The State List of heavy work and work with harmful and/or hazardous working conditions prohibits the recruitment of women⁶⁶ in 181 professions that are considered unsuitable. The Special Rapporteur welcomes the shortening of the list from the previous 252 positions. However, she remains concerned that the existence of the list is justified as a measure to protect women's reproductive and maternal health. This argument *de facto* restricts the access of all women, including non-pregnant and non-breastfeeding women, as well as transgender women, to specific job opportunities.⁶⁷ Certain types of work schedules – including nighttime and overtime work, work on public holidays and weekends, and business trips – are also either prohibited or restricted for some categories of women. During its last review of Belarus, the Committee on the Elimination of Discrimination against Women expressed concern about persistent discrimination against women in employment and about the Labour Code, which included a list of a significant number of professions prohibited to women. The Committee recommended that Belarus review the list and ensure that it covered only those restrictions that were absolutely necessary for the protection of maternity in the strict sense.⁶⁸ Implementation of this recommendation by Belarus is still pending.

68. The Special Rapporteur is particularly concerned about access of women to employment opportunities in rural areas. Owing to a lack of job opportunities, the predominance of low-paid jobs and limited accessibility of preschool education, women are frequently forced to stay at home to take care of children and the household. The Special Rapporteur notes that discrimination against women in terms of their access to the labour market has a negative impact on their economic independence and resilience. Gender equality, in particular the empowerment of women, closing the gender gap and creating a more equal society, is central to implementing Agenda 2030 and achieving the Sustainable Development Goals.

Persons with disabilities

69. In terms of access to employment for persons with disabilities, the Special Rapporteur welcomes the development of the draft law on the rights of persons with disabilities and their social integration.⁶⁹ The draft law includes education and labour rights for persons with disabilities that could strengthen protection of this vulnerable group in the employment sphere, in line with the Convention on the Rights of Persons with Disabilities, ratified by Belarus in 2016.

70. Nonetheless, the Special Rapporteur is concerned about remaining barriers to employability of persons with disabilities, including through structurally discriminatory practices and a lack of inclusive and accessible working environments. Reportedly, only 20

⁶² See https://genderperspectives.by/images/PolNePotolok/_----.pdf (in Russian).

⁶³ Alex Kremer, "Has Belarus really succeeded in pursuing gender equality?", 7 August 2018. Available at <https://blogs.worldbank.org/europeandcentralasia/has-belarus-really-succeeded-pursuing-gender-equality>.

⁶⁴ See https://genderperspectives.by/images/PolNePotolok/_----.pdf (in Russian).

⁶⁵ See <https://nash-dom.info/52952> (in Russian).

⁶⁶ See <https://mshp.gov.by/ohrana/ff7555d0abe25acf.html> (in Russian).

⁶⁷ See www.eeprava.by/document/spisok-zapreshennyh-professij/ (in Russian).

⁶⁸ CEDAW/C/BLR/CO/8, paras. 32–33.

⁶⁹ See <http://pravo.by/document/?guid=3941&p0=2019087001> (in Russian).

per cent of working-age persons with disabilities in Belarus are employed.⁷⁰ Moreover, medical commissions assessing disabilities take restrictive approaches. For instance, the Special Rapporteur was informed about the case of a person with a mental health condition who, despite being able to do physical work, was not granted permission to work at a factory where she had received an offer for employment. Such practices add to the vulnerability of persons with disabilities and prevent them from making a meaningful contribution to the economic, social and cultural development of the communities they live in.

Roma

71. The Roma community continues to face discrimination in access to the labour market. There are reports that Roma applicants who have sufficient educational and professional qualifications have been denied jobs, allegedly owing to strongly rooted stereotypical perceptions that are frequently reinforced by the media and the authorities.⁷¹ Such practices further stigmatize the Roma community, resulting in exclusion, extreme poverty and social isolation.

Forced labour

72. According to the Constitution and Criminal Code of Belarus, forced labour is prohibited. Article 42 of the Constitution of Belarus also guarantees a minimum wage and equal remuneration for the work performed. However, certain elements of forced labour remain within the legislation and policies of Belarus. The Human Rights Committee reiterated its concern over such practices in its concluding observations on the fifth periodic report of Belarus in 2018 (CCPR/C/BLR/CO/5). Regrettably, these concerns have not yet been addressed by the Government.

73. The Special Rapporteur notes that forced labour is applied systematically in Belarus and disproportionately targets vulnerable categories of people, including employees of State-owned enterprises and administrations, students, people held in so-called labour treatment centres, prisoners and army conscripts. According to available information, approximately 40,000 people are subjected to occasional or partial forced labour in Belarus.⁷²

74. The Special Rapporteur reiterates the concern that the majority of persons working in public service, who are especially vulnerable to forced labour, have short-term labour contracts that subject workers to pressure and self-censorship, and that effectively discourage any criticism of established labour practices.⁷³

75. Some of the frequently used practices of forced labour are the obligation to participate in harvesting and in street-cleaning activities ahead of public national holiday ceremonies. On 20 April 2019, thousands of people were strongly encouraged by the Government to participate in the republican *subbotnik* (term used to describe the day devoted for cleaning activities). In Minsk alone, 700,000 people took part in *subbotnik* activities on that day.

76. One of the vulnerable categories of people systematically subjected to forced labour are people held in detention facilities. According to article 100 of the Criminal Law Enforcement Code of Belarus of 11 January 2000, all persons deprived of their liberty are entitled to receive remuneration for their work, which shall not be lower than the set minimum wage in Belarus. The official minimum wage rate in Belarus as of January 2020 is 375 Belarusian roubles per month (\$177). Meanwhile, according to information received, prisoners' wages in different penal colonies vary from 1 to 300 Belarusian roubles per month. Most testimonies seem to indicate that the average monthly wage of a prisoner in Belarus is around 25 Belarusian roubles (\$10). Prisoners and people held in so-called labour therapy centres are especially vulnerable since they cannot choose the work they

⁷⁰ See Aliaksandr Audzevich, "Creating inclusive workplaces for people with disabilities in Belarus", 28 November 2019.

⁷¹ See <https://belsat.eu/ru/programs/kak-zhivut-v-belarusi-romy/> (in Russian).

⁷² See <https://matuli.org/2840> (in Russian).

⁷³ A/HRC/23/52, paras. 103–107; and A/HRC/32/48, para. 119.

perform and there are no effective complaint mechanisms. In addition, if they refuse to work, they face sanctions.

77. The Special Rapporteur notes that owing to suppressive policies towards independent trade unions, workers cannot effectively defend their rights, and those who proactively try to do so may face retaliation. She adds that this perpetuates anti-union policies and other violations of labour rights.

Discrimination against unemployed persons

78. The Special Rapporteur continues to be concerned about the practice of systematic discrimination against unemployed persons.⁷⁴ According to the presidential decree No. 1, on the promotion of employment of the population, also known as the “anti-parasite law”, persons who are included on this list of able-bodied unemployed citizens have to pay for State-subsidized services, such as gas, heating and hot water, at their full cost. According to available statistics, approximately 500,000 persons are on this list.⁷⁵ The Special Rapporteur reiterates that the decree discriminates against persons who are not able to find employment owing to health conditions or due to the fact that they take care of their elderly relatives. The Special Rapporteur was informed about the case of a woman who took care of her elderly parents and therefore could not engage in the formal employment. As a result, the woman was included on the list, faced stigma and had to pay full cost for services. Several human rights defenders and workers of unregistered civil society organizations have also been included on this list.

3. Right to cultural life

Discrimination against the Belarusian language

79. According to available statistics, 48 per cent of Belarus citizens consider the Belarusian language to be their mother tongue. However, only 3 per cent of the population claims to use the Belarusian language at home and in their everyday interactions.⁷⁶ The Special Rapporteur is concerned about the limited use of the Belarusian language in education and in cultural activities. While acknowledging the existence of national programmes in support of the Belarusian language, she regrets that in practice not enough is done to protect and promote it. The Belarusian language is underrepresented in all public spheres. There is a widespread perception that the Belarusian language cannot be used in technical, medical, economic, legal and other contexts. According to the Constitution of Belarus, both Russian and Belarusian are recognized as official languages; however, speakers of Belarusian are being systematically discriminated against in most public institutions.

80. Of particular concern is discrimination against speakers of Belarusian in education. Higher and secondary specialized education is provided solely in Russian, with the exception of specific studies of Belarusian philology. After the President of Belarus declared that there was no need for a university whose language of instruction was Belarusian, it was unclear whether the university that was recently registered in Minsk would receive the necessary licence and start operating. Furthermore, according to recent statistics, only 10 per cent of secondary schools offer an educational programme in the Belarusian language and only 1.6 per cent of schools in cities do so. This contributes to a division in terms of the use of the Belarusian language between cities and rural areas. Options for preschool education in Belarusian are very limited. For instance, in Minsk there are only two kindergartens which operate in Belarusian. These concerns were raised by the Committee on Economic, Social and Cultural Rights in its concluding observations on the combined fourth to sixth periodic reports of Belarus. The Committee’s recommendations in this regard still remain unaddressed.⁷⁷

81. The Special Rapporteur reiterates that restrictions on receiving education in the Belarusian language, along with the limitations on the use of the language in public life and

⁷⁴ A/HRC/41/52, paras. 77–78.

⁷⁵ See <https://charter97.org/ru/news/2018/12/2/315016/> (in Russian).

⁷⁶ See www.kp.by/online/news/3381149/ (in Russian).

⁷⁷ E/C.12/BLR/CO/4-6, para. 29.

in the media, put the language under threat of significant decline or disappearance. She encourages the Government of Belarus to commit itself to the protection and promotion of all minority languages in the country.

Participation in cultural life

82. The Special Rapporteur notes that discrimination against the Belarusian language in the public sphere has a negative effect on everyone's ability to take part in cultural life, which is guaranteed by article 15 of the International Covenant on Economic, Social and Cultural Rights. According to information received, owing to continuous discrimination of the Belarusian language in the public and cultural spheres and in the media, the population of Belarus has a very low level of awareness about Belarusian literature and culture. According to a survey conducted by the Union of Belarusian writers in the period 2017–2018, a total of 92 per cent of respondents were not able to name any contemporary Belarusian writer.

83. Moreover, the Special Rapporteur is concerned about censorship in the cultural sphere and the restriction of freedom of speech of artists. Outspoken representatives of the cultural sphere face artificially created obstacles in the exercise of their artistic freedoms if their work promotes equality and fundamental freedoms. According to information received, the authorities have so-called black lists of artists, writers and other representatives of the cultural sphere who should not be allowed to organize public events and whose names should not be mentioned in the media. For instance, on 6 June 2019, a Belarusian artist-performer was detained in Belarus after a performance in defence of the Belarusian language. The court found him guilty of holding an unsanctioned event and disobeying a police officer; he was subsequently fined 204 Belarusian roubles (\$90).⁷⁸ In another case, in April 2019, authorities denied touring certificates to a musician owing to the alleged "low artistic level" of his music. The Special Rapporteur stresses that cultural life must be characterized by freedom and authorities should not interfere with the exercise of cultural practices.

84. Of particular risk is the enjoyment of artistic freedoms by representatives of the LGBTQI community. The Special Rapporteur received a number of reports suggesting that during the reporting period, LGBTQI artists had been restricted in their ability to express social and political statements through the arts. Moreover, State authorities continued to use homophobic statements in their official capacity. On 4 May 2020, the Ministry of Interior issued a statement on its website that argued that artificial promotion of the theme of same-sex relationships was destructive, violating moral norms and leading to an increase in sexual offences against children.⁷⁹ The Special Rapporteur is concerned that while exercising public functions and utilizing public resources, officials engaged in acts that could be qualified as incitement to discrimination based on sexual orientation and gender identity, for which they should be held accountable.

IV. Conclusions and recommendations

85. **The Special Rapporteur regrets the continuous policy of non-engagement with the mandate and hopes that this position will be reconsidered. Engagement with the mandate is a real opportunity for Belarus to show its willingness to reflect on human rights issues and engage with United Nations special procedures for the purposes of improving the human rights situation.**

86. **The Special Rapporteur regrets the lack of meaningful progress towards the protection of human rights in Belarus. Even though there has been little change in the legislation since the last report, she also acknowledges that some advances are observable in practice. The engagement of Belarus with international human rights mechanisms is encouraging, and the Special Rapporteur is hopeful that the interest in meaningful, constructive engagement will increase.**

⁷⁸ See <https://belsat.eu/en/news/artist-ales-pushkin-detained-for-performance-event-against-russification>.

⁷⁹ See www.mvd.gov.by/ru/news/5372 (in Russian).

87. Most recommendations made in the previous reports of the Special Rapporteur have not been implemented and remain valid.

88. The Special Rapporteur further recommends that the Government of Belarus:

(a) Establish without undue delay an independent national human rights institution, which fully complies with the Paris Principles;

(b) Adopt comprehensive anti-discrimination legislation that would afford comprehensive protection against discrimination on all the grounds prohibited under the International Covenant for Civil and Political Rights and provide effective remedies for discrimination;

(c) Elaborate and adopt a new inter-agency Human Rights Action Plan that identifies steps whereby Belarus could improve the promotion and protection of human rights;

(d) Introduce a moratorium on the death penalty as an initial step towards its abolition and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

(e) Pending the abolition of the death penalty, ensure that the death penalty is not imposed in violation of the International Covenant on Civil and Political Rights, provide an effective right to appeal against death penalty sentences, and ensure that family members of persons convicted and sentenced to death are informed about the date and place of the execution, and are also informed about the place of burial;

(f) Ensure that all allegations of torture and ill-treatment are promptly, effectively, thoroughly and impartially investigated, and that perpetrators are prosecuted and reparations are provided to victims;

(g) Develop and integrate into the Criminal Code of Belarus a specific definition of torture that is in conformity with international human rights standards and is punished with sanctions; provide regular training to prosecutors, the judiciary and law enforcement bodies on issues related to the provisions of the Convention against Torture; provide staff and medical professionals with full information for identifying signs of torture and ill-treatment, in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(h) Adopt legislative changes to criminalize enforced disappearance effectively;

(i) Conduct impartial, independent and effective investigations into the fate and whereabouts of Yuriy Zakharenko, Analoliy Krasovskiy, Victor Honchar and Dmitriy Zavadski;

(j) Ensure that the families of Mr. Zakharenko, Mr. Krasovskiy, Mr. Honchar and Mr. Zavadski have access to a prompt and effective remedy and to reparations, including rehabilitation, satisfaction and guarantees of non-repetition;

(k) End the practice of criminal and administrative sanctions against persons organizing, calling for or participating in peaceful assemblies; exclude single pickets from the scope of the Law on Mass Events;

(l) Review current registration procedures so as to ensure that individuals, public associations and political parties can exercise their right to freedom of association;

(m) Take measures to end racial profiling by law enforcement authorities and undertake prompt, effective and impartial investigations of all allegations of racial profiling;

(n) Lift all unnecessary restrictions in law and practice on the exercise of the rights to freedom of expression and opinion;

(o) Allow a diversity of opinions in the public sphere through free, uncensored and unhindered media, and end the harassment of independent journalists, bloggers and reporters working for foreign media;

- (p) Review existing registration requirements of religious communities in order to ensure the right of all persons to practice and manifest their religion or belief;
 - (q) Review legislation and policies and address social attitudes that effectively discriminate against and stigmatize people living with HIV;
 - (r) Improve access to and the quality of health care for prisoners, including minors, in detention facilities, increase the number of professional qualified medical staff in all detention facilities and ensure their independence and impartiality;
 - (s) Take all necessary measures to monitor, prevent and sanction acts of discrimination against women, persons with disabilities, Roma and other vulnerable groups in the area of employment; review the State List of heavy work and work with harmful and/or hazardous working conditions to ensure that it covers only restrictions that are absolutely necessary for the protection of maternity in the strict sense;
 - (t) Review legislation and policies that regulate non-voluntary work, in line with human rights standards outlined in articles 8 and 9 of the International Covenant on Civil and Political Rights, and ensure that prisoners and people held in so-called labour therapy centres receive the set minimum wage for their work;
 - (u) Take all necessary measures, including through the development of specific State programmes, to ensure that preschool, secondary and higher levels of education are meaningfully available in the Belarusian language and to promote a wider use of the Belarusian language in public and cultural life and in the media;
 - (v) Take all necessary measures to guarantee the peaceful enjoyment of cultural freedoms by various representatives of the cultural sphere in Belarus;
 - (w) Ensure preconditions for free participation in, and facilitation and promotion of, cultural life.
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