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Parallel report submitted to the 51st session of the Committee on Economic,
Social and Cultural Rights in relation to the second periodic report
submitted by:

Belarus

October 2013

Statement of Interest

1. The Equal Rights Trust (ERT) submits this parallel report to the United Nations Committee on Economic, Social and Cultural Rights (the Committee) providing information in relation to the second periodic report by Belarus
2. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. ERT has been actively involved in the promotion of improved protection from discrimination in Belarus since 2010. In the projects *Empowering Civil Society in Belarus to Combat Discrimination and Promote Equality* and *Empowering Civil Society to Advocate Collaboratively the Adoption of Anti-discrimination Legislation*, ERT has worked in partnership with the Belarusian Helsinki Committee (BHC), and trained and consulted with many other civil society organisations from across the country. In the course of this project, ERT has undertaken research on patterns of discrimination and inequality in Belarus and on the legal and policy framework in place to prevent discrimination and promote equality. This research is currently being compiled in a major report on addressing discrimination and inequality in Belarus, and is the basis for the recommendations made in the present parallel report.

4. This parallel report focuses on the extent to which Belarus has met its obligations to respect, protect and fulfil the rights to equality and non-discrimination. The submission is concerned with Belarus's performance under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (the Covenant), and with the impact which discrimination has on the enjoyment of economic and social rights protected by the Covenant. Thus, the submission reflects the importance which the Committee has placed on the need for effective protection from discrimination for the realisation of all Covenant rights:

Discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.

Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.¹

5. In assessing Belarus's adherence to its obligations under Article 2(2), this report relies on the interpretation of this Article which has been provided by the Committee in its *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*.² The submission also relies upon the Declaration of Principles on Equality,³ a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".⁴ It has also been endorsed by the Parliamentary Assembly of the Council of Europe.⁵
6. This report is divided into two parts. The first analyses the existing legislative framework related to equality in Belarus and highlights a number of gaps, weaknesses and deficiencies such that it does not meet the standards required by Article 2(2) of the Covenant. The second examines a number of rights protected under the Covenant where discrimination results in the denial of their effective enjoyment by different groups of persons in Belarus.

Part 1: Article 2(2): The Legal Framework Related to Equality

7. Under Article 2(2) of the Covenant, States Parties undertake:

(...) to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2009, Paras 1-2.

² *Ibid.*

³ *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

⁴ *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.

⁵ Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

8. In its list of issues in relation to the combined fourth, fifth and sixth periodic reports of Belarus, the Committee asked Belarus to indicate whether it intends to adopt a comprehensive anti-discrimination legislation addressing discrimination in all areas, prohibiting direct and indirect, as well as *de facto* and *de jure* discrimination, reflecting a comprehensive list of grounds for discrimination and providing for appropriate remedies to victims.⁶ ERT has found no evidence that Belarus intends to enact comprehensive anti-discrimination legislation.
9. Protection from discrimination in Belarus is provided by both the Constitution and provisions in a number of pieces of legislation. Article 22 of the Constitution of Belarus provides that: "All shall be equal before the law and have the right to equal protection of their rights and legitimate interests without any discrimination." In the absence of comprehensive anti-discrimination legislation, provisions prohibiting discrimination in particular areas of life are scattered across individual pieces of legislation specific to that area. Among the most significant of these are the Criminal Code and legislation in the area of employment.

Criminal Code

10. While Article 190 of the Criminal Code does not use the term "discrimination", it does establish liability for "violation of the equality of citizens". The Article prohibits the deliberate direct or indirect violation or limitation of rights and freedoms and the introduction of direct or indirect privileges which result in essential harm to the rights, freedoms and legitimate interests of citizens. Citizen is understood in the Article as referring to all people. The Article lists a number of grounds: sex, race, ethnicity, language, origin, property or official status, place of residence, relation to the religion, beliefs, and membership in civil society associations. Violations of Article 190 are punishable by a fine, corrective labour, restriction of liberty or imprisonment for up to two years, or deprivation of the right to hold certain posts or to be involved in certain activities.
11. As a criminal provision, Article 190 is formulated in such a way that it is necessary to prove intent. The Article also requires a claimant to prove the existence of "essential or significant harm", a concept which is not defined either the Article itself, or elsewhere in the Code.⁷ While these limitations are largely understandable in the context of criminal legislation, the closed and restricted list of grounds – omitting disability, sexual orientation and age, for example – is a cause for concern
12. Article 197 of the Criminal Code prohibits victimisation of persons making complaints about the state, including by implication complaints of discrimination. The Article prohibits the infringement of human rights, freedoms and legitimate interests by public officials in response to proposals, statements, complaints or criticisms addressed to state bodies or public organisations. The Article deals only with acts committed by public officials, though this is an important protection in respect of state-provided services such as education or healthcare, and employment in the public sector.
13. Article 64 of the Code provides for additional penalties in respect of hate crimes. Under the provision, motivation of a crime by racial, ethnic or religious hatred or discord, political or ideological hatred, or hatred or discord towards any social group, is defined as an aggravating

⁶ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the combined fourth, fifth and sixth periodic reports of Belarus (E/C.12/BLR/4-6)*, adopted by the pre-session working group at its fifty-first session (21-24 May 2013), UN Doc. E/C.12/WG/BLR/Q/4-6, 10 June 2013, Para 3.

⁷ Resolution of the Plenum of the Supreme Court (2004) in the context of judicial practice in cases of crimes against the interests of the service says that "substantial harm can be in violation of the constitutional rights and freedoms of citizens, undermining the authority of the government, state, civil society and other organizations, in violation of public order" (p. 19). Постановление Пленума Верховного Суда Республики Беларусь от 16 декабря 2004 года № 12 «О судебной практике по делам о преступлениях против интересов службы (ст.ст. 424-428 УК)», available at: <http://www.supcourt.by>.

circumstance. These aggravating circumstances may be taken into account in determining punishment, except in cases where such a circumstance is among the essential elements of an offense under the Criminal Code. Murder (Article 139) and intentional infliction of serious bodily injury (Article 147) are also subject to more severe punishment where there is an aggravating circumstance. Other provisions in the Criminal Code prohibit “intentional actions aimed at inciting racial, ethnic or religious hatred or discord, degradation of national honour and dignity” (Article 130), and the establishment or management of civil society associations or religious groups which encroach on the person, or rights and duties of citizens (Article 193)

Employment Legislation

Prohibition on Discrimination

14. The Labour Code prohibits direct discrimination in employment. Article 14 of the Code defines “discrimination” as:

[R]estrictions of labour rights, or receiving any privileges on the basis of sex, race, ethnic origin, language, religion or political belief, participation or non-participation in trade unions or other voluntary associations, property or professional status, or physical or mental disabilities, which do not hinder the performance of employment duties (...)

15. The definition is limited in a number of senses. The protection is limited to direct discrimination, defined only in relation to the enjoyment of labour rights or benefits. In addition, the list of prohibited grounds for discrimination is closed and does not include, for example, age or sexual orientation.
16. Article 14 provides that distinctions, exclusions, preferences or limitations will not be considered discrimination if they are: (1) based on the inherent requirements the job; or (2) required to provide special care to persons in need of social and legal protection (defined as women, children, persons with disabilities, persons affected by the Chernobyl disaster, etc.). In addition to prohibiting discrimination in the area of labour rights and benefits, Article 14 also provides that any discriminatory provisions in collective bargaining agreements are void. Article 23 states that any discriminatory provisions in employment contracts are void.
17. Under the Act, persons who believe that they have been discriminated against in the workplace may apply either to a quasi-judicial commission composed of equal numbers of trade union and employer representative or a court. Article 241 of the Code stipulates, however, that certain cases, including those relating to a failure to conclude an employment contract with a person on the basis of a protected ground, may only be considered directly by a court. When considering individual employment disputes, employees are exempt from paying of court fees.
18. In addition to provisions in the Labour Code, the Law on Foreign Labour Migration in Article 33 guarantees equal treatment for immigrant workers⁸ with nationals and foreigners permanently residing in Belarus. Equal treatment is required in both remuneration for work of equal value and statutory payments due to the loss of health, occupational disability or death because of accidents or illness at work.

⁸ Immigrant worker is a foreigner who does not have a permanent residence permit in the Republic of Belarus, who came to the Republic of Belarus for the employment and labor activity under an employment contract with the employer of the Republic of Belarus, or is engaged in such activities in the Republic of Belarus (Article 1 of the Law on the Foreign Labor Migration).

Reasonable Accommodation

19. The only requirement to provide any form of reasonable accommodation for disabled persons in employment relates to persons who acquired a disability through occupational injury or illness. Article 20 of the Law on Social Protection of Disabled Persons requires employers to create work placements for anyone in this position. Failure to create such work placements is an administrative offense under Article 9.15 of the Administrative Code. Article 20 also provides that, in certain circumstances, state funds may be used to compensate expenses incurred in order to create specialised work placements or to purchase special equipment for disabled persons. However, the Act does not establish a comprehensive duty to make reasonable accommodation for the needs of disabled persons.

Reservations

20. Belarusian employment legislation creates a system of reservations in employment for members of “vulnerable” groups. The system applies in both public and private employment, though it should be recalled that the Belarusian government directly controls much of the economy. The Labour Code requires that local executive and administrative bodies establish reservations in employment and training for first-time job seekers who are under the age of 21, former orphans and children left without parental care (Article 280). The Law on Social Protection of Disabled Persons provides reservation of jobs and the creation of specialised jobs for persons with disabilities (Article 20). The Law on Employment lists a number of groups – current and former orphans and children without parental care, parents of large families or single-parent families, parents of disabled children, disabled persons, persons freed from prison, first time job-seekers aged under 21 and persons close to retirement age – as in need of social protection. Among other things, the Act requires the creation of reservations in employment for these groups (Article 11).
21. The procedure for establishing reservation for socially vulnerable groups is set out in a special government decree adopted on 29 November 2006.⁹ According to this decree, local bodies on labour, employment and social protection, taking into account the assessment and forecast of employment in the region, and the information from the database of the unemployed among the target group, send a proposal to employers to set reservations and to create jobs. Employers analyse these proposals and inform the employment service about how many people and from which categories they can guarantee jobs and work placements (Section 4). Local bodies on labour, employment and social protection then develop draft decisions for local executive and administrative bodies on the establishment of reservations. These decisions must indicate: the identities of employers, the number of persons to be employed, and the minimum number of work placements to be created (Sections 5-6). Once these decisions are final, the relevant bodies inform the target group about opportunities available (Section 9). Employment under reservations can take place only on assignment from such bodies (Section 11). Unreasonable refusal to hire a person with an assignment for a job is an administrative offense (Article 9.16 (1) of the Code of Administrative Offences).

Additional guarantees.

22. In addition to reasonable accommodation and reservations, employment legislation provides additional guarantees for certain groups. Article 16 of the Labour Code prohibits “unreasonable refusal” to conclude an employment contract both with persons having a reservation, and with other groups. Thus, it is prohibited to refuse to conclude a contract with a woman on the

⁹ Постановление Совета Министров Республики Беларусь от 29 ноября 2006 года № 1595 «Об утверждении Положения о порядке установления брони для приема на работу граждан, особо нуждающихся в социальной защите и не способных на равных условиях конкурировать на рынке труда».

grounds that she is pregnant, has children under the age of three, or is a single mother of a child under the age of fourteen or a disabled child under the age of eighteen. As noted above, such a refusal to enter into an employment contract may be appealed in court. It should be noted that the Labour Code does not provide a similar guarantee for single fathers, a distinction which can be seen as direct gender discrimination. In addition, Article 199 of the Criminal Code prohibits unreasonable refusal to hire or dismissal of a woman because she is pregnant and manifestly unfair dismissal.

23. Articles 28, 276, 277 and 287 of the Labour Code establish a special regime of work and rest, and a ban on the use of probationary periods for certain categories of workers, such as the disabled and minors.

Other Non-discrimination and Equality Provisions

24. The Law on National Minorities in the Republic of Belarus¹⁰ prohibits direct or indirect violations of the rights and freedoms of citizens of Belarus based on their belonging to a national minority (Article 4). Article 6 guarantees those defining themselves as members of national minorities equality in political, economic and social rights and freedoms provided in Belarusian law. The Law also provides for: the right to receive assistance from the state for developing national culture and education; the right to use a native language, to choose a language for communication and to choose a language for upbringing and education; the right to establish mass media and to receive, store and disseminate information in native language; the right to establish cultural bonds with compatriots abroad; the right to practice or not practice any religion and to participate in religious cults, rituals, rites using a native language; the right to preserve historical and cultural and spiritual heritage and the right to free development of culture including professional and amateur art; the right to establish and join civil society associations; the right to freely elect and to be elected to state bodies on the basis of comprehensive, equal and secret voting; and the right to equal access to any offices in state bodies.
25. The Law on Languages in the Republic of Belarus¹¹ requires the state to provide for the comprehensive development and functioning of the Belarusian and Russian languages in all areas of public life (Article 2), a measure which could be considered a duty to accelerate progress towards equality between speakers of the two languages.
26. The Law on Social Protection of Disabled Persons in the Republic of Belarus¹² stipulates that State policy in the field of social protection of disabled persons is aimed at ensuring the rightful participation of disabled persons in society and is to be carried out on the basis of the principles of respect for human rights and prohibition of discrimination on the basis of disability (Article 4).
27. The Law on Disability Prevention and Rehabilitation of Disabled Persons¹³ provides the right of disabled persons to equal, respectful and non-discriminatory treatment by persons involved in the process of rehabilitation (Article 24).

¹⁰ Закон Республики Беларусь от 11 ноября 1992 года № 1926-XII «О национальных меньшинствах в Республике Беларусь».

¹¹ Закон Республики Беларусь от 26 января 1990 года № 3094-XI «О языках в Республике Беларусь».

¹² Закон Республики Беларусь от 11 ноября 1991 года № 1224-XII «О социальной защите инвалидов в Республике Беларусь».

¹³ Закон Республики Беларусь от 23 июля 2008 года № 422-3 «О предупреждении инвалидности и реабилитации инвалидов».

28. The Law on State Service of the Republic of Belarus¹⁴ refers to the principle of equal access in the civil service to any post and to any promotion in accordance with an individual's abilities, professional knowledge and education (Article 6).
29. The Law on Mass Information¹⁵ provides that the media must act with respect for the equal rights of all natural persons, state bodies, political parties, other civil society associations, and other legal persons to disseminate and obtain information (Article 4).
30. The Law on Children's Rights¹⁶ provides for the equal rights of every child, regardless of origin, racial, ethnic and civil identity, social and property status, sex, language, education, religion, place of residence, health status and other factors connected with the child and his or her parents. The Law requires that children born in and out of wedlock should enjoy equal and comprehensive state protection (Article 6).
31. The Education Code¹⁷ does not directly use the term "discrimination". However, one of the principles of state policy in education is "to ensure equal access to education" (Article 2). The main aims of state policy in special education include "creating special conditions for the education of persons with special developmental needs and providing them with correctional and educational assistance" and "ensuring equality of the Belarusian and Russian languages" (Article 2). The right of citizens of Belarus to education is ensured, amongst other means, through "the creation of conditions for education in accordance with national traditions, as well as individual needs, abilities and aspirations of students" and the creation of special conditions for the education of persons with special developmental needs and their integration into society and socialisation (Article 3).
32. The Law on State Youth Policy¹⁸ states that, in education, the relationship between young people and educational institutions and organisations that implement educational programmes is "built on the principles of equality and mutual respect for rights and freedoms" (Article 17).
33. The Law on Foreign Labour Migration¹⁹ protects immigrant workers²⁰ and foreigners permanently resident in Belarus from discrimination on the basis of sex, race, ethnicity, language, religion or political beliefs, participation or non-participation in trade unions or other voluntary associations, property or official status, age, place of residence, or physical or mental disabilities, if such characteristics do not interfere with the duties of the work and other circumstances not related to quality of the work, and are not related to specific job functions or the status of the employee (Article 4).
34. The principle of equality before the law as a general principle of law is provided for in the Code

¹⁴ Закон Республики Беларусь от 14 июня 2003 года № 204-З «О государственной службе в Республике Беларусь».

¹⁵ Закон Республики Беларусь от 17 июля 2008 года № 427-З «О средствах массовой информации».

¹⁶ Закон Республики Беларусь от 19 ноября 1993 года № 2570-XII «О правах ребенка».

¹⁷ Кодекс Республики Беларусь об образовании от 13 января 2011 года № 243-З.

¹⁸ Закон Республики Беларусь от 7 декабря 2009 года № 65-З «Об основах государственной молодежной политики».

¹⁹ Закон Республики Беларусь от 30 декабря 2010 года № 225-З «О внешней трудовой миграции».

²⁰ An immigrant worker is a foreigner who does not have a permanent residence permit in Belarus, who came to Belarus for employment under an employment contract with an employer in Belarus, or who is engaged in such activities in Belarus (Article 1 of the Law on the Foreign Labour Migration).

of Administrative Offences (Article 4.2),²¹ the Criminal Code (Article 3),²² the Civil Code (Article 2),²³ and the Law on the Basis of Administrative Procedures (Article 4).²⁴

The adoption of specific and comprehensive equality legislation

35. ERT is concerned that, beyond the limited and declarative non-discrimination provisions listed above, Belarus has no effective legal framework providing protection from discrimination. The Committee, other treaty bodies such as CEDAW,²⁵ and the authors and signatories of the Declaration of Principles on Equality,²⁶ have all recognised that in order to provide effective protection from discrimination, states must adopt specific anti-discrimination legislation. The Committee has made this point particularly robustly, stating that:

*Adoption of legislation to address discrimination is indispensable in complying with article 2, paragraph 2. States parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights.*²⁷

36. Belarus has neither a comprehensive equality law, nor specific legislation prohibiting discrimination and requiring the promotion of equality on a specific ground or grounds, or with respect to any human right. In the view of ERT, the protections provided in the Constitution and the various Laws listed above – even if amended to address numerous inconsistencies with Belarus’ international legal obligations which are highlighted below – will not be sufficient to discharge the obligation elaborated by the Committee in its General Comment No. 20.

37. To make the right to non-discrimination effective in practice, specific, detailed and comprehensive legislation²⁸ is necessary to define and prohibit all of the different forms of discrimination which fall within the scope of Article 2(2) of the Covenant. Such equality legislation must prohibit discrimination which occurs on at least all those grounds (or any combination of those grounds) recognised by the Committee. The list of grounds should be open-ended, or there should be the possibility to admit new grounds to the list through evaluation against criteria set down in law.²⁹ Moreover, such legislation should explicitly

²¹ Кодекс Республики Беларусь об административных правонарушениях от 21 апреля 2003 года № 194-3.

²² Уголовный кодекс Республики Беларусь от 9 июля 1999 года № 275-3.

²³ Гражданский кодекс Республики Беларусь от 7 декабря 1998 года № 218-3.

²⁴ Закон Республики Беларусь от 28 октября 2008 года № 433-3 «Об основах административных процедур».

²⁵ Committee on the Elimination of All Forms of Discrimination Against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 2010, Para 31.

²⁶ See above, note 3, Principle 15, p. 12.

²⁷ See above, note 1, Para 37.

²⁸ The Declaration of Principles in Equality contains a principle on specificity of equality legislation, according to which “The realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage.” See above, note 3, Principle 15.

²⁹ Principle 5 of the Declaration of Principles on Equality sets out a test to establish the admission of new grounds: “Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited

prohibit discrimination on the basis of perception and association, and define and prohibit multiple discrimination. To be comprehensive, equality legislation must apply to both state and non-state actors³⁰ and in all areas of life regulated by law.³¹

38. Comprehensive equality legislation should define and prohibit direct discrimination and indirect discrimination in accordance with the definitions provided by the Committee. It should prohibit harassment as a form of discrimination, as recognised by the Committee. Such legislation should also define reasonable accommodation as a right held by all persons, with a corresponding obligation arising for the state and other actors. Importantly, equality legislation should define positive action as a necessary component of the right to equality, and an obligation arising wherever required to accelerate progress towards equality of particular groups.
39. In the absence of specific and comprehensive equality legislation, provisions to ensure access to justice, such as provisions for the transfer of the burden of proof in civil cases and measures to ensure standing by associations or other interested parties, which are necessary for the effective protection of the right to equality, are absent from the legislative framework. These procedural elements, which are crucial if victims of discrimination are to be able to realise their rights in practice, should be explicitly set down in equality legislation. The Declaration of Principles on Equality provides a clear guide to best practice in this area, which ERT would recommend as a guide to how Belarus can effectively meet its obligations in this regard.³²

Suggested Recommendation

The State Party should adopt comprehensive substantive and procedural equality legislation conforming to the requirements of the Covenant, as elaborated by the Committee in its General Comment No. 20, and the Declaration of Principles on Equality.

Part 2: Discrimination Affecting the Enjoyment of Other Covenant Rights

40. In addition to identifying a range of problems with the legislative framework on non-discrimination and equality in Belarus, ERT's research highlighted discrimination on a number of grounds affecting the ability of persons in Belarus to enjoy Covenant rights on an equal basis with others. This section of the report examines some of these issues, highlighting the impact of discrimination on the enjoyment of the right to work (Article 6), the right to physical and mental health (Article 12) and the right to education (Article 13).

grounds stated above". See above, note 3. This approach reflects that of the principal anti-discrimination legislation in South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000) which provides both a list of explicitly prohibited grounds and a condition that further grounds are to be prohibited if one of the three criteria listed above is met.

³⁰ The Committee, in General Comment No. 20, has stressed that states should ensure that individuals and entities do not discriminate on prohibited grounds. See above, note 1, Para 11.

³¹ Principle 8 of the Declaration of Principles on Equality defines the scope of the right to equality as "all areas of activity regulated by law". This definition draws inspiration from various sources of international law, including Article 26 of the International Covenant on Civil and Political Rights which has been interpreted by the Human Rights Committee as prohibiting discrimination "in law or in fact in any field regulated and protected by public authorities."³¹ As is evidenced in the second section of this report, discrimination is prevalent in a number of areas of life in Belarus, including areas where no legislative protection exists.

³² See above, note 20, Principle 18 (Access to Justice), Principle 21 (Evidence and Proof), Principle 20 (Standing), and Principle 22 (Remedies and Sanctions).

Article 6: The Right to Work

Access to employment for women

41. Official Belarusian employment statistics rely on data on the number of people registered as unemployed with the relevant government agencies, resulting in an underestimate of the total number of unemployed people in the country. A more reliable metric for assessing actual unemployment is provided by the census, which includes data on the number of persons identifying as unemployed. The result is two different unemployment statistics, giving very different pictures of the position of women relative to men. In 2009, the year of the last census, women constituted 57% of the registered unemployed, a figure which fell in 2010 to 53%.³³ At the same time, the census, using an internationally-approved methodology,³⁴ found that women constituted only 36% of the total unemployed population. Indeed, according to the census the unemployment rate among women (4.75%) was significantly lower than that of men (7.68%).
42. There is, however, a pay gap between men and women in all sectors of the economy. In December 2009, women earned, on average, 74.6% of what men earned (924,700 Belarusian rubles for women, 1,240,200 rubles for men). The smallest differences were in agriculture and forestry, the largest in such sectors as non-production-related services, health care, physical culture and social security.³⁵ The lower level of average pay for women arises for a number of reasons, including the concentration of women in low-paying sectors and jobs, fewer women in high positions, and the social obligation upon many women to combine work with domestic responsibilities.
43. One example of a sector of the economy dominated by women is public health. In 2009, women accounted for 95.5% of paramedical (nursing) staff. Among physicians, this figure was 67.1%, though female doctors made up lower proportions of those in the highest positions.³⁶ This helps to explain why, in fields such as healthcare, the average salary of a woman at the end of 2009 was 794,600 roubles compared to 1,281,300 roubles for a man.³⁷ Moreover, ERT's research indicates that their lower salaries require women, such as health care workers and teachers, to increase their workload at the expense of their health and development. Another factor noted by experts as contributing to women's lower pay relates to the payment of bonuses to basic salaries, which often represent a large part of total remuneration. As the value of bonuses is generally determined on a subjective, case-by-case basis, there is ample scope for gender stereotypes (for example, that men will be the breadwinners of the family and so need a higher income) to play a role in decision-making.³⁸
44. There is also evidence of significant de facto inequality in the seniority of men and women, even

³³ *Belarus in Figures. Statistical reference Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2011, p. 29.

³⁴ Unemployment among the economically active population of working age (men 16-59, women 16-54).

³⁵ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 4.20.

³⁶ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 2.20.

³⁷ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 4.20.

³⁸ Петина, Л., Тонкачева, Е., Смолянко, О., Сержан, Т., Ефимова, Н., Еськова, Е., *Альтернативный отчет Республики Беларусь по выполнению Конвенции о ликвидации всех форм дискриминации в отношении женщин. Обзор 2009 года*, Международная гендерная программа «Шаг к равенству», С. 12, available at: http://gender.do.am/publ/alternativnyj_otchjot_respubliki_bielarus/4-1-0-164.

in sectors where women represent more than half the workforce. As of 1 November 2009, women accounted for 67.4% of employees in state administration bodies, while the figure was 74.0% within judicial and legal institutions. Yet women made up just 19.6% of heads and deputy heads of such bodies. It should be noted that women were better represented at the next level down, though even here, women's position was not reflective of their numbers across the sector: amongst heads and deputy heads of the major departments, divisions, sections, and assistants of organisation heads, advisors and consultants, the figure was 49.8%.³⁹

45. Belarusian law contains protections for women during pregnancy and the early years of a child's life. The Labour Code prohibits denial of employment contracts to women or reduction in pay on grounds of pregnancy or having children under the age of three.⁴⁰ If an employment contract is denied to a woman in these circumstances, the employer is obliged to inform her of the reasons in writing, and the refusal may be challenged in court.⁴¹ However, since there is no developed anti-discrimination legislation, the existing means of protection are difficult to apply in practice. Moreover, relying on this impunity, employers seek to avoid their obligations to female employees by dismissing them or denying them employment citing false reasons, such as lack of experience or insufficient education.⁴² A member of a focus group of women reported the following to ERT's researchers:

I qualified as a clinical psychologist. I was looking for a job in schools or in-day care centres. I don't remember how many times I was interviewed, probably about ten times. Within two months, every week I went for a job interview. And everywhere I was refused. But every time the reason for the refusal was either my lack of experience or the employer's fear that I'll get married, get pregnant and go on maternity leave. During each interview the first question was about my marital status, and my plans of getting married and having children. I said that I had no plans of the kind. And this was where all the fun began: "You all say so". After that, I just didn't not know what to say, how to convince the employer.⁴³

46. More broadly, achieving gender equality in employment is impossible without the eradication of patriarchal stereotypes of the family. According to the findings of O. Ciareščanka (O. Tereshchenko):

Traditional views of women's place in the family and in society and an underestimation of the value of women's work in their formal employment leads to an unequal distribution of unpaid domestic labour, which creates benefits for men and reduces the competitiveness in the labour market for women.⁴⁴

³⁹ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 4.13 and 4.14.

⁴⁰ Трудовой кодекс Республики Беларусь от 26 июля 1999 года № 296-З.

⁴¹ Статьи 16 и 268 Трудового кодекса.

⁴² Чистякова, И. и Чуткова, И., «Гендерная экспертиза законодательства, регулирующего трудовые отношения» // *Отдел кадров*, апрель 2003, № 4 (27), available at: otdelkadrov.by/number/2003/4/335.

⁴³ A focus group of women (Viciebsk, a total of 12 people, aged 25-40 years), held by ERT/BHC on 9 November 2011.

⁴⁴ Терещенко, О., *Гендерные аспекты бедности в белорусском обществе*, [С. 10], available at: un.by/pdf/statistics/8/text2.doc. The article was written in 2005 for an UNDP project.

47. A participant of a focus group commented that women sometimes agree to follow such a patriarchal stereotype themselves:

Now, you know, women say that their husbands wash socks and underwear by themselves. (...) I never allowed this. This is, perhaps, rustic: women's work is for women, men's for men. I just grew up in a family where there were only men, and in my husband's family there were only brothers and one girl in the family. We have two sons. (...) I did not let myself look down upon men, but was responsible to keep them clean, do laundry, and so on. I thought that one shouldn't become impudent. I'm already doing too much for myself (...) and I should be doing more for my husband.⁴⁵

48. The image of certain professions, such as the police, is connected with masculinity and based on socially constructed attitudes according to which law-enforcement officials should have the physical characteristics of a man. This leads to open discrimination against women in access to specialised education and entrenches gender segregation in the field of law enforcement. An example of such discrimination is enrolment at the Academy of the Ministry of Internal Affairs. In 2010, 1,367 candidates applied for training at the Academy and, following entry examinations, 627 people were enrolled. Women accounted for just 5% of the total number of enrolled students. At the police faculty, for the exam on "jurisprudence", the score needed to pass for the 199 male students was 146 points, whereas for the 11 female students, it was 268 points. For "economic law", the score for men was 165, for women from urban areas, 340 and for women from rural areas, 248. For "forensics", 27 students were enrolled (26 men and one woman). The score for the male students was 169 and for the woman, 365.⁴⁶ In all cases, the score for women was much higher than for men.

Access to employment for disabled persons

49. A number of provisions in the Labour Code make special provision for disabled persons in employment. According to Article 283 of the Code:

Taking into account individual rehabilitation programs, disabled persons have the right to work for employers on the ordinary conditions, as well as in specialised organisations, workshops and divisions. The refusal to enter into an employment contract or a promotion at work, termination of the employment contract by the employer, the transfer of a disabled person to another job without his/her consent on grounds of disability are not allowed, except in cases where the performance of the job duties is contraindicated by the individual rehabilitation program. It is now allowed to terminate the employment contract by the employer with a person with disabilities passing medical, professional, Labour and social rehabilitation in the respective organisations, regardless of the length of stay.

50. Under Article 284 of the Code, employers who employ persons with disabilities receive significant tax benefits. Under Article 286, employers are required to create jobs for those who became disabled as a result of an injury or disease acquired at work. Where the expenses incurred by employers in creation of work placements exceed a certain threshold, they receive compensation from the state. Compensation is also provided for the costs of specialised equipment required to facilitate work placements. In addition to requirements on employers, a minimum number of work placements are established by local executive and administrative

⁴⁵ A focus group of women (Viciebsk, the total of 12 people, age: 25-40 years), held by ERT/BHC on 9 November 2011.

⁴⁶ Интерфакс, «Гендерные страсти в Академии МВД», *Интерфакс*, available at: <http://www.interfax.by>.

bodies or by special state programmes. The Labour Code also establishes a system of reservations in employment for disabled persons.

51. Article 287 of the Labour Code provides a number of benefits for workers with disabilities: there is no probationary period for disabled employees; employers must ensure that working conditions are in accordance with any individual rehabilitation programmes, including through the organisation of training in the workplace; disabled persons should be given the ability to work from home. The Article also creates a prohibition on the creation of worse working conditions when compared to other workers, including pay and working hours and places limits on working overtime, night work, working on public holidays, and on being sent on business trips. It also sets shorter working hours with full pay for some groups of persons with disabilities. Article 287 also provides for preferential treatment of disabled employees when redundancies are made. Article 288 of the Code provides for various rights and responsibilities of employers with regards to providing social security for persons with disabilities.
52. Thus, employment law in Belarus contains a number of measures to increase the level of employment of persons with disabilities. In addition, from 2006 to 2010, the authorities implemented a special programme for the professional rehabilitation of persons with disabilities.⁴⁷ According to official figures for January to September 2011, 2,900 persons with disabilities seeking employment were registered in the labour, employment and social protection offices, and assistance in finding employment was provided to 2,600 persons. Approximately half of these jobs were provided through the established state reservation system for employment of persons with disabilities.⁴⁸
53. Despite these examples of progress however, problems remain, in particular with regards to the extent to which effective and comprehensive reasonable accommodation measures are adopted in practice. For example, in an interview with ERT, A. said:

I found a good job offer of an accountant. Despite the wheelchair, the director agreed to take me on the job. But on the first day I found the books on the top shelf, and I couldn't even come up to the bookcase because the wheelchair did not fit between the tables. The co-workers looked at each other, and called the principal. The next day, after an uneasy conversation with the director, I finished my work there.⁴⁹

54. In general, the absence of detailed anti-discrimination provisions in Belarusian employment law, and the absence of any legally binding requirements to provide reasonable accommodation in cases other than those where a person acquires a disability at work, make it extremely difficult for persons with disabilities to prove cases of discrimination. At the same time, statistical data indicates significant de facto inequalities affecting persons with disabilities in employment. Thus, a survey conducted by the Academic Research Institute of the Ministry of Labour and Social Protection showed that out of the total number of persons with disabilities aged 18 years and older and living in households, only 17.2% were employed.⁵⁰ Among workers with

⁴⁷ Постановление Совета Министров Республики Беларусь от 27 сентября 2006 года № 1269 «Об утверждении Государственной программы по предупреждению инвалидности и реабилитации инвалидов на 2006-2010 годы».

⁴⁸ UN, *Common Core Document Forming Part of the Reports of States Parties: Belarus, 15 December 2011*, UN Doc. HRI/CORE/BLR/2011, Para 92.

⁴⁹ A focus group of disabled persons (Mozyr, the total of 16 people, age: 20-38), held by ERT/BHC on 1 October 2011.

⁵⁰ During December 2009 and January 2010 trained interviewers from the staff of local social services centres, representatives of civil society organisations and the Academic Research Institute of Ministry of Labour and Social Protection held a straw poll of more than 5,000 persons with disabilities as well as a survey of all persons

disabilities 54.7% were male and 45.3% female. Particularly severe disability, disease or injury significantly restrict the ability of disabled persons to engage in work, so the proportion of persons in disabled groups I and II who work is very low: 4.3% and 5.7% respectively. Among people with milder forms of disability (group III), the employment rate was 46.7%.⁵¹ For persons with disabilities of working age (18-60 years old), their disability was the most common reason they cited for their unemployment: 78.3% of non-disabled people of working age believed them to be unemployed because of their disability.⁵² The employment rate of persons with disabilities seeking assistance from specialised bodies⁵³ is significant, increasing from 26% of persons with disabilities in 1995 to 42% in January to September 2011.⁵⁴

Access to employment for opposition political activists

55. Since the mid-1990s, the increasingly authoritarian tendencies of the Belarusian political regime have led to an increase in discrimination on the basis of political opinion and belief. However, there are no quantitative sociological surveys on the relative position of individuals depending on their political affiliation or beliefs, and almost all of the available information on specific cases was gathered by Belarusian and international human rights organisations. Moreover, most of these reports and studies focus on restrictions on the observance of civil and political rights, including discrimination on the basis of political opinion, rather than on economic, social and cultural rights. Nevertheless, ERT identified strong evidence of discrimination against active opponents of the government in the area of employment.
56. The evidence gathered by ERT indicates that many politically active people in Belarus are insecure in their jobs and professional relationships. For example, opposition activists come under pressure at work because of harassment by the security services at their place of residence and employment. One participant at a BHC-ERT focus group, K. L. from Babrujsk, reported that he was harassed due to his political activism:

*[Because of my social activity in connection with the last People's Assembly on 8 October 2011, at which I was the chairman, and because as a result I spent three days in detention, I drew the immediate attention of the security forces. On 8 October high-ranking police officials – majors and colonels – came to my residence and asked my neighbours who I was and what my occupation was. They inquired at my work place, asking my supervisor why I had some time off, how I worked and what my salary was. In addition, during my studies at refresher courses in Minsk, KGB people checked my report card attendance.]*⁵⁵

with disabilities living in Čašnicki district in Vitebsk region, more than 1,000 people. In order to ensure the full participation of persons with disabilities in data collection both adults with disabilities aged 18 years and older and children with disabilities under 18 were interviewed. The children were interviewed in the presence of, or with, their parents or their legal representatives. In some cases, this was also done with adults.

⁵¹ Программа развития ООН, Министерство труда и социальной защиты Республики Беларусь, *Обследование положения инвалидов в Республике Беларусь*, Минск: Тесей, 2010, С. 68.

⁵² Программа развития ООН, Министерство труда и социальной защиты Республики Беларусь, *Обследование положения инвалидов в Республике Беларусь*, Минск: Тесей, 2010, р. 50.

⁵³ This can be accounted for by only those who have decided to ask for help, and whose individual rehabilitation program does not interfere with any employment.

⁵⁴ UN, *Common Core Document Forming Part of the Reports of States Parties: Belarus, 15 December 2011*, HRI/CORE/BLR/2011, p. 15.

⁵⁵ Political and social activists focus group (total of 13 people, mainly aged 30-35), held by ERT/BHC on 29 December 2011.

57. Another recent example is the case of A. Kambalava, the head of the Baranavičy city organisation of the United Civil Party, an activist of the National Assembly of the Brest region. In November 2011 she was fired from the private firm "BelSnabPodshipnik". Ms Kambalava believes that this decision was politically motivated as, prior to the preparation of the first National Assembly convened by the political opposition, police officers visited her work place. After the police visit, Ms Kambalava's employer told her that she could not combine work and political activity.⁵⁶
58. Moreover, ERT found evidence that changes in employment conditions – both by public sector and private sector employers – are used as a means to exert pressure on opposition activists. Thus, known supporters of the opposition have been refused renewal of contracts, leave without pay, and suffered dismissal. These problems are exacerbated by the almost complete transition to a system of fixed-term employment contracts in Belarus. According to the Labour Code:

[F]ixed-term employment contract is concluded when the employment relationship cannot be established for an indefinite period, given the nature of the work or the conditions of its implementation, as well as in the cases provided for in this Code. A kind of fixed-term employment contract is a contract that is concluded on conditions stipulated by the Labour legislation.⁵⁷

59. These fixed-term contracts are generally provided for a period of 1-3 years, but not more than 5 years. After the term of the contract is finished the employer can dismiss an employee without further justification. Evidence collected by ERT indicates that opposition activists are vulnerable to non-renewal of contracts on the basis of their socio-political activity, rather than on the basis of their skills, experience or ability to undertake a particular job. According to human rights activists:

[S]ince 2004 ministries, agencies, and employers (...) under the threat of dismissal forced workers to switch to the contract form of employment (...) Fixed-term contracts are now the main form of employment contract in the country. (...) The contract system at the enterprise level is used by employers to deal with independent trade union activists and members of opposition parties and civil society organisations. During the period of fixed-term contracts many representatives of independent organisations were laid off, including women.⁵⁸

60. In practice, it is extremely difficult to contest the refusal to extend contracts. In January 2011, N. Illinič, a history teacher at Tałkas school in Puchavičy district of Minsk region had her contracted ended without renewal. Ms Illinič said in an interview:

I do not agree with the decision of my employer, and I believe that the real reason for the decision on my dismissal and refusal to enter into a new employment contract is to limit my employment rights based on political opinion, because of my social and political activities. I think this dismissal is illegal and based on the discriminatory approach towards me from the employer and other government agencies. (...) My political activity, my political beliefs in no way affected my professional career while working as a school teacher.

⁵⁶Anžela Kambalava (Angela Kambalova), interview on 16 November 2011, Minsk, database of Human Rights Center "Viasna".

⁵⁷Трудовой кодекс Республики Беларусь (ст. 17).

⁵⁸Петина, Л., Тонкачева, Е., Смоляноко, О., Сержан, Т., Ефимова, Н., Еськова, Е., *Альтернативный отчет Республики Беларусь по выполнению Конвенции о ликвидации всех форм дискриминации в отношении женщин. Обзор 2009 года*, Международная гендерная программа «Шаг к равенству», С. 12, available at: http://gender.do.am/publ/alternativnyj_otchjot_respubliki_bielarus/4-1-0-164.p.23-24.

However, despite this, I was constantly exposed to pressure from the education department of Minsk regional and local executive authorities, who have repeatedly threatened me with dismissal because of my social and political activities in connection with my political beliefs and views.⁵⁹

61. Non-renewal of employment contracts for opposition activists without apparent justification also occurs in the private sector. For example, at the beginning of September 2011 the administration of private college "BIP - Institute of Law" chose not to extend the contracts of the Associate Professor of Theory and History of Law A. Zavadski and senior lecturer M. Vasilievič. The decision not to renew the contracts did not appear to be motivated by any change in their capacity or any violation of the college's rules and regulations. A. Zavadski is the author of many publications on the development of local self-government and concepts developed by a non-governmental organisation "Lieŭ Sapieha Foundation", while M. Vasilievič is an editor of the website "Church" and a director of the "Ekumiena" centre. Both believe that the decision not to renew their contracts was based on their political affiliation and extra-curricular activities.⁶⁰
62. ERT also identified evidence of negative employment consequences for persons performing professional duties when acting on behalf of the political opposition. For example, after the presidential elections on 19 December 2010, an unauthorised protest rally took place, which grew into a clash with demonstrators and riot police. The Office for Democratic Institutions and Human Rights organised the monitoring of the trials of participants in the action, during which it was found that:

[T]he exercise of the right to be represented by a counsel of one's own choice was in some instances hampered by license revocations of defence counsel, which is perceived as undue executive interference with the independence demanded of the legal profession as well as the ethical obligations imposed on its members. Some defence counsel were denied access to their clients for prolonged periods.⁶¹

63. One of those defenders was T. Sidarenka (T. Sidorenko), whose clients included former presidential candidate U. Niakliajeŭ (V. Neklyayev). On 5 January 2011 she received an order from the Ministry of Justice indicating that excerpts from an interview which she had given had been posted on the Internet, in which she suggested that she had been denied admission to her client. According to the Ministry, Ms Sidarenka's comments contravened the provisions of the Law on the Bar Association that was in force at that time⁶² and were not consistent with the requirements of the Rules of Professional Ethics of the Lawyer.⁶³ On 19 July 2011, the Ministry of Justice sent Ms Sidarenka a second order which indicated that she had committed a number of violations during the registration of financial documents and agreements with customers. On 1 September 2011, Ms Sidarenka received a notice terminating her license to practice law, citing repeated violations of the relevant laws and regulations. The decision was appealed, but the appeal failed.⁶⁴

⁵⁹Вясна, «Учитель Наталья Ильинич будет добиваться восстановления на работе через суд», Правозащитный центр «Вясна», 24 февраля 2011 года, available at: <http://spring96.org/ru/news/41162>.

⁶⁰ All materials are kept in the archives of Belarusian Helsinki Committee, February 2013.

⁶¹ OSCE/ODIHR, Report, Trial Monitoring in Belarus (March – July 2011), Warsaw, 2011, available at: <http://www.osce.org/odihr/84873>, Paragraph 200.

⁶² Закон Республики Беларусь от 15 июня 1993 года № 2406-XII «Об адвокатуре».

⁶³ Постановление Министерства юстиции Республики Беларусь от 27 июня 2001 года № 15 «Об утверждении Правил профессиональной этики адвоката».

⁶⁴ All materials are kept in the archives of Belarusian Helsinki Committee, February 2013.

Access to employment for Lesbian, Gay, Bi-sexual and Transgender persons

64. There is little statistical data on the situation of LGBT people in the Labour market. However, ERT's research indicated that stigma remains a serious problem, with homosexuality being linked with paedophilia and pornography in the public consciousness. Testimony gathered by ERT and BHC indicates that this prejudice can in turn lead to problems in employment. BHC spoke with Aliaksandar, a university professor who was summoned to the dean to discuss his online dating profile with a photo. From the profile it was clear that he was gay. The dean demanded that Aliaksandar remove the photo.⁶⁵ Indeed, stigma and prejudice extends to those associated with LGBT persons, or those perceived to be gay or lesbian. Jura told BHC:

*I have many gay friends. But I am heterosexual. I got fired from one job when the photograph appeared, in which it was possible to conclude that I was gay. I see no other reasons for that.*⁶⁶

Suggested Recommendation

The State Party should, in accordance with its obligations under Article 6, read with Article 2(2) of the Covenant, take steps to ensure the enjoyment of the right to work without distinction on any grounds. In addition to enacting comprehensive equality legislation and ensuring its effective implementation, the state party should take steps to remove the discriminatory barriers to employment facing groups exposed to discrimination, including but not limited to women, disabled persons, opposition political activists and LGBTI persons.

Article 12: The Right to the Highest Attainable Standard of Physical and Mental Health

Access to healthcare for persons living with HIV

65. A number of studies have shown that HIV status is a serious obstacle in different areas of social life for persons living with HIV. Stigma and prejudice force persons living with HIV to hide their HIV status, lead them to distrust the effectiveness of programmes to protect their rights, and foster a lack of trust in the organisation and protection of personal data.⁶⁷ As a result, many persons living with HIV prefer to choose non-institutional forms of assistance and support, limiting the reach and effectiveness of state efforts to combat HIV/AIDS.
66. According to research into persons living with HIV conducted by Professor A. Kiečyna (A. Kechina) during the second half of 2009, 41.6% of respondents indicated that during the previous year they had been abused, harassed and/or threatened verbally, and 31.6% of respondents had experienced such violations repeatedly.⁶⁸ Of those stating that they had been abused or threatened, 16.9% of respondents said that it was because of their HIV status, 43.5% for other reasons, and 34.4% because of their HIV status and other reasons. According to the

⁶⁵Aliaksandar (surname withheld), ERT/BHC interview, 15 November 2011, Minsk.

⁶⁶Jura (surname withheld), ERT/BHC interview, 11 December 2011, Minsk.

⁶⁷ Article 23 of the Law on Prevention of Diseases that Pose a Risk to Public Health, Human Immunodeficiency Virus lists certain patient's rights, including the right to respectful and humane treatment without cruelty, brutality or any humiliation of human dignity. Article 26 of the same Law requires health care providers to observe patient confidentiality.

⁶⁸ The study was conducted in the period from 10 August to 30 November 2009 in 13 cities: Minsk, six regional centres and six regional cities. Each of the regions in the samples includes those cities where the epidemic situation reflects the epidemic process of the region as a whole. The same consists of 370 people, and was dominated by people aged 25 to 39 (81.7% of participants).

same survey, 36.7% of respondents stated that people do not understand how HIV is transmitted, and fear that they could be infected with HIV through casual contact. Over one third of respondents (35.8%) stated that people find the presence of HIV shameful, while 32.8% stated that people are afraid of getting HIV from persons living with HIV.⁶⁹

67. The research by A. Kiečyna also revealed that persons living with HIV face discrimination in access to healthcare. Almost one in five (17.9%) of the survey respondents indicated that they had been denied medical care during the previous year because of their HIV status (16.9% of men and 17.5% of women). A similar number (18.9%) of the respondents had been denied family planning services because of their HIV status.⁷⁰ Persons living with HIV also report suffering from prejudice among healthcare professionals, as exemplified in the following excerpt from an article by Volha, the leader of a group for persons living with HIV in Žlobin:

Earlier this month, one of the members of the initiative group Žlobin NGO "Belarusian community of persons living with HIV," travelled to the town of Homieĺ to take the required tests for HIV (...) tired after (...) the long journey he needed to use a restroom. However, when he asked for a toilet in a health care establishment, he got the following reply from the nurse: "How am I supposed to go there after you?!"⁷¹

68. The Law on Prevention of Diseases that Pose a Risk to Public Health, Human Immunodeficiency Virus, adopted in 2011, defines HIV as a socially dangerous disease.⁷² Article 19 of the Law provides for the compulsory medical examination of a person with respect to whom there are reasonable grounds to believe that they have HIV. The Law provides that compulsory examinations should be carried out by a health care institution with the permission of a public prosecutor. The Law sets out a number of circumstances which will be considered sufficient to indicate that a person has HIV, identifying the following groups: persons who have had sexual intercourse with someone who has HIV; persons who have taken narcotic drugs and psychotropic substances intravenously, using the same syringe as a person with HIV; and persons who have had clinical, instrumental or laboratory tests which have indicated HIV (Article 19).
69. According to the Regional Director of UNAIDS Support Group for Europe and Central Asia Jean-Elie Malkin:

Since there is a possibility of compulsory testing for suspected HIV and forced treatment, there is a risk of rejection of persons living with HIV by the society and, as a consequence, hiding their status. This in turn increases the risk of the further growth of the infection and ultimately increases health care, and social security systems costs.⁷³

⁶⁹ Кечина, Е., *Определение показателя стигматизации людей, живущих с ВИЧ: отчет об исследовании*, Минск: Минсктунпроект, 2011, С. 17, available at: <http://ecuo.org>, p. 20.

⁷⁰ Кечина, Е., *Определение показателя стигматизации людей, живущих с ВИЧ: отчет об исследовании*, Минск: Минсктунпроект, 2011, С. 17, available at: <http://ecuo.org>, p. 22.

⁷¹ *Ольга, «Как победить стигму со стороны медицинского персонала?», HIV.BY, available at: <http://www.hiv.by>.

⁷² Закон Республики Беларусь от 7 января 2012 года № 345-3 «О предупреждении распространения заболеваний, представляющих опасность для здоровья населения, вируса иммунодефицита человека».

⁷³ Полуян, А., «Минск посетил Региональный Директор ЮНЭЙДС», AIDS.BY, 2 Марта 2012 года, available at: www.aids.by.

Suggested Recommendation

The State Party should, in accordance with its obligations under Article 12, read with Article 2(2) of the Covenant, take steps to ensure the enjoyment of the right to the highest attainable standard of physical and mental health without distinction on any grounds. In addition to enacting comprehensive equality legislation and ensuring its effective implementation, the state party should take steps to remove the discriminatory barriers to healthcare facing groups exposed to discrimination, including but not limited to persons living with HIV.

Article 13: The Right to Education

Access to education for the Roma

70. The level of education of the Roma population in Belarus is a cause for serious concern. According to the 2009 census, 12% of Roma aged 10+ cannot read and write. In the same age group, 41% had only primary education, and 19% only had basic general education. Whilst 17% of those of the relevant age had secondary, vocational or specialised secondary education, only 0.5% had higher education.⁷⁴
71. According to researcher O. Bartoš, who conducted interviews with married women 30-40 years old, a generation gap can be observed in Roma families, with older persons being distrustful of state education:

Children who attend school, as a rule, tend to be involved not only in the learning activities, but also in public life. The older generation, encouraging the preservation of ethnic identity, requires adherence to traditional norms of behaviour, which exclude social and cultural life outside the Roma community. In the motivations of older Roma generation of Belarus, as in Roma groups of other regions, there are statements that speak about the perception of school as a medium for spreading alien morality. Unwillingness to be educated is also motivated by the fact that Roma skills are more applicable to real life than the knowledge gained at school.⁷⁵

72. Low levels of education also have a negative impact on the employment opportunities of Roma persons. According to the 2009 census, the unemployment rate reached 31.5% among the Roma, while the figure for the whole population of Belarus was 6.4%.⁷⁶

Access to education for women

73. Women in Belarus are generally educated to a higher level than men: in 2009, almost 55% of women had higher and specialised secondary education compared to 37% for men.⁷⁷ Indeed, the

⁷⁴ National Statistical Committee of the Republic of Belarus, System of the 2009 Belarus Census Database Access via the Internet, database available at <http://belstat.gov.by/homep/en/census/2009/database.php>.

⁷⁵ Бартош, О., «Цыгане Беларусіі» // *Цыгане Росііі*, available at: <http://gypsy-life.net/etno-06.htm>. See also: Bartosh, O., "The Roma in Belarus: in the Light of Transformations", *Interstitio: East European Review of Historical Anthropology*, June 2009, Vol. 2, No 2 (4).

⁷⁶ National Statistical Committee of the Republic of Belarus, System of the 2009 Belarus Census Database Access via the Internet, database available at <http://belstat.gov.by/homep/en/census/2009/database.php>.

⁷⁷ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 4.10 and 4.11.

higher educational level of women in Belarus has persisted for a long period of time, although the current percentage of students enrolled in higher education who are women is only slightly higher than that of men: 51.1% versus 48.9%.⁷⁸

74. However, as in employment, there is a division in education, with women being overrepresented in certain subject areas. The most predominantly “female” areas of education are the humanitarian and social sciences. Statistics from higher educational establishments in 2009/2010 indicate that women dominated in subjects including pedagogy (76.7%), humanities (81.2%), communications, law, economics, management, economics and manufacturing (72.6%), ecological sciences (79.9%), social work (90.9%), and public catering, hotel and personal services (82.6%). Within engineering and technology, however, only 28% of students are women.⁷⁹
75. Indeed, the means by which education is provided can, in fact, replicate gender inequalities in society, and gender stereotypes can be fixed at school, where textbooks and materials reflect existing gender imbalances.⁸⁰ Thus, the Committee on the Rights of the Child has recommended that Belarus should strengthen the fight against sexist and racist attitudes and behaviour in education.⁸¹
76. Direct and indirect sex discrimination is also reflected in the maintenance of special educational institutions which are based on the principle of separating students. For example, the Code of Education sets down the characteristics of Suvorov schools, which recruit only boys in order to provide a military- and sports-focused education.⁸²

Access to education for opposition political activists

77. One important form of suppression of opponents of the Belarusian regime – which also constitutes direct discrimination on the basis of political opinion – is the expulsion of students from higher and secondary specialised educational institutions. Young people who are active in the opposition movements have been dismissed or expelled for breaches of discipline, while the administration of educational institutions limits itself to only reprimanding other students in similar situations, so they can continue their studies.
78. For example, in December 2009, T. Šapučka, a press secretary from the opposition youth organisation “Malady Front”, was expelled from the Law faculty of Belarusian State University. The reason for the expulsion was her participation in the Civil Society Forum of the “Eastern Partnership” in Belgium where independent civil society organisations were invited to participate. A statement in support of T. Šapučka by a representative of the European Commission was ignored by the decision-making body.⁸³

⁷⁸ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 3.1, data as of 2009/2010 academic year.

⁷⁹ *Women and Men in the Republic of Belarus. Statistical Book*, Minsk: National Statistical Committee of the Republic of Belarus, 2010, Table 3.2.

⁸⁰ See for example: Коновальчик, Е., *Воспитание гендерной культуры учащихся*, Минск: Нац. ин-т образования, 2008.

⁸¹ Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Belarus*, CRC/C/BLR/CO/3-4, 2011, Paragraph 28.

⁸² “Suvorov schools admit minor citizens of the Republic of Belarus, of male gender, which are not younger than 12 years as of 1 September of the school year (but not older than thirteen) and who have completed training in class VII at the II stage of secondary education” (Part 7 of Article 159 of the Education Code).

⁸³ Tacciana Šapučka (Tatyana Shaputko), BHC interview, 29 November 2011, Minsk.

Access to education in Belarusian language

79. Under Article 90(1) of the Education Code, Belarusian and Russian are the main mediums of instruction in Belarusian education. In addition, the state guarantees the right to choose education in one of the two official languages. The language of instruction is determined by the founder of the educational establishment.
80. According to government data, in 2011/2012 academic year, teachers of pre-school education groups communicated in the Belarusian language with 12% of all children. In secondary education about 18% of pupils studied all the subjects in the Belarusian language. In institutions of special secondary education 14% of all pupils studied in Russian and Belarusian and about 1% in Belarusian alone. For institutions of higher education, the proportion of those using both languages was 37%, while those using Belarusian alone constituted just 0.9%.⁸⁴
81. The expert I. Ulasiuk notes that there are no higher education institutions in Belarus today where all instruction would be in Belarusian. This largely reflects the situation in high schools, where only a small proportion of pupils study in the Belarusian language. Conversely, the lack of higher education in Belarusian affects parents' choice of medium of instruction for their children, especially in senior classes.⁸⁵ One of the members of the focus group convened by ERT's partner BHC testified to the effect on opportunities to study in Belarusian:

There is almost no chance to study in Belarusian. Only if you go to the countryside. In higher education the chances are even lower. We have to switch to Russian language completely and suffer from the fact that papers written in the Belarusian language are not accepted. They refused to accept the papers at university, and the discussion of the dissertation turned into a philological sparring, which was accompanied by derogatory comments.⁸⁶

Access to education in the languages of national minorities

82. In July 2012, the section of the Law on Languages concerning minority education was clarified with the adoption of special amendments. Article 21 of the Law provides for the right of persons belonging to national minorities to receive education in their native language, in accordance with national legislation. Where it is in accordance with the desires of pupils, students and their legal representatives, local executive and administrative bodies may decide, with the approval of the Ministry of Education, to establish pre-school and general secondary educational institutions, or classes and groups in secondary educational institutions, in which the education and training are carried out in the language of a national minority, or where the language of a national minority is studied. Article 22 provides that education and training while receiving pre-school, secondary or special education "under the conditions and with the approval of the Ministry of Education" can be carried out in a foreign language. Article 23 provides that education and training in vocational schools, and special secondary and higher educational institutions, should be carried out in Belarusian and/or Russian. These provisions are also reflected in the Education Code, at Article 90.⁸⁷

⁸⁴ Носова, М., «По данным Белстата, белорусский язык в качестве разговорного использует 23% населения страны», *Белорусская информационная компания «Белопан»*, 21 февраля 2012 года, available at: <http://belapan.com>.

⁸⁵ Ulasiuk, I., *Language Policies and Law in Education in Post-Soviet Belarus*, ECMI Working Paper No. 50, September 2011, Flensburg: ECMI, 2011, p. 8.

⁸⁶ A focus group of experts (Minsk, the total of 10 people, age: 29-64 years), held by ERT/BHC on 2-16 December 2011.

⁸⁷ Кодекс Республики Беларусь об образовании от 13 января 2011 года № 243-3.

83. Thus, education in the language of a national minority is not a right but a statutory possibility which depends on both the "wishes of the people" and the decisions of the government. Moreover, the Law does not set out rules for how the "wishes of people" are to be taken into account.

84. Nevertheless, according to research reviewed by ERT, some education in minority languages is available in Belarus:

Nowadays Hebrew, Polish, Lithuanian, Modern Greek, Ukrainian and other languages are being studied in various forms in many educational institutions in Belarus. Two secondary schools in the country are functioning entirely in Polish. Civil society associations organised around 65 weekend schools, in which the native language, history and culture are studied by more than five thousand people (Azerbaijanis, Armenians, Afghans, Georgians, Greeks, Jews, Koreans, Lithuanians, Latvians, Moldovans, Germans, Poles, Tatars, and Ukrainians). Universities in Brest, Hrodna, and Minsk train teachers of Lithuanian, Polish and Ukrainian languages. Polish is taught in ten higher schools in the capital and in all regional centres of Belarus (...) The schools' ethno-component is paid from the budget of the country as education costs.⁸⁸

85. School education in minority languages in Belarus is available in Polish and (for a significantly smaller number of students) in Lithuanian. The largest linguistic minority – Russian speakers – do not experience difficulties in access to education, as Russian is used at all levels of education in Belarus.

86. Following the closure of the last Polish school in the Belarusian SSR in 1948, the restoration of Polish school education began in the late 1980s.⁸⁹ By 2005, there were two schools with training carried out in Polish (in Hrodna and Vaŭkavysk), and five schools which had classes with Polish as a language of tuition. Polish secondary schools operate within the public system of education of Belarus, and all subjects are taught in Polish, with the exception of Belarusian language and literature, Russian language and literature and the history and geography of Belarus.⁹⁰ Also in 2005, Polish as a foreign language was studied by more than 22,000 people, among them more than 12,000 people studying in public schools and pre-schools.⁹¹

87. Yet opportunities to influence the Belarusian authorities to increase the provision of education in the languages of national minorities are limited, and the question of the language of instruction tends to be decided by officials at their own discretion, relying on the latitude provided by the Law on Languages. Thus, activists' attempts to expand the network of Polish schools in Belarus have failed. In this context it is easy to understand why Polish language campaigners and representatives take a critical view of any change in the existing Polish schools, seeing a potential threat to the conservation of Polish education. The case of high school 36 in Hrodna, which started functioning as a Polish-language secondary school in September 1996⁹²

⁸⁸ Осипов, А., «Этнокультурная политика в Беларуси: сопоставление с международным контекстом» // *Вопрос меньшинств в Республике Беларусь, Европе и мире. Сборник материалов*, Минск: Медисонт, 2012, С. 193.

⁸⁹ Колоцей, М., Улейчик, Н., «Польское национальное образование на Гродненщине в 1990 – начале 2000-х годов: достижения, проблемы, перспективы» // *Працэсы ўрбанізацыі ў Беларусі: XIX – пачатак XXI ст. Зборнік навуковых артыкулаў*, Гродна: ГрДУ імя Я.Купалы, 2010, С. 341.

⁹⁰ *Ibid.*, p. 343.

⁹¹ *Ibid.*, p. 342.

⁹² See: High school number 36 in Hrodna, available at: <http://sch36.grodno.unibel.by>.

exemplifies the tensions. Financing for the construction of the school was provided by the Polish authorities, but its maintenance was provided by the Belarusian authorities. In 2012, plans to launch elementary school classes in Russian at the school resulted in protests by the local Polish community. The representative of the unregistered Union of Poles in Belarus, journalist A. Pačobut (A. Pochobut), expressed concern on behalf of his organisation about the plans to launch Russian-language classes in the school, which is the only school in Hrodna to provide opportunities to complete a full course of study in Polish. According to Mr Pačobut, the situation should be viewed in the context of the negative attitude of Belarus to the fact that ethnic minorities want to learn and be taught in their native language. A representative of the local authorities later stated that there were no plans to open Russian classes in school number 36, but to place under lease two classes of a nearby school that is overloaded.⁹³

Suggested Recommendation

The State Party should, in accordance with its obligations under Article 13, read with Article 2(2) of the Covenant, take steps to ensure the enjoyment of the right to education without distinction on any grounds. In addition to enacting comprehensive equality legislation and ensuring its effective implementation, the state party should take steps to remove the discriminatory barriers to education facing groups exposed to discrimination, including but not limited to the Roma, women, opposition political activists and speakers of Belarusian and minority languages.

⁹³ Навины, «Польская школа в Гродно сохранит свой статус, утверждают в районном отделе образования», *Naviny.by*, 25 мая 2012 года, see at: <http://naviny.by>.