

Report to the Committee on Economic, Social and Cultural Rights:

The implementation by Belarus of Article 12 (the right to health) with respect to people who use drugs and people living with HIV

This report is submitted by the HIV Legal Network and the Eurasian Harm Reduction Association.¹ The report is based on official statistics, information from open sources and communications with civil society activists in Belarus.

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Introduction and focus of the report

In the country report, the Government of Belarus informed CESCR that all HIV prevention programmes recommended by WHO have been implemented in the country. They also state that the Government supports innovative approaches to communication for preventive campaigns aimed at developing tolerant social attitudes towards people living with HIV and to improve the quality of life and increase the involvement of people living with HIV in such programmes and in antiretroviral therapy adherence programmes.²

¹ Information about these organizations is annexed to this report.

² Country report. E/C.12/BLR/7. Para 78, 79 Online:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBLR%2f7&Lang=en

We would like to commend the Government for its commitment to WHO- and UNAIDS-recommended interventions. At the same time, we would like to draw CESCR’s attention to outdated and disproportionate drug laws and policies that obstruct health intervention for people who use drugs, providing punishment instead of treatment. According to UNAIDS, *“criminalization of drug use and possession for personal use significantly and negatively impact the realization of the right to health.”*³

Belarus is a party to the UN Drug Conventions that pursue the aim of protecting public health from the adverse consequences of illicit drugs. In the implementation of the Conventions, Belarus joins other UN member states in declaring its commitment to a comprehensive, integrated, and balanced approach⁴ through the development, adoption, and implementation of alternative or additional measures to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions.⁵

However, in practice, drug laws and policies in Belarus remain archaic and imbalanced with too much emphasis on harsh punishment for people who use drugs, including those whose drug use amounts to a chronic or temporary health condition. Draconian drug laws in Belarus do not distinguish crimes committed in the context of use from crimes committed in the context of wholesale commercial trafficking. For this reason, many people who use drugs land in jail for many years. Despite having many people who use drugs in prisons, Belarus does not provide any harm reduction measures in pre-trial detention or prisons.

In addition, Belarus undermines HIV prevention by maintaining and actively enforcing HIV criminalization laws.

Issue 1: Draconian drug laws as the disproportionate and ineffective instrument to achieve public health goals contrary to article 12 of the Covenant

The estimated number of people who inject drugs in Belarus is between 73,800 and 87,000 persons.⁶ The majority of them use two or more substances, including opioids and synthetic stimulants such as Alpha-PVP and mephedrone. The synthetic drugs, especially stimulants, are most popular among young people who buy them via the internet.⁷ Internet sales of narcotic drugs are on the increase.⁸

³ UNAIDS upholds decriminalization, access to services, on International Drug Users’ Day. UN News. 1 November 2021. Online: <https://news.un.org/en/story/2021/11/1104552>

⁴ Outcome document of the thirtieth special session of the General Assembly, entitled “Our joint commitment to effectively addressing and countering the world drug problem”. General Assembly resolution S-30-1, annex. Adopted on 19 April 2016

⁵ Para (i) Drugs and human rights, youth, women, children, vulnerable members of society, and Communities. General Assembly resolution S-30-1, annex. Adopted on 19 April 2016

⁶ Kechina E., Studying HIV prevalence among key populations (Кечина Е. Изучение особенностей распространения ВИЧ среди уязвимых групп (ЛУИН, ЖСБ и МСМ) и оценка их численности в разрезе регионов Республики Беларусь. Минск, Республика Беларусь: Республиканский центр гигиены, эпидемиологии и общественного здоровья) 2020.

⁷ NGO Your Chance, Eurasian Harm Reduction Association. Assess and advocate for adjustment of OST programs to people with multi-drug dependence (Твой Шанс, Евразийская Ассоциация Снижения Вреда, Фонд СПИД

When buying drugs via the internet, young people very often pool their funds, then one member of a group orders drugs online in bulk, picks up a cache, and distributes the drugs among the group members. Group purchasing significantly increases the buyer's risk of being arrested and prosecuted for drug trafficking, despite the fact that the bulk purchase and distribution was for group use rather than for commercial trafficking. Group use of stimulants also increases risks of HIV, because people share needles and/or engage in unprotected sex under the influence of stimulants.^{3,9}

At the same time, heavy-handed drug enforcement drives stimulant users underground and prevents any harm reduction measures among them. Overreliance on heavy-handed drug enforcement also prevents the development of client-centered low-threshold drug and HIV prevention and treatment options for stimulant users or those who use two or more substances.¹⁰ Such tools as web outreach for people who use drugs¹¹ is very difficult if not impossible in the environment when drug enforcement employ blanket bans on outreach activities on the dark web, as is the case in Belarus.

Belarus officially supports harm reduction and opioid substations therapy, but the coverage remains very low at 2-3%.¹² Belarus continues to employ mandatory registration for people who use drugs, including with respect to patients of opioid substitution therapy. Mandatory registration discourages people who use drugs from seeking medical help. It also creates the atmosphere of distrust between patients and doctors. The UN Special Rapporteur on the right to health considers the drug registration system as a violation of Article 12 of the International Covenant on Economic, Social and Cultural Rights.¹³

The Law of January 4, 2010, No 104-3 “On treatment-labour facilities” provides for coercive treatment, including in labor camps.¹⁴ According to CESCR, States shall refrain from applying coercive medical treatments, unless on an exceptional basis, respecting best practices and applicable international standards.¹⁵

Восток Запад. Определить и повлиять на готовность программы ОЗТ принять людей с сочетанной зависимостью. Минск, Республика Беларусь: Твой Шанс). 2019.

⁸ DrugStat. Исследование даркнет-рынка наркоторговли в Республике Беларусь. Минск, Республика Беларусь; 2020.

⁹ Kurcevič E. New psychoactive substance use in Moldova and Belarus: Results from the Republic of Belarus. Vilnius, Lithuania: Swansea University, Eurasian Harm Reduction Association; 2019.

¹⁰ Kurcevič E. *supra* note 8.

¹¹ Alexey Lakhov for UNODC. Recommendations «Web – outreach for people who use drugs». 2021. Online: https://www.unodc.org/res/hiv-aids/new/publications_drugs_html/RecommendOutreachENG.pdf

¹² Artemenko E., Interest of people who inject drugs to OST (Артеменко ЕК. Потенциальный интерес ЛУИН к ЗТМ. Минск, Республика Беларусь: PCOO «Твой шанс» при поддержке БОО «Позитивное движение»). 2018.

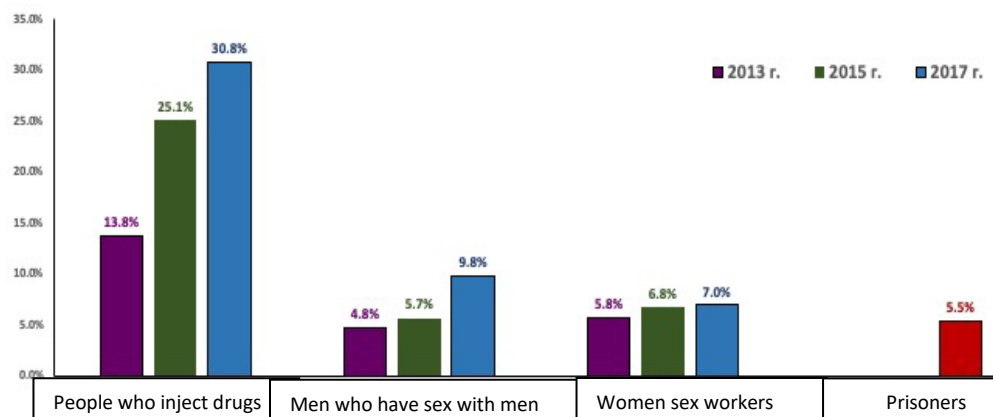
¹³ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/65/255. August 6, 2010. Para. 20.

¹⁴ Закон Республики Беларусь О порядке и условиях направления граждан в лечебно-трудовые профилактории и условиях нахождения в них от 4 января 2010 г. № 104-3, № 104-3 (2010).

¹⁵ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 11 August 2000. E/C.12/2000/4. Para 34

HIV prevalence among people who inject drugs is about 30%;¹⁶ Hepatitis C prevalence in this group is 58%,³

Chart 1: HIV prevalence among key affected populations¹⁷



The analysis of courts statistics as well as examples of drug cases suggest that most people sentenced to long prison terms are people who use drugs, not drug traffickers. Many of them receive such draconian sentences as 13 or 17 years' imprisonment. Such a disproportionate response in the name of public health runs contrary to Article 12 of the Covenant.

Of the total 2,002 persons convicted for drug crimes in Belarus in 2020, the majority — 1,927 (96.3%) — were convicted under article 328 of the Criminal Code.

Section 328(1) is applicable to the possession of any amounts of narcotic drugs. Any possession is a crime.

Sections 328 (2)-(5) are applicable to any types of drug handling if law enforcement proves the intent to distribute. The Supreme Court defines the distribution as any act of handing over narcotic drugs to another person, including as a gift, a share, or in exchange of any consideration. There is no definition of wholesale commercial trafficking. Drug purchase and use often occur when peers join funds so that one of them can buy a certain amount of drugs and share with the rest of the group. In such circumstances, a buyer can be subject to such a serious charge as handling of extra dangerous drug (if the subject drug is heroin, amphetamine, LSD, MDMA, or similar drug) — section 328(3), punishable by 6 to 15 years' imprisonment.

¹⁶ Kechina E., Results of sentinel epidemiological research concerning HIV among key populations (Кечина Е. Результаты дозорного эпидемиологического надзора по оценке ситуации по ВИЧ-инфекции среди групп населения с высоким риском инфицирования ВИЧ. Минск, Республика Беларусь: Республиканский научно-практический центр медицинских технологий, информатизации, управления и экономики здравоохранения). 2018.

¹⁷ Trukhan L., HIV in Belarus (Трухан Л. Ситуация с ВИЧ-инфекцией: Республика Беларусь. Региональный воркшоп по новым психоактивным веществам; Киев, Украине) 2019.

Table 1: Drug laws and punishment in Belarus¹⁸

Article of the Criminal Code	Definition of drug crime	Threshold amount	Punishment	No of convicted people in 2020	Share of people sentenced to imprisonment
328(1)	Handling of drugs with no purpose to distribute	No minimum amount, no maximum amount	2-5 years' imprisonment or limitation of freedom	1,344 or 69.7% of all convicted under article 328	250 or 18.6% of all sentenced under 328(1)
328(2)	Handling of drugs with the purpose to distribute	No minimum amount	3-8 years' imprisonment with or without fine	86 or 4.5% of all convicted under article 328	
328(3)	Handling of drugs in large amounts or handling of extra dangerous drugs (such as heroin, amphetamine)	No minimum amount for extra dangerous drugs (such as heroin or amphetamine); Large amount for marijuana is 80.0 grams; cannabis resin is 25.0 grams	6-15 years' imprisonment with or without fine	425 or 22.1% of all convicted under article 328	
328(4)	Activities described in 328(2)-(3) committed by an organized criminal group, or manufacturing of drugs using laboratory equipment	As described for 328(2)-(3)	10-20 years' imprisonment with or without fine	68 or 3.5% of all convicted under article 328	581 or 99.7% were sentenced to imprisonment

¹⁸ Courts Statistics on drug crimes in 2020 (Данные за 2020 год о преступлениях, связанных с незаконным оборотом наркотических средств, психотропных веществ, их прекурсоров и аналогов. Интернет-портал судов общей юрисдикции Республики Беларусь). Online: <http://www.court.gov.by/ru/statistika/>

328(5)	Activities described in 328(2)-(4) that led to the death of a drug consumer	As described for 328 (2)-(4)	12-25 years' imprisonment with or without fine	4 or 0.2% of all convicted under article 328	
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There are cases when police in Belarus do an exemplary job in disrupting wholesale commercial scale trafficking. For example, in 2019, law enforcement in Belarus managed to arrest members of a group that transported more than 400 kilograms of heroin from Afghanistan to European countries through Belarus.¹⁹ However, there are many more cases when police deploy heavy-handed drug enforcement measures against the very low-scale drug use activities that only formally fall under the definition of distribution.

Examples of drug enforcement in Belarus

Case of Maxim Zhuravlev, 24 years old²⁰

Maxim was sentenced to eight years in a penal colony under article 328 of the Criminal code of the Republic of Belarus. On February 22, 2017, Maxim's cousin Alexey came to visit Maxim at about 11:00 a.m. Later that day, Maxim walked with Alexey to the bus stop and disappeared. The next day at 5:00 a.m., police called Maxim's mother to inform her that both Maxim and Alexey had been detained for drug crimes under part 1 of article 328. However, Maxim was later indicted with the crime of trafficking under part 3 of article 328 because in his first testimony, Alexey said that Maxim gave him a prohibited substance. Because the word "gave" appeared in the testimony, police were able to apply part 3 rather than part 1. The court convicted Maxim for drug trafficking and sentenced him to eight years' imprisonment in a high-security prison.

¹⁹ Afghan heroin for 50 mln dollars: a trial began in Minsk (Афганский героин на 50 млн долларов: в Минске начался суд над дилерами). Sputnik Belarus. 20.08.2021. Online: <https://sputnik.by/20210820/bolee-500-kg-afganskogo-geroina-v-minske-nachalsya-sud-nad-dilerami-1055816280.html>

²⁰ Interview of Irina Zhuravleva, mother of Maxim Zhuravlev. April 2018. Online: <https://www.youtube.com/watch?v=HZoMha64KFg&t=87s>

Table 2: Examples of punishment for drug distribution cases²¹

Punishment	Name, health, and family situation of a convicted person	Crime as convicted
9.6 years of high security prison	Nemirov Andrey, born in 1985, a father of a three-year-old daughter	Cultivated two cannabis plants
9.6 years' imprisonment	Pashkevich Alexandr, born in 1976, a father of four children	Harvested naturally grown cannabis
9 years' imprisonment	Kirik Nikita, born in 1998	Attempted to distribute 3 grams of precursor and 0.038 grams of Alpha-PVP
8 years of high security prison	Anonuk Irina, born in 1996, suffers from bronchiectasis, emphysema, and blockage of the left ventricle of the heart	Charged with distribution. No substance was seized. The whole case is based on the police witness statement and the mobile phone messages.
8.6 years of high security prison	Shabanonv Sergey, born in 1988, a father of three children	Distribution of 0.55 grams of amphetamine and 0.36 of marijuana
9 years' imprisonment	Ustimenko Kirill, born in 1990, a father of a two-year-old child	Distribution of 0.07 grams of heroin
8 years of high security prison	Zhuravlev Maxim, born in 1993	Distribution of 0.37 grams of Alpha-PVP

²¹ The list is composed by a civil society organization of people who use drugs LUNA. Person to contact Katerina Parfenuk email: kaparfenuk@gmail.com Online: <https://enpud.net/index.php/2019-09-02-13-20-47/dokumenty-i-broshyury/999-%D0%B1%D0%B5%D0%BB%D0%B0%D1%80%D1%83%D1%81%D1%8C-%D1%81%D0%B8%D1%81%D1%82%D0%B5%D0%BC%D0%B0-%D0%BD%D0%B0%D0%BA%D0%B0%D0%B7%D0%B0%D0%BD%D0%B8%D1%8F-%D1%81%D0%B8%D1%81%D1%82%D0%B5%D0%BC%D0%B0-%D1%83%D0%BD%D0%B8%D1%87%D1%82%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D1%8F.html>

9 years' imprisonment	Tsivinsky Konstanin, born in 1985, a father of three children, three-year-old, two-year-old, and 16-year-old	Distribution of 0.5 gram of methadone
6 years' imprisonment	Solyankin Alexandr, born in 1994, a father of a newborn child	Distribution of 0.25 grams of synthetic cannabinoid
13 years in high security prison	Semenyakov Dmitry, born in 1989, a father of three children	Distribution of 38 grams of synthetic cannabinoids
12 years' imprisonment	Baykov Dmitry, born in 1987, a father of three children	Distribution of 3 grams of Alpha-PVP
12 years' imprisonment	Tretyak Konstantin, born in 1989, a father of a newborn child	Distribution of one gram of Alpha-PVP

Drug prosecutions in Belarus disproportionately affect people who are economically or socially vulnerable, often due to chronic health conditions such as drug dependence. Instead of targeting wholesale drug trafficking and disrupting illicit drug markets, the imbalanced drug policy primarily targets people who use drugs — the very people who should benefit from a health-centered approach through access to harm reduction and evidence-based drug dependence treatment.

Issue 2: The lack of access to drug dependence treatment and harm reduction in police custody, pre-trial detention, and in prisons.

Against the backdrop of sentencing thousands of people who use drugs to prison, Belarus does not provide access to opioid substitution therapy or harm reduction in police custody, pre-trial detention facilities, or prisons. There is also limited access to other medications, such as antiretroviral treatment for people living with HIV, in pre-trial detention centers. Law enforcement offices often misuse withdrawal syndrome to obtain confessions from people who use drugs in police custody. Detainees may also experience violence inflicted by prison guards or detention facilities staff members.

Case of Igor Ptichkin, died in pre-trial detention center (SIZO No 1) on August 4, 2016.

The initial cause of death was established as heart failure. Later, a coroner established the cause of death as an acute psychiatric disorder due to the use of synthetic cannabinoids (spice). However, a doctor, Alexander Krilov, told police during an interview that Igor was

...tied to a bed for more than 20 hours. Igor's relatives also informed police that Igor had been beaten before his death, and that there was blood on his shoes and urine on his clothes. It appeared that Igor could not move, eat, or go to toilet for the whole day because he was tied to a bed.

Suggested recommendation to the Government of Belarus with respect to Issues 1 and 2

Apply a human rights– and health–based approach to people who use drugs and in particular:

(a) Adopt a comprehensive, proportionate, and balanced policy to combat drug problems, including by applying criminal law and law enforcement only against commercial level drug trafficking, and consider lifting criminal and administrative sanctions for drug possession with no intention to distribute as well as for low level peer to peer distribution that occur in the context of drug use;

(b) Conduct broad awareness-raising programmes about the serious health risks associated with drug use, including the web-outreach activities as recommended by UNDOC;

(c) Address discrimination against people who use drugs, including with regard to their access to health-care services as well as in the area of labour rights, and educate law enforcement officers, justices, lawyers, health workers about the International Guidelines on Human Rights and Drug Policy endorsed by UNDP, UNAIDS, and WHO²²;

(d) Provide appropriate health care, psychological support services and rehabilitation to drug dependent people, such as geographically accessible opioid substitution therapy with take home medications, and continue supporting harm reduction programmes, such as needle and syringe exchanges, while ensuring their coverage, particularly in prisons with a view to combating the spread of HIV, Hepatitis C, and tuberculosis, and support non-governmental organizations that provide such services.

(f) Refrain from applying coercive drug dependence treatment, unless on an exceptional basis, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

Issue 3: Criminalization of HIV

Belarus is a global leader in the number of convictions for HIV exposure and HIV transmission. Both, the exposure and transmission are criminal offences under Article 157 of the Criminal Code. In 2019 Article 157 was amended with the Note to prevent prosecution of people from discordant couples. This resulted to the significant decrease of the number of criminal prosecutions against people living with HIV. Despite this, in the first part of 2020 Belarus prosecuted 37 people living with HIV; most of them (65%) were prosecuted for HIV exposure,

²² International Guidelines on Human Rights and Drug Policy. 2020. Online: <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy>

without actually transmitting HIV.²³ According to laws of Belarus, doctors must inform law enforcement officers when they suspect that HIV exposure took place. Such laws seed mistrust between patients and doctors and deter people from getting tested and seeking medical help.

Suggested recommendation to the Government of Belarus with respect to Issues No 3

Apply a human rights– and health– based approach to people living with HIV and in particular:

- (a) End HIV-specific criminalization by repealing article 157 of the Criminal Code, and create an environment that enables people to seek testing, support, and treatment, and to safely disclose their HIV status as an alternative to a punitive approach to HIV prevention;*
- (b) Limit possible application of general criminal law only to cases of intentional HIV transmission (e.g. where a person knows their HIV status, acts with the intention to transmit HIV, and does in fact transmit the virus), informed by the best available scientific and medical evidence about HIV and modes of transmission, prevention, and treatment. The harm of HIV non-disclosure or potential or perceived exposure, without actual transmission, is not sufficient to warrant prosecution and should not be criminalized;*
- (c) Educate law enforcement officers, justices, and lawyers about the science-based fact about HIV transmission as well as about international prosecutorial and judicial guidance endorsed by UNDP and UNAIDS.²⁴*

Annex I. Information about the applicants



The HIV Legal Network (www.hivlegalnetwork.ca) promotes the human rights of people living with, at risk of, or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education, and community mobilization.

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Eurasian Harm Reduction Association (EHRA) (<http://harmreductioneurasia.org>) is a non-profit public organization, uniting 303 organizational and individual members from 29 countries of the Central and Eastern Europe and Central Asia region (CEECA) with a mission to support communities and civil societies to ensure the rights and freedoms, health, and well-being of people who use psychoactive substances.

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Person to contact: Maria Plotko, email: maria@harmreductioneurasia.org

²³ Valentina Mokhor. Belarus needs decriminalization of HIV (Валентина Мохор. Беларусь нуждается в декриминализации передачи ВИЧ. Медицинский вестник), 13 October 2020. Online: <https://www.bsmu.by/page/6/7317/>

²⁴ UNDP Guidance for Prosecutors on HIV Related Criminal Cases. UNDP. 2021. Online: <https://www.undp.org/publications/undp-guidance-prosecutors-hiv-related-criminal-cases>