



Submission to the UN Universal Periodic Review

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Belarus

Submitted by: **Equality Now**

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Introduction and Summary

1. Equality Now is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organisations in over 190 countries.
2. In this submission, Equality Now provides information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. This submission is in reference to Equality Now's Report: *Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia*, which contains a survey of the laws on sexual violence in the 15 countries of the former Soviet Union and analysis of gaps in the law and examples of practice allowing for impunity for perpetrators of sexual violence crimes.ⁱ As noted in this submission, the definitions of rape and sexual violence related crimes in Belarus do not conform to international human rights standards. In addition, perpetrators of sexual violence often go unpunished because of discriminatory investigation and prosecution procedures that are applied in practice.
3. We reiterate the Conclusions adopted during the previous cycleⁱⁱ which enjoyed the support of Belarus, and underscore in particular the recommendations that Belarus continue its efforts in improving women's rights, including with regard to domestic violence,ⁱⁱⁱ and specifically by intensifying its efforts to prevent and prosecute acts of domestic and sexual violence against women as recommended by the Committee on the Elimination of Discrimination against Women.^{iv}
4. Articles 167-170 of the Criminal Code of Belarus criminalise various forms of sexual violence, including rape, violent acts of a sexual nature, compulsion to sexual intercourse, and statutory rape.^v These provisions fail to apply the international and regional human rights standards^{vi} of requiring lack of consent as a proper element of crimes of sexual violence and denoting that any consent must be given voluntarily as the result of the person's free will. In addition, the crime of rape in Belarus requires additional violence, rather than identifying violence as an aggravating circumstance of rape. It also fails to explicitly criminalise or recognise marital rape. Lack of explicit criminalisation leads to many acts of marital rape going unpunished. Finally, these provisions fail to explicate the broad range of coercive circumstances through which rape or other forms of sexual violence can be committed, as recommended by the Committee on the Elimination of Discrimination against Women,^{vii} leaving more women and girls vulnerable under the law.
5. The Criminal Code also allows for certain exemptions to be applied to the crimes of compulsion to sexual intercourse and statutory rape. Article 89 allows for release from criminal liability due to reconciliation with the victim. This provision allows perpetrators of gender-based violent crimes against women and girls to be granted impunity for their crimes, often at the discretion of the prosecutor.
6. International human rights standards provide for mandatory (ex officio) prosecution of sexual violence against women and girls. Contrary to this, Article 26 of the Criminal Procedure Code requires public-private prosecution procedures for the crimes of non-aggravated rape and non-aggravated sexual assault. This means that a criminal claim must be initiated by a victim, and prosecutors generally cannot initiate an investigation or prosecution on their own. Such procedures impose additional barriers to justice for victims of sexual violence and often lead to perpetrators

being set free. These laws give room for local law enforcement authorities to discourage women from filing claims and to postpone initiation of investigation. This transfer of the burden onto the survivor for seeing a prosecution through also exposes a victim of sexual violence to pressure not to file a complaint or to withdraw her claim. It has been reported that prosecutors are also quick to close a case when the victim wants to withdraw the complaint because of “reconciliation” with the perpetrator or for any other reason, without any further inquiry.

7. In addition to the abovementioned issues, deeply entrenched patriarchal attitudes, barriers to reporting sexual violence and lack of gender-sensitive investigation and prosecution procedures (including victim-blaming, burdensome evidence requirements, and practices that lead to secondary victimisation such as examining survivors’ prior sexual history and subjecting them to intrusive interrogations) which local groups have informed us leave an overwhelming majority of sexual violence crimes unpunished in Belarus. Adolescent girls (including in cases of child marriages and bride kidnappings), women with disabilities, ethnic minority women, women in prostitution and other vulnerable or marginalised women are particularly likely to face even greater challenges and intersecting forms of discrimination in accessing justice for sexual violence.

Recommendations for Action by the Government of Belarus

1. Amend legal provisions to ensure that definitions of sexual violence crimes align with international human rights standards on sexual violence;
2. Abolish provisions that enable public-private prosecution for sexual violence and require mandatory (ex officio) prosecution for these crimes;
3. Put in place gender-sensitive and survivor-centred investigation and prosecution procedures to ensure that perpetrators are brought to justice and survivors obtain access to justice.

ⁱ Available at https://www.equalitynow.org/roadblocks_to_justice

ⁱⁱ Report of the Working Group on the Universal Periodic Review, HRC thirtieth session, A/HRC/30/3, 13 July 2015 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/88/PDF/G1515588.pdf?OpenElement>

ⁱⁱⁱ A/HRC/30/3 paragraph 127.57 recommendation by the Democratic People’s Republic of Korea

^{iv} A/HRC/30/3 paragraph 127.61 recommendation by Rwanda

^v Available at http://etalonline.by/?type=text@num=HK9900275#load_text_none_1_

^{vi} Developed by ECtHR, CEDAW Committee, Istanbul Convention, ICC, ICTY and others.

^{vii} Karen Tayag Vertido v. The Philippines, CEDAW, Communication No.18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010), § 8.9(b)(ii); CEDAW, U.N. Doc. CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19