

1 This submission was prepared in September 2014 on the basis of the latest information available to the signatory organisations.

### **Executive summary:**

**2 This submission focusses on the situation regarding military service and conscientious objection to military service in Belarus.**

**3 The principal human rights concern it identifies is the continued failure to promulgate legislation to implement the right of conscientious objection to military service. Although this situation dates back beyond the review of Belarus in early May 2010 during the first cycle of the UPR, the issue was not raised during the Working Group, and no recommendations were made.**

### **Background**

4 Belarus operates a system of obligatory military service. Male citizens between the ages of 18 and 27 are liable to perform 18 months service; 12 months in case of those with higher educational qualifications

5 Article 57 of the 1994 Constitution, without explicitly mentioning conscientious objection, states: "Procedures regulating military service, and the grounds or conditions for exemption from military service or its replacement by alternative service, shall be further regulated by law".

6 According to Article 4 of the 1994 Law "On the Procedure Governing the Entry into Force of the Constitution of the Republic of Belarus", a law on alternative service should have been adopted within two years. This however did not happen. In 1994, the Parliament discussed a draft law but it did not proceed with its implementation.

7 Noting the assurance of the delegation of Belarus that legislation on conscientious objection to military service was envisaged, the Human Rights Committee, in its concluding observations on the Fourth Periodic Report of Belarus under the International Covenant for Civil and Political Rights, considered in October 1997, recommended "that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22."<sup>1</sup> The Fifth Periodic Report of Belarus, due in 2001, is still outstanding; Belarus has now opted for the "simplified reporting system"; the List of Issues Prior to Reporting is to be drawn up at the Human Rights Committee's 114<sup>th</sup> Session, in July 2015.

8 In 2000, in the case of Valentin Guhai, a Jehovah's Witness who had requested a civilian alternative service rather than the unarmed military service which was available to those who convinced the military of their objection to bearing arms on religious grounds, the Constitutional Court ruled that conscientious objectors had a constitutional right to a civilian alternative to military service, and called upon the Government to bring in implementing legislation. Guhai's sentence of 18 months imprisonment plus 18 months labour on a state construction project was subsequently commuted to a twelve-month suspended sentence.

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1 CCPR/C/79/Add.86, 19<sup>th</sup> November 1997, para.16.

9 A further draft Law, which envisaged 27 months' alternative service to be performed on collective farms, in factories or on building sites, was introduced in 2001. This draft was criticised by the Ministry of Defence as too favourable towards conscientious objectors, and was defeated in Parliament in December 2004.

10 It is reported that at the beginning of 2010 President Lukashenka personally instructed the Security Council of Belarus, which “consists of top military, KGB, police and other related officials” to prepare a draft Law.<sup>2</sup> However, soon after this had appeared on the legislative programme it ceased to be listed, with no announcement or explanation.

11 Nevertheless, in May 2010, an international conference on conscientious objection to military service took place in Minsk, hosted by the Public Campaign “For alternative civilian service in Belarus”, with the support of the Organisation for Security and Co-operation in Europe, and produced an unusually open dialogue between representatives of conscientious objectors' organisations throughout the region, international experts, and representatives of government ministries, including the Ministry of Defence, which seemed to be actively contemplating the possibility of drafting an alternative service law. In July 2010, as a follow-up to that conference, a group of non-governmental organisations drew up and published proposals for an Alternative Service Law. The government made no response to these proposals.

12 The most recent draft Law on Alternative Service was included in the Legislative Programme for 2013, approved by presidential decree on 3<sup>rd</sup> January 2013. Preparation of the draft was assigned to the Council of Ministers in co-operation with the National Centre for Legislation and Legal Research. Completion of the draft was scheduled for July 2013 and it was envisaged that it would be presented to the Lower House of Parliament in October 2013.<sup>3</sup>

13 In the event a draft prepared by the Ministry of Labour and Social Security was presented to parliament in December 2013 but before the Labour and Social Affairs Committee of the Parliament could commence its consideration, the draft was returned to the Ministry “for technical amendments”, with no date set for its return. This draft would not have guaranteed freedom of conscience, granting the possibility of applying to substitute a civilian alternative service for military service only to those who cited explicitly religious grounds. Applications would have been allowed only within a ten-day window, creating doubts as to whether the process would in practice be accessible to all those affected, and making no allowance for the possibility that conscientious objections may develop over time. And the proposed duration of alternative service was punitive and discriminatory – 30 months as opposed to 18 months of military service.

14 It is of course to be hoped that withdrawing the draft for amendment would enable the Ministry of Labour and Social Security to address these aspects in which as first put forward it fell short of international standards. Non-governmental organisations in Belarus fear however that yet again the legislative proposal will simply disappear without trace.<sup>4</sup>

15 Following the Constitutional Court's decision in the case of Guhai (see para 8 above), no proceedings were initiated against conscientious objectors who requested alternative civilian service

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2 Shraibman, A., “Alternative Civilian Service in Belarus; possible, but only in theory” <http://belarusdigest.com/story/alternative-civilian-service-belarus-possible-only-theory-12784>, 17<sup>th</sup> January 2013

3 Corley, F., “Belarus: Alternative service law “earliest by Summer 2014”?”, [Forum 18 News Service](http://www.forum18.org) ([www.forum18.org](http://www.forum18.org)), 10<sup>th</sup> January 2013.

4 All details from Glace, O., “Belarus: Long awaited alternative service law abandoned?” [Forum 18 News Service](http://www.forum18.org) ([www.forum18.org](http://www.forum18.org)), 4<sup>th</sup> February 2014.

until October 2009, when Jehovah's Witness Dmitry Smyk went on trial in the city of Gomel. On 6<sup>th</sup> November 2009, Smyk was fined 3,500,000 Belarus Roubles (approximately 860 Euros), and was notified that he was forbidden to leave the country.

16 On 20<sup>th</sup> December 2009 Ivan Mikhailau, a member of Jewish-messianic religious community from Homel, the second largest city in Belarus, was arrested and incarcerated in Zhodzina pre-trial prison on charges of “draft evasion”. Brought to trial on 1<sup>st</sup> February 2010, he pleaded not guilty and claimed his constitutional right to alternative service. He was however found guilty and sentenced to three months' detention. Mikhailau was recognised as a prisoner of conscience by Amnesty International. On appeal heard on 10<sup>th</sup> March 2010 he was found not guilty and released, having been held in pre-trial detention for almost as long as the sentence against which he was appealing.<sup>5</sup>

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5 Sources:  
Shraibman, op cit.