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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Analytical report on conscientious objection to military service

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

This report is submitted in accordance with Human Rights Council resolution 20/2, which requested the Office of the High Commissioner of Human Rights (OHCHR) to prepare, in consultations with all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions, a quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges. The last analytical report on conscientious objection to military service was submitted to the Commission on Human Rights in 2006 (E/CN.4/2006/51).

The present report sets out the international legal framework, with particular attention to new developments, for conscientious objection to military services and includes information on the recognition of conscientious objection in international human rights law, the issue of its applicability to conscripts and those serving voluntarily, selective conscientious objection, the prohibition of repeated trial and punishment of unrecognized conscientious objectors, decision-making processes and the right to information, alternative service, non-discrimination between conscientious objectors, and the right to protection in international refugee law for conscientious objectors under certain circumstances. The report also contains information on best practices and remaining challenges in law and practice at the national level that relate to the above issues.

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\* This document is submitted late so as to include the most up-to-date information.

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## I. Introduction

1. The Human Rights Council in its resolution 20/2 requested OHCHR to prepare, in consultations with all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions, a quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges, and to submit the report to the Human Rights Council at its twenty-third session, under agenda item 3.

2. By note verbale dated 31 January 2013, OHCHR invited States to submit information on new developments, best practices and remaining challenges in relation to conscientious objection to military service. The Office received responses from the following States: Bosnia and Herzegovina, Colombia, Croatia, Ecuador, Finland, Georgia, Greece, Honduras, Lithuania, Mauritius, Montenegro, Russian Federation, Serbia, Slovenia, Singapore and Ukraine.

3. The same request was addressed to national human rights institutions, United Nations bodies, intergovernmental and non-governmental organizations. The following national human rights institutions responded: the Commission nationale des droits de l'Homme and des Libertés of Cameroon, the Defensoria del Pueblo of Colombia, the Defensoria del Pueblo of Paraguay, and the national human rights institution of Guatemala. Of the intergovernmental organizations, the Council of Europe submitted a contribution.

4. The following non-governmental organizations responded: the Associazione Comunita Papa Giovanni XXIII, the Centre for Civil and Political Rights, the European Bureau for Conscientious Objection, the European Organisation of Military Associations, Forum 18 News Service, the German Institute for Human Rights, Human Rights Watch, the International Fellowship of Reconciliation, Jehovah's Witnesses, the Quaker United Nations Office, the Russian NGO Soldiers' Mothers of St. Petersburg, the Union of Conscientious Objectors, and War Resisters International.

5. The last analytical report on conscientious objection to military service was submitted to the Commission on Human Rights in 2006 (E/CN.4/2006/51). Subsequent to this analytical report, a note by the secretariat was submitted to the Human Rights Council in 2007 (A/HRC/4/67). An updating report was submitted to the Council in 2008 (A/HRC/9/24), on developments at the national level as well as developments in the jurisprudence of the Human Rights Committee pertaining to conscientious objection to military service.<sup>1</sup>

## II. The international legal framework, with particular attention to new developments

### A. The right to conscientious objection to military service

6. The right to conscientious objection to military service is based on article 18 of the International Covenant on Civil and Political Rights ("the Covenant"), and article 18 of the Universal Declaration of Human Rights. Article 18 of the Covenant guarantees the right to freedom of thought, conscience and religion or belief, but makes no specific reference to

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<sup>1</sup> In 2013, OHCHR issued a new publication entitled *Conscientious objection to military service* (United Nations publication, Sales No. E.12.XIV.3).

conscientious objection to military service. Nevertheless, the Human Rights Committee has concluded that a right to conscientious objection to military service derived from article 18 exists and has articulated its position in its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion and in its jurisprudence relating to individual communications to the Committee.

7. In that general comment, the Committee stated: “The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief” (para. 11).

8. In its jurisprudence adopted subsequent to the elaboration of that general comment, the Committee also found a right to conscientious objection in a series of views on individual communications: *Yoon and Choi v. Republic of Korea*,<sup>2</sup> *Jung et al. v. Republic of Korea*,<sup>3</sup> and *Jeong et al. v. Republic of Korea*.<sup>4</sup> In *Yoon*, the Committee explained that a right to conscientious objection could be based on article 18 although it is not explicitly mentioned in the article, and moreover that the right existed notwithstanding the language in article 8 of the Covenant, which states that “the term ‘forced or compulsory labour’ shall not include ... any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors”. In the *Yoon* case, the Committee stated that “article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant”. This explanation was important because in an earlier case decided in 1985, *L.T.K. v. Finland*,<sup>5</sup> the Committee appeared to suggest that article 8 precluded an obligation on States to provide for conscientious objection to military service.

9. In the *Yoon* case, decided in 2006, the Committee indicated that conscientious objection to military service should be treated as a manifestation of religion or belief. However, in the *Jeong* case, decided five years later in 2011, the Committee stated that conscientious objection to military service “inheres in the right to freedom of thought, conscience and religion”.

10. Subsequently, in 2012, the Committee repeated its position that there is a right to conscientious objection to military service based on article 18 of the Covenant in *Atasoy and Sarkut v. Turkey*.<sup>6</sup> However, a divided Committee in *Atasoy and Sarkut* provided clarification on the issue of whether conscientious objection was a manifestation of religion or belief as indicated in *Yoon* or, as stated in the *Jeong* case, “inheres in the right to freedom of thought, conscience and religion”. In *Atasoy and Sarkut*, the Committee followed the reasoning in the *Jeong* case and concluded that the right to conscientious objection to military service is inherent in the right to freedom of thought, conscience and religion. In an individual opinion of Committee member Sir Nigel Rodley, jointly with members Mr. Krister Thelin and Mr. Cornelis Flinterman (concurring), it was stated that:

The implication of relying on that provision [that the right is a manifestation of religion or belief] is that circumstances could be envisaged in which the community interests contemplated by the provision could override the individual’s conscientious objection to military service. This goes against all our experience of the

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<sup>2</sup> Communications Nos. 1321-1322/2004, Views adopted on 3 November 2006.

<sup>3</sup> Communications Nos. 1593-1603/2007, Views adopted on 23 March 2010.

<sup>4</sup> Communications Nos. 1642-1742/2007, Views adopted on 24 March 2011.

<sup>5</sup> Communication No. 185/1984, decision of admissibility, 9 July 1985.

<sup>6</sup> Communications Nos. 1853-1854/2008, Views adopted on 29 March 2012.

phenomenon of conscientious objection. It is precisely in time of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice.

In a separate individual opinion of Committee member Mr. Gerald L. Neuman, jointly with members Mr. Yuji Iwasawa, Mr. Michael O’Flaherty and Mr. Walter Kälin (concurring), it was argued that the finding of a violation should have been based on the reasoning of the *Yoon* case, which treated conscientious objection to military service as a manifestation of religion or belief and that the Committee should consider whether the State had “identified any empirical reasons why its refusal to accommodate conscientious objection to military service would be necessary for one of the legitimate purposes listed in the Covenant”, namely “to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (art. 18, para. 3).

11. Given that article 4 of the Covenant does not permit any derogation of a State party’s obligations under article 18 of the Covenant in a time of public emergency which threatens the life of the nation, it would appear that there could be no circumstances where the right to conscientious objection to military service could be set aside given the Committee’s jurisprudence that conscientious objection “inheres in the right of thought, conscience and religion”. This would be consistent with the Committee’s position in its concluding observations on a State party report, where the Committee stated that the “State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime”.<sup>7</sup>

12. The Committee has made it clear that the right to conscientious objection applies not only to members of religious faiths that have pacifist tenets such as, for example, Jehovah’s Witnesses, Quakers, and Mennonites, but rather to “all religious beliefs and other convictions”.<sup>8</sup> In its general comment No. 22, the Committee has interpreted the terms “religion” and “belief” broadly, stating that “article 18 protects theistic, non-theistic and atheistic beliefs ... Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions” (para. 2). Therefore, a State, for example, would be in violation of article 18 of the Covenant if it only recognized the right to conscientious objection to persons who had an affiliation with an approved list of religious faiths that were found to be pacifist in character.<sup>9</sup> In its concluding observations, the Committee called on one reporting State to “extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions”.<sup>10</sup>

13. A claim of conscientious objection to military service must be based on an objection to the obligation to use lethal force. This position is reflected in the Committee’s general comment No. 22, paragraph 11, and in the Committee’s jurisprudence in *Westerman v. the Netherlands*.<sup>11</sup>

<sup>7</sup> Concluding observations on the fifth periodic report of Finland, CCPR/CO/82/FIN, para. 14.

<sup>8</sup> Concluding observations on the fifth periodic report of Ukraine, CCPR/CO/73/UKR, para. 20; see also concluding observations on the initial report of Kyrgyzstan, CCPR/CO/69/KGZ, para. 18.

<sup>9</sup> *Ibid.*

<sup>10</sup> Concluding observations on the sixth periodic report of Ukraine, CCPR/C/UKR/CO/6.

<sup>11</sup> Communication No. 682/1996, decision of admissibility, 16 October 1997.

14. The former Commission on Human Rights adopted a series of resolutions recognizing a right to conscientious objection to military service,<sup>12</sup> and the Human Rights Council in its resolution 20/2 recalled all previous resolutions and decisions concerning the recognition of conscientious objection to military service.

15. A number of States do not acknowledge that there is a universally applicable right to conscientious objection. For example, Singapore indicated in its submission that it did “not agree with the premise of resolution 20/2” and further stated that “Singapore would like to reiterate the reasons why it does not recognise the universal applicability of the right to conscientious objection to military service. The resolution 20/2 goes beyond what is prescribed in international law and applicable human rights instruments.” Singapore further indicated that “Article 29 of the UDHR and Article 18 of the Covenant recognise that the exercise of the rights and freedoms of an individual are subject to the necessity of ensuring public order and the general welfare of the society. National defence is a fundamental sovereign right under international law. Where individual beliefs or actions run counter to such a right, the right of a State to preserve and maintain national security must prevail.”<sup>13</sup>

16. At the regional level, the European Court of Human Rights decided in *Bayatyan v. Armenia*,<sup>14</sup> a Grand Chamber judgment, that a right to conscientious objection to military service exists based on article 9 of the European Convention on Human Rights, which indicates that, “everyone has the right to freedom of thought, conscience and religion”. The European Court of Human Rights wrote that, “opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to service in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9”.

17. The Court found that the failure of the applicant, a Jehovah’s Witness, “to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion as guaranteed by Article 9, para. 1” (para. 112). The Court also found that, “since no alternative civilian service was available in Armenia at the material time, the applicant had no choice but to refuse to be drafted into the army if he was to stay faithful to his convictions and, by doing so, to risk criminal sanctions” (para. 124).

18. The Court’s judgment in *Bayatyan v. Armenia* has been followed in subsequent cases by the European Court of Human Rights. For example, in 2011, a Chamber Judgment of the Court found in *Erçep v. Turkey*<sup>15</sup> that the applicant, a Jehovah’s Witness, had the right to conscientious objection. The Court took the view that the numerous convictions imposed on the applicant because of his beliefs, amounted to a violation of article 9 of the

<sup>12</sup> See Commission on Human Rights resolutions 2004/35, 2002/45, 2000/34, 1998/77, 1995/83, 1993/84, 1991/65, 1989/59 and 1987/46, all of which recognized the right to conscientious objection. With the exception of the Commission resolution 1987/46, which was adopted by a vote of 26 in favour, 2 against and 14 abstentions, all other Commission resolutions were adopted without a vote.

<sup>13</sup> This objection to the universal applicability of a right to conscientious objection has been continuous by some States. For example, in its reply to a request for information for a report on conscientious objection prepared by OHCHR in 2006, Singapore stated that Commission “resolution 2004/35 goes beyond what is prescribed in the international law and the applicable human rights instruments.” See analytical report of OHCHR on best practices in relation to conscientious objection to military service (E/CN.4/2006/51), para. 18. Similarly, in a joint letter to the Commission dated 24 April 2002, 16 Member States, including Singapore stated that they did “not recognise the universal applicability of conscientious objection to military service” (E/CN.4/2002/188).

<sup>14</sup> Application No. 23459/03, Judgement of 7 July 2011.

<sup>15</sup> Application No. 43965/04, Chamber Judgement of 22 November 2011.

European Convention on Human Rights (“European Convention”). In addition, the Court found a violation of the right to fair trial. The Court determined that, despite being accused of an offence under the Military Criminal Code, the applicant was, for criminal law purposes, not a member of the armed forces but a civilian. The Court found that his trial as a civilian before a military court was a violation of his right to fair trial.

19. In 2012, in *Bukharatyan v. Armenia*<sup>16</sup> and *Tsaturyan v. Armenia*,<sup>17</sup> the Court found violations of the applicants’ right to conscientious objection to military service based on the judgment rendered in *Bayatyan v. Armenia*. Also in 2012, the Court, in *Feti Demirtaş v. Turkey*,<sup>18</sup> found that the right to conscientious objection to military service of the applicant had been violated. The Court found a violation of article 6 of the European Convention which guarantees the right to fair trial since the applicant had been incorporated into the army against his will and then tried by a military court on nine charges of persistent disobedience relating to successive incidents when he had refused to put on a military uniform. The Court also found a breach of article 3 of the European Convention prohibiting cruel, inhuman and degrading treatment in relation to his treatment in detention for 554 days.

20. In 2012, the Court applied the Grand Chamber’s judgment in *Bayatyan v. Armenia* in two additional cases, *Savda v. Turkey*<sup>19</sup> and *Tarhan v. Turkey*,<sup>20</sup> and found violations of article 9 of the European Convention. These were the first “secular” cases addressed by the Court which did not involve Jehovah’s Witnesses. In *Savda v. Turkey*, the applicant, a Kurd, had been subject to repeated call-ups, prosecutions and imprisonment. The Court also found violations of the European Convention’s article 3 (inhuman or degrading treatment) and article 6 (right to a fair trial). The judgment also noted that the applicant’s case was characterized by an absence of a procedure on the part of the State to examine his request for recognition of conscientious objector status, and consequently his request was never examined by the authorities who made use of criminal law provisions penalizing his refusal to carry out military service. The Court emphasized the State’s obligation to provide a framework to protect the rights of individuals who would like to make a claim of conscientious objection to military service.

21. Although article 9 of the European Convention does not specifically mention conscientious objection to military service, the Charter of Fundamental Rights of the European Union does. In its article 10 providing for the right to freedom of thought, conscience and religion, paragraph two states that, “The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right”.

22. Other regional instruments recognize the right to freedom of conscience and belief, such as the American Convention on Human Rights (art. 12) and the African Charter on Human and Peoples’ Rights (art. 8), but neither specifically mentions the right to conscientious objection to military service.

23. One intergovernmental convention, the Ibero-American Convention on the Rights of Young People, does provide specific protection for the right of conscientious objection to military service. Article 12, paragraph 1, states that, “Youth have the right to make conscientious objection towards obligatory military service”.

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<sup>16</sup> Application No. 37819/03, Chamber Judgement of 10 January 2012.

<sup>17</sup> Application No. 37821/03, Chamber Judgement of 10 January 2012.

<sup>18</sup> Application No. 5260/07, Chamber Judgement of 17 January 2012.

<sup>19</sup> Application No. 42730/05, Chamber Judgement of 12 June 2012.

<sup>20</sup> Application No. 9078/06, Chamber Judgement of 17 July 2012.

24. It should be noted that, prior to the decision of the Human Rights Committee in the case of *Yoon and Choi* in 2006 and the judgement of the European Court of Human Rights in *Bayatyan v. Armenia* in 2011, the Inter-American Commission on Human Rights found in 2005 in *Sahli Vera et al. v. Chile*<sup>21</sup> that “failure of the Chilean State to recognize ‘conscientious objector’ status in its domestic law, and the failure to recognize [the petitioners] as ‘conscientious objectors’ ... does not constitute an interference with their right to freedom of conscience”. The Inter-American Commission stated that the “American Convention does not expressly create or even mention a right of ‘conscientious objection’”, and found no violation of the applicant’s rights under article 12 of the Convention providing for freedom of conscience and belief. It is an open question whether the Inter-American Commission, or the Inter-American Court of Human Rights, would come to the same conclusion today in the light of the more recent jurisprudence of the Human Rights Committee and the European Court of Human Rights.

## **B. The right of serving members of the armed forces, including conscripts and volunteers, to make a claim of conscientious objection to military service**

25. An issue that is also important is whether an individual can make a claim of conscientious objection after he or she has joined the armed forces. The basis for allowing such a claim after a person has joined the armed forces is the language of article 18 of the Covenant on Civil and Political Rights, which provides that an individual has the freedom “to have or to adopt a religion or belief of his choice”. The Human Rights Committee has interpreted this language to mean that a person has the right to change his or her religion or belief.<sup>22</sup> In the case of a person subject to conscription, the Committee in its concluding observations on a State report urged the State “to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces”.<sup>23</sup> The Commission on Human Rights indicated in its resolution 1993/84 that it was “aware that persons performing military service may develop conscientious objections”, and affirmed “that persons performing compulsory military service should not be excluded from the right to have conscientious objections to military service”.

26. Although the Human Rights Committee has not addressed the precise issue of a person who has volunteered to serve in the armed forces and who then subsequently makes a claim for conscientious objection to military service, the more consistent position would be that such a claim should be granted if based on a change of religion or belief. It is useful to note in this regard that, in 2010, the Committee of Ministers of the Council of Europe adopted a recommendation which states that “professional members of the armed forces should be able to leave the armed forces for reasons of conscience”.<sup>24</sup> The recommendation indicates that conscripts already integrated in the armed forces should have the right to make a claim of conscientious objection to military service.<sup>25</sup>

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<sup>21</sup> Report No. 43/05, case 12,129, Merits (10 March 2005).

<sup>22</sup> General comment No. 22, para. 5. The Universal Declaration on Human Rights also provides that “the right to freedom of thought, conscience and religion ... includes freedom to change his religion or belief” (art. 18).

<sup>23</sup> Concluding observations on the fourth periodic report of Spain, CCPR/C/79/Add 61, paras. 15 and 20.

<sup>24</sup> Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, para. 42.

<sup>25</sup> *Ibid.*, paras. 40–46.

27. The recommendation states: “Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible ... No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.”<sup>26</sup>

### **C. Selective conscientious objection**

28. Selective conscientious objection is distinct from an objection to participation in any war, military action, or the armed forces, and accepts the legitimacy of some types of military action. The General Assembly implicitly recognized one type of selective objection in its resolution 33/165, in which it called upon, “Member States to grant asylum or safe transit to another State ... to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of *apartheid* through service in military or police forces”.

### **D. Decision-making process for applications for conscientious objector status**

29. The Commission on Human Rights in its resolution 1998/77 underlined the importance of an independent and impartial decision-making body in the assessment of applications and called “upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs” (para. 3). In the same resolution, the Commission welcomed “the fact that some States accept claims of conscientious objection as valid without inquiry” (para. 2).

30. In its concluding observations on a State report, the Human Rights Committee requested the State to “consider placing the assessment of applications for conscientious objector status under the control of civilian authorities”.<sup>27</sup> While not appearing to require that the assessment process be subject exclusively to a civilian process, the Committee may recommend the use of a civilian process if it appears there is a concern with the independence and impartiality of an existing process.

31. The Committee of Ministers of the Council of Europe in its Recommendation No. R (87) 8, adopted in 1987 has also underlined the need for a fair procedure. It specifies three requirements: (a) that the examination of applications include all the necessary guarantees for a fair procedure; (b) that an applicant have the right to appeal against the decision of first instance, and (c) that the appeal authority be separate from the military administration and composed so as to ensure its independence.

### **E. Prohibition of repeated trial or punishment of conscientious objectors**

32. States that do not recognize conscientious objection have sometimes resorted to repeated trial or imprisonment of conscientious objectors. The Working Group on Arbitrary Detention considers that “repeated incarceration of conscientious objectors is directed

<sup>26</sup> Ibid., paras. 43, 45.

<sup>27</sup> Concluding observations on the initial report of Greece, CCPR/CO/83/GRC, para. 15.

towards changing their conviction and opinion, under threat of penalty”,<sup>28</sup> and that it is thus incompatible with article 18, paragraph 2, of the Covenant which prohibits “coercion which would impair his freedom to have or to adopt a religion or belief of his choice”. The repeated trial or punishment of unrecognized conscientious objectors to military service would also be a violation of article 14, paragraph 7 of the Covenant prohibiting repeated trial or punishment for an offence for which a person has been finally convicted or prohibited. The Human Rights Committee addressed the issue in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial where it stated: “Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience” (para. 55).

33. In resolution 1998/77, the Commission on Human Rights emphasized that, “States should take the necessary measures to refrain from subjecting conscientious objectors ... to repeated punishment for failure to perform military service, and recalls that no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”.

## F. Alternative service

34. The Human Rights Committee has frequently referred to the fact that States may, if they so desire, establish alternative service in place of compulsory military service. This is also recognized in article 8 of the Covenant which provides that “any national service required by law of conscientious objectors” shall not be included within the meaning of the terms “forced or compulsory labour”. But it should also be noted that there is no requirement under international law for States to establish such a system, and State can simply excuse conscientious objectors from military service with no further action required from such persons.

35. The Commission on Human Rights in its resolution 1998/77 set out criteria for alternative service and indicated to States that “they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character”. This recommendation can be understood to distinguish those conscientious objectors whose objection is to personally bearing arms, but who are not opposed to unarmed military service, from those whose objection is to any participation in the armed forces. For the first category of objectors whose objection is to personally bearing arms, non-combatant service in the military may be compatible with the reasons for their conscientious objection. However, for conscientious objectors whose objection is to any participation in the armed forces, alternative service should be of a civilian character, in the public interest and not of a punitive character.<sup>29</sup>

36. The Human Rights Committee has indicated that the term “punitive” includes the conditions of alternative service as well as its duration in relation to the length of military service. In its concluding observations following consideration of a State report in 2009, the Committee found that the conditions of alternative serve were “punitive in nature, including

<sup>28</sup> Report of the Working Group on Arbitrary Detention, E/CN.4/2001/14 (Recommendation 2: detention of conscientious objectors), paras. 91–94; see also opinion No. 36/1999 (Turkey).

<sup>29</sup> Recommendation No. R (87) 8 of the Committee of Ministers of the Council of Europe also makes this distinction between two types of alternative service: unarmed military service and alternative service that is civilian, in the public interest and not of a punitive nature (paras. 9–10).

the requirement to perform such services outside the places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organizations, and the restrictions in the freedom of movement for the persons concerned”.<sup>30</sup>

37. The Committee’s approach regarding the length of alternative service is set out in its views on the individual communication *Foin v. France*.<sup>31</sup> In this case, the Committee recognized that “the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service”. Subsequent to expressing its views on the individual communication in *Foin*, the Committee has expressed concern that alternative service of twice and 1.7 times the length of military service may be punitive in its concluding observations.<sup>32</sup>

38. The Council of Ministers of the Council of Europe has stated that “the less onerous duties of civilian service may justify a longer duration than that of military service. It considers that member States must enjoy a certain discretion in deciding on the length and organisation of the alternative service”.<sup>33</sup>

39. The European Committee of Social Rights of the Council of Europe has also accepted “that the less onerous nature of civilian services justifies a longer duration than that of military service”, adding that Contracting Parties to the European Social Charter “enjoy a certain margin of appreciation in this area”.<sup>34</sup> Nevertheless, the Committee has found that alternative civilian service twice the duration of military service was “excessive” in character. The Committee has taken the position that under article 1, section 2 of the revised European Social Charter, alternative service should not exceed one and a half times the length of military service.<sup>35</sup>

### III. State law and practice: best practices

#### A. Trend to abolish or suspend compulsory military service

40. The trend to either abolish or suspend compulsory military service has reduced considerably issues associated with compulsory military service and alternative service. A number of States and other organizations indicated that their State or other States had volunteer military service system or had formerly had a compulsory military service obligation which had now been suspended or replaced with a voluntary military service system (Bosnia and Herzegovina, Croatia, Germany (German Institute for Human Rights), Honduras, Italy (Association Comunita Papa Giovanni XXIII), Lithuania, Serbia, Slovenia, National Commission of Human Rights and Freedoms of Cameroon). Other countries that

<sup>30</sup> Concluding observations on the sixth periodic report of the Russian Federation, CCPR/C/RUS/CO/6, para. 23.

<sup>31</sup> Communication No. 666/1995, Views adopted on 3 November 1999.

<sup>32</sup> Concluding observations on the second periodic report of Estonia, CCPR/CO/77/EST; concluding observations on the fifth periodic report of the Russian Federation, CCPR/CO/79/RUS.

<sup>33</sup> Reply to recommendation 1518 (2001) of the Parliamentary Assembly on the exercise of the right to conscientious objection to military service in Council of Europe member States, Doc. 9379.

<sup>34</sup> *Quaker Council for European Affairs v. Greece*, complaint No. 8/2000, decision on the merits.

<sup>35</sup> European Committee of Social Rights, *European Social Charter (Revised): Conclusions 2008* (vol. I), p. 231.

have abolished or suspended conscription since 2009 include Albania, Ecuador, Poland and Sweden, according to the International Fellowship of Reconciliation. Ukraine indicated that it was presently transitioning to an all voluntary armed forces. Mauritius indicated that it did not have a military force, but a Special Mobile Force, that was part of the police and under the command of the Commissioner of Police.

41. The German Institute for Human Rights indicated that, with the end of compulsory military service in Germany, the programme for alternative service had also been suspended. However, it was recognized that the alternative service programme had significant benefits to German society, and that in 50 years, 2,718,360 young men had engaged in useful service to 37,000 social and charitable organizations. Consequently, Germany had established a new federal volunteer service open to men and women at all ages to engage in voluntary activity on a broad social scale. It was hoped that the new federal volunteer service would partially compensate those social and charitable institutions which had benefited from alternative civilian service.

## **B. Alternative service**

42. The Russian Federation indicated that article 59 of its Constitution recognized the right to conscientious objection to military service and the right to alternative service. Its submission stated that alternative service was regulated by the Federal Law on Alternative Civilian Service and that, from 2009 to 2012, the number of persons undertaking alternative service had steadily increased each year from 391 in 2009 to 587 in 2012.

43. Alternative military service, according to the European Organisation of Military Associations, should not be more than one and a half times the length of military service. War Resisters International said that best practice in relation to alternative service was exemplified by Denmark, which had alternative military service of the same length as military service. Since 2011, Norway had suspended substitute service for conscientious objectors.

44. Ukraine reported that, under its alternative service programme, all worked performed in a civilian capacity was regulated by the same labour laws and regulations applicable to other employees. Georgia reported that citizens performing civilian alternative service were usually assigned according to their place of residence and include participation in: (a) rescue, ecological, fire-prevention activities; (b) engineering, repair organizations; (c) organizations and facilities involving agricultural production; (d) establishments of health protection; and (e) public service establishments.

45. Greece reported that it had an alternative civilian service that was slightly longer than military service and that the period of service varied according to the length of service in the respective branches in the armed forces. The Ombudsman of Guatemala reported that there was a national service requirement that could be fulfilled either in the military or in a civilian capacity.

## **C. Recognition of the right to conscientious objection to military service for conscripts and those serving voluntarily**

46. The European Organisation of Military Associations indicated that conscientious objection should be available to both conscripts and persons serving voluntarily in the armed forces, both prior to and during military service. In replies to the request for information for the present report, it was indicated that in Georgia and Serbia, persons serving in the reserves can apply for conscientious objection to military service.

#### **D. Selective objection to military service**

47. Both the German Institute for Human Rights and the European Organisation of Military Associations referred to selective conscientious objection to military service and cited a case where the right to selective conscientious objection was recognized by the German Federal Administrative Court in 2005. The Court held that freedom of conscience protected an army software engineer, Major Florian Pfaff, who declared that the Iraq war was illegal and refused to work on a computer programme related to the conflict for reasons of conscience.

#### **E. Fair, independent and impartial procedures to consider applications for conscientious objection to military service; non-discrimination between conscientious objectors**

48. War Resisters' International stated that the action of some States to accept claims of conscientious objection as valid without inquiry was a good practice. It should be recalled that the Commission on Human Rights in its resolution 1998/77 had welcomed the practice of recognizing claims without inquiry, and in the same resolution called upon States "to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of their particular beliefs".

#### **F. Consideration of claims for refugee status for conscientious objectors**

49. The European Bureau for Conscientious Objection in its reply called on States to give consideration to applications for asylum from all persons seeking to escape military service in any country where there were no provisions or no adequate provision for conscientious objectors.<sup>36</sup>

### **IV. State law and practice: remaining challenges**

#### **A. Lack of recognition or implementation of the right to conscientious objection to military service and alternative service; repeated trial or punishment**

50. In the replies received from States and other organizations, the biggest remaining challenge identified was a lack of implementation of conscientious objection to military service. The following cases which illustrate a lack of implementation are taken from the replies received to requests for contributions to the present report.

51. The submission of Jehovah's Witnesses alleged that, despite the judgment of the European Court of Human Rights in *Bayatyan v. Armenia*, Armenia continued to prosecute and imprison conscientious objectors. The Jehovah's Witnesses indicated there were 22 cases pending by Jehovah's Witnesses for failure to implement the right to conscientious objection to military service before the European Court of Human Rights. Forum 18 News

<sup>36</sup> See Chapter III, "Protection of conscientious objectors in international refugee law", in *Conscientious Objection to Military Service*, pp. 72–82.

Service also said that Armenia continued to imprison conscientious objectors to military service, and alleged that there were 31 conscientious objectors in prisons, all of them Jehovah's Witnesses. Forum 18 News Service also claimed that the alternative service in Armenia was not a truly civilian alternative service because it was supervised by the Military Police under regulations laid down by the Defence Ministers, and that all breaches of orders or regulations were dealt with by the Military Prosecutor's Office. It also took the position that alternative service at 42 months, compared with compulsory military service of 24 months, was excessively long.

52. Forum 18 News Service indicated in its reply that Azerbaijan continued to imprison conscientious objectors. The Jehovah's Witnesses also alleged that Azerbaijan prosecuted and convicted conscientious objectors, and indicated that there were two cases pending before the European Court of Human Rights involving Jehovah's Witnesses.

53. War Resisters' International highlighted the lack of coherency between recognition of the right to conscientious objection to military service and its implementation. It stated that in 2009 the Colombian Constitutional Court recognized the right of conscientious objection to military service, and urged the Colombian Congress to pass a law to regulate this right. War Resisters' International noted, however, that there was currently no legislative provision regulating conscientious objection and in practice the right did not exist. The Government of Colombia indicated that a proposed law had been under consideration in the Colombian Congress since 2010, although it had not yet been adopted. The Defensoria del Pueblo of Colombia also reported that the proposed law had not yet been adopted.

54. Human Rights Watch noted that Eritrea did not recognize conscientious objection to military service and did not permit alternative service. Human Rights Watch alleges that, in 1994, the Government arrested three Jehovah's Witnesses, who remained incarcerated 19 years later. It also alleged that other Jehovah's Witnesses had also been imprisoned subsequently, and that Eritrea had no time limit on imprisonment of conscientious objectors. It stated that those persons were imprisoned in isolation, and that the Government did not allow access to the Jehovah's Witness prisoners to ascertain how they were treated. Human Rights Watch indicated that, since Eritrea did not publish information on individuals who were imprisoned, it was plausible that there may be other conscientious objectors imprisoned in addition to the Jehovah's Witnesses.

55. The Jehovah's Witnesses claim that there are 56 Witnesses currently imprisoned in Eritrea, and that 15 of them were known to have been imprisoned for conscientious objection to military service. Like Human Rights Watch, it maintained that three of the prisoners had been imprisoned since 1994. The Jehovah's Witnesses stated that the national military service requirement had no provisions for conscientious objection, and that most Jehovah's Witness between the ages of 18 and 40 were in hiding. Jehovah's Witnesses' alleged that those who were arrested by the military police and expressed their conscientious objection to military service were detained and often tortured.

56. War Resisters' International reported a case of repeated punishment in Israel where it alleged that a conscientious objector who refused to serve in the Israeli military had been subject to repeated call-up, followed by refusal to service, and repeated punishment.

57. The Jehovah's Witnesses indicated that the Republic of Korea had not implemented the Views of the Human Rights Committee in the three communications decided recognizing the right to conscientious objection to military service. Other replies from the International Fellowship of Reconciliation and the Centre for Civil and Political Rights also noted the failure of the Republic of Korea to implement the Committee's decisions. The Jehovah's Witnesses indicated that there were 50 complaints pending before the Committee from Jehovah's Witnesses. The Jehovah's Witnesses alleged that there were currently 669

Witnesses in prisons in the Republic of Korea and that, since 1950, 17,208 Witnesses had been sentenced to a combined total of 32,566 years in prison.

58. The Jehovah's Witnesses alleged that Kyrgyzstan prosecuted and imprisoned Jehovah's Witnesses for their conscientious objection to military service. It indicated that nine cases were pending before the Supreme Court of Kyrgyzstan and another 45 were pending before the Military Commissariat. The submission stated that the Law on the Universal Duty of Citizens of the Republic of Kyrgyzstan required those who chose alternative service to make payments to the Ministry of Defence to support the military, and maintained that the requirement violated the conscience of Jehovah's Witnesses. The submission stated that 12 Jehovah's Witnesses have been convicted for refusing to perform military service. Three cases of Jehovah's Witnesses were pending before the Human Rights Committee.

59. The Defensoria del Pueblo of Paraguay stated that, while the right to conscientious objection was recognized in law and there was provision for alternative service, there remained problems in how the law was implemented. In particular, the Defensoria had recommended that one entity should administer the law, a central database should be established for claims of conscientious objection and there should be an information campaign to better inform young people of their rights under the law.

60. The organization Soldiers' Mothers of St. Petersburg in its submission alleged that, although the Russian Federation had an alternative service law, according to non-governmental sources only 25 per cent of applications were accepted by Draft Boards, and that inappropriate or unacceptable assignments were sometimes made that were incompatible with some applicants' religious or personal needs.

61. The International Fellowship of Reconciliation noted that in Tajikistan, although the military recruitment legislation referred to the possibility of alternative service, no implementing legislation for performing alternative by service had been adopted.

62. Turkey continued to prosecute conscientious objectors to military service, according to the submission of Jehovah's Witnesses, which indicated that as of November 2012 there were 21 young men facing prosecution as conscientious objectors, although it acknowledged that there are no Jehovah's Witnesses currently imprisoned. It reported that it had one case pending before the European Court of Human Rights.

63. The Jehovah's Witnesses claimed that Turkmenistan did not recognize the right of conscientious objection to military service, and that there was no law allowing for alternative civilian service. It indicated that there were currently eight Jehovah's Witnesses serving 12–24-month prison sentences, and alleged that they had been subjected to cruel and inhuman treatment. It further indicated that four of the eight had been convicted for a second time, and that Turkmenistan maintained a policy of repeated prosecution and imprisonment of young Witnesses for their conscientious objection to military service. It was reported that there were presently 10 individual communications pending before the Human Rights Committee concerning conscientious objection to military service. Forum 18 News Service in its reply also indicated that Turkmenistan imprisoned conscientious objectors to military service and the latter were subject to repeated prosecutions and imprisonment. It said that there were eight Jehovah's Witnesses in prison, and added that some other individuals who had been prosecuted, had been given fines or suspended prison sentences. It further alleged that the police took retaliatory action against family members of a jailed Jehovah's Witness after he and nine others submitted a complaint to the Human Rights Committee.

**B. Restrictions on the right of freedom of expression for those who publicly support conscientious objectors and conscientious objection to military service**

64. Additional challenges, according to War Resister's International, concerned restrictions on the freedom to advocate conscientious objection to military service. By way of example, it stated that article 318 of the Turkish Penal Code prohibited "alienating the people from military service" and alleges that the provision had been used to punish statements in support of other conscientious objectors, arguing that it was a violation of article 19 of the Covenant, which guarantees freedom of expression.

**C. Conscientious objection for those serving voluntarily in the armed forces**

65. Based on a questionnaire circulated requesting, inter alia, whether its member States had procedures for permitting members of the armed forces serving voluntarily to resign from the service for reasons on conscience, the Council of Europe reported that 22 of 33 States had indicated that they had such procedures. Some States (Czech Republic, France, Germany, Lithuania, Netherlands and the Republic of Moldova) indicated that if the armed forces opposed the request to resign, it would be subject to judicial review. Some countries (Austria, Croatia, Italy, Slovakia, Spain and Switzerland) underlined that the timing and procedure to leave the armed forces were different according to the type of contract which engaged the person to the armed forces. In addition, a number of States (Austria, Belgium, Croatia, Portugal, Slovakia and Ukraine) reported that resignation on grounds of conscience represented an unknown reason for resigning and that no particular regulations existed in this respect. It was noted that in all of these eight States professional members of the armed services could resign on the basis of their contractual right to terminate their service.

66. War Resisters' International underlined the need for more States to adopt a framework for persons who joined the armed forces, but who subsequently developed a conscientious objection to have their applications heard. It added that, even in some States that had recognized conscientious objection for professional members of the armed forces, the procedures for considering an application could be unduly long. It alleged that for those serving in the United States armed forces, gaining recognition of conscientious objector status could take over two years, and that some unrecognized conscientious objectors consequently went absent without leave.

**D. Availability of information about the right to conscientious objection to military service**

67. Based on replies to a questionnaire circulated to its member States concerning the existence of measures to ensure that conscripts and professional service personnel are informed about the right to leave the armed forces because of conscience issue and about the right to be granted conscientious objection status, the Council of Europe reported that 22 States had indicated that they had such measures to inform conscripts and professional service personnel, while eight States (Armenia, Belgium, Denmark, Hungary, Ireland, Lithuania, Luxembourg and Slovakia) indicated that they did not.

## V. Conclusions

68. The present report shows that there have been significant legal developments in recognition of conscientious objection to military service at the international and regional levels since the last analytical report of OHCHR in 2006 and its updating report in 2008. It also shows that there are an increasing number of countries that recognize conscientious objection not only for conscripts, but also for those serving voluntarily. Problems remain, however, as some States continue not to recognize conscientious objection to military service, or do not recognize it for those serving voluntarily.

69. Reports of repeated trial or punishment, as well as of ill-treatment of unrecognized conscientious objectors, are sources of concern. Restrictions on freedom of expression for those who support conscientious objectors or who support the right of conscientious objection are also a concern. Additionally, it is of concern that, while some States have recognized conscientious objection, there is no legal framework or no adequate legal framework so that the right can be applied in practice, including the establishment of an alternative service that is compatible with the reasons for the conscientious objection.

70. States that have not yet done so should provide information to conscripts and persons serving voluntarily in the armed services about the right to conscientious objection, and allow applications both prior to and during military service. States, subject to the circumstance of the individual case meeting the requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, should be encouraged to consider granting asylum to conscientious objectors who feel compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.

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