



War Resisters' International
5 Caledonian Rd, London N1 9DX, Britain

Submission: Request for information on conscientious objection to military service

London, 13 February 2017

*"War is a crime
against humanity.
I am therefore
determined not to
support any kind of
war, and to strive for
the removal of
all causes of war."*
WRI declaration

Dear Nathalie Prouvez,

Please find attached a submission to the OHCHR covering the status of conscientious objection to military service, which highlights new developments, best practice and remaining challenges related to conscientious objection to military service.

War Resisters' International (WRI) works for a world without war. We are a global antimilitarist and pacifist network, with over ninety member organisations in over forty countries. Since 1921 we have been supporting and connecting people around the world who refuse to take part in war, and who use nonviolent action to tackle war's causes. WRI has consultative status with the Economic and Social Council of the United Nations.

The Right to Refuse to Kill programme of WRI specialises in conscientious objection to military service, and we are thankful for this opportunity to submit information for use in the this process. Our submission is in three stages: new developments, best practice and remaining challenges. We have given examples under each category that we consider important.

Yours sincerely,

A handwritten signature in blue ink that reads "H Brock".

Hannah Brock
Right to Refuse to Kill programme work, War Resisters' International

War Resisters' International is an international network with 83 affiliated organisations in 42 countries. It aims to:

- ▶ connect and support war resisters around the world
- ▶ promote nonviolent action to remove the causes of war

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Conscientious objection to military service

1. New developments

i. States that have introduced or reintroduced conscription

The relevance of conscientious objection is not limited to States that enact obligatory military service, however it is especially important that armed forces that use this form of recruitment provide for the right to conscientious objection to military service.

Several States have, in the last few years, reintroduced compulsory military service, or introduced it for the first time.

Georgia announced the reintroduction of conscription in 2017, following Ukraine and Lithuania in 2014 and 2015 respectively. Qatar and the United Arab Emirates both introduced conscription for the first time, also in 2014 and 2015 respectively. Croatia may also launch a compulsory military service in 2019, if Parliament accepts the proposal from the Ministry of Defence.

ii. Developments in States with ongoing issues: RoK, Colombia, Armenia, Greece

In the Republic of Korea (RoK) - the State that routinely imprisons more conscientious objectors than all other States put together - some lower, regional courts have made decisions in favour of conscientious objectors. In October 2016 the Gwangju District Court overturned the guilty verdicts of two conscientious objectors, Cho Rak-hoon and Kim Hyung-geun.¹ This ruling was, however, overturned by the Supreme Court on 31 January 2017. However, other lower courts have also since overturned another three conscientious objector's guilty verdicts: Cheongju District Court in January 2017 for a conscientious objector refusing reserve military service, and Incheon District on 6 February 2017 for three people refusing military service.

The RoK Constitutional Court is due to examine the constitutional right (or lack thereof) to conscientious objection to military service shortly. The Human Rights Committee has declared RoK's failure to provide an alternative to military service for conscientious objectors a clear violation of its human rights obligations regarding freedom of thought, conscience and religion, set out in Article 18 of the ICCPR², and we hope the constitutional court's ruling reflects an understanding of this.

In Colombia, the *libreta militar* (military book) is still issued to soldiers on completion of military service³. Being in receipt of a *libreta militar* still affords certain privileges, including working for the government. This is discriminatory against conscientious objectors who do not possess it. However, progress was made in 2014, when the law changed to ensure that the *libreta militar* is not required to graduate from university. This meant that many conscientious objectors who had previously finished university were allowed to graduate and in some cases receive professional certificates and be allowed to practice.

In November 2013 Armenia released a number of Jehovah's Witness conscientious objectors from prison⁴.

A January 2016 law in Greece⁵ amended various provisions concerning military service. Some of the provisions were positive, including cancelling pending prosecutions against those who declared their conscientious objection in writing to the authorities before the current law came into force (1st January 1998). Men over 35 years of age can now also buy themselves out of military or substitute (alternative) service, after serving for a minimum period (which is 20 days for military service and twice that length for substitute service), at a rate of €810 for each month of service not performed. Since substitute service is almost twice as long as military service, this is discriminatory.

1 See South Korea: Appeal Court acquitted conscientious objectors <http://www.wri-irg.org/en/node/26981>

2 See e.g. Communications No. 1642-1741/2007, Min-Kyu Jeong et al vs. Republic of Korea, at <http://co-guide.info/jurisprudence/min-kyu-jeong-et-al-vs-republic-korea>

3 Reported in El Espectador: *Libreta militar no será requisito para poder graduarse de la universidad* <http://www.elespectador.com/noticias/politica/libreta-militar-no-sera-requisito-poder-graduarse-de-un-articulo-531056>

4 See http://www.forum18.org/archive.php?article_id=1901

5 Law 4361/2016

iii. Regional human rights systems

The European Court of Human Rights produced a Fact Sheet on Conscientious Objection⁶, outlining the case-law of the European Court of Human Rights, and the European Commission of Human Rights. We welcome this as an opportunity to inform States of the regional standards for conscientious objection.

2. Examples of best practice

i. No substitute service

Since 2011, Norway has suspended substitute service for conscientious objectors. Conscientious objectors to military service are no longer called up for a substitute service, but are simply exempted from military service.

ii. Claims to conscientious objection accepted as valid 'without inquiry'

The Human Rights Council has welcomed the fact that some States accept claims of conscientious objection as 'valid without inquiry'⁷.

iii. Non-punitive nature of substitute service

Substitute service required of conscientious objectors in lieu of compulsory military service must be compatible with the reasons for the objection, of a civilian character, in the public interest and not of a punitive nature⁸. The term "punitive" covers the duration of substitute service and the type of service required of conscientious objectors, as well as the conditions under which it is served.

In Denmark, substitute service is non-punitive in terms of length. At four months long, substitute service is the same length as military service. Conscriptio is only implemented in Denmark when there is a shortage of recruits.

3. Remaining challenges

i. No recognition

Many States continually fail to recognise the rights of conscientious objectors to military service, either in law or in practice. These include the northern part of Cyprus (self-declared Turkish Republic of Northern Cyprus), Eritrea, Egypt, Senegal, Sudan, Tajikistan, Thailand, Turkey and Turkmenistan.

ii. Punishment of COs

Many of the above States consequently imprison those who refuse. In Turkmenistan in 2016 alone, we know of six young men who were convicted and sentenced under Criminal Code Article 219, Part 1, according to which refusing to serve in the armed forces in peacetime can be punished with a maximum penalty of two years' imprisonment or two years' corrective labour⁹. Of the six convicted in 2016, five received two-year suspended sentences. The sixth received a one-year corrective labour sentence, where he lives at home under restrictions and a fifth of his wages are seized.

Punishment is not limited to imprisonment, however. In Turkey, many rights are curtailed, leading the European Court of Human Rights to call this situation a 'civil death' in 2006¹⁰. They can face problem in obtaining a passport, so their freedom of movement is restricted. They are also not able to be employed in a legal work-place.

Most recently, in November 2016, a directive of the Turkish government required all employers to have their

6 See <http://www.wri-irg.org/en/system/files/Sept%202015%20Fact%20Sheet.pdf>

7 Human Rights Council, Resolution 2013/24, Conscientious objection to military service, point 7. See <http://www.wri-irg.org/node/22511>

8 Ibid., point 9.

9 See Turkmenistan: Six conscientious objectors sentenced in 2016 http://www.forum18.org/archive.php?article_id=2220

10 Ülke v. Turkey, application no. 39437/98).

employees military status checked. They justify the sending of these letters using Article 75 of the Military Penal Code and Military Law Article 93 which makes it a criminal offence to employ an “evader” in the private sector. Employers can be imprisoned from between 3 months to 7 years for doing so. Employers receiving these letters are asked firstly to tell their staff to register for conscription. If they do not, employers face the risk of imprisonment, which in practice results in employers dismissing “evaders”.

iii. Gap between policy and provision

Of those States that do recognise conscientious objection to military service, there remain some with a mismatch between constitutional recognition, and the accompanying recognition of conscientious objectors in practice.

Article 216 of the Colombia constitution provides for compulsory military service for men aged 16 – 28. The constitution also states that "freedom of conscience is guaranteed. No one will be obliged to act against their conscience." In October 2009, the Constitutional Court of Colombia ruled that there is a right to conscientious objection to military service under the Colombian constitution, and urged the Colombian Congress to pass a law to regulate the right to conscientious objection.

This law has not yet been passed, and therefore, there is currently no legislative procedure to achieve CO status – in practice the right does not exist at the moment.

iv. Repeated punishment

Conscientious objectors whose rights are not recognised by their State can face repeated punishment for their ongoing refusal to undertake military service. This is in violation of article Article 14, paragraph 7 of the ICCPR, which States that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country. The UN Working Group on Arbitrary Detention has also addressed the prohibition of repeated punishment of conscientious objectors because of their continued refusal to undertake military service, finding repeated imprisonment to be arbitrary detention.¹¹

Yet conscientious objectors do regularly face repeated imprisonment. Currently two conscientious objectors in Israel - Tamar Alon and Tamar Ze'evi - are in a cycle of call up, imprisonment, release and call up. There have been numerous examples of this in the State of Israel in the last four years.

v. New substitute service provision, and discrimination against non-religious COs

No discrimination is permitted amongst conscientious objectors. The Human Rights Committee's General Comment 22, paragraph 11 affirms that "there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs"¹². This is not upheld by a number of States.

In Kyrgyzstan, members of an officially registered religious group who forbid their members to bear arms or serve in the armed forces can perform a substitute to military service¹³. This is discriminatory. You also have to pay a fee of 18,000 to 20,000 soms (about \$250 to \$290), so your ability to access this is dependent on your economic resources. It is also punitive, being over twice the length of military service (3 instead of 1.5 years).

Several more States have introduced a substitute service to military service in the past four years. However in several cases, it is discriminatory, based on the motivation for objection.

In Belarus, in 2016 a new law on substitute service came into force in June 2016¹⁴. It is only available to religious pacifists.

In 2013, Armenia introduced a substitute service that was in civilian control (previous versions of substitute

11 Opinion No. 36/1999 (TURKEY): United Nations: Working Group on Arbitrary Detention (E/CN.4/2001/14/Add.1); Working Group on Arbitrary Detention Recommendation No. 2 (E/CN.4/2001/14); and Opinion No. 24/2003 (ISRAEL) E/CN.4/2005/6/Add. 1.

12 Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

13 Read more at Radio Free Europe <http://www.rferl.org/a/kyrgyzstan-conscientious-objectors/27183276.html>

14 Read the news at Belarus Direct: 'Belarus Introduces Alternative Civilian Service' <http://belarusdigest.com/story/belarus-introduces-alternative-civilian-service-26309>

service were still under the control of the military), and Jehovah's Witnesses have been taking advantage of this. However, the law that regulates this substitute service stipulates that only those whose religious beliefs or convictions are opposed to the bearing of arms need apply.

There are also examples of discrimination amongst States who have offered a substitute service for many years, including Greece, where Jehovah's Witnesses are recognised when they apply for conscientious objector status, yet only half of all others who apply for substitute service are refused. Similarly in Finland, Jehovah's Witnesses are exempt from conscription.

vi. Forced recruitment

Irregular and forced recruitment leaves conscientious objectors particularly at risk, especially in States where there is no right (either in policy or practice) to conscientious objection, so no opportunity to appeal to this once recruited.

In Colombia, press ganging (the raids are known as *batidas*) are an ongoing problem¹⁵. The practice was declared unconstitutional by the Constitutional Court in 2014¹⁶, but in reality *batidas* still happen.

In Tajikistan, "military press gangs making sweeps of city streets, bazaars and bus stations, rounding up young men who meet the desired criteria [to serve their compulsory two-year-long service]" are known as *oblavas*, and there have been multiple reports of them over the last four years.

vii. Freedom of expression

Freedom to advocate conscientious objection to military service, and make accompanying criticisms of military institutions, are not always respected. Article 318 of the Turkish penal code prohibits 'alienating the people from military service'. Article 318 represents an unfair limitation of the right to freedom of expression in Turkey, potentially criminalising any criticism of the Turkish military. The Human Rights Committee's General Comment 34 on Article 19 makes explicit that State parties should not prohibit criticism of institutions, such as the army or the administration.¹⁷

In 2015, Ukrainian journalist and conscientious objector Ruslan Kotsoba was charged with 'high treason' and 'obstructing the lawful activities of the Ukraine military' for uploading a video on YouTube in which he voiced his opposition to Ukraine's warfare in the eastern part of the country, announced his refusal to be called up, and called on his fellow countrymen to do likewise. He was eventually released in July 2016 by the Court of Appeal in Ivano-Frankivsk region.

viii. Barriers to accessing information on conscientious objection

The importance of making information available to all affected by military service is stressed by UN Human Rights Council resolution 24/17¹⁸, and has also been taken up by the Human Rights Committee in Concluding Observations, to ensure that people know about the right of conscientious objection and also how to acquire conscientious objector status¹⁹.

However, challenges remain around the right to conscientious objection to military service both conscripts, reservists, and for members of the armed forces who have joined voluntarily, but who develop a conscientious objection during service.

ForcesWatch, an NGO that scrutinises the ethics of armed forces recruitment in the UK, say that 'It is very likely that many forces personnel are unaware of their right to discharge if they develop a conscientious objection²⁰.

In the Republic of Cyprus, although there is provision in law for conscientious objection to military service and substitute social service, information about this and access to the procedure is problematic. Conscripts have no real access to this information and the deadline given for application for substitute service is very short, creating a barrier to accessing this right. Information about the right for reservists to apply for a

15 See the 2015 report by la *Acción Colectiva de Objetores y Objektoras de Conciencia*, 'Aunque estan prohibidas' <http://www.wri-irg.org/en/system/files/Informe%20Detenciones%20Arbitrarias%20-%20Batidas%20-%20ACOOC%20-%202015.pdf>

16 Sentencia T-455/14 – accessible at <http://www.corteconstitucional.gov.co/relatoria/2014/T-455-14.htm>

17 General comment No. 34, CCPR-C-GC-34, 12 September 2011, para 38.

18 Human Rights Council, op. cit, point 15.

19 Human Rights Committee Concluding Observations on Paraguay (CCPR/C/PRY/CO/2) of 24 April 2006, para 18.

20 See Conscientious Objection in the UK Armed Forces: http://www.parliament.uk/documents/joint-committees/human-rights/Briefing_from_Forces_Watch_Conscientious_objection.pdf

substitute to reservist military service is also difficult to obtain.

ix. Lack of information

Of the status of conscientious objection in some States we remain woefully ignorant. For example, our information regarding military service in Eritrea is obtained through accounts of those who have fled from Eritrea. Many of the Eritrean Diaspora remain too scared to speak out because of perceptions of the strength of the Eritrean regime to reach them in exile, and their families in Eritrea. We have details of many conscientious objectors who have been imprisoned. We are unable to discover whether they remain incarcerated. Three – Paulos Eyassu, Negede Teklemariam, Isaac Mogos – were detained 19 years ago, on 24 September 1994, and as far as we know, are still imprisoned at Sawa Military Camp.

x. Right to refugee status

Sheila Keetharuth, the UN Human Rights Councils Special Rapporteur on Eritrea published a report in May 2013 in which she blamed 'indefinite national service' and 'excessive militarisation' for leaving Eritreans with little option but to risk leaving.²¹ The June 2015 Report of the commission of inquiry on human rights in Eritrea²² said 'Eritreans are fleeing severe human rights violations in their country and are in need of international protection'. However, not all States are affording this protection. For example The Swiss governments do not consider Eritrea a State where asylum seekers who do not gain refugee status cannot be sent back to.

21 See

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.53_ENG.pdf

22 A/HRC/29/42