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Submission for the Analytical Report on Conscientious Objection to Military Service of the High Commissioner for Human Rights

The Quaker United Nations Office (QUNO) welcomes the opportunity to contribute information the quadrennial Analytical Report of the High Commissioner for Human Rights on Conscientious Objection to Military Service.

Conscientious objection to military service is recognised in international law as inherent in the right to freedom of thought, conscience and religion enshrined in Article 18 of the Universal Declaration of Human Rights as well as Article 18 of the International Covenant on Civil and Political Rights. States are, therefore, under an obligation to make provision for conscientious objection to military service in their domestic law and implement it in practice.

An overview of the status of the right to conscientious objection to military service in international law is contained in our publication *International Standards on Conscientious Objection to Military Service*.¹ Reiteration of the standards and further clarity have been provided in developments since the last report.

In summary, the Human Rights Committee considers that:

the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion.²

And this line has been followed in more recent cases.³

In September 2013, the UN Human Rights Council adopted resolution 24/17 without a vote; this resolution:

1. Recognizes that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion⁴

¹ Rachel Brett, *International Standards on Conscientious Objection to Military Service* (QUNO, 2015)

<http://www.quno.org/sites/default/files/resources/QUNO%202015%20RB%20Conscientious%20Objection%20FIN%20AL.pdf>

² Jong-nam Kim et al. v. The Republic of Korea (CCPR/C/106/D/1786/2008 Communication No. 1786/2008 of 1 February 2013), para. 7.4

³ Young-kwan Kim et al. v Rep. of Korea (CCPR/C/112/D/2179/2012 Communication No. 2179/2012 of 14 January 2015)

⁴ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013

Punishment

New Developments

Since the publication of the previous analytical report the Human Rights Council stated in resolution 24/17:

10. Emphasizes that States should take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service and to repeated punishment for refusing to perform military service, and recalls that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment in breach of the legal principle *ne bis in idem*;⁵

Additionally, the Human Rights Committee has found that imprisonment on grounds of conscientious objection constitutes arbitrary detention:

Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.⁶

The Committee, therefore holds that imprisonment per se (and not just repeat imprisonment) as a result of conscientious objection to military services is a violation of Article 18.

Discrimination

New Developments

Human Rights Council resolution 24/17 says:

12. Reiterates that States, in their law and in practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights;⁷

Remaining Challenges

Our concerns regarding discrimination and punishment beyond imprisonment are explored in *Conscientious objectors to military service: Punishment and discriminatory treatment*.⁸ These include:

⁵ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013

⁶ *Young-kwan Kim et al. v Rep. of Korea* (CCPR/C/112/D/2179/2012 Communication No. 2179/2012 of 14 January 2015), para. 7.5

⁷ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013

⁸ Emily Graham, *Conscientious objectors to military service: Punishment and discriminatory treatment* (QUNO, 2014) <http://quno.org/sites/default/files/resources/QUNO%20Publication%20-%20Concientious%20Objection%20Punishment%20%26%20Discrim.%20Treatment.pdf>

- Acquiring a criminal record leading to life-long societal and economic disadvantage and in some countries limitations on access to certain professions, access to housing and the right to vote. The Human Rights Committee has called on States to expunge criminal records when convictions resulted from conscientious objection to military service.⁹
- Lack of necessary identification documentation (such as the *libreta militar* or certificate of military service). This is sometimes a necessary identity document in its own right and sometimes a pre-requisite for acquiring identity documents. The lack of such documents can impact on: employment, education, housing, ability to open bank accounts, right to vote, civil registration (including marriage and birth registration), freedom of movement. The impact of these restrictions was described by the European Court of Human Rights as amounting “almost to civil death” they found that these measures (coupled with repeat prosecution) constitute inhuman or degrading treatment or punishment.¹⁰

In addition to this formal discrimination conscientious objectors to military service may also face informal discrimination.

Application and Assessment Procedures

New Developments

Human Rights Council resolution 24/17 states:

7. Welcomes the fact that some States accept claims of conscientious objection to military service as valid without inquiry;
8. Calls 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 to military service 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;¹¹

In September 2016 for the first time the European Court of Human Rights found that there had been a violation of the right to freedom of thought, conscience of religion of a conscientious objector in a country that recognises conscientious objection. The Court held that the lack of independence in the decision making process meant that the refusal to recognise the complainant’s application for conscientious objector status violated Article 9 of the European Convention on Human Rights.¹²

⁹ *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012), para.12. *Kim et al v Republic of Korea* (CCPR/C/106/D/1786/2008 of 1 February 2013), para.9.

¹⁰ European Court of Human Rights *Ülke v. Turkey*, application no. 39437/98 (24 January 2006)

¹¹ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013

¹² European Court of Human Rights *Papavasilikis v. Greece* (application no. 66899/14) (15 September 2016)

Refugee Protection

New Developments

Human Rights Council resolution 24/17 states:

13. Encourages States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service;¹³

However, the most significant development in regard to refugee protection is the issuing of the UN High Commissioner for Refugees' (UNHCR) Guidelines on International Protection No. 10: on claims to refugee status related to military service.¹⁴ These guidelines replace UNHCR's 1991 position on certain types of draft evasion and provide legal interpretive guidance intended to aid States in the assessment of claims for refugee status made by those fleeing persecution resulting from their conscientious objection to military service. The Guidelines are a useful statement of UNHCR's assessment of the international standards at the time of drafting. Two particular points to note are:

- Scope: the guidelines recognise that selective objectors and those who become objectors after voluntarily enlisting are included in the scope of conscientious objection to military service.
- What constitutes persecution: the guidelines recognise that in addition to the most obvious resultant rights violations such as imprisonment and other punishments, other impacts (such as those outlined above in the section on discrimination) may amount to persecution either cumulatively or in and of themselves.

Persistent Non-Implementation of Decisions and Concluding Observations from UN and Regional Human Rights Bodies

There is clarity in the international standards and a growing body of jurisprudence and recommendations from Special Procedures, Treaty Bodies, the Universal Periodic Review and regional human rights bodies. However, there continues to be flagrant non-implementation of these recommendations, decisions and judgements. Such non-implementation of the rulings and recommendations of international human rights bodies denies the victims of rights violations justice and undermines the human rights protection system as a whole. This non-implementation and failure to address not just the circumstances for the individual complainants but the underlying systemic violation of the right to conscientious objection to military service coupled with a failure to provide access to justice at a domestic level has led to repeated cases on similar grounds being brought to UN and regional human rights bodies. Further follow up is needed to address this non-implementation.

Recommendations

¹³ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013

¹⁴ UN High Commissioner for Refugees' Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951, HCR/GIP/13/10/Corr. 1 of 12 November 2014

Convention and/or the 1967 Protocol relating to the Status of Refugees

In light of the persistent violations of the right to conscientious objection to military service in countries where it is not recognised but also in countries that recognise the right but do not yet fully implement it we believe that tools for technical assistance should be developed to support States in the full implementation of the right. These could supplement the OHCHR publication *Conscientious Objection to Military Service*¹⁵ with more detailed information drawing on good practice and lessons learned from States that have introduced provisions to implement the right to conscientious objection to military service.

¹⁵ Office of the High Commissioner for Human Rights, *Conscientious Objection to Military Service* (HR/PUB/12/1) (OHCHR, 2012)