



References to
CONSCIENTIOUS OBJECTION
in the documents submitted to, and
resolutions of, the UN Commission
on Human Rights

61st Session, March – April 2005

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SECTION ONE: REPORTS

DOCUMENT E/CN.4/2005/60/Add.1
 TITLE **CIVIL AND POLITICAL RIGHTS, INCLUDING THE
 QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY,
 ADMINISTRATION OF JUSTICE, IMPUNITY**
**Report of the Special Rapporteur on the independence of judges and
 lawyers, Leandro Despouy, submitted in accordance with Commission
 on Human Rights resolution 2004/33**
Addendum, Situations in specific countries or territories

AGENDA ITEM 11

PAGE 23

QUOTE **Eritrea**

Communication to the Government

47. On 11 November 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning large scale round-ups in Asmara of Eritrean men between 18 and 40 years of age on 4 and 5 November 2004 by the Eritrean Defence Force (EDF). More than 50,000 men were arrested over this period in the streets, their schools, workplaces and homes in a harsh, systematic manner and without search warrants. It is reported that the rounds-up were connected with the Eritrean National Service Policy. Eyewitnesses reported that all those who did not comply with orders were publicly beaten. On the night of 4 November in Adi Abeto military camp, 4 km outside Asmara, a riot between detainees and prison guards broke out sparked by the lack of food. Some detainees attempted to escape over a wall, which subsequently collapsed. Shooting followed and at least 25 people were killed, including five guards, and about 100 people were injured. According to Eritrean National Service Proclamation No. 82/1995, all Eritrean citizens between 18 and 40 years old are required to perform 18 months' military and national service. However, following the conflict with Ethiopia, this obligation continues to be prolonged indefinitely. The Government has reportedly called up United Nations national staff members for service, in contravention of section 18 (c) of the 1946 Convention on Privileges and Immunities of the United Nations. Since the beginning of 2004 more than 50 staff members of the United Nations Mission in Ethiopia and Eritrea (UNMEE) have reportedly been arrested and detained, of whom 4 are still unaccounted for. In an incident reported in recent months, about 30 national staff of UNMEE were arrested while returning home on an UNMEE bus. Some of these persons were immediately sent to the military camp in Sawa. The prisoners have no access either to their families or to lawyers.

Communication from the Government

48. The Government sent a reply to the Special Rapporteurs' joint urgent appeal of 11 November 2004, too late to be reflected in this year's report.

DOCUMENT E/CN.4/2005/6/Add.1
TITLE **CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION
OF TORTURE AND DETENTION**
Opinions adopted by the Working Group on Arbitrary Detention
AGENDA ITEM 11(b)
PAGE 18
QUOTE **OPINION No. 24/2003 (ISRAEL)**

Communication addressed to the Government on 2 May 2003.

Concerning: Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi.

The State has ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which has submitted comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information submitted to the Working Group, upon being drafted into the Israeli Defence Forces (IDF) Matan Kaminer appeared at the Bakun Classification Base on his induction date (9 December 2002) but refused to be inducted. He was then arrested, his detention confirmed by the Military Court in Jaffa.
6. Adam Maor presented himself on 12 December 2002 when he was drafted into the IDF but also refused to be inducted and was immediately arrested. He was confined in a military camp pending judicial proceedings against him. He was held in open detention, meaning that he may temporarily leave the camp with the permission of the court.
7. Noam Bahat was arrested by the military on 10 December 2002 for non-compliance with an order to be inducted into the IDF. He was sentenced to imprisonment. He was also detained in open detention pending judicial proceedings. He requested to be released from military service because he was against the occupation of the Palestinian territories and the human rights violations taking place there. His request was rejected, as his arguments were of a political nature. It is submitted that under Israeli law conscientious objection may be recognized by a military committee in cases of "complete pacifism". It is alleged that Mr. Bahat's request to be heard by this committee was rejected. On 15 January 2003 he began a hunger strike protesting against his detention and that of all conscientious objectors and against the violations of the rights of the Palestinian people.
8. Jonathan Ben-Artzi was arrested by the military on 8 August 2002, upon refusing to be inducted into the IDF. He received a disciplinary sentence of 28 days' imprisonment, said to have been confirmed by a military court. Subsequently he received three separate sentences of 28, 28 and 23 days, because under Israeli law each refusal to serve constitutes a separate offence. He offered to perform alternative service, but this was denied. He requested to meet the military conscientious objection committee to present his arguments, but was denied. A military disciplinary court sentenced Mr. Ben-Artzi to a prison term, which was confirmed by a military appeal court. He requested that the Supreme Court review his case, or, alternatively, that a civilian court hear it.

9. The source expressed doubts that a military court under Israeli law would comply with the criteria for an independent and impartial tribunal, arguing that only the presiding judge is a trained lawyer, the two other judges being army officers. To support his contention that the convictions were unlawful, the source invokes article 18, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR), which provides that “no one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

10. The Government provided the Working Group with the following information. With regard to the specific allegations raised by the source, Israel’s Security Service Law and the Military Judicial Law apply military jurisdiction to the four persons concerned as of the date on which they were obliged to enter military service. They enjoy the same rights and are subject to the same obligations as soldiers. Under the applicable legislation, a refusal to obey a legally given order by such persons constitutes a martial offence actionable either by disciplinary or by criminal proceedings. The Government goes on to say that no military system can reconcile itself with the existence of a principle whereby soldiers can dictate to it where they will serve and under what circumstances.

11. Matan Kaminer, Noam Bahat and Adam Maor did not at any point claim to be pacifists; their refusal to serve was based solely on their opposition to certain policies of the Israeli Government. Moreover, and contrary to the information provided by the source, Noam Bahat appeared before the Advisory Committee on 7 October 2002, and was found not to be a conscientious objector.

12. Mr. Kaminer, Mr. Bahat and Mr. Maor served disciplinary sentences for refusal to obey military orders and, following repeated refusals (each constituting a separate offence), they were indicted in a military court. An agreement was reached with each of them that they would remain in open detention for the duration of the proceedings. The terms of their open detention included leave from the base every third weekend, as is the general practice of soldiers in military service in Israel.

13. Adam Maor’s military service has since been postponed on medical grounds as of 12 May 2003. He was released on that date, and is no longer in military service.

14. Prior to the date of his induction, Jonathan Ben-Artzi claimed to be a conscientious objector to military service. He appeared before the Advisory Committee three times in order to make his case, contrary to the contention of the source. The Committee did not find that he was a pacifist, and Jonathan Ben-Artzi appealed to the Supreme Court sitting as High Court of Justice. The Supreme Court determined that the Committee’s conclusions were reasonable and rejected the appeal. The Government notes that, during his testimony, Mr. Ben-Artzi expressly stated that he did not object to the concept of war per se.

1. Jonathan Ben-Artzi served disciplinary sentences for refusal to obey military orders and, following repeated refusals (each constituting a separate offence), he was indicted in a military court. During the proceedings in the military court, Mr. Ben-Artzi raised the claim of double jeopardy. The claim was rejected, as he had committed numerous offences of disobedience and the case before the court did not relate to any of the offences for which he had previously been indicted. An agreement was reached with him that he would remain in open detention for the duration of the proceedings.

16. Jonathan Ben-Artzi further claimed that his case should be tried before a civil and not a military court, and appealed to the Supreme Court sitting as High Court of Justice on

these grounds. The appeal was rejected in a detailed and reasoned judgement, inter alia on the grounds that the military court system is professional, objective and impartial, applying legal proceedings similar to those applied in the civil court system, with meticulous safeguards to guarantee the defendant's rights. The defendant is represented by legal counsel of his choice and may summon witnesses; a right of appeal to the Supreme Court is equally available from both court systems.

17. In conclusion, the Government asserts that all of the above-mentioned individuals are not conscientious objectors to military service, as this term is generally understood. As explained in detail above, none of them is currently held in closed detention.

18. In its comments on the Government's reply the source acknowledges that Mr. Ben-Artzi had appeared before the conscientious objection committee three times, but he was on each occasion denied the right to be eligible, as pacifist, to refuse military service. The source also acknowledges that Mr. Ben-Artzi could not affirm before the military court that he would not have served with the Allies during the Second World War. This was the reason why the court concluded that, like Mr. Maor, Mr. Bahat and Mr. Kaminer, he could not be considered a pacifist, as he is not opposed to war per se. The source affirms that the basic ground for the four men refusing to perform military service is their conscientious moral objection to the military occupation of the Palestine territories.

19. The source asserts that although Adam Maor was in fact released temporarily, after his operation he was taken back to detention.

20. The source affirms that the Human Rights Committee in general comment No. 22 on article 18 of ICCPR interprets this article as permitting the right to conscientious objection to be derived therefrom.

21. The source refers to the 2001 annual report of the Working Group on Arbitrary Detention (E/CN.4/2001/14, paras. 91-94), in which the Working Group observed that repeated incarceration of conscientious objectors is directed towards changing their conviction and opinion and is therefore incompatible with article 18, paragraph 2, of ICCPR.

22. Finally, the source contests the admissibility of the Government's argument that the four people are not held in a closed detention system.

23. To assess whether the detention of these four individuals is arbitrary, the following questions need to be addressed:

(a) Has the holding of these four conscripts at a military base amounted to deprivation of liberty within the meaning of the Working Group's mandate?

(b) Have the international norms relating to the right to a fair trial been observed during the proceedings conducted against them?

(c) Is their prosecution for failing to obey a military order in breach of Israel's international obligations?

(d) Are the repeated penalties imposed on them for refusing to serve in the armed force in compliance with the requirements of the right to a fair trial?

24. The Government argued that Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi are being detained under an open detention system. The Working Group wishes to point out that according to the information provided by both the source and the Government it is beyond any doubt that they are forcibly held under conditions that are equivalent to deprivation of liberty, regardless of the fact that the terms of the open detention include leave from the military base every third weekend.

25. The source did not contest the detailed information provided by the Government that individuals who are denied conscientious objector status and are prosecuted for failing to comply with military orders enjoy the same protection under criminal procedural law as do civilians.

26. The source contends that the deprivation of liberty of Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi is arbitrary because it is imposed to punish the exercise of their freedom of conscience, which is a right protected under international law, inter alia by article 18 of ICCPR, to which Israel is a signatory.

27. The Working Group welcomes the growing body of national legislation that abandons the system of compulsory armed military service and the preparations being made in a number of States to replace this system with alternatives. International law is also undoubtedly evolving towards the recognition of the right of the individual to refuse, on grounds of religious belief or conscience, to bear and use arms or to serve in the army. But at the present time it cannot be said that this evolution has reached a stage where the rejection by a State of the right to conscientious objection is incompatible with international law. The Working Group also noted the reference by the source to general comment No. 22 of the Human Rights Committee.

28. The source also contends that the repeated penalties imposed on Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi for the same offence are incompatible with the principle of *non bis in idem* embodied in article 14, paragraph 7, of ICCPR.

29. The Government has made it clear to the Working Group that under Israeli law all four individuals in question have served disciplinary sentences more than once for refusing to obey military orders. Although the Government did not specify the number and duration of the detentions, it unequivocally stated that several, hence more than one, disciplinary sanctions entailing deprivation of liberty have been imposed against the four conscripts in question:

“following repeated refusals (each constituting a separate offence) they were indicted in a military court”. Moreover, the Government explained to the Working Group that one of the four persons, Mr. Ben-Artzi, raised before the court the claim of double jeopardy, but that the claim was rejected “... as he had committed numerous offences of disobedience, and the case before the court did not relate to any of the offences for which he had previously been indicted”.

30. The explanation of the Government that after one conviction for not having obeyed an order to serve in the military repeated acts of disobedience are considered new offences did not convince the Working Group. Very much along the lines of its reasoning in its opinion No. 36/1999, and bearing in mind its recommendation 2 on detention of conscientious objectors (E/CN.4/2001/14, paras. 91-94), the Working Group is of the opinion that if after an initial conviction the convicted persons exhibit, for reasons of conscience, a constant resolve not to obey the subsequent summonses, additional penalties imposed for disobedience have the same content and purpose: to compel an individual to serve in the army. Therefore, the second and subsequent penalties are not compatible with the principle of *non bis in idem*, as contained in article 14, paragraph 7, of ICCPR, which states that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted ...”.

Moreover, repeated penalties for refusing to serve in the military would be tantamount to compelling someone to change his/her mind for fear of being deprived of liberty if not for life, then at least until the age at which citizens cease to be liable for military service.

31. In the light of the foregoing, the Working Group expresses the following opinion:

The second and subsequent deprivations of liberty of Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben-Artzi are contrary to article 14, paragraph 7, of the International Covenant on Civil and Political Rights. The non-observance of the international norms relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty an arbitrary nature, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

32. The Working Group therefore requests the Government to take the necessary steps to remedy the situation so as to bring it into line with the norms set forth in the International Covenant on Civil and Political Rights.

Adopted on 28 November 2003

DOCUMENT E/CN.4/2005/61/Add.1
TITLE **CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION
OF RELIGIOUS INTOLERANCE**
**Report of the Special Rapporteur on freedom of religion or belief,
Asma Jahangir, Addendum: Summary of cases transmitted to
Governments and replies received***
AGENDA ITEM 11(e)
PAGE 3
QUOTE ARMENIA

Communications and replies received

3. On 27 October 2004, the Special Rapporteur transmitted a communication to the Government of Armenia in relation to the situation of five Jehovah's Witnesses who were reportedly sentenced to prison terms in October 2004 for refusing military service on grounds of conscience. According to the information received, between 7 and 14 October 2004, **Karen Hakopyan, Arsen Sarkisyan, Mher Mirpakhatyan** and **Artur Manukyan** were sentenced by a court in Armavit whereas **Hovhanes Bayatyan** was sentenced by the Yerevan Erebuni-Nubarashen Court. They all received the maximum sentence of two years of prison each under article 327, Part I, of the Criminal Code. They were reportedly held in Nubarashen prison. On 1 October 2004, **Asatur Badalyan**, another Jehovah's Witness, was reportedly sentenced on the same grounds to 1 ½ years' imprisonment by a court in Kotaik. Concerns have been expressed that the six prisoners, who were called up in May 2004, officially applied to do alternative civil service but were told that such an option did not exist.

4. By letter dated 3 December 2004, the Government of Armenia indicated that the law on alternative service had only entered into force on 1 July 2004 but that the persons referred to in the communication could now apply for alternative service and their prison sentences would then be cancelled.

5. The Government further stated that while looking into the matter a special mission comprised of the staff members of the Armenian Human Rights Defender's Office and the Public Observation Group of the Ministry of Justice investigated the conditions of detention of Arsen Sargsyan, Mher Mirpakhatyan, Karen Hakobyan,

Artur Manukyan, Hovhannes Bayatyan, using a questionnaire survey.

6. The visiting group also met with Asatur Badalyan and other imprisoned Jehovah's Witnesses at the Kosh detention centre on 19 November 2004. According to the questionnaires filled out by the prisoners, all the above-mentioned persons believed that they were prisoners of conscience and that they were unfairly sentenced. However, nothing in their verdicts referred to their being sentenced because of their religious beliefs.

7. The Government indicated that the men claimed that they had applied to the Prosecutor General and to local enlistment offices to do alternative service. The request had been denied since the relevant legal provisions did not exist at the time. The visiting group also found that the men considered that the alternative service established by the new legal provisions to be of too long a duration and therefore still did not want to do it, although they did not consider the alternative service to be in contradiction with their religious beliefs.

8. Finally, the Government informed the Special Rapporteur that the visiting group explained to the men the legal procedures that would help them to transform their detention into alternative service, in order to have a clear their records. As to the alternative service conditions, the Government also noted that each state has its own legislation in that regard.

Observations

9. The Special Rapporteur is grateful for the details provided in the reply of the Government and, referring to the concluding observations of the Committee on the Elimination of Racial Discrimination of 14 August 2002 (A/57/18, paras. 269-291), encourages the Government to take all the measures to ensure freedom of religion to all without discrimination.

PAGE 6
QUOTE AZERBAIJAN

18. On 27 October 2004, the Special Rapporteur transmitted a communication regarding information according to which, on 16 September 2004, the Baku Court of Appeal confirmed a district court decision that rejected Jehovah's Witness **Mahir Bagirov**'s submission that the request that he present himself for military service was illegal and unconstitutional. Despite a constitutional right to perform alternative service and the State's commitment to the Council of Europe to introduce a law regulating such alternative service, for which the deadline had long expired, Mr. Bagirov, aged 28, had reportedly failed to secure this right in two court hearings. Reports indicated that he had lodged an appeal with the Supreme Court but fears had been expressed that he could have been sent to a military unit at any time. According to the information received, Mr. Bagirov was called up in 2000 and informed the recruitment office that he wished to perform alternative service because of his faith. Although his application received no response, he received a three-year deferment as he had started studies. He was called up again in May 2004 and ordered to report to a military unit. On 9 June 2004, he lodged his suit at the Baku Khatai district court, arguing that the obligation to perform military service was in violation of article 76, Part 2, of the Constitution, which provides that: "If the beliefs of citizens come into conflict with service in the army then in some cases the law can permit alternative service instead of regular army service."

PAGE 24
 QUOTE ERITREA

Communications and replies received

93. In early 2003, the authorities allegedly began a pattern of arrests of members of several of these Churches, breaking into church services and ceremonies, illegally detaining them for indefinite periods without charge, and subjecting prisoners to torture or ill-treatment to try to force them to abandon their faith. In August 2003, 57 school students on a compulsory course at Sawa military barracks were reportedly arrested and put in metal shipping containers in harsh conditions amounting to torture, because they were found with Bibles in their possession. At the time of the communication, over 330 members of minority faiths were said to be detained in different parts of the country.

97. On 24 January 2004, Ms. **Akberet Gebremichael**, aged 30, Mr. **Asmerom Beraki**, aged 50, Mr. **Gebrehiwet Tedla**, aged 87, Mr. **Gebreselassie Adhanom**, aged 94, Mr. **Mikias Gebru**, aged 19, Ms. **Rebka Gebretensae**, aged 39, Mr. **Samson Tesfalem**, aged 24, Mr. **Sertsu Yilma**, aged 55, Mr. **Tedros Atsbeha**, aged 25, Mr. **Tekle Gebrehiwet**, aged 40, Mr. **Tsegaberhan Berhe**, aged 41 and Mr. **Yemane Tsegay**, aged 41, all Jehovah's Witnesses, were reportedly arrested along with 26 other people, including eight children, while they were holding a religious service in a private home in Asmara. The Special Rapporteur on the question of torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint urgent appeal to the Government of Eritrea in connection with their case on 24 February 2004 and another joint communication was sent on 20 July 2004 by the Special Rapporteur on the question of torture, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention. According to the information received, 26 individuals who were arrested at the same time as the 12 above-named persons were released. However, the latter were reportedly still detained incommunicado at an unknown location, without charge or trial. It is also reported that they were warned not to worship or conduct any religious activities again. It seems that the authorities have not publicly acknowledged the arrests or given any reason for them, but it is believed that these arrests might have been aimed at forcing them to abandon their faith, and to force those of conscription age (18-40) into military service.

Follow-up to previously transmitted communication

98. By letter dated 4 February 2004, the Government of Eritrea responded to a communication sent by the Special Rapporteur on 7 October 2003 and relating to the arrests of three members of the Jehovah's Witnesses "because of their religious beliefs" and their refusal "to comply with the military service law", the brief detention of some 50 members of the Charismatic Rhema Church, the arrest of 15 Christians and the arrest of two young people from the Evangelical Lutheran Church "after processing through the streets to celebrate Easter".

99. The Government replied that the Jehovah's Witnesses had not been arrested because of their religious beliefs but because they refused to participate in the National Service Programme, which is compulsory and universal.

100. Members of the Charismatic Rhema Church and other groups were detained briefly because they had deliberately, contemptuously and provocatively disobeyed the decision of the Government that no religious group could operate until after they had registered with, and acquired a permit from, the Government in accordance with the existing law. These groups had refused to register with the Government and apply for permits.

101. It is a clear manifestation of the leniency and tolerance of the Government that those who had so contemptuously and willfully broken the law of the country and challenged the authority of the Government were released with only a warning after a brief detention of 10 days. They were not "beaten" or "threatened with death" or attacked "by mobs, including priests". These charges are only malicious defamations. Only those who must serve in the compulsory and universal military, including presumably the two young people from the Evangelical Lutheran Church, have been taken to the Military Training Centre at Sawa. The claim that some in the armed forces have been "jailed for refusing to deny their beliefs and return to orthodoxy" is too fatuous for comment. Eritrea is a secular State that does not permit intolerance and religious fundamentalism of any type.

PAGE 32
QUOTE GREECE

Follow-up to previously transmitted communication

127. By letter dated 5 February 2004, the Government of Greece, in response to a communication sent by the Special Rapporteur on 10 October 2003 related to alternative military service for conscientious objectors, stated that it had established alternative service on 1 January 1998, an institution that is now constitutionally provided for under the last amendment to the Constitution. The Government also aims to continuously improve this alternative service so that it complies fully with international standards. To this end, the Government reported about a number of legislative measures it had taken, including (a) the possibility of reassignment (i.e. transfer) of conscientious objectors after the completion of alternative service of at least 12 months, provided that there were serious family or social reasons; (b) deletion of the convictions for disobedience from the conscientious objectors' criminal record, provided that they have served their sentence or have been released on parole; (c) abolition of the disqualification for appointment to the civil service for those who have completed alternative service; (d) provision of the same pension time and employment protection for alternative service as for regular army service; and (e) replacement of the fixed service increment with a gradual increment associated with the term that would apply if they carried out regular military service. In this connection, the Government wished to underline that a law was to be adopted by Parliament further reducing the term of alternative service, which now lasts for 6-24 months, pro rata according to the term of regular service that conscientious objectors would otherwise be required to fulfill.

128. The prosecution of Mr. Petromelidis was an isolated event that resulted from his refusal to perform the alternative service required under the law in force at the time when he was recognized as a conscientious objector, and under no circumstances

did it reflect the real picture of alternative service and human rights in Greece. Moreover, all the legal and practical aspects of this complex issue were at the time of the reply being examined, so Mr. Petromelidis - and probably others in a similar situation - would be given a second chance under the law to perform alternative service and thus have the charges of military offences having been committed withdrawn.

DOCUMENT E/CN.4/2005/88/Add.2
TITLE **Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum: MISSION TO COLOMBIA***

AGENDA ITEM 15

PAGE 13

QUOTE **The armed conflict in indigenous areas - Columbia**

43. There are many reports of cases of forced recruitment of indigenous youths, and even children, by the armed groups. Although under Colombian law members of indigenous communities are exempt from compulsory military service, the army has nonetheless recruited indigenous youths, who allegedly volunteered, to peasant soldier units; and there are reports of cases of indigenous people enlisting, for a variety of reasons, in one of the rival armed factions. Such actions provoke reprisals against the families or the community as a whole, creating even greater insecurity and bringing further abuses and violations.

PAGE 22

QUOTE **Military service**

100. **Indigenous people should continue to be excluded from the bill on compulsory military service. Congress should not approve any law limiting or restricting the autonomy and freedoms of social and human rights NGOs.**

DOCUMENT E/CN.4/2005/G/24

TITLE **Note verbale dated 16 March 2005 from the Ministry of Foreign Affairs of Colombia addressed to the office of the United Nations High Commissioner for Human Rights**

AGENDA ITEM 15

PAGE 4

QUOTE **SPECIFIC OBSERVATIONS**

12. Attention is drawn to recommendations 100 and 101 of the report: with regard to the first, there is no need to recommend that indigenous people should continue to be excluded from the bill on compulsory military service, as both the Government and the legislature have publicly reaffirmed their commitment to maintained the exemption of indigenous peoples as being necessary to protect the country's ethnic and cultural diversity; as regards the second recommendation, calling for the discontinuation of schemes for children and youngsters such as the network of informers, the peasant soldiers and the "soldiers for a day" programme, it must be pointed out that all of these programmes are entirely voluntary in nature, and it would therefore be incorrect to assume that they involve civilians in the armed conflict.

PAGE 7

QUOTE **Military Service**

Act No. 48/1993 remains in force; this Act exempts Columbia's indigenous people from compulsory military service and payment of the military assessment.

SECTION TWO: RESOLUTIONS

DOCUMENT E/CN.4/2005/L.55
TITLE **Elimination of all forms of intolerance and of discrimination based on religion or belief**
AGENDA ITEM 11
PAGE 5
QUOTE

4. *Urges* States:

...

(g) To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of their official duties, respect different religions and beliefs and do not discriminate on the grounds of religion or belief, and that all necessary and appropriate education or training is provided;

SECTION THREE: ORAL STATEMENTS

States

STATE **Armenia**
DELIVERED BY Zohrah Mnatsakanian
DATE 31 March 2005
AGENDA ITEM 11
QUOTE

The previous year has been rather successful in terms of the legal and institutional progress for the promotion of the freedom of religion or belief. Following the adoption of the law on alternative military service and the completion of respective institutional changes within the military, we have effectively removed all previous constraints in accommodating objections to military service on the grounds of conscience or belief. As a result, we have removed from our agenda the long standing problem related to the registration and functioning of one particular religious organisation.

STATE **Armenia (right of reply)**
DELIVERED BY Artak Apitonian
DATE 5 April 2005
AGENDA ITEM 11
QUOTE

We have requested the floor for a point of clarification in connection with the statement from the International Helsinki Federation for Human Rights.

Following legal adjustments of the Charter of the Organisation, the Jehovah's Witnesses Organisation has been officially registered in Armenia by the Ministry of Justice in 2004.

Furthermore, the 'Law on Alternative Military Service' has entered into force in Armenia on 1 July 2004. According to the provisions of the Law, any citizen of Armenia rejecting military service on the grounds of conscience or belief can legally opt for alternative service within the legally stipulated frameworks. Furthermore, the Government of Armenia provides clear guidelines for the modalities of such service, which among other things, do not oblige such persons rejecting military service to carry arms or wear military uniform. Institutional changes to provide for the implementation of the provisions of the Law have also been introduced. The Jehovah's Witnesses Organisation has accepted the principles as stipulated by the law. The previous problem related to the registration and functioning of this one particular organisation has been removed from the agenda. All previous criminal cases against conscientious objectors in which alternative service had been accepted by objectors, have been subsequently dropped.

Rejection of compulsory military service and at the same time of alternative service is punishable by law.

DOCUMENT E/CN.4/2005/SR.34
TITLE **Summary Record of the 34th Meeting Held at the Palais des Nations, Geneva, on Tuesday, 5 April 2005 at 3 p.m.**
AGENDA ITEM 11
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QUOTE

86. Mr. KHAN (Eritrea) said that military service in Eritrea was compulsory and no Jehovah's Witnesses had been arrested on religious grounds, but instead for refusing to participate in the national service programme. In Eritrea, the operation of religious groups required official registration and the acquisition of a permit. Some members of religious groups had been detained for short periods of time for deliberate violation of those provisions. Since then, four of those groups had formally registered, and he urged the other groups to follow suit. Those detained had been released after a few days and let off with a warning. Such leniency illustrated the Government's goodwill. The allegation that the Government was burning bibles was entirely untrue; bibles were on sale in several bookstores in the country's capital. The accusation that Eritrea had imprisoned large numbers of persons on religious grounds was totally ridiculous.

Non-Governmental Organisations

NGO **Friends World Committee for Consultation (Quakers)**
DELIVERED BY Eleanor Andrews
DATE 1 April 2005
AGENDA ITEM 11(g)
QUOTE

Friends World Committee for Consultation (Quakers) welcomes resolution 2004/35 adopted at last year's UN Commission on Human Rights without a vote. In particular, the need for post-conflict amnesties for conscientious objectors highlighted in the resolution remains a matter of high priority. Many conscientious objectors to military service who fled their country because there was no, or no adequate, provision for conscientious objection are still unable to return or even to visit their own country without facing penalties.

Much progress has been made at the international level on the recognition of the right of conscientious objection to military service and the requirements for alternative service. A summary of this is provided in our written statement E/CN.4/2005/NGO/83.

However, many problems remain at the national level. Some of these arise because in some States the right of conscientious objection itself is not recognised although provision is made for alternative service. We hope that the report which the OHCHR has been requested to prepare for the next session of the Commission will, in particular, address best practice concerning the issues of:

- Recognition of the right of conscientious objection to military service where conscription exists, including for those in the armed forces and those in the reserves;
- Recognition of the right of conscientious objection in volunteer armed forces and how to implement it;
- Provision of alternative civilian service; and
- Granting of asylum for unrecognised conscientious objectors and post-conflict amnesties for them.

NGO **Conscience and Peace Tax International**
DELIVERED BY Pedro Otaduy
DATE 1 April 2005
AGENDA ITEM 11(g)
QUOTE

Hablo en representación de la *Internacional de Conciencia e Impuestos por la Paz*.

Criminal es no sólo quien ejecuta el crimen, también lo es quien la financia. Con el sistema actual de impuestos se nos está obligando a financiar los crímenes masivos de las guerras. De acuerdo con nuestra conciencia, muchas personas pensamos que debemos reaccionar ante ello. Por eso exigimos que con nuestros impuestos se construya la paz en lugar de preparar la guerra.

En nuestra organización *Internacional de Conciencia e Impuestos por la Paz* nos hemos presentado ante las instituciones internacionales para reivindicar este derecho como un derecho fundamental de la persona, directamente deducible del derecho a la libertad de pensamiento, conciencia y religión.

Hoy hablo yo porque la persona que habíamos designado para hacerlo no ha podido venir. Venía de Colombia, un país sometido desde hace años a una guerra en la que no dos, sino tres ejércitos se enfrentan entre ellos: el gubernamental, el de la guerrilla y el de las fuerzas paramilitares. Y no debemos olvidar la colaboración de ejércitos extranjeros.

Nos podría haber hablado de la Comunidad de Paz de San José de Apartadó, una comunidad campesina cuya mayor aspiración es poder vivir en paz, al margen de un conflicto que les mantiene en la pobreza. En estos años han sufrido varios ataques. A veces de un lado, a veces de otro. Hace dos meses Luis Eduardo, miembro del Consejo de la comunidad, fue asesinado. Tenía 35 años. Con él, siete personas, de ellas tres niños de 11, 6 y 2 años.

Colombia y otros muchos países pagan un gran coste humano y económico por culpa de las guerras. En los países ricos no hacemos las guerras, no las sufrimos, pero sí que las pagamos con nuestros impuestos.

La carta de Nuremberg dice que son responsables no solamente los líderes y organizadores de crímenes de guerra, sino también sus cómplices. Quien paga es cómplice y, por tanto, responsable. Los estados, a través de los impuestos, nos hacen cómplices de estos crímenes, cómplices de la muerte de otros seres humanos.

La Declaración Universal de los Derechos Humanos dice que *"Todas las personas tienen derecho a la libertad de pensamiento, conciencia y religión"*. La resolución 1998/77 de esta Comisión exige que se establezcan las condiciones para el respeto del derecho a la Objeción de Conciencia. En Colombia y en otros muchos países los gobiernos se niegan a ello. Pedimos al relator Especial sobre Libertad de Religión y Creencias que investigue urgentemente todas las restricciones que se dan a este derecho en Colombia y otros muchos países.

Internacional de Conciencia e Impuestos por la Paz pide también al Alto Comisionado de Derechos Humanos que en su trabajo preparatorio del informe de buenas prácticas en Objeción de Conciencia al Servicio Militar para la 62ª Comisión incluya el análisis del respeto a la conciencia de quienes somos objetores también a mantener ese servicio mediante el sistema de impuestos.

NGO **International Helsinki Federation for HR**
DELIVERED BY Willy Fautré
DATE 5 April 2005
AGENDA ITEM 11(g)
QUOTE

Turkmenistan is also imprisoning those who refuse on religious grounds to serve in the armed forces. There are now five known religious prisoners of conscience in Turkmenistan, four of them Jehovah's Witnesses and one Muslim, the former chief mufti. Religious prisoners of conscience in Turkmenistan have been harshly treated, being regularly beaten, threatened with homosexual rape.

Imprisonment of conscientious objectors to military service is also common practice in **Armenia**, in **Nagorno-Kharabakh**, where the usual sentence is 4 years in prison, and in **South Korea**.

NGO **War Resisters International**
DELIVERED BY Abraham Mehreteab
DATE 5 April 2005
AGENDA ITEM 11(g)
QUOTE

I'm representing War Resisters' International. We conduct research on conscientious objection to military service in many countries. Last year, we undertook a preliminary survey on the issue of Eritrean conscientious objectors. We learned that there are thousands of Eritrean conscientious objectors and deserters.

In Eritrea the right of conscientious objection is not recognized by law with the present government. Some members of religious groups such as the Jehovah Witnesses are in custody since more than 10 years because of their convictions to refuse to serve in the military. They never had a hearing in court.

Arbitrary detention, torture, deployment at the front line, forced labour - all without any hearing - have been common ways to punish deserters and objectors. A very often used way of military punishment is to tie victims and to lay them in the sun for days or sometimes weeks.

Furthermore relatives of deserters are threatened to push their children to send them to their units.

Although it is difficult to know the exact number, thousands from the army are evading the military service. They declare their objection through various means. They conscientiously object, desert or flee the military dictatorship. A lot of the deserters are asking for political asylum in foreign countries.

We request the UN Commission on Human Rights to take note of the continuous violations against conscientious objectors and that it take further measures to ensure that conscientious objectors and deserters get asylum protection in accordance with the Geneva Convention on the Status of Refugees.

We also request the Special Rapporteur on Freedom of Religion or Belief to investigate the situation of conscientious objectors and other members of the army, particularly in Eritrea.

And we request the Eritrean government to comply with Commission Resolution 1998/77: and in particular that it

- I. releases immediately all conscientious objectors;
- II. recognizes the right to refuse the military service on reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives;
- III. introduces an alternative service compatible with reasons for conscientious objection.

NGO **International League for Human Rights and Human Rights Council of Australia**
DELIVERED BY Andrey Kuvshinov
DATE 5 April 2005
AGENDA ITEM 11(g)
QUOTE

In recent years many countries - notably in Eastern Europe and the former Soviet Union – have introduced legislation, which regulates alternative civil service for conscientious objectors to military service. We consider this development as a significant step toward securing the right for conscientious objection.

However, these laws have often set up conditions for alternative civil service, which effectively makes it a **punishment for conscientious objectors**. For example:

- The length of alternative civil service is significantly longer than the military service;
- Conscientious objectors can often be sent to institutions under military jurisdiction without the consent of the objectors and contrary to the very reason for their objection;
- The law does not anticipate the right for conscientious objection at all possible stages, including the right for conscientious objection during military service;
- The law does not promote conditions for alternative civil service in social organizations;

For example, in the Russian Federation the length of the alternative civil service amounts to 42 months. This is the longest period of such service in the world and is almost twice the length of military service in Russia.

Moreover, the Russian law specifically requires that alternative civil service should “as a rule” be carried out outside of the region where the conscientious objector lives, while there is no such requirement in the law on military service. This puts additional punitive pressure on the conscientious objectors.

The Russian law also stipulates a type of organizations, where conscientious objectors can carry out their alternative civil service. By doing this it excludes organizations at the municipal level, which effectively blocks the opportunity to work in municipal hospitals and educational institutions, services for the disabled, elderly and other people in need, etc.

Thus, we request the Special Rapporteur on Freedom of Religion or Belief to look at the situation to ensure that relevant legislation around the world is not punitive to the conscientious objectors and is in line with Resolution 1998/77 of the UN Commission on Human Rights.

We ask the High Commissioner on Human Rights to ensure a thorough analysis of current legislation in her forthcoming report on “Best practices in the Field of Conscientious Objection to Military Service”.

We also appeal to the Russian Government to undertake the necessary steps to change the situation according to the points mentioned above (including adoption of the Draft Federal Law #308978-3 which removes the “out of region” requirement for alternative civil service) in line with the recommendations of the Human Rights Committee in November 2003 (CCPR/CO/79/RUS).

NGO **International Fellowship of Reconciliation**
DELIVERED BY Michel Monod
DATE 18 April 2005
AGENDA ITEM 17
QUOTE

The International Fellowship of Reconciliation draws the attention of this Commission to the threat of death that is pending on Conscientious Objectors to military service in case of war. Thanks to the resolution of this Commission 1998/77 it seems that the situation of Conscientious Objectors has improved in many countries as they can now perform a civilian service. This is in accordance with the freedom of thought, conscience and religion. Some countries have even renounced to the obligatory conscription and have adopted a professional army of volunteers. But many other countries do maintain such an obligation with no provision for those who refuse to participate to a fighting with weapons. In case of war they have no other solution than to escape and then to be threaten by death penalty. This is in contradiction with the right to life, liberty and security of person according to article 3 of the Universal Declaration on Human Rights

In the 6th quinquennial report of the Secretary General on death penalty some countries declare that they do not practice death penalty. In fact we hear from refugees that conscientious objectors have been executed in time of war.

Some refugees expelled from refuge countries at the demand of their own government have been put in prison and disappeared. In another country conscientious objectors have been put in containers under the sun, others have been executed.

Those testimonies draw our attention to the legality of such treatment. According to the second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty states can make a reservation that allows them to impose death penalty in time of war for a most serious crime. In order to prevent such drastic events in the future we demand that this reservation may not apply to Conscientious Objectors. We ask to introduce in the resolution on the death penalty of this Commission the wording of the resolution 1999/4 of the Sub Commission which says: **the Commission urges all states that maintain the death penalty not to apply the death penalty for refusal to undertake military service where the refusal to undertake military service is the result of conscientious objection to such service.**

The COs will then be examined by independent and impartial body and submitted to a civilian service according to the resolution 1998/77 and in conformity with article 8, paragraph 3, alinea II of the International Covenant on Civil and Political Rights.