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## Human Rights Council

Twenty-fourth session

Agenda item 3

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

### **Written statement\* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## The right to conscientious objection to military service

Friends World Committee for Consultation (Quakers)<sup>1</sup> welcomes the Human Rights Council's decision to be kept regularly informed about developments in relation to the right to conscientious objection to military service.<sup>2</sup> The Report of the United Nations High Commissioner for Human Rights to the UN Human Rights Council's 23<sup>rd</sup> session<sup>3</sup> is a valuable overview of international, regional and national developments in the recognition of the right to conscientious objection to military service, including good practice and remaining challenges.

### Information on relevant standards and good practices

The availability of easily accessible information on the right to conscientious objection to military service, applicable human rights standards and good practices, is essential. It can facilitate States' introduction of legislation to recognise the right to conscientious objection to military service or to address discriminatory or inadequate provisions in existing legislation. It is also a resource enabling persons affected by military service to better understand how to have their right to conscientious objection protected and the means available to acquire conscientious objector status.

On good practices,<sup>4</sup> we would like to highlight particularly that

- not all States require an alternative service of conscientious objectors, a recent example of this was Norway's decision in 2011 to suspend such service while maintaining conscription;
- the increasing recognition that those who join the armed forces voluntarily or as conscripts may become conscientious objectors and should be able to gain release as such, as well as those who have completed service and been assigned to the reserves (for example, in Georgia and Serbia reservists are able to make such claims); and
- the long-standing practice in some States (including Finland) of accepting claims of conscientious objection as valid without inquiry.

In addition to the Report to the Council, two recent initiatives are especially worth highlighting in this regard:

1. the publication by the Office of the UN High Commissioner for Human Rights on *Conscientious Objection to Military Service* (2012) which brings together applicable international standards and jurisprudence relating to conscientious objection. We encourage extensive use of this publication by Government officials, Members of Parliament, national human rights institutions, individuals who may be called to perform

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<sup>1</sup> This statement supplements the one submitted to the 19th session of the Council (A/HRC/19/NGO/2) which also addresses the issues of who may be a conscientious objector, the decision-making process, punishment of conscientious objectors and alternative service.

<sup>2</sup> Human Rights Council resolution 20/2, adopted without a vote on 5 July 2012. The resolution requests the Office of the High Commissioner of Human Rights 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.

<sup>3</sup> Analytical report on conscientious objection to military service presented by the United Nations High Commissioner for Human Rights to the Human Rights Council twenty-third session (A/HRC/23/22).

<sup>4</sup> Ibid, paras. 40-49 for examples of good practice.

military service and are unsure of what their rights are in this regard, civil society, including non-governmental organizations, as well as other elements of civil society such as the media.

2. the *Conscientious Objector's Guide to the International Human Rights System* ([www.co-guide.info](http://www.co-guide.info)) launched in May 2013. This interactive online guide (in English and Spanish) is designed to assist individuals and organisations wishing to raise issues and cases about conscientious objection to military service in international or regional human rights bodies, what the possibilities are, how to use them and the likely advantages and disadvantages of the different procedures.

### **The right to conscientious objection**

We welcome the growing recognition of the right to conscientious objection to military service. The former UN Commission on Human Rights adopted a series of resolutions on conscientious objection to military service, and explicitly recognised the right to conscientious objection for the first time in 1995.<sup>5</sup> In its first resolution on conscientious objection to military service, the Human Rights Council recalled that resolution as well as all other relevant ones including Commission resolutions 2004/35 and 1998/77.<sup>6</sup> More recently the Council specifically called on Eritrea to provide for conscientious objection to military service.<sup>7</sup>

The Human Rights Committee is clear that conscientious objection to military service is protected under Article 18 of the International Covenant on Civil and Political Rights and has stated so in its Views (decisions) on individual communications, its General Comments<sup>8</sup> and Concluding Observations. In particular, in recent Views the Committee has clarified that this right “inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion.”<sup>9</sup>

The Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion and Belief of the UN Human Rights Council have also addressed the issue. In addition to Opinions on individual cases, the Working Group has issued a Recommendation on “detention of conscientious objectors”<sup>10</sup>.

The Charter of Fundamental Rights of the European Union explicitly recognises the right to conscientious objection (Article 10 (2)). The European Court of Human Rights has issued

<sup>5</sup> Commission on Human Rights Resolution 1995/83 of 8 March 1995.

<sup>6</sup> Human Rights Council resolution 20/2, adopted without a vote on 5 July 2012. The resolution requests the Office of the High Commissioner of Human Rights 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.

<sup>7</sup> Resolution on the “Situation of Human Rights in Eritrea” calls on the government “To put an end to the system of indefinite national service, to provide for conscientious objection to military service, and to end the compulsory practice of all children undertaking their final year of schooling in a military training camp”. Operative Paragraph 3(d) of A/HRC/RES/23/21, adopted without a vote on 14 June 2013.

<sup>8</sup> General Comment No. 22 (1993) and General Comment No. 32(2007)

<sup>9</sup> Min-Kyu Jeong et al v Republic of Korea (CCPR/C/101/D/1642-1741/2007 of 5 April 2011), para. 7.3.

<sup>10</sup> Recommendation 2 available in the Working Group's Report to the Commission of Human Rights: E/CN.4/2001/14, paragraphs 91-94.

a series of judgments recognising that conscientious objection to military service is protected under the European Convention on Human Rights. It did so in 2011, when the Grand Chamber of the European Court of Human Rights, in *Bayatyan v Armenia*<sup>11</sup>, ruled that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience, constitutes a conviction or belief of sufficient importance to attract the guarantees of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights, and that the provision on forced labour (Article 4 of the European Convention) is irrelevant. This has been followed by a series of Chamber judgements finding that failure to provide for conscientious objectors to military service is a violation of Article 9.

The Ibero-American Convention on Young People's Rights is another treaty with an explicit recognition of the right to conscientious objection to military service (Article 12).

### **International Protection for conscientious objectors**

Sometimes conscientious objectors seek protection in another country because there is no provision in their own country, or only some forms of objection are recognised. In some cases, they may object to involvement in a particular conflict rather than all wars, or object to the methods and means of warfare, including engagement in war crimes or other violations of international humanitarian, human rights or criminal law. However, these conscientious objectors often encounter problems in gaining acceptance as refugees and face being returned to their home country.

The Commission on Human Rights "encouraged States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors 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."<sup>12</sup> The UN High Commissioner for Refugees is expected to issue its Guidelines on International Protection, No.10: Objection to military service (Reference: HCR/GIP/13/10) this year. FWCC (Quakers) looks forward to their release and trusts that they will contribute to greater protection to individuals who are compelled to leave their country and seek asylum abroad for reason of conscience.

### **Recommendations**

FWCC (Quakers) calls on the UN Human Rights Council to:

- continue to pay attention to protection of the right to conscientious objection to military service;
- build on the very positive contribution made by its predecessor, the Commission on Human Rights, to the recognition, promotion and protection of this right;
- draw the positive developments on conscientious objection to military service to the attention of States; and
- include conscientious objection to military service in relevant country-specific resolutions.

We call on States to:

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<sup>11</sup> European Court of Human Rights Grand Chamber, *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011)

<sup>12</sup> UN Commission on Human Rights Resolution 1998/77 of 22 April 1998.

- fully implement the right of conscientious objection to military service in law and practice;
- use the above-mentioned OHCHR report and publication, and the upcoming UNHCR Guidelines on International Protection, No.10: Objection to military service, to introduce legislation to recognize the right to conscientious objection to military service, where such recognition does not yet exist, and review existing ones that do not meet international standards.

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