

**Executive summary:**

**This submission focusses on human rights aspects of military service in Armenia.**

**Specific issues raised are:**

**conscientious objection to military service, where despite improvements in the Law, the duration of civilian alternative service remains punitive, and there is some concern about time limits for application and the vague terms of reference of the Committee which assesses applications;**

**the introduction of a “Conscription Bond” which must be paid by young men who wish to study abroad;**

**militarisation in the education system, and the treatment of persons under 18 at military training establishments as members of the armed forces;**

**human rights within the armed forces.**

1 This submission was prepared in June 2014 on the basis of the latest information available.

Conscientious objection to military service

2 In the first cycle of the Universal Periodic Review, although the question of conscientious objection to military service had featured in stakeholder submissions,<sup>1</sup> no questions were asked nor recommendations made on this subject. This was despite the fact that the provisions for conscientious objectors in Armenia at the time were so unsuitable that conscientious objectors refused to take advantage of them, and the rate of imprisonments was exceeded only in the Republic of Korea. On the other hand, since the review of Armenia on 6<sup>th</sup> May 2010, there has been a considerable improvement in the legislative situation, and as of June 2014 there are no imprisoned conscientious objectors.

3 On 7<sup>th</sup> July 2011 the Grand Chamber of the European Court of Human Rights issued a ground-breaking judgement in the case of *Bayatyan v Armenia*,<sup>2</sup> which was followed by chamber judgements in two cases with similar facts,<sup>3</sup> all three reached with the sole dissent of the “national judge”.

4 In 2001, the Parliamentary Assembly of the Council of Europe, in recommending the admission of Armenia to membership, had recorded:

“The Parliamentary Assembly takes note of the letters from the President of Armenia, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in the parliament, and notes that Armenia undertakes to honour the following commitments: (...) to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service.”<sup>4</sup>

5 Vahan Bayatyan, a Jehovah's Witness, had nevertheless been imprisoned in 2003 for his

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<sup>1</sup> See paragraph 35 of the summary of stakeholder information (A/HRC/WG.6/8/ARM/3, 5<sup>th</sup> February 2010)

<sup>2</sup> Application No.23459/03, Grand Chamber Judgment of 7<sup>th</sup> July, 2011

<sup>3</sup> *Bukharatyan v Armenia*, Application No. 37819/03, and *Tsaturyan v Armenia*, Application No. 37821/03, Chamber Judgements of 10<sup>th</sup> January 2012. (Section 2.1.1.3 of the EBCO Report to the European Parliament, 2012)

<sup>4</sup> Parliamentary Assembly of the Council of Europe (PACE) Opinion No.221 of 28<sup>th</sup> June, 2000, para 13.

refusal, on grounds of conscience, to perform military service, requesting that he be permitted to perform the new alternative civilian service when it became available; indeed a Law on Alternative Service was passed in December 2003, and came into effect on 1<sup>st</sup> July 2004. In January 2004, the Parliamentary Assembly of the Council of Europe welcomed the adoption of this law, but pointed out “that Armenia undertook on joining the Council of Europe to pardon conscientious objectors serving prison terms” and expressed “its indignation at the fact that twenty or so young people who refuse to perform military service are still in prison.”<sup>5</sup> (Armenia has subsequently<sup>6</sup> claimed that 38 conscientious objectors were indeed pardoned when the Law was adopted. But of course its commitment had been to pardon *all* conscientious objectors, and pending – not upon - the adoption of the Act.)

6 In the event, the Law on Alternative Service did not however put an end to the imprisonment of conscientious objectors in Armenia. The first 23 persons to enrol for alternative service started their placements early in 2005.<sup>7</sup> By the end of the year, however, all 23 had withdrawn, complaining that the placements were not truly civilian in nature and that they were to all intents and purposes treated as unarmed members of the military. Nineteen of the Jehovah's Witnesses brought a case to the European Court of Human Rights, which was decided in November 2012.<sup>8</sup> The Court found unanimously that 17 of them, who had been held for several months on charges (later dropped) of “desertion from military service” had been unlawfully detained, in violation of Article 5 of the European Convention, because there was no basis in the Law on Alternative Service for such detention. This loophole was closed in the 2006 revision of the Law, which introduced an offence of desertion from alternative service.

7 From 2005, Jehovah's Witnesses who were called up to military service refused also to perform the alternative service, on the grounds that it was not truly civilian. In this they received the backing of the Council of Europe. In a resolution of January 2007,<sup>9</sup> the Parliamentary Assembly of the Council of Europe was “disappointed to note that the current law, as amended in 2005 and subsequently in June 2006, still does not offer conscientious objectors any guarantee of “genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character”, as provided for by Council of Europe standards”. The law was also singled out for critical comment in a speech by the Secretary General of the Council of Europe in November 2007, in which he observed “For Armenia to comply with the undertaking made on accession, the law needs to be ‘in compliance with European standards’, and this is not yet the case.”<sup>10</sup> More recently, the United Nations' Human Rights Committee observed “The Committee is concerned that the Alternative Military Service Act, as amended in 2004 and 2006, still does not guarantee conscientious objectors a genuine alternative service of a clearly civilian nature. The Committee is also concerned that conscientious objectors, overwhelmingly Jehovah's Witnesses, are still imprisoned when they refuse to perform military service and the existing alternative military service (...). The State party should put in place a real alternative to military service, which is genuinely non-military in nature, accessible to all conscientious objectors, and neither punitive nor

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<sup>5</sup> Parliamentary Assembly of the Council of Europe, Resolution 1361, “Honouring of obligations and commitments by Armenia”, 27<sup>th</sup> January 2004

<sup>6</sup> Reply dated 31<sup>st</sup> January 2012 to Communication from UN Special Procedures, hyperlink from A/HRC/19/44, p.64, Case No ARM/1/2011.

<sup>7</sup> All but one were Jehovah's Witnesses, the other, Pavel Karavanov, was a Molokan, a member of a Russian protestant church founded in the 18<sup>th</sup> Century, whose members are known for their pacifism, and had been excused military service in imperial days.

<sup>8</sup> *Khachatryan and Others v. Armenia* (application no. 23978/06), Chamber Judgment of 27<sup>th</sup> November, 2012.

<sup>9</sup> Parliamentary Assembly of the Council of Europe, Resolution 1532, “Honouring of obligations and commitments by Armenia”, 23<sup>rd</sup> January 2007

<sup>10</sup> War Resisters International, “Armenia: no progress for conscientious objectors”, CO Update, 15<sup>th</sup> November 2007.

discriminatory in nature, cost or duration. The State party should also release all conscientious objectors imprisoned for refusing to perform the military service or the existing alternative to military service.”<sup>11</sup>

9 In April 2011 a number of fresh amendments to the 2003 Act were laid before the national assembly. Asked for advisory opinions on the proposed revisions, both the Venice Commission of the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE) criticised them as still not instituting a fully civilian service of a duration which is not punitive by comparison with military service.

10 Meanwhile, imprisonment of conscientious objectors continued. Between the receipt of a “communication”<sup>12</sup> from the UN Working Group on Arbitrary Detention, together with the Special Rapporteurs on Freedom of Religion or Belief, and on Freedom of Peaceful Assembly and Association, and the Independent Expert on Minority Issues, regarding the continued imprisonment of 72 Jehovah's Witnesses for their conscientious objection to military service, and the examination of Armenia by the Human Rights Committee in July 2012, no new imprisonments of conscientious objectors were reported, and many of those already imprisoned completed their sentences, so that the number in detention dropped to 30. But no conscientious objectors were released early, and pending prosecutions were deferred, not dropped.

11 On 14<sup>th</sup> March 2012, the very day when Armenia's policy of imprisoning conscientious objectors was criticised by the Parliamentary Assembly of the Council of Europe, the first new sentence was handed down, but the young man concerned was released pending appeal. Over the next six months this happened in a further fifteen cases, but in the month of August 2012 two objectors were imprisoned immediately following conviction. As of September 2012, a further 23 conscientious objectors were awaiting trial for their refusal of both military service and the alternative service available.<sup>13</sup> In all, by Forum 18's estimate, some 275 Jehovah's Witness conscientious objectors had been imprisoned since the Law on Alternative Service came into force.<sup>14</sup>

12 In December 2012, in reply to a follow-up communication from the Special Rapporteurs on Freedom of Religion or Belief and on Minorities Issues,<sup>15</sup> Armenia indicated that “14 criminal cases (...) against members of “Jehovah's Witness” religious organisation, that have refused to perform compulsory military or alternative service, are currently in the pre-trial stage, another 11 criminal case sare being considered by the first instance court, 9 cases arebeing proceeded by the Court of Appeals, 3 are in the Cassation court, while 32 convicts are currently serving their sentences in the penitentiaries of the RA Ministry of Justice.” Following discussions with the Venice Commission the draft law had been “further elaborated” and it was planned to resubmit it to the Venice Commission.

13 The amended draft law was presented to the Venice Commission early in 2013, and as a result two sets of amendments were presented to Parliament on 27<sup>th</sup> February 2013. On 18<sup>th</sup> March, deputies approved both in the first reading with 103 in favour and one against. In the second (and final) reading on 2<sup>nd</sup> May, 65 deputies voted in favour and two against. The amendments were signed into law on 21<sup>st</sup> May, and entered into force on 8<sup>th</sup> June.

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<sup>11</sup> UN Document CCPR/C/ARM/CO/2 , 31<sup>st</sup> August 2012, Para 25

<sup>12</sup> Quoted in UN Document A/HRC/19/44, p.64, Case No ARM/1/2011.

<sup>13</sup> Forum 18 News Service ([www.forum18.org](http://www.forum18.org)) “Armenia: Jailings of conscientious objectors resume”, 20<sup>th</sup> September 2012.

<sup>14</sup> Corley, 6<sup>th</sup> June 2013, op cit.

<sup>15</sup> ARM 1/2012, 18<sup>th</sup> October 2012, and reply dated 24<sup>th</sup> December 2012, see A/HRC/23/51, p.95.

14 Details of the amended law have been published by Forum 18.16

15 Article 3.1 of the Law as amended makes alternative service available to all conscientious objectors, irrespective of the beliefs on which the objection is founded.

16 Article 5 retains the previous reference to two forms of alternative service:

a.) "Alternative military service" which is not connected with bearing, keeping, maintaining or using weapons; and

b.) "Alternative labour service" not connected with the armed forces.

The durations are however reduced, from 36 to 30 months for "Alternative military service" and from 42 to 36 months for "Alternative labour service". This compares with 24 months for normal military service.

17 Article 3.2, as previously, does not allow individuals once they are performing either military or alternative service to change their minds and transfer to the other. Although no such cases have been recorded in the past, this could cause future problems.

18 Decisions on alternative service applications are made by the "Republican Committee". Under Article 4 this is a standing committee made up of one representative each from: the Territorial Administration Ministry; the Healthcare Ministry; the Labour and Social Affairs Ministry; the Education and Science Ministry; the Police; the Defence Ministry; and the Department for Ethnic Minorities and Religious Affairs.

19 "Religious studies experts, psychologists and other professionals, representatives of the locations where alternative service is performed, religious and social organisations, and others persons can", under Article 18.2, "be invited to the Republican Committee's meeting." However, there is no indication of the basis on which such invitations shall be issued. For example, Article 18.2 might be interpreted as allow a religious leader of one faith to have an input into a decision on the application of someone from a different faith.

21 The Republican Committee can under Article 9 reject alternative service applications if:

"1) The citizen who applied for alternative service has been invited twice to the meeting of the Regional Conscription Committee and failed to appear for unjustifiable reasons, or;

2) The applicant has submitted false information;

3) The application is obviously groundless."

There is an unwelcome subjectivity in the concept of "obviously groundless".

22 Under Article 14 alternative labour service is to be performed in state agencies. There will be "no military supervision"; "supervision of the performance and organisation of alternative labour service is carried out by state agencies".

23 Amendments to the Law on Implementing the Criminal Code allow conscientious objectors to apply to have their criminal records expunged, but they do not address the issue of compensation for conscientious objectors who have been imprisoned in the past, regarding which a number of applications are currently before the European Court of Human Rights. Those who had not completed their sentences might apply before 1<sup>st</sup> August 2013 to perform alternative service, with the time already served in prison being deducted from the duration of alternative service required.

24 The release of imprisoned conscientious objectors began on 8<sup>th</sup> October 2013, when nine Jehovah's Witnesses were included in a prisoner amnesty which reduced their term of imprisonment

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<sup>16</sup> Corley, 6<sup>th</sup> June 2013, op cit.

by six months.<sup>17</sup>

25 The Republican Committee met for the first time on 23<sup>rd</sup> October, and accepted 57 applications, six of them from imprisoned Jehovah's Witnesses who were released the following day. One applicant, not a Jehovah's Witness, was reportedly rejected, having lodged his application late.<sup>18</sup> The 57 were assigned to placements in “nursing homes, orphanages, psychiatric centres, and rescue services” started on 13<sup>th</sup> January, 2014.<sup>19</sup>

26 The Republican Committee met again on 12<sup>th</sup> November 2013 in Erebuni Prison to interview the final 14 imprisoned Jehovah's Witnesses, all of whom were accepted and released immediately.<sup>20</sup> The exact state of progress of over 40 pending applications from Jehovah's Witnesses, some of which had been lodged in July 2013, was not clear.

### Conscription Bond

27 A decision announced on 23<sup>rd</sup> January 2014 requires all men of military age who wish to study abroad to deposit 8.5 million drams (the equivalent of US \$20,000) with the Government as a “conscription bond”, which they may reclaim when they return to the country.<sup>21</sup> Intended to reduce the numbers who avoid military service in this way, the changes have a doubly regressive effect. For the wealthy, it will still be possible to avoid military service simply by forfeiting the deposit. Meanwhile, for the poor, the requirement makes the cost of study abroad prohibitive.

### Militarisation in education and juvenile recruitment

28 When the Committee on the Rights of the Child examined the initial report of Armenia under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, it expressed concern that the general school curriculum from the age of 14 included a course on “civil defence”, including firearms training, that at least two military educational institutes admitted boys below the age of 18 and included combat and firearms training on the curriculum, and that such boys might be considered members of the armed forces and therefore at risk of embroilment in hostilities.<sup>22</sup>

### Human rights within the armed forces<sup>23</sup>

29 The human rights of those who join the armed forces are no less important than those of

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<sup>17</sup> Corley, F., “Armenia: Conscientious objectors should be immediately and unconditionally released”, Forum 18 News Service, 18<sup>th</sup> October, 2013.

<sup>18</sup> Corley, F. “Armenia: Jailed conscientious objectors freed – but alternative service applications missing?”, Forum 18 News Service, 28<sup>th</sup> November 2013.

<sup>19</sup> “Armenia: Currently there is no imprisoned conscientious objector”, Human Rights Without Frontiers Newsletter, 31<sup>st</sup> January 2014.

<sup>20</sup> Corley, F. , 28<sup>th</sup> November 2013, op cit.

<sup>21</sup> Abrahamyan, G., “Armenian Students to pay “Conscription Bond”, Institute of War and Peace, Caucasus Reporting Service No. 722, 7<sup>th</sup> February 2014.

<sup>22</sup> CRC/C/OPAC/ARM/CO/1, 14<sup>th</sup> June 2013, para 10.

<sup>23</sup> ARMENIAN ARMY DEATHS CAUSE OUTCRY Defence ministry forced to become more open than previously”, Institute for War and Peace Reporting, Caucasus Reporting Service No 612 18<sup>th</sup> October 2011..

conscientious objectors. In this respect, concern is growing about the high rate of non-conflict deaths in the Armenian armed forces.

30 Official sources indicate that, between 2007 and 2011, 228 serving members of the armed forces died, 32 of them in incidents on the cease-fire line with Azerbaijan. That leaves 198 deaths to be accounted for. A large number are classified as suicides, which should in itself be a clear indication that something is severely wrong – to that is added the suspicion that in many cases the finding of “suicide” may shield persons whose assaults had led directly to the deaths in question.

31 Public outrage was stirred by an incident in July 2010 when a conscript, whose parents subsequently claimed that he ought to have been deemed unfit for service on the basis of a known psychological condition, killed five of his colleagues before turning his gun on himself. But it was the deaths in suspicious circumstances of three conscripts, Vardan Sevyan, Aghasi Abrahamyan and Hayk Mkrtchyan within a few weeks in the late summer of 2011 which caused organisations representing parents of conscripts who had been killed while performing their military service to unite under the name “The army in reality” in a campaign for military reforms.

32 The deaths of Sevyan and Abrahamyan, aged 19 and 18 respectively, were initially recorded as suicides, but these findings were disputed by their parents. The parents of Abrahamyan succeeded in obtaining a court investigation, which found that he had been badly beaten, and that the cause of death was head injuries. A number of arrests were subsequently made. The death of Mkrtchyan, also aged 19, on 7<sup>th</sup> September, was treated from the outset as a probable homicide, and a fellow-conscript was arrested.

33 These and similar concerns were brought to the Human Rights Committee when it considered the Second and Third Periodic Reports of Armenia under the ICCPR. In its Concluding Observations, the Committee stated:

“The Committee is concerned about suspicious deaths in the Armenian Armed Forces under non-combat conditions and about the alleged practice of hazing and the existence of other mistreatment of conscripts by officers and fellow soldiers.

The State party should guarantee the elimination of hazing and other such mistreatment in the armed forces. The State party should ensure thorough investigation of all allegations of hazing and non-combat deaths in the military, the prosecution and punishment of the perpetrators, and the access of victims to compensation and rehabilitation, including through appropriate medical and psychological assistance.<sup>24</sup>

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<sup>24</sup> CCPR/C/ARM/CO/2-3, 31<sup>st</sup> August 2013, para 15