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KYRGYZSTAN

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Executive summary:

This submission focusses on issues of military service and freedom of conscience in Kyrgyzstan. The specific concerns it raises are:

The recognition as conscientious objectors to military service only members of specific religious denominations, and discriminatory features of the alternative service available.

Shortcomings in the 2008 Law on Religious Associations

Militarisation of the secondary education system

Trial of civilians in military courts

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

Conscientious objection to military service

2 Military service is obligatory for males aged 18 to 27 under the 1992 Law On Compulsory Military Service. The normal duration was reduced in 1994 from 24 months (as inherited from the Soviet Union) to 18 months and again in 2005 to 12 months. Graduates serve for 9 months.

3 Limited provisions for conscientious objection to military service were introduced in the 1994 Law On Alternative (Non-military) Service. A “member of a registered religious organisation whose dogma forbids the use of arms and service in the Armed Forces” “may enlist for alternative service” whose duration is twice that of military service.¹

4 This Alternative Service was not primarily intended for any form of conscientious objector. It was required of those exempted from military service on grounds of family circumstances (eg. fathers of children), or because a brother died while performing military service,² and also apparently of some of those excused military service on health grounds.³ The legislation followed a pattern developed in some other former Soviet republics, notably Moldova. Instead of dedicated placements, those performing “alternative service” “work in the national economy of the Kyrgyz Republic regardless of the [organisation's] departmental affiliation, form of ownership and management structure and, as a rule, in the citizen's permanent place of residence.”⁴

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1 CCPR/C/113/Add.1, 3rd December 1999, Para 247.

2 Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998

3 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, London, 2004, p.251.

4 CCPR/C/113/Add.1, 3rd December 1999, Para 247.

residence.”⁵ Seemingly, all that a person who is accepted for alternative service has to do is (under the supervision of the Ministry of Defence) find employment – perhaps even retain his previous employment. The only condition is that while he is performing alternative service 20% of his salary is diverted to the Ministry of Defence – thus a substantial military tax replaces uniformed service. By 1997, it appears that as many persons annually were embarking on alternative service as were serving as conscripts in the army, although it would seem that an equally large group were either completely exempted or successfully evaded conscription.⁶ It is not however known how many have at any stage applied, successfully or unsuccessfully, for recognition as conscientious objectors. One isolated case was reported from In November 2001 when Dmitri Shukhov, a Baptist, was sent for a psychiatric investigation after his refusal to swear the military oath, having previously been told that he was ineligible for alternative service because of his church's failure to register.⁷

6 In its concluding observations on the initial report under the ICCPR of Kyrgyzstan [“The Kyrgyz Republic”], which it examined in July 2000,⁸ the Human Rights Committee noted “that conscientious objection to military service is allowed only to members of a registered religious organisation whose teachings prohibit the use of arms.” Citing Articles 18 and 26, the Committee also regretted “that the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service.” and recommended “Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis.”

7 An amended version of the Law on Alternative (Non-Military) Service was promulgated in June 2002. The duration of alternative service was reduced to 24 months (or 18 months for those with higher education). There was however no change in the criteria on which “religious” applications could be accepted had been revised. The reduction in the ratio between the lengths of military and alternative service was probably accidental; a Bill to reduce military service to 12 months (and to introduce a direct buying-out option) was approved by the Parliament in the same year, but ultimately rejected by the Government.⁹

8 In July 2005 an amendment to the Law On Compulsory Military Service¹⁰ finally brought the long-anticipated reduction to 12 months in the duration of military service,¹¹ but there was no accompanying change in the duration of alternative service, which thus once again became twice as long. The possibility of “buying out” of all except a one-month training resurfaced in a law of 2009; a fee of 12,000 soma (approximately \$250) was set. This part of the law was reportedly repealed the next year after a change of Government,¹² and a Law of 15th June 2012 abolished the “recruiting mobilisation reserve” to which those who had taken advantage of the buying-out provision had been allocated, the authorities having come to the conclusion that a reserve force whose members had undergone only one month's military training was not useful.¹³

9 In 2012, the Supreme Court agreed to suspend proceedings against ten Jehovah's Witnesses

5 CCPR/C/113/Add.1, 3rd December 1999, Para 247.

6 See statistics quoted by Horeman & Stolwijk, op cit

7 Makowski, S. “An unrecognised human right: conscientious objection in the Caucasus and Central Asia”, in The Broken Rifle No 56, November 2002.

8 CCPR/CO/69/KGZ, 24th July 2000, Para 18.

9 Child Soldiers Global Report 2004, London, 2004, p.251.

10 No.1068-XII of 16th December 1992

11 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008, London, 2008, p.202.

12 Rogers, S. “Kyrgyzstan resumes conscription gets new defence minister” CentralAsiaOnline.com, 22nd July 2010.

13 Vashakmazde, M. Security Sector Legislation in the Kyrgyz Republic: A Review, [in Russian] Centre for the Democratic Control of the Armed Forces (DCAF), Geneva, 2013, p.26

who were refusing to perform either military service or the alternative service offered, in order to obtain a ruling on the constitutionality of the Military Service Law.¹⁴

10 As reported by the Jehovah's Witnesses, their complaint was that the Law did not offer a truly civilian alternative service, as guaranteed by article 56.2 of the Constitution, especially in that under article 32.4 of the Law "alternative service includes making monetary contributions by those in alternative service to a special account of the Ministry of Defence..."¹⁵ They also complained that alternative service was supervised by military personnel, and that those who performed it were automatically entered in the military reserves.¹⁶ The Jehovah's Witnesses reveal that three of their members who were convicted in 2012 over their refusal to perform either military service or the existing alternative service had addressed individual communications to the Human Rights Committee in this respect.¹⁷

11 The Court had noted that the complaints regarding the alternative service arrangements were:

"(a) this service requires to pay money directly to the Defence Ministry for support of the military and military activity;

(b) places the conscientious objector under the direct control and supervision of the military; and

(c) enlists the conscientious objector in the Armed Forces as an 'obligated reservist'"

It found all three complaints justified and ordered immediate amendment of the relevant legislation.¹⁸ The Court meanwhile rejected a challenge to the constitutionality of Article 351.2 of the Criminal Code, under which between 2007 and 2013 42 Jehovah's Witnesses had been prosecuted for evasion of alternative service".¹⁹

12 On 17th February, 2014, amendments to the Military Service Law were put before the *Zhogorku Kenesh*, or Parliament. These amendments narrowly addressed the complaints on which the Constitutional Court had ruled without doing anything to remedy the other shortcomings of the alternative service arrangements previously identified by the Human Rights Committee.

13 The arrangements under which persons performing "Alternative Civilian Service" are, along with others exempted from military service, to pay a sum of 180 "calculation indices" (approximately \$350) – indeed some sources use the phrase "alternative service" to refer simply to this payment. This system remains in place, but whereas at present "this money is sent to a special account of the authorized state body in charge of defence issues, through the district (city) military commissariats, with 20% being transferred to the special, conscientious objectors account of the authorized state body in charge of protection and defence of the state border."²⁰ and under Article 32.4 of the Military Service Law, is to be "used for support of and provisions for troops, for conducting training assemblies, upgrading educational facilities, and increasing social security for military personnel".²¹ it is proposed under the new amendments that this payment will be directed to "the state body which handles social issues". The immediate objection of the Jehovah's Witnesses

14 Submission to the Human Rights Committee by the European Association of Jehovah's Christian Witnesses; OHCHR document reference INT/CCPR/NGO/KGZ/14601, April 2013, para 60.

15 *Ibid*, para 52, which also gives details of the purposes for which the "special fund" could be used.

16 Human Rights Without Frontiers, *op cit*

17 INT/CCPR/NGO/KGZ/14601, *op cit*, paras 57,58.

18 Corley, F. "Kyrgyzstan: Who can be a conscientious objector?", *Forum 18 News Service* (www.forum18.org) 25th February 2014.D

19 Communication from the NGO network "Amparo - Society and Army", Moscow, 28th February 2014, quoting replies given to their questionnaire by their member organisation *Kylym shamy* Public Foundation, Bishkek.

20 *Ibid*, quoting Regulation on the Law on Alternative Service for Citizens of the Kyrgyz Republic, para 9.

21 Corley, *op cit*

to paying directly for military expenditure is thus addressed, while leaving a most unsatisfactory linkage between the availability of alternative service and the ability to pay.

14 It is not reported that the new amendments contain any specific proposals which would otherwise remove alternative service from military control, nor further reduce the duration of alternative service. On the other hand it remains rather unclear exactly what, apart from the financial payment, alternative service in Kyrgyzstan actually comprises.

15 The provisions of Article 351.1 and 351.2 of the Criminal Code remain in place. Under these, for evasion of military service, in absence of legal grounds for exemption, the penalty is a fine of between 200 and 500 calculation indexes [\$400 to \$1,000] or imprisonment for up to two years²². Evasion of alternative (non-military) service is punishable by a fine of 100 to 200 calculation indexes[\$200 - \$400], or by community service for 180 to 240 hours²³.

16 Following its consideration of Kyrgyzstan's Second Periodic Report under the ICCPR, the Human Rights Committee stated:

“The Committee reiterates its previous concerns about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and the stipulation of a shorter period of military and alternative service for persons with higher education. The Committee notes the State party’s initiative to amend the Law on Universal Conscription of Citizens of the Kyrgyz Republic on Military and Alternative Service.”²⁴

“Law on Freedom of Worship and Religious Organisations”

17 Although a formal registration requirement for all religious groups functioning in Kyrgyzstan was introduced by presidential decree in 1996, for many years registered and unregistered denominations of all faiths worshipped with very little interference by the authorities, in stark contrast to the situation elsewhere in Central Asia.²⁵ The 2008 Law, however, requires all worshipping communities or congregations to re-register, showing that they contain at least 200 adult citizens. All gatherings for worship by unregistered groups are banned, as are also any form of proselytism, the distribution of religious literature or audio-visual materials anywhere other than in a property owned by the religious organisation concerned. Implementation has been even more repressive – Ahmadis and all Christian denominations except Russian Orthodox have been denied re-registration, or had their applications blocked. Forum 18 reveals that two individual communications from different Jehovah's Witness groups on this subject have been addressed to the Human Rights Committee.²⁶ The Jehovah's Witness community in Kyrgyzstan grew steadily over the decade 1998 – 2008 from approximately 3,500 to approximately 4,500 adherents.²⁷ If recognition were denied and they were effectively outlawed it would be very hard under the existing legislation for their members to be excused military service, to which they are implacably opposed.

18 In its Concluding Observations on Kyrgyzstan's Second Periodic Report under the ICCPR,

22 Criminal Code, art. 351, part 1.

23 Criminal Code, art. 351, part 2.

24 CCPR/C/KGZ/CO/2, 23rd April 2014, para 23.

25 See Rotar, I. “Kyrgyzstan: Religious freedom survey, January 2004”, Forum18 News Service (www.forum18.org), 7th January 2004.

26 Corley, F. “Kyrgyzstan: Eight raids, two official warnings in three months”

27 Slupina, W. “Problems Associated with religious freedom in the Commonwealth of Independent States, as shown by the example of Jehovah's Witnesses”, in Besier, G. & Seiwert, H. (Eds), On religious liberty in a democratic society: Aspects of law, religion and philosophy in constitutional theory and reality, LIT Verlag, Berlin (Religion-Staat-Gesellschaft: Journal for the Study of Beliefs and Worldviews, 10 Jahrgang (2009), Heft 2), 2010. at p226.

the Human Rights Committee addressed these issues in the following words:

“While noting the planned amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic, the Committee is concerned about the restrictions in the current law that are incompatible with provisions of the Covenant, including with respect to missionary activities, the registration procedure and dissemination of religious literature. The Committee is also concerned about reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech.

“The State party should ensure that the legislative amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic remove all restrictions that are incompatible with article 18 of the Covenant, by providing for a transparent, open and fair registration process for religious organizations and eliminating distinctions among religions that may lead to discrimination. The State party should take measures, including through public statements and awareness-raising campaigns, to promote religious tolerance and condemn any act of religious intolerance and hatred. The State party should also investigate all cases of violence based on religion, prosecute perpetrators and compensate victims.”²⁸

Militarisation in schools and juvenile recruitment

19 According to the Initial Report of Kyrgyzstan under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, “male citizens desiring to pursue their studies at a military academy may be admitted to such an institution at the age of 17 or if they turn 17 in the year they enter the academy.” In other words, students aged 16 may be admitted. “Citizens admitted to military academies are deemed to be national servicemen and shall be called cadets. They shall be subject to the same obligations as those prescribed for national servicemen.”

20 It seems clear that this wording at present applies to just one institution “The Lieutenant-General Kalyinur Usenbekov Higher Military Academy”, in Bishkek, where, at the beginning of the 2005/2006 academic year, 26 of 104 cadets were aged 17²⁹. “First year cadets are not allowed to take part in military operations.”³⁰ Written replies to supplementary questions by the Committee on the Rights of the Child revealed that entrants to the College must produce written authorisation from a parent or guardian, and that “all graduates continue their military service at officer rank (...), except for those discharged from military service for reasons of health or family circumstances.”³¹

21 When delivering its report, Kyrgyzstan was embarrassed by the fact that another institution, the Dair Asanov Kyrgyz State Military High School had recently come under the direct administration of the Ministry of Defence. From the discussion it appears that this had happened against a background of severe bullying.³² Statistics provided to the Committee on the Rights of the Child showed that the 212 15-year-olds at the start of the 2004/5 academic year, dwindled to a cohort of only 59 sixteen-year-olds at the start of the following year, as against something between 160 and 175 who might have been expected based on the figures from other years.³³ Mass fighting between second and third year students at this school was again reported in April 2007.³⁴ Whatever the problems of the Dair Asanov school, however, it is clear that pupils at this school, who generally

28 CCPR/C/KGZ/CO/2, 23rd April 2014, para 22.

29 CRC/C/OPAC/KGZ/Q/1/Add.1, 11th January 2007, table included in para 2.

30 CRC/C/OPAC/KGZ/1, 16th May, 2006

31 CRC/C/OPAC/KGZ/Q/1/Add.1, p3.

32 CRC/C/SR.1220 (29th January 2007), paras 14, 17, 22, 24, 25.

33 CRC/C/OPAC/KGZ/Q/1/Add.1, table included in para 2.

34 Child Soldiers Global Report 2008, p203.

enrol at the age of 14 or 15, are not considered to be serving members of the armed forces.

22 It also emerged when Kyrgyzstan reported under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict that:

“Schoolchildren attend classes in military preparation and patriotism as part of their pre-conscription preparatory course, for which two hours per week are assigned in the curriculums of general education schools for students in grades 10 and 11 (ages 15 and 16).” This includes “training and field exercises (...) over a period of three days (18 hours) in April and May, conducted together with the Ministry of Defence (...), during which pupils in the 11th grade learn to handle weapons and are taught how to shoot. Girls undergo practical training in (...) medical and nursing duties.” Furthermore, “in higher educational establishments, male students attend classes in military faculties.”³⁵

Military courts

23 The trial of civilians in military courts was addressed by the Human Rights Committee in March 2014 in the following words:

“The Committee is concerned that military courts continue to exercise jurisdiction in criminal cases where military personnel and civilians are jointly accused.

“The State party should without further delay remove the power to exercise jurisdiction over civilians from military courts.”³⁶

35 CRC/C/OPAC/KGZ/Q/1/Add.1, p3

36 CCPR/C/KGZ/CO/2, 23rd April 2014, para 20.