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Executive summary:

**This submission was prepared in October 2012 on the basis of the latest information available at that date. It focusses on:
the actual and threatened deportations of conscientious objectors to military service from Canada to the United States of America, where they face persecution as a result of the exercise of their freedom of thought, conscience, and religion;
and on juvenile recruitment and militarisation in schools.**

Deportations of conscientious objectors¹

1. On Monday 16th September 2012, Justice Near of the Canadian Federal Court judge denied conscientious objector Kimberly Riveira's request for a stay of removal. Lawyers for the Department of Justice argued that she would not be detained when she crossed the border, and Justice Near accepted that argument, finding the possibility of her arrest and detention in the USA to be only "speculative".

2. Rivera, who served with the US Army in Iraq before developing a conscientious objection, had gone absent without leave between deployments in 2007, travelling to Canada with her husband and children, where they claimed refugee status. In January 2009 this was rejected, and she was ordered to leave the country or face deportation.

3. It was the appeal against this decision which was finally rejected on 16th September 2012. Last minute appeals (including from Archbishop Desmond Tutu) to immigration minister Jason Kenney to grant the family status in Canada on humanitarian and compassionate grounds having proved unsuccessful, Riveira presented herself alone at the border between Gananoque ON and Fort Drum NY on 20th September. Her family, including crossed separately, so that her four minor children (two of whom had been born in Canada) would not have the traumatic experience of seeing the "speculative" arrest and detention of their mother, which took place as immediately she had crossed the border.² As of 4th October 2012, she had been transferred to Fort Carson, Colorado, where she is awaiting court-martial on a charge of desertion. Amnesty International has declared her a prisoner of conscience.³

4. In July 2010, the Government of Canada introduced Operational Bulletin 202⁴. This requires all Immigration Officers addressing permanent residency or refugee applications of deserters to contact their program manager for guidance. OB202 states that "Desertion is an offence in Canada under the *National Defence Act*" and that "consequently, persons who have deserted the military in their country of origin may be inadmissible to Canada under section 36(1)(b) or 36(1)(c) of the *Immigration and Refugee Protection Act*". It makes particular note of deserters from the US military. This implies that all conscientious objectors who have "deserted" are criminals and thus inadmissible to Canada. Even those sponsored by Canadian spouses are being rejected on the basis

¹ As well as the specific sources quoted, this section draws heavily on a draft dated 7th February 2012 of a short article by Jane Orion Smith, General Secretary of Canadian Friends Service Committee for a planned booklet on conscientious objection to be published by The Friend (<http://thefriend.org>)

² War Resisters Support Campaign (<http://resisters.ca>), "Conscientious objector to the Iraq war detained by the US military", 20th September, 2012

³ War Resisters International (wri-irg.org), CO Alert: "USA: Ongoing detention of conscientious objector Kimberly Riveira", 4th October, 2012.

⁴ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob202.asp>

of criminal inadmissibility

5. UNHCR's guidelines regarding conscientious objection cases state:

“Where military service is compulsory, refugee status may be established if the refusal to serve is based on genuine political, religious, or moral convictions, or valid reasons of conscience. (...) In conscientious objector cases, a law purporting to be of general application may, depending on the circumstances, nonetheless be persecutory where, for instance, it impacts differently on particular groups, where it is applied or enforced in a discriminatory manner, where the punishment itself is excessive or disproportionately severe, or where the military service cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions...”⁵

6. The above of course does not directly address the situation of persons who initially joined the military voluntarily. However, the USA itself recognises that such persons may subsequently develop genuine conscientious objections to military service, and has administrative procedures permitting honourable discharge in such circumstances. The procedures are however inadequate, in that cases are examined by military tribunals, which have a conflict of interest and are therefore liable to be swayed by considerations not relating to the objection itself. Not only are objections relating to specific deployments, such as to Iraq, not accepted, but by extension any application for release by a person listed for deployment to Iraq will be rejected. The evidence is moreover that those who fled to Canada usually face arrest and imprisonment if they return to the USA. Given estimates that 94% of deserters from the US military are punished simply by a dishonourable discharge,⁶ this constitutes “excessive and disproportionately severe” punishment, “applied in a discriminatory” manner.

7. It may also be noted that a refusal to obey orders when to do so would involve the commission of war crimes is not only permitted but actually mandated under the Nuremburg Principles. For it to be upheld, however, there must be agreement upon the facts. A firm belief that participation in a certain action will be tantamount to complicity in illegal action or war crimes is however in itself adequate basis for a genuine conscientious objection, irrespective of whether the precise charge has been proved to the satisfaction of an appropriate tribunal.

8. More specific protection in such cases was envisaged in a Bill 440 which passed its first reading in the Canadian House of Commons on 3rd June 2008. This would have given permanent residence status to any conscientious objector to military action without the sanction of the United Nations. It will be noticed that this resolution would give protection not only with regard to the invasion of Iraq, but also to those who wish to avoid involvement in many other of the world's conflicts. The Bill was however narrowly defeated on second reading in September 2008.

9. In January 2004, the first conscientious objector to the Iraq War arrived in Canada seeking refugee status; Jeremy Hinzman had developed a conscientious objection to war through his experience of military service, but his application for discharge was refused. Dozens of service men and women followed him to Canada seeking refuge.

10. Applications by Hinzman and others for refugee status were all turned down, but at first no deportation orders were issued. The first deportation took place in July 2008. Robin Long, who had arrived in Canada in 2005 and was living there with his family, was detained by the Canadian Border Services Agency on charges that he had breached the conditions of an undertaking to report

⁵ UNHCR, Guidelines on international protection: religion-based refugee claims, (2004), para 26.

⁶ Toronto Star, 19th September 2012 (<http://www.thestar.com/news/gta/article/1259422--canada-s-first-female-war-resister-slated-to-be-deported-thursday>)

his whereabouts to the authorities. After detention he was informed that he was subject to a deportation order, which was carried out on 15th July. On 22nd August Long was sentenced by a United States' court martial at Colorado Springs to dishonourable discharge and 15 months imprisonment.

11. One further deportation has taken place, and five others had preceded Riveira in returning "voluntarily". All except one have been tried and imprisoned for desertion. The sentences handed down indicate that conscientious objectors who had gone to Canada may be systematically treated more severely than other members of the armed forces who have failed, for whatever reason, to deploy to Iraq.

12. Of those remaining, most have appeals in process in the courts of decisions by the Refugee Board or by the Department of Immigration. Many court cases have resulted in cases sent back to the Board or the Department with instructions to take into account certain factors or experience that was disregarded in the original assessment process, and have highlighted how those returned to the US were singled out for prosecution and punishment. In the landmark Federal Court of Appeal decision in *Hinzman v. Minister of Immigration*⁷ (July 2010), the Court unanimously acknowledged that there is a developing right of conscientious objection and that a person's sincerely held beliefs has to be considered as a part of the decision-making process, especially in the light of evidence. However no conscientious objectors from the USA have yet been granted status in Canada, and all live under the threat of deportation.

Juvenile recruitment and militarisation in schools

13. In September 2012, the Committee on the Rights of the Child considered the consolidated third and fourth periodic report of Canada under the Convention on the Rights of the Child, having already, in July 2006, considered its initial report under the Optional Protocol on the involvement of children in armed conflict. As of that month, Canada was one of only 18 States which continued to permit the legal recruitment of persons aged 16, one of the others, Ireland, having just announced that it was bringing in legislation establishing 18 as the minimum age for all recruitment.⁸

14. In its concluding observations:

"While noting with appreciation oral responses provided by the delegation during the dialogue, the Committee seriously regrets the absence of information to the follow up on implementation of the OPAC pursuant to Article 8(2). The Committee expresses deep concern that despite the recommendation provided in its concluding observations (CRC/OPAC/CAN/C0/1, para. 9, 2006) to give priority, in the process of voluntary recruitment, to those who are oldest and to consider increasing the age of voluntary recruitment, the State party has not considered measures to this effect."⁹ and:

"reiterates its previous recommendations provided in CRC/OPAC/CAN/C0/1 and recommends to the State party to include their implementation and follow up to OPAC in its next periodic report to the CRC. The Committee further recommends the State Party to consider raising the age of voluntary recruitment to 18, and in the meantime give priority to those who are oldest in the process

7

<http://www.canlii.org/en/ca/fca/doc/2010/2010fca177/2010fca177.html>

⁸ Child Soldiers International, *Louder than words*, London, September 2012, p53.

⁹ CRC/C/CAN/CO/3-4, 5th October 2012, para 75.

of voluntary recruitment.”¹⁰

15. The Committee also expressed “concern that recruitment strategies may in fact actively target Aboriginal youth and are conducted at high school premises”, and recommended “that Aboriginal, or any other children in vulnerable situations are not actively targeted for recruitment and to reconsider conducting these programs at high school premises.”¹¹

¹⁰ Ibid, para 76.

¹¹ Ibid, paras 75, 76.