

1 This submission was prepared in March 2015 on the basis of the latest information available to the signatory organisations.

Executive summary:

2 **This submission focusses on the situation regarding military service and conscientious objection to military service in Georgia.**

3 **The principal human rights concerns it identifies are:
discriminatory provisions for conscientious objectors to military service**

Military service and conscientious objection

4 The first recognition of conscientious objection to military service was in the 1997 Law on Alternative Service, which came into force in January 1998. Under Article 4 of this Law "Those conscripts who according to the legislation must perform military service, but refuse to do so because military service of any sort is incompatible with their conscience, may be called up to perform civilian service in times of peace".¹ Article 6 of the Law set the length of alternative non-military service at 36 months.

5 In 2002, in its Concluding Observations on Georgia's Second Periodic Report under the ICCPR, the Human Rights Committee expressed "its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service", regretted "the lack of clear information on the rules currently governing conscientious objection to military service," and recommended that "The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant."²

6 Georgia's Third Periodic Report quoted the Ministry of Labour, Health and Social Affairs to the effect that the duration of such service was now 24 months,³ without giving any indication of when this change was made. This response, which was confirmed during the examination of the Report in October 2007,⁴ was sufficient to ensure that conscientious objection to military service appeared neither in the List of Issues nor the Concluding Observations on the Third Periodic Report.

7 The duration of alternative service was however addressed the following year by the Council of Europe's Committee of Social Rights in its "Conclusions" on Georgia under the European Charter of Social Rights, in the following words:

"The Committee points out that several other practices can pose problems under Article 1§2 :

Length of service required to replace military service

"The Committee would emphasise that the length of service carried out to replace military service (alternative service), during which those concerned are denied the right to earn their living in an

¹ Stolwijk, M. The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council for European Affairs, Brussels, 2005, p.30.

² CCPR/CO/74/GEO, 19th April 2002, para18.

³ CCPR/C/GEO/3, 7th November 2006, Para 138.

⁴ "substitute civil service lasted 24 months, only six months longer than military service, which lasted 18 months." CCPR/C/SR/2484 (Meeting of 16th October, 2007), para 47.

occupation freely entered upon, must be reasonable (...). The Committee assesses whether the length of alternative service is reasonable by comparing it with the length of military service. For example, where the length of alternative service is over one-and-a-half times that of military service, it considers the situation to be incompatible with Article 1§2 (...).

“Admittedly, recognised conscientious objectors are in a better position than they are in countries that do not grant them special status or where refusal to serve is punishable by imprisonment. But even if the state acknowledges the principle of conscientious objection and institutes alternative service instead, it cannot make the latter longer than is necessary to ensure that refusal to serve on grounds of conscience is genuine and the choice of alternative service is not seen as advantageous rather than a duty. The Committee notes that in Georgia compulsory military service lasts 18 months and alternative service is the same length for citizens with a higher education and 24 months for all others. (...)”⁵

8 In 2011 the issue was taken up during the Review of Georgia in the first cycle of the UPR. Slovenia “took note of the concluding observations of the Human Rights Committee on the issue of conscientious objectors, in particular, the differences between the length of alternative non-military service and military service, and asked what steps had been taken to address that difference”.⁶ It recommended that Georgia should “reduce the length of alternative service for conscientious objectors so that it is the same length as the military service”.⁷ Although this recommendation “enjoyed the support of Georgia”, there has been no report of any action to implement it.

9 Indeed there is reason to fear that since 2008 the ratio between the duration of military service and civilian alternative service may have become more discriminatory. The basic period of military service has now been reduced to 12 months. In 2012 it was at the request of the military authorities again increased to 15 months,⁸ but under the new government this change was reversed a few months later.⁹ If the duration of alternative service has remained unchanged at 24 months, this means that it will again be twice as long as military service.

10 In its Fourth Periodic Report under the ICCPR, Georgia revealed that Article 2 of the 2006 Law on Service in Reserve Military Forces had in 2011 been successfully challenged by the Public Defender [Ombudsman], being declared by the Constitutional Court to be unconstitutional, and thus void.¹⁰ The law in question had transformed the voluntary reserve force set up under the 2002 reforms into an obligation on all men aged between 27 and 40 to attend 24 days military training every two years – or if university graduates to attend two 18 day training sessions.¹¹ It however contained no provisions allowing for conscientious objectors.

11 In December 2011 legislation was brought in to create a civilian alternative for reserve military duty. Previously, five Jehovah's Witnesses and four Seventh Day Adventists had been fined 500 lari (approximately US \$300) for their refusal of reserve service. (Some or all of these fines may well have been cancelled following the ruling of the Constitutional Court.) One Jewish conscientious objector had also initially been denied permission to substitute an alternative service,

⁵ Council of Europe, European Committee of Social Rights, European Social Charter (revised): Conclusions 2008 (GEORGIA): Articles 1, 10, 15, 18 and 20 of the Revised Charter, November 2008, p 9.

⁶ A/HRC/17/11 (Meeting of 28th January, 2011), para 37

⁷ A/HRC/17/11, para 105.63.

⁸

Freedom Watch, “Georgia extends military service to 15 months”, 16th February 2012.

Democracy and

⁹

Freedom Watch, “Georgia to end the draft by 2016” 9th January, 2013.

Democracy and

¹⁰ CCPR/C/GEO/4, 1st November 2012, para 143.

¹¹ Liklikadze, K. “Georgia creates army reserves”, Institute for War and Peace Reporting, Caucasus Reporting Service No. 384, March 22, 2007.

but this decision had been overturned.¹²

12 When the Human Rights Committee considered Georgia's Fourth Periodic Report in July 2014, issues of military service and conscientious objection were not raised. This is probably because the Committee had received no reports of, or complaints from, identifiable "victims", which in turn reflects doubts as to whether the alternative service arrangements described in the legislation have ever applied in practice.

13 It is reported that "The Ministry of Defence stated in 2000 that members of religious denominations who forbid their members to bear arms can obtain a document from the Ministry, which states that they have performed an alternative to military service. This arrangement reportedly applied to Jehovah's Witnesses and Baptists, upon handing over a document proving membership of the denomination."¹³

14 In 2012, according to the United States State Department, "In two cases reported by the Jehovah's Witnesses involving alternative service for compulsory active military duty, the Ministry of Defense denied initial requests for exemptions, but granted the requests in follow-up appeals. Authorities granted the appeal of one Jehovah's Witness in which the individual was fined for non-fulfillment of military or alternate service, but denied the appeals of three others."¹⁴ Although not unambiguous, this report seems to refer to the *de facto* complete exemption of Jehovah's Witnesses from both military and civilian alternative service – those whose appeals were denied falling under the provisions of the Alternative Service Law.

15 The other confusing element is the system of "buying-out" of the obligatory military service requirement instituted in 2002, as part of the downsizing of the armed forces (and which, according to one source, formalised a practice which was already widespread illicitly). It is reported that within the first month of its operation, in the Summer of 2002, 124 persons made use of the provision;¹⁵ no subsequent figures have been traced. All sources agree that fees were initially charged at a rate of 200 laris¹⁶ for a one-year deferment, and 2,000 laris for a permanent exemption; there are however conflicting reports as to whether or not the system has subsequently been wholly or partly abolished.¹⁷ Early in 2013 it was reported that the fine for evading military service was US \$600, while the fee for an 18-month postponement US \$1,200.¹⁸

16 "Buying out", together with the *de facto* exemption of Jehovah's Witnesses and Baptists may effectively have removed the "demand" for alternative service, but the fact that those who are able to pay can choose to avoid military service does not in any way constitute an appropriate response to conscientious objections.¹⁹ Indeed a similar system was definitively rejected by the

¹² United States State Department, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report for 2011: Georgia

¹³ Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p31 .

¹⁴ United States State Department, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report for 2012: Georgia

¹⁵ Immigration and Refugee Board of Canada, op. cit.

¹⁶ At the time there were roughly two laris to the US \$.

¹⁷ Various sources quoted by the Immigration and Refugee Board of Canada, op cit; Stolwijk, op. cit.

¹⁸ Democracy and Freedom Watch, "Spring recruitment for the military has started," 8th February, 2013.

¹⁹ See the Human Rights Committee's concluding observations on Syria, July 2005: CCPR/CO/84/SYR, Para 11, also the Friendly Settlement before the Inter-American Commission on Human Rights in the case of Alfredo Diaz Bustos v Bolivia, (Case No. 12.515; report 97/05, 27th October 2005) in which the State conceded that no payment in lieu of military service should be required of a conscientious objector, even though it imposed such an obligation on those

constitutional court of Kyrgyzstan in 2013²⁰

exempted on other grounds.

Military training in the education system

17 Georgia acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 3rd August 2010. It has however yet to present its Initial Report under the Optional Protocol. Surprisingly, in its most recent report under the CRC itself, Georgia claimed to have acceded to the Optional Protocol on 21st June 2002²¹. This assertion does not seem to have been challenged by the Committee on the Rights of the Child, nor were any of their 82 concluding observations²² directed at issues covered by the Optional Protocol.

18 In the declaration made on accession Georgia stipulated that the minimum age for recruitment into obligatory military service was 18 years. No minimum age was stipulated for voluntary recruitment, but as “contract troops” are engaged only after completing obligatory military service their recruitment age is in practice rather higher. Loopholes may however exist. In 2010 the Minister of Defence issued a decree establishing a Cadets' Military Lyceum in the city of Kutasi “for boys under the age of 17 years who have completed nine grades of education. It was unclear if pupils in the lyceum were classified as members of the armed forces.”²³ A school for Non-Commissioned Officers also admitted pupils straight from school, but it was not clear what the minimum age was. The Defence Academy, which in the past admitted seventeen-year-olds, now has graduate admissions only.²⁴

19 Meanwhile, compulsory military training programmes for 14-to-17 year olds were once widespread in the school system, and certainly sometimes involved the use of live munitions.²⁵ Although it was reported in 2007 that these had ceased, their function had been taken over by “Patriot Camps” which offered “ten day resident programs in gun handling, sport, and leadership training for young people (male and female) aged 15 to 20. Handling guns, including automatic weapons, was taught by military trainers.”²⁶ The numbers attending such camps doubled from 15,000 in 2005 to 30,000 in 2006. Camps were sometimes located close to the borders of secessionist regions including in 2007 in the supposedly demilitarised Kodori Gorge on the borders of Abkhazia.²⁷ It could be argued that by giving children military training close to areas of tension the Georgian authorities were placing them at unnecessary risk of being involved in armed conflict.

²¹ CRC/C/GEO/3, 22nd August 2007, para 299.

²² CRC/C/GEO/CO3, 23rd June 2008

²³ Child Soldiers International, Louder than words (op cit), p 148.

²⁴ Child Soldiers Global Report 2008, op cit, p 149.

²⁵ See Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004, p 240.

²⁶ Child Soldiers Global Report 2008, op cit, p 149.

²⁷ Ibid. See also Institute for War and Peace Reporting, Caucasus Reporting Service No. 394, 31st. May 2007.

