UPR SUBMISSION UNITED STATES OF AMERICA 22nd SESSION - 2015

1 This submission was prepared in September 2014 on the basis of the latest information available to the signatory organisations.

Executive summary:

2 The concerns raised in this submission are:
compulsory registration for military service, with restrictions on the civil rights of those who do not register
military recruitment of persons aged under 18, with associated abuses
difficulties encountered by serving members of the armed forces who develop a conscientious objection to such service, and harsh treatment of those whose claim to be conscientious objectors is not accepted by the military authorities.
the treatment of persons with a conscientious objection to the use for military expenditures of the taxes they have paid.

Registration for military service

3 In 1980, in response to the Soviet invasion of Afghanistan, the compulsory registration for military service within 30 days of the eighteenth birthday, which had been suspended at the same time as the draft itself, was re-introduced, and remains in force.

4 Although when the draft was in place claims of conscientious objection had to be filed at the time of registration in order to be eligible for consideration, the reintroduced registration requirement has no provisions to allow the declaration of conscientious objections.

5 The maximum penalty for failure to register is five years imprisonment *and* a fine of $250,000. In fact, prosecution has generally been treated as a last resort; there have been no convictions since 1985. Enforcement is in practice effected by curtailment of civil, economic and social rights. Those who have not registered are not eligible for federal loans or grants for higher education, for federally-funded job training, or for most federal employment. Many individual states have enacted similar legislation; some completely debar unregistered men from admission to state colleges or universities. In many cases registration is also a precondition for the issue of a driving licence, or a State-sanctioned photographic ID. Although the obligation persists up to the 27th birthday, registration must be completed at least a year before. Once a man has passed the age of 25 he can no longer register, and may find that some of these handicaps persist for life.

6 The requirement to register applies to all resident males of the relevant age "except those who are in valid non-immigrant status" (ie. overseas students and others with temporary entry permits). Resident non-citizens who are discovered not to have registered - even if their presence in the country at the appropriate time was not covered by valid documentation - are in a particularly vulnerable situation at any future time when their residence status comes under scrutiny. They may be liable to

deportation, may be debarred from obtaining citizenship, or permanent residence status, and can be prohibited for life from re-entering the USA.

Juvenile recruitment

7 The United States of America has not joined the near-universal ratification of the Convention on the Rights of the Child. Nevertheless it has ratified the Optional Protocol to that Convention on the involvement of children in armed conflict (OPCAC). Its initial report under OPCAC was considered by the Committee on the Rights of the Child (CRC) in June 2008, and it has now become the first of the Parties to the OPCAC to submit a second report, which was examined by the Committee on the Rights of the Child in January 2013.

8 Enlistment is permitted by law at any time after the 17th birthday. Figures provided to the CRC show that during the three-year period 2009 – 2011, juvenile recruitment was just over 45,000, or 5.3% of all recruits.[1]

9 Enlistment under the age of 18 is not a breach of OPCAC. At the time of ratification the USA lodged a series of "understandings" which placed very restrictive definitions on its obligations, including that on deployment in armed conflict.

10 An army investigation revealed that, despite safeguards, during 2003 and 2004, 62 soldiers were deployed in either Iraq or Afghanistan before their eighteenth birthday. Some subsequent cases have been reported[2], but none have yet come to light during the period under review.

11 The USA has shown no inclination to accept the CRC's 2008 recommendations, repeated in 2013, that it withdraw the "understandings" and raise the minimum enlistment age to 18.[3]

12 In its concluding observations, the CRC recommended that the State Party:
"Reconsider its recruitment policies and practices, by inter alia amending the No Child Left Behind Act and to ensure that recruitment practices do not actively target persons under the age of 18, abolish the recruiter quota system and ensure that military recruiters access to school grounds be limited
"Prohibit disclosure of information on students without prior parental consent and ensure that recruitment policies and practices are brought in line with the respect for privacy and integrity of children. In this regard, continue and strengthen monitoring and oversight of recruiter irregularities and misconduct by effective investigation, imposition of sanctions and when necessary prosecution of recruiter misconduct
"Ensure that schools, parents and pupils are made aware of the voluntary nature of the ASVAB before consenting to the participation into it; and

[1] CRC/C/OPAC/USA/Q2/Add1 Annex 2. In the text of the Second Periodic Report itself (CRC/C/OPAC/USA/2, 25th January 2010, para 13), however, 17-year-olds had been described as "approximately 10%" of all recruits, and this was the figure quoted in the Concluding Observations (CRC/C/OPAC/USA/CO/2, 28th January 2013, para 20.)

[2] CRC/C/OPAC/USA/Q2/Add1, para 5

[3] CRC/C/OPAC/USA/CO/1, 25th June 2008, paras 7 and 16 and CRC/C/OPAC/USA/CO/2, paras 12 and 23.

"Provide in its next periodic report information on the number of reported cases of recruiter irregularities and the nature of the complaints and sanctions pronounced."[4]

13 The CRC also expressed concerns about the JROTCis programme:
"Children are not always properly informed that enrolment into the JROTC programme is of a voluntary nature.
"In some schools, this programme is used as a substitute for students enrolled in oversubscribed classes from which children cannot withdraw without losing their school credit;
"Children enrolled into the JROTC might be trained to use weapons..."[5]
and was disturbed by the lack of information about the Army Cadet corps, although it was believed that children might enrol from the age of 11, and that firearms training was included in the Corps' activities. It asked for detailed information in the next periodic report.[6]

14 The CRC recommended that the USA:
"(a) Ensure that families and children are properly informed of the voluntary nature of the JROTC programme (b) Ensure that JROTC is not used as a substitute for regular school activity;
(c) Ban military-type training including the use of firearms for children..."[7]

Conscientious objectors within the armed forces

15 The USA does have a procedure allowing for the "honorable discharge" of a serving member of the armed forces who becomes a conscientious objector.

16 The difficulties which may be encountered in practice were illustrated by the seemingly straightforward case of Michael Izbicki, who in 2009 and 2010 launched unsuccesful applications for release from the navy on grounds of conscience.[8] It was in reaction to the "9/11" atrocities, when he was aged 15, that Izbicki decided to join the armed forces and participate in what he saw as a clear struggle between good and evil. At the age of 17 he applied to the US Naval Academy at Annapolis, Maryland He was an excellent student, completed studies at the Academy in a semester less than the normal time and was sent by the navy for advanced study in computer science at Johns Hopkins University, graduating with an MSc degree in December 2008. He was then posted to the Naval Nuclear Power Training Command in Charleston, South Carolina in anticipation of service in submarines. Ironically, it was the psychological evaluation test he was presented with there which started him on the road towards

4 Ibid, para 21 (a) - (d)
5 Ibid, para 24 a – c.
6 Ibid, paras 24d and 25d
7 Ibid, para 25

8 The details presented here are based on the "Petition for a writ of *habeas corpus* and other relief by a person in military custody" regarding this case, which was submitted to the United States District Court in the District of Connecticut by the American Civil Liberties Union on 1st November 2010, supplemented by a personal interview with Izbicki in Falls Church, DC on 20th March 2011, shortly after his eventual release from the navy.

applying for release as a conscientious objector. One of a list of questions to be answered at speed without reflection was "If on board a submarine you were given the order to fire a missile with a nuclear warhead would you obey?" He ticked "NO" subsequently explaining that his instinctive hesitation was not because of the words "nuclear warhead", but because he knew that such an order would give only grid co-ordinates. The person firing the missile would know nothing about what target lay at those co-ordinates. "It could be a school, or anything"). This response automatically triggered a reference to a navy psychologist, and through him to a chaplain, who was the first to suggest that Izbicki might be a conscientious objector – a suggestion which he himself initially rejected, but which led him eventually to conclude that the use of military force could never be reconciled with his Christian beliefs.

17 Despite the testimony of the chaplains and psychologists, the "Investigating Officers" for both applications recommended rejection, and their recommendations were accepted by the Department of the Navy. It was only once the American Civil Liberties Union (ACLU) had filed a petition with the Federal Courts,[9] citing in detail the errors in law and facts in the investigating officers' reports, and the deviations from the procedures laid down in the regulations, that the navy offered Izbicki an honourable discharge, not formally as a conscientious objector.

18 Among the elements the ACLU petition identified were that the first investigating officer had found that as Izbicki was able on the spot to list only nine of the ten commandments "he could not be a religious person". Nevertheless he had persisted in a theological debate about the significance of the ten commandments, and considered that as Izbicki's beliefs did not co-incide with his, he could not be a conscientious objector. Finally, he had criticised Izbicki's failure to provide "a creed or official statement" from his church in support of his conscientious objection, despite the fact that the applicable regulations explicitly stated that this was not necessary. The investigating officer on the second application was seemingly even more closely identified with a specific theological position which would make the recognition of *any* conscientious objector well-nigh impossible. In particular, his report was critical of the contacts which Izbicki had recently developed with Quakers (erroneously referred to in the report as Mennonites) who did not satisfy his personal credal test to qualify as Christians, and must therefore be equated with the "Jonesville" cult which had committed mass "suicide" in Guyana in 1997.

19 If the procedures can put such difficulties in the way of an intelligent, articulate conscientious objector supported by chaplains and psychologists, it is clear that for the average recruit any chance of release in practice must depend entirely on the goodwill of the local chain of command. An even more fundamental problem, however, is that, relying on no authority beyond the regulations, the procedures can be altered or withdrawn at any time. In particular, under a "stop loss" order, any contracted period of military service can at complete executive discretion be extended indefinitely, and any pending discharge cancelled. At the outset of the "First" Gulf War in 1991, a total of between 1,500 and 2,000 outstanding applications, from serving personnel or reservists, for release on grounds of conscience were affected by a presidential "stop-loss" order. It was left to the discretion of the immediate chain of

[9] See footnote 24, above.

command whether applications were treated as having failed or were simply "frozen" and, in the latter case, the extent to which the conscience of the applicant was accommodated in the interim. In most cases, it is reported, mutually satisfactory arrangements were arrived at, but at least 42 Marines who persisted in declaring themselves conscientious objectors and resisting active deployment were jailed.

The definition of what is accepted as conscientious objection refers to "a firm fixed and sincere objection to participating in war in any form", thus a person who is prepared to defend his or her homeland but not to engage in what he or she considers wars of aggression abroad does not qualify. Many reservists who found themselves unexpectedly recalled to take part in the 2003 invasion and subsequent occupation of Iraq were confronted with a moral dilemma they had innocently assumed they would never encounter.

20 Those who felt obliged to avoid deployment by going temporarily absent without leave or by deserting also included many whose conscientious objections were not "selective." Such action, severely prejudicial to any future discharge as a conscientious objector, could result from a number of circumstances. First, the existence of the possibility for release and the procedure to follow are not routinely made known to those affected. By contrast, the dissemination of this information is actively hampered by for example making it a disciplinary offence for a member of the armed forces to have more than one copy of the relevant regulations. Therefore some simply did not know about the provisions at the appropriate time. Others were dissuaded from applying, sometimes misled into believing that only members of certain religious denominations could apply, or were trapped by the slow procedures involved, typically taking more than a year, during which the applicant is obliged to obey all orders, no matter how incompatible with the objection. In other cases the application was blocked by a "stop-loss" order.

21 Many such persons followed the precedent set by conscientious objectors at the time of the Vietnam War, by crossing the border to Canada. Although the Vietnam era objectors were made welcome and permitted to take up permanent residence in Canada, and despite the fact that Canada did not itself participate in the invasion of Iraq, those who fled there to avoid embroilment in that conflict have found a far less welcoming environment, and have been obliged to contesting persist attempts to return them to the USA, even though those who have returned even voluntarily after seeking asylum in Canada have regularly been treated more harshly than other military personnel who deserted while facing deployment to Iraq.

22 A recent case, that of United States Servicewoman Kimberly Rivera, was in December 2012 the subject of a joint urgent appeal from the Working Group on Arbitrary Detention and the Special Rapporteurs on Freedom of Religion or Belief and Freedom of Expression.[10]

23 During a deployment in Iraq Rivera had become convinced that she was morally unable to take human life, but was not aware of the possibility of applying for release as a conscientious objector, and despite meeting with an army chaplain to discuss her crisis of conscience was not informed of this possibility. Instead, in 2007,

[10] USA 34/2012, 20th December 2012, A/HRC/23/51, p.28.

between deployments, she had travelled with her family to Canada, where they claimed refugee status. In January 2009 this was rejected, and she was ordered to leave the country or face deportation. On Monday 16th September 2012, Justice Near of the Canadian Federal Court judge denied Rivera'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". 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, Rivera presented herself alone at the border between Gananoque Ontario and Fort Drum New York on 20th September. Her family, 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 indeed took place immediately she had crossed the border.[11] After four days' imprisonment, Rivera was handed over to the military authorities and was transferred to Fort Carson, Colorado, where on 29th April 2013 a court martial found her guilty of desertion and sentenced her to 14 months imprisonment. This confirms the fear of the Special Procedures that Rivera faced victimisation for the publicity received by the case and for her public statements regarding her conscientious objections. Under a pre-trial agreement, she is to serve ten months of her sentence. Although Amnesty International declared her a prisoner of conscience, while held at Fort Carson awaiting the court martial proceedings,[12] the USA classified her during that time as having rejoined her unit,[13] so granted no allowance for time already served.

24 On 4th November Rivera submitted to Fort Carson Senior Commander Brigadier Michael A. Bills an application that he use his clemency authority to grant a 45-day reduction in her prison sentence on humanitarian grounds, in order to allow her to give birth in a civilian hospital. Despite letters of support from Amnesty International and other organisations, as well as a large number of individuals, no response was made to this appeal. On 26th November, she gave birth to a son, Matthew, at Balboa (military) Medical Centre in San Diego, California. Within days the son she had started to breast-feed while in hospital was left in the care of his father while she was transferred back to the detention facility at Miramar to complete her sentence. She did not see her husband and son again until she was finally released on 13th December.[14]

25 The treatment of Rivera means that the Canadian authorities will not in future be able to claim ignorance of what awaits conscientious objectors who are forcibly returned to the USA. As well as the "dozens" in Canada, there is also a US serviceman who is seeking asylum as a conscientious objector in Germany.

---

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

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

13 Reply to Urgent Appeal 34/2012,op cit, dated 8th April 2013.

14 Information extracted from www.couragetoresist.org.

26 US Army Specialist André Shepherd had, after completing training as an Apache helicopter airframe mechanic, been posted to a unit based at Katterbach in Bavaria, but currently deployed at a forward operating base near Tikrit in Iraq. His experiences during the six months he spent in Iraq led Shepherd to question the legitimacy and the conduct of the USA's military operation there, and on return to Germany he investigated the possibility of applying for release as a conscientious objector, but was told that as his was a "selective" objection to the war in Iraq, it would almost certainly be denied. On April 11th 2007, having unexpectedly been detailed for a redeployment to Iraq, he went "absent without leave" and on 27th November 2008 applied for asylum in Germany, where he had been living "underground".

27 The German Federal Bureau of Migration and Refugees[15] turned the application down on 31st March 2011, arguing "whether the helicopters he maintained and their crews actually participated in specific illegal actions (contrary to international law) has neither been stated sufficiently, nor can it be determined specifically otherwise. According to the applicant's statements, the himself was also not able, during his first Iraq deployment, to find out details on the missions of the helicopters serviced by him or his unit. Accordingly, the applicant's deliberations on the potential participation of 'his' helicopters in possible illegal acts and war crimes constitute at most conjectures or a hypothetical possibility."[16] An appeal against this decision was lodged with the Munich Administrative Court, which at the beginning of September 2013 postponed the case in order to request an advisory opnion from the Court of Justice of the European Communities on "the degree to which an involvement in military hostilities is necessary, in order to offer the right of refugee status to a military deserter, who will be punished for his desertion".[17] At issue is the Qualification Directive 2004/83/EC issued by the Council of the European Union, is intended to protect those who would face persecution on return to their home country. Article 9 para 2 of the Directive states: "Acts of persecution (...) can, inter alia, take the form of: ... (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include (...) a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes."

28 The hearing at the Court of Justice of the European Communities took place in Luxembourg on 25th June 2014; the (non-binding) advice of the Advocate General will be published in mid-October; it is to be expected that the Court's definitive Opinion will have appeared before the date of the UPR Working Group.

Treatment of conscientious objectors to military taxes

29 There is a long tradition in the USA of objection to the contribution to military expenditure through the payment of taxes. The brief imprisonment of Henry David

15 Bundesamt für Migration und Flüchtlinge

16 Press release by Connection e.V., Offenburg,Germany, 7th April 2011.

17 Press release by Connection e.V., Military Counseling Network e.V. and Pro Asyl, Frankfurt-am-Main, Germany, 10th September, 2013.

Thoreau for his refusal to pay a tax levied to fund the American-Mexican war of the 1840's is often quoted, but members of the "historic peace churches" - Quakers, Mennonites and the Brethren – had opposed specific taxes for military purposes on a number of occasions going back to colonial times.[18]

30 The high level of military expenditure, coupled with the fact that overall public expenditure in relation to GDP is lower in the USA than in most other nations, means that an unusually high proportion of public expenditure, goes to the defence budget. Even as narrowly defined this accounts for about a quarter of the federal budget; campaigners frequently quote also the costs of veterans benefits and of servicing the national debt in order to claim that over half of federal taxes go directly or indirectly to military expenditure. It is therefore not surprising that today there are more citizens in the USA than anywhere else in the world who actively express a conscientious objection to this use of the taxes they pay. In total, although not a homogenous group, or linked in a single movement, they probably number more than 10,000 persons.

31 In recent years a number of cases[19] submitted to the Supreme Court have argued that freedom of conscience can be violated when a person is forced to contribute to military expenditure, but the Court has refused to hear all such cases.

32 In 2009 Frank Donnelly, a peace activist from the state of Maine, was imprisoned for understating his income in the years 2003 and 2004; his defence had been that this had been done in order to avoid funding military activities.

33 Until recently, however, dissent was more usually punished by imposing a $5,000 "frivolous filing" fine on any person who enclosed any form of letter of protest with their tax return, even if the return itself was full and accurate. Following a legal challenge an internal memorandum of 22nd April 2012 instructed that "...the penalty will not apply if the taxpayer shows the correct tax due but refuses to pay the tax."[20]

---

[18] See Benn, R & Hedemann, E (Eds), War Tax Resistance: a guide to withholding your support from the military (War Resisters League, New York, 5th edition 2003), Chapter 9 "A history of war tax resistance in the United States", pp 72 et seq.

[19] Adams v Commissioner of Internal Revenue (2000), Browne v United States of America (2000), Packard v United States of America (2000), Jenkins v Commissioner of Internal Revenue (2007).

[20] Memorandum, Office of Chief Counsel, Internal Revenue Service
Dated: April 22, 2013, (made public on 16th August 2013 Release Number: 20133303F),
CC:SB:5:SLC: POSTF-153168-12
Subject: Application of Section 6702 Penalty to Taxpayer Who Files a Return with War Complaint