

INTERNATIONAL FELLOWSHIP OF RECONCILIATION (IFOR)

UPR SUBMISSION Kyrgyzstan

35th SESSION – JANUARY 2020

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

1 This submission was prepared in July 2019 on the basis of the latest information available.

2 The issue of conscientious objection to military service was not raised with Kyrgyzstan in either the First or the Second Cycle of the UPR. It was however the subject of Concluding Observations by the Human Rights Committee, following their consideration of Kyrgyzstan's first two Periodic Reports under the ICCPR.

3 The Alternative Service which was introduced in Kyrgyzstan in 1994, and which was made available to those who were “a member of a registered religious organisation whose dogma forbids the use of arms and service in the Armed Forces”¹ had not been 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

4 Seemingly, all that a person who is accepted for alternative service has to do is (under the supervision of the Ministry of Defence) to 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.⁵ It is not however known how many

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.

⁵ See statistics quoted by Horeman & Stolwijk, op cit

have at any stage applied, successfully or unsuccessfully, for recognition as conscientious objectors. One isolated case was reported from 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.⁶

5 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 is no indication, however, of whether the criteria on which “religious” applications could be accepted had been revised, and it is clear that conscientious objection on any wider grounds remained unrecognised. 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.⁷

6 In July 2005 an amendment to the Law On Compulsory Military Service (No.1068-XII of 16th December 1992)⁸ finally brought the long-anticipated reduction to 12 months in the duration of military service,⁹ 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,¹⁰ 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.¹¹

7 In November 2013, the Constitutional Court of Kyrgyzstan upheld three complaints As reported by Forum 18¹², 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. The Court meanwhile had rejected a challenge to the constitutionality of Article 351.2 of the Criminal Code, under which between 2007 and 2013 42 Jehovahs' Witnesses had been prosecuted for evasion of alternative service".¹³

⁶ Makowski, S. “An unrecognised human right: conscientious objection in the Caucasus and Central Asia”, in *The Broken Rifle No 56*, November 2002.

⁷ *Child Soldiers Global Report 2004*, London, 2004, p.251.

⁸ Referred to in the Initial Report under the ICCPR as “the Law On the Universal Military Obligation of Citizens of the Kyrgyz Republic” - the shorter title is used in Kyrgyzstan's Initial Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/KGZ/1, 16th May, 2006.)

⁹ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008*, London, 2008, p.202.

¹⁰ Rogers, S. “Kyrgyzstan resumes conscription gets new defence minister” *CentralAsiaOnline.com*, 22nd July 2010.

¹¹ 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

¹² Corley, F. “Kyrgyzstan: Who can be a conscientious objector?”, *Forum 18 News Service* (www.forum18.org) 25th February 2014.D

¹³ 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.

8 On 17th February 2014, amendments to the Military Service Law were put before the *Zhogorku Kenesh*, or Parliament. As had been feared, these amendments narrowly addressed the Constitutional Court ruling without doing anything to remedy the other shortcomings of the alternative service arrangements.

9 On the positive side, conscientious objectors would no longer be enrolled in the army reserve. But it was not clear how much was being done to remove the alternative service arrangements from military control. Nor was there any indication of moves towards equalising the duration and other terms of military and alternative service. Certainly there is no question of equal remuneration – in fact the best-documented aspect of admission to alternative service in Kyrgyzstan is that, along with others exempted from military service, conscientious objectors are required to pay a sum of 180 “calculation indices” (approximately \$350) – indeed some sources use the phrase “alternative service” to refer simply to this payment! The main feature of the amendments is that whereas previously “this money is sent to a special account of the authorized state body in chawg 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.^{14.}” 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”.¹⁵ this payment is now directed to “the state body which handles social issues”. The immediate objection of the Jehovah's Witnesses 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.

10 The amendments do not however do anything to remove alternative service from military control.

11 On considering Kyrgyzstan's First Periodic Report under the ICCPR, the Human Rights Committee expressed concerns about about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and about the stipulation of a shorter period of military and alternative service for persons with higher education.¹⁶

12 In its Concluding Observations on the Second Periodic Report. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para. 18) 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 (arts. 2, 18 and 26)., and recommends:

„The State party should ensure that amendments to the Law on Universal Conscription of Citizens of the Kyrgyz Republic, on Military and Alternative Service provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. It should also stipulate periods of military and alternative service on a non-discriminatory basis.“¹⁷

¹⁴ *Ibid.*, quoting Regulation on the Law on Alternative Service for Citizens of the Kyrgyz Republic, para 9.

¹⁵ Corley, *op cit*

¹⁶ CCPR/CO/69/KGZ, para. 18

¹⁷ C/CO/KGZ/2, 23rd April 2014, p23.

13 Suggested recommendation:

That Kyrgystan review its military service legislation with a view to bringing this into conformity with international standards, advised by the guidelines set out in UN document A/HRC/41/23.