INTERNATIONAL FELLOWSHIP OF RECONCILIATION

UPR SUBMISSION SWITZERLAND 28th SESSION

(Oct/Nov 2017)

Executive Summary

1. This submission deals with the situation in Switzerland with regard to conscientious objection to military service and related issues. It was prepared in March 2017 on the basis of the latest information available at that time.

2. The concerns to which it draws attention are:
The Law on Civilian Service sets a duration for civilian service which appears to be discriminatory and punitive by comparison with that of military service; moreover amendments which took effect early in 2011 represent a move away from recognised best practices and international standards with regard to conscientious objection to military service.
Switzerland retains a "military exemption tax" which is imposed on male citizens who do not perform military service. This provision is discriminatory and impinges on conscientious objectors to military service in their exercise of their freedom of thought, conscience and religion under article 18 of the Covenant.
Revisions to the Asylum Law have debarred from its provisions conscientious objectors and others who are seeking asylum in order to escape military service in countries where there is no provision for conscientious objectors.

A Previous Cycles of the UPR

3. Switzerland was examined in the Second Session of the UPR Working Group, in May 2008. Issues regarding military service and conscientious objection did not feature in that discussion. Regarding the third concern raised in this submission, however, Switzerland accepted a recommendation from Brazil "to foster internal analysis on the recently adopted law on asylum and its compatibility with international human rights law".[i]

4. No recommendations with regard to the issues raised in this submission were made in the Second Cycle of the UPR,and there was no follow-up to the recommendation on the asylum law made in the first cycle.

B Military and civilian service

5. As specified in Article 58 of Switzerland's 1999 Constitution "In principle, the armed forces shall be organised as a militia". Article 59.1 states "Every Swiss man is required to do military service. Alternative civilian service shall be provided for by law."

6. Male citizens are required to attend an initial period of eighteen weeks military training at around the age of 20, followed by service in the mobilisation reserve until the age of 34. Reserve service includes attendance at regular target practice and, at approximately two-yearly intervals, at refresher courses, typically of seventeen days' duration.

7. With effect from the beginning of 2004 the combined length of initial and reserve training required of each conscript was reduced from 300 to 260 days; for commissioned and non-commissioned the cumulative requirement is greater, and in the case of commissioned officers the obligations continue until the age of 50. It is not permitted to refuse promotion to a higher rank if offered. Fully-paid leave of absence from civilian employment is normal during reserve training.

8. Only some 4,000 training personnel and officers above the rank of brigade commander do not follow this pattern but serve in the armed forces on a continuing basis. At any one time it is estimated that some 17,600 conscripts are in uniform, but around 100,000 are available for mobilisation.[ii]

9. Switzerland was much later than its neighbours in accepting a right of conscientious objection to military service. This was conceded partially in 1991, when those who satisfied a military tribunal that their refusal to perform military service was the result of a "severe conflict of conscience" were permitted to expunge the relevant criminal convictions by performing compulsory labour of a duration one-and-a-half times that of military service,[iii] but it was only with the passage of a Civilian Service Law[iv] which took effect at the beginning of 1996 that conscientious objection to military service was effectively decriminalised.

10. The Civilian Service Law of 1995 gave the possibility for those for whom military service would present a "severe conflict of conscience" to apply to a civilian Commission reporting to the Ministry of Economic Affairs for permission to perform a purely civilian alternative service. This was an enlightened piece of legislation in that the civilian nature of the alternative service was guaranteed by placing all aspects of its administration outside the control of the military authorities, and also in that no artificial time limits were placed on application. Those who had already commenced their military service - including those who were subject to reserve obligations - were able to take advantage of the Law's provisions, receiving credit for the proportion of their military service obligation which they had fulfilled. The duration of alternative service was set at 1.5 times that of the military service (or the remaining proportion of such service).

11. An amendment to the Civilian Service Law dated 3rd October 2008 which came into effect on 1st April 2009 abolished the role of the Commission in interviewing those who sought admission to civilian service on the grounds of conscientious objection. Article 16a of the amended law stipulates that the application will be made in writing; a sub-paragraph enables the drawing up of procedures to enable electronic submission. Article 16b stipulates that the applicant must state that he is unable to reconcile military service with his conscience and that he is prepared to undertake the civilian service prescribed in the law. No condition or reservation can be attached to this statement. This means that it is impossible for an objector to make it clear that he is performing the service under protest, prompting a small number each year to refuse outright.

12. On 12th October 2010, the Federal Council approved amendments to the regulations under the Civilian Service Law, with the explicit intention of reducing the attractiveness of civilian service. This was justified by the fact that the number of applications that year had reached 7,000, roughly four times the level of a decade earlier.[v]

13. In fact the approximate number of young men annually reaching the age of eligibility for military service is just over 44,000. Approximately 60% are rejected or discharged on health or (most frequently) "psychological" grounds, and are not thereafter asked to perform any form of service. (Their tax bill is however increased, see next section.) The 6,000 applicants for alternative service, by contrast, represent a mere 15% or so of the age cohort.

14. The changes, which came into effect on 1st February 2011, include:
that the application form is no longer be accessible by internet, but must be requested individually
that applications must be reconfirmed after exactly four weeks otherwise they will be automatically rejected
that, within the overall requirement, a period of alternative service of six consecutive months must be completed within three years of approval of the application. Those who fail to meet this deadline can face criminal prosecution.
a substantial (just under 50%) reduction in the subsistence allowances payable to those who enrol for alternative service before they are in full time employment. (Those who are released from employment in order to perform civilian service receive 80% of their salary during the period of service.)
a narrowing of the definition of organisations which can accept alternative service placements to those working in "social and environmental" fields – and increased administrative charges levied on those organisations which are accepted.

15. Although Switzerland as a member of the Human Rights Council co-sponsored Resolution 24/17, these provisions are clearly incompatible with OP12 of that Resolution, whic: "*Reiterates* that States, in their law and in practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights" and run contrary to the spirit of OP7, which "*Welcomes* the fact that some States accept claims of conscientious objection to military service as valid without inquiry" and OP 15, which "*Affirms* the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service".

16. There is furthermore no evidence that the 50% discrepancy between the length of military service and alternative civilian service is objectively justified in line with the criteria set out by the Human Rights Committee. [vi] Indeed, the Swiss conscientious objectors' organisation BfMZ points out that in practice the discrimination against those performing civilian service is greater. All 390 days civilian service *must* be performed by the age of 34 whereas ordinary military conscripts are discharged from all obligations on reaching that age, whether or not they have done the full stipulated quota of 260 days.[vii] It was estimated in 2010, the latest date for which figures are available, that only some 71.8% of the nominal military service requirement was actually performed.[viii]

17. An amendment to Article 84 of the Military Penal Code, introduced on 1st July 2016 makes anyone who does not report for military service when summoned liable to a fine, even if an application to perform civilian service is under consideration at the time.[ix]

C Military exemption tax

18. The Swiss military exemption tax (*Wehrpflichtersatzabgabe / taxe d'exemption du service militaire)* was brought into question in the case of *Glor v Switzerland*[x] decided in 2009 before the European Court of Human Rights.

19. This tax applies to all male citizens of the age group eligible for military service, whether or not resident in Switzerland, who for more than six months of a given tax year have - for whatever reason - not been attached to a military or reserve unit, or who have failed to attend when

summoned to perform their military service.[xi]

20. Revisions to the Law in 1994 exonerated the most severely handicapped persons, and stipulated that other recognised disabled persons benefit from a 50% reduction in the rate, which, with effect from 2004, was raised from 2% of taxable income, or Fr.150 if greater, to 3% of taxable income, subject to a minimum payment of Fr.200.[xii]

21. With the creation of Civilian Service in the mid-1990s, the Law was redrafted so as to exclude those who were performing this alternative to military service (this included the dropping of the word "military" from its title in French – but not in German.) [xiii] With this change, repeated imprisonment for non-payment of the military tax became less of a focus for the conscientious objection movement in Switzerland than it had previously been[xiv]

22. The applicant before the European Court of Human Rights was a lorry-driver who suffered from diabetes and had therefore been ruled unfit for military service, although he maintained his willingness to perform such service. "The Court considered that the Swiss authorities had treated persons in similar situations differently in two respects: firstly, the applicant was liable to the exemption tax, unlike persons with more severe disabilities, and secondly, he was unable to perform alternative civilian service, which by Swiss law was reserved for conscientious objectors."[xv] It found unanimously that this constituted a violation of Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life), of the European Convention on Human Rights.

23. Following the *Glor* judgement, the possibility was introduced for those found unfit to serve to appeal against this decision, but only within a narrow time window, and with it remaining at the army's discretion whether it is able to accommodate them. In October 2016, in one such case, the Swiss military authorities finally relented and decided that a young man could present himself ˈnext year for military service despite the fact that he had originally been found unfit for military service because he was a vegan and refused to wear leather.[xvi]

24. Even though, for the purposes of assessment for this tax, periods performing alternative civilian service are treated as the equivalent of military service, it nevertheless tends to impinge more heavily on those who perform alternative service. Whereas military reserve service is typically spread throughout the years of liability, the alternative service requirement is usually discharged in fewer instalments, sometimes a single longer placement. Those who have not completed their alternative service liability are taxed for any year in which they do not perform such service.

25. The tax also impinges on two specific groups on conscientious objectors. One is those who are precluded from undertaking alternative civilian service. The Civilian Service Law stipulates that only those who have been declared fit for military service and do not qualify for any exemption are allowed to apply for recognition as conscientious objectors. In fact many of those who in practice are not being called into the army would have a conscientious objection to military service and for some this extends to paying what is seen as a "military tax". There is also a small number of objectors each year who are imprisoned for their refusal even to perform the alternative service, whether because they see it as too closely related to the system of military service, or in protest against its punitive and discriminatory duration and other conditions. For these, the extra fiscal burden is a further source of grievance.

D Revision of the Asylum Law

26. On 20th December 2005[xvii], the Swiss Asylum Appeals Commission (*Asylrekurs-kommission - ARK*), ruled in favour of an Eritrean appellant who had shown that he would face the death penalty as a deserter if repatriated - a punishment which was (reasonably) held to be disproportionate. Moreover, the Commission took into account the findings by the European Court of Human Rights[xviii] and by Immigration Appeals Tribunals in the UK and elsewhere that the treatment of deserters and military service evaders in Eritrea constituted inhuman and degrading punishment contrary to Article 3 of the European Convention on Human Rights.[xix]

27. This ruling was blamed by politicians for the subsequent increase in the number of asylum applications lodged in Switzerland by Eritreans - from 181 in 2005 to 1,207 in 2006, 1,661 in 2007, and 2849 in 2008. There is in fact no evidence that this increase was any steeper in Switzerland than elsewhere in Europe, and indeed in 2009 the number fell again to 1724. However, with the explicit purpose of countering this increase, in October 2007 the Federal Justice and Police Department (EJPD[xx]) was instructed to begin work on a redraft of the Asylum Law with one of the proposed changes being "Refusal to recognise conscientious objectors and deserters as refugees".

28. In June 2012, the Parliament agreed on urgent changes to Article 3.3 of the Asylum Act, and the Federal Council agreed on a fast-track process which led to them being confirmed by a vote of 78.5% in a referendum on 9th June 2013, and thus passing into law.

29. Refugee organisations, religious groups and other civil society actors have criticised many aspects of the changes as potentially contrary to Switzerland's obligations under the 1951 Convention relating to the Status of Refugees. Many aspects of these changes have been subject to critical comment; this submission simply wishes to draw attention with concern to the fact that the provisions regarding those who have deserted or avoided military service, for whatever reason, have been reversed. Instead of stating that they may qualify for asylum subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the 1951 Convention, an explicit statement is made that conscientious objectors may not receive asylum unless they qualify on other grounds.

30 Suggested recommendations

- **that Switzerland shoud end all discriminatory treatment of conscientious objectors who opt for alternative civilian service, including in the duration and conditions of the service and the liability to penalties.**
- **that Switzerland should abolish the discriminatory and inequitable Military Exemption Tax**
- **that Switzerland should carefully examinne whether the provisions of its Asylum Law are in complete compliance with the 1951 Convention.**

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i A/HRC/8/41, para 57.2; A/HRC/8/41/Add.1, para 3.

[ii] International Institute for Strategic Studies (London), The Military Balance 2017, p164.

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

[iv] RS 824.0 *Loi fédérale du 6 octobre 1995 sur le service civil (LSC)*

[v] See the figures quoted by Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p 69

[vi] *Foin v France* Communication 666/1995, ICCPR, A/55/40 vol II (3rd November 1999)

[vii] E-mail comments, 10th March 2009

[viii] InfoDroit.ch, Conscientious objection in Switzerland (Submission for the OHCHR Quadrennial Report on conscientious objection to military service), February 2017, para 21.

[ix] Ibid, para 23.

[x] Glor v Switzerland, Application No. 13444/04. Chamber Judgment delivered on 30th April 2009

[xi] Law 661 of 12th June 1959. Article 2

[xii] Law 661, Article 13, as revised by the Law of 4th October 2002.

[xiii] Now "*Loi fédérale sur la taxe d'exemption de l'obligation de servir*"

[xiv] Prasad, D & Smythe T, Conscription - a world survey: compulsory military service and resistance to it, War Resisters International, London,1968, p127

[xv] "Chamber Judgement Glor v Switzerland", Press Release issued by the Registrar of the European Court of Human Rights, 30th April 2009.

[xvi] 20 Minutes (Genève), "L'armee perd son bras de fer contre un végane tetu", 19th October 2016, p3.

[xvii] Decision reported in EMARK 2006 No. 3, pp29 et seq.

[xviii] *Said v Netherlands*, Application No.2345/02, Judgment of 5th July 2005.

[xix] Caroni, M. & Hofstatter, S., "*Flüchtlingsrechtliche und rechtsstaatliche Überlegungen zur geplanten Teilrevision des Asylgezetses betreffend Desertion und Dienstverweigerung",* ASYL 3/08 , (Swiss Refugee Council 7th August 2008). (http://www.osar.ch/2008/08/07/eritrea_desertion)

[xx] Eidgenössische Justiz- und Polizeidepartement