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Joint UPR Submission: ISRAEL Fifteenth Session: February 2013

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Executive Summary

This submission deals with conscientious objection to military service and related issues. It was prepared in July 2012 on the basis of the latest information available.

Principal concerns are:

- **inadequate provision for conscientious objection to military service**
- **repeated imprisonment of conscientious objectors**
- **the pervasive militarisation of society, particularly the education system, leading to juvenile recruitment, to discrimination against those who have not performed military service, and to grave breaches of the freedoms of expression and association through the harassment of organisations which are seen to question the behaviour of the military and its role in society.**

Background

1. The Israeli Defence Force (IDF) is organised as a citizen's militia. In principle, men and women alike are required to perform obligatory military service, usually starting at the age of 18, and subsequently to report for an annual period of active reserve duty. In practice, only Jewish Israelis and men from the Druze community are affected. Other “Arab Israelis” are not called up. Orthodox Jewish women, and Ultra-Orthodox men, have also benefited from a variety of exemptions.

2. Article 36 of the Israeli Defence Service Law gives the Minister of Defence authority to exempt individuals from their military service obligations, including on grounds of conscientious objection. Israel is however unique in that the procedures to be followed in cases of conscientious objection are not spelled out in any more detail in legislation.

3. Under the authority vested in the Minister of Defence “A special military committee reviews the applications of those who wish to be exempted from the army on the basis of conscientious objection. Among the members of this committee are an officer with psychological training, a member of the IDF Military Advocate General's Corps and a member of the Academia.”¹

4. “The Committee first examines the reliability and authenticity of the request and the nature of the reasons presented, including the type of conscientious claim brought before them – whether it is inclusive and unconditional (...). An enlistee whose request for exemption was denied must, of course, perform his/her duty of military service. If he/she refuses to do so, the IDF employs a variety of disciplinary measures at its disposal – and if the enlistee's refusal persists, he/she may also be criminally prosecuted.”²

5. Those who object on grounds of conscience to military service in the IDF do so on various grounds. Some would refuse to bear arms under any circumstances. Others are willing to serve in defence of the territory of Israel, but refuse to be part of an “army of occupation”. Others who oppose the occupation reject any service in the IDF.

6. In considering who it will recognise as a conscientious objector, the Committee excludes

¹ CCPR/C/ISR/Q3./Add1, 12th July, 2010, pp. 49 -51

² Ibid

anyone whose objection can be in any way described as “selective”. However even with regard to those who adopt a completely pacifist stance, the Committee is exercised to distinguish between conscientious objection and civil disobedience: “Conversely to civil disobedience, conscientious objection is compelled by specific personal motives. It is not purported to change state policy. Rather, it stands alone as a completely individual decision. The conscientious objector has no interest in influencing others to join him...”. It also apparently helps to establish the credibility of a claim if the conscientious objector is also a vegetarian, but even this did not help in the case of one vegetarian conscientious objector who had nevertheless taken a summer job as a waitress in a fast food restaurant.³

7. In brief, the Committee can be relied upon to reject the vast majority of claims which come before it. Moreover whether an individual case is heard by the Committee is completely at the discretion of the IDF.

8. Hitherto, those who are not called for military service, or who are excused on any grounds, including conscientious objection, have not been obliged to perform any “alternative” or “substitute” service.

The First Cycle of the UPR and follow-up

9. In the Working Group in December 2008, Slovenia recommended that Israel should “Cease imprisoning conscientious objectors and consider granting them the right to serve instead with a civilian body independent of the military.”⁴

10. The response to this in the Working Group (not fully reflected in the Report⁵), was: “Israel’s Supreme Court has addressed the issue in a number of cases, and in particular the difficulty of balancing conflicting considerations, in particular the needs to respect the conscience of the individual objector and the nature of army service in Israel as a general duty imposed on all members of society. The Court has affirmed that, where conscientious objection can be proved and is distinguished from political motivations or civil [dis]obedience, exemption from army service must be granted to men and women alike.”⁶

11. In fact, the Supreme Court decision referred to⁷ confirmed simply that opinions which could not obtain discharge from the military for a man should not do so for a woman. Its effect was to restrict rather than to affirm the right of conscientious objection.

12. During the adoption of the UPR report, among “items from the Council’s recommendations” which Israel had “taken upon itself to promote” was listed: “granting the right to those who object to serve in the army on conscientious grounds to serve instead with a civilian body, such as in the form of the newly established and strengthened Public Commission for National Civil Service.”⁸

³ See War Resisters International ISRAEL: Update on imprisoned conscientious objectors. CO Alert, 31st May 2006.

⁴ Para.100 sub-para (22) of the Report of the Working Group (A/HRC/10/76)

⁵ A/HRC/10/76, para

⁶ UN Webcast of the UPR Working Group, 4th December 2008, afternoon: (<http://www.un.org/webcast/unhrc/archive.asp?go=081204#pm>) “Closing comments and answers by Israel, (Mr. Malkiel Blass, Deputy Attorney General, Legal Counselling) (4’49” -)” .

⁷ H.C.J. 2383/04 *Laura Milo v. The Minister of Defence et. al*

⁸ The text of the statement may be found at <http://www.upr-info.org/IMG/pdf/Israel.pdf> . The relevant passages are

13. This did not represent an acceptance of the recommendation, which had also called upon Israel to cease imprisoning conscientious objectors. The National Civil Service referred to had started as a voluntary programme for women exempted from military service on “religious lifestyle” grounds. Later, while retaining its strictly voluntary nature, the scheme had been broadened to involve all those exempt from military service, particularly Arab Israelis and ultra-orthodox men.⁹ It was of course thereby already open to application from anyone exempted from military service on grounds of conscientious objection, although a placement was not guaranteed.

14. There have been no significant developments with regard to this commitment. The procedures for dealing with those who object to military service on conscientious grounds remain unchanged; few conscripts are released on such grounds, and there is no record that any have sought to assert a “right” to a placement in the National Civil Service scheme. However in February 2012 the Supreme Court ruled that the “Tal Law” governing military exemptions for “*yeshiva*” religious students was unconstitutional and instructed the Government to bring forward revised legislation by August. In response, the governing Likud party at beginning of July 2012 decided to propose legislation extending the liability for military service to all sectors of the population. It seemed likely that any such proposals would include a major expansion of the National Civil Service scheme, making this obligatory for all who did not in fact perform military service. Rather than creating any new right, such a move would potentially impose a new duty on a large number of Israeli citizens.

Developments during the period under review

Imprisonment of conscientious objectors; impartiality of the decision-making process

15. The cycle of repeated imprisonments of conscientious objectors have continued. Individual sentences are usually short, but if on release from military detention facilities the objector does not relent and agree to perform military service, a further conviction and sentence, which may be slightly longer, follows. The cycle is broken only when the objector either submits or becomes recognised as unfit for military service.

16. As expressed by the Working Group on Arbitrary Detention in an earlier case from Israel “repeated penalties for refusing to serve in the military would be tantamount to compelling someone to change his/her mind for fear of being deprived of liberty if not for life, then at least until the age at which citizens cease to be liable for military service.”¹⁰ In its General Comment No. 32 the Human Rights Committee classified such punishments as in breach of the principle of *ne bis in idem* when the “subsequent refusal is based on the same constant resolve grounded in reasons of conscience.” On this precise issue, individual case law under the ICCPR, which would be binding on Israel, does not yet exist, but it is worthy of note that dealing with similar facts, the European Court of Human Rights (ECtHR) in *Ulke v Turkey* found that “the cumulative effects of the ensuing criminal convictions and the constant alternation between prosecution and imprisonment, together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the

on pages 2, 3 and 4 of the document.

⁹ Information drawn from a power-point presentation made by Lior Shohat, Public Affairs Coordinator in the Administration for National Civic Service at a Study Session on Voluntary Service and Intercultural Dialogue, Council of Europe European Youth Centre, Budapest, October 2009.

¹⁰ Working Group on Arbitrary Detention, Opinion No. 24/2003 (Israel), 28th November 2003, reported in UN DOCUMENT E/CN.4/2005/6/Add.1, pp.18 et seq

aim of ensuring that he performs his military service. They are aimed more at repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will,"¹¹ and that this constituted inhuman or degrading treatment, a precedent which it has followed in subsequent judgements. In the context of such coercion, an indefinite sequence of gradually increasing short sentences represents a more severe abuse than would a single longer sentence.

19. In the majority of cases, the sequence of imprisonments is finally brought to an end when the objector agrees to be examined by a military psychiatrist, in order to be declared unsuitable for military service on the grounds of "psychiatric instability".

20. In December 2008, four conscientious objectors, three of them women, were known to be serving their second or subsequent sentences of imprisonment. Since January 2009, at least five further first-time Jewish conscripts, three women and two men, all aged between 18 and 20, have been imprisoned for refusing military service on grounds of conscientious objection; three have received multiple sentences.¹²

21. Concerns have been raised about the treatment of the conscientious objectors in detention. In December 2008 Tamar Katz was punished for the refusing to wear military uniform (consistently with her conscientious objection), by denial of telephone contact with her family and the opportunity to change her clothes or brush her teeth. For a similar "offence" Efi Brenner was in October 2009 sentenced to the isolation ward; he was also allegedly not permitted to take books with him into prison.

22. Many conscientious objectors are Druze, but individual cases are not comprehensively documented. The treatment of Druze objectors is particularly severe; in March 2011, for instance, it came to light that 18-year-old Ajuad Zidan was facing his sixth and seventh convictions in an almost continuous sequence since November 2010.

23. Since 2008, at least one conscript has been imprisoned after developing conscientious objections during his military service, and there have been further imprisonments of persons who refuse on conscientious grounds to report for reserve service, most recently Yaniv Mazor, sentenced to 20 days imprisonment on 11th June 2012.

24. In July 2010, in its concluding observations on the Third Periodic Report of Israel, the Human Rights Committee expressed concern "about the independence of the 'Committee for Granting Exemptions from Defence Service for Reasons of Conscience', which is composed entirely, with the exception of one civilian, of officials of the armed forces.", and noted "that persons whose conscientious objection is not accepted by the Committee may be repeatedly imprisoned for their refusal to serve in the armed forces". It recommended that the Committee: "should be made fully independent, persons submitting applications on the grounds of conscientious objections should be heard and have the right to appeal the Committee's decision. Repeated imprisonment for refusal to serve in the armed forces may constitute a violation of the principle of *ne bis in idem*, and should therefore be ceased."¹³

25. It may be noted, although not binding upon Israel, that the Human Rights Committee's

¹¹ *Ulke v Turkey*, Application No.39437/98, Chamber Judgment of 24th January 2006.

¹² The information in this and subsequent paragraphs is derived from War Resisters International's "Prisoners for Peace / CO Database" accessible at wri-irg.org

¹³ CCPR/C/ISR/CO/3, 2nd September 2010, para.19

concerns about the impartiality of military bodies in determining conscientious objection cases have, with regard to a number of recent cases from Turkey¹⁴, been further developed by the ECtHR, which has taken the view that to treat as members of the armed forces persons who are refusing initial recruitment to military service on grounds of conscience and therefore to subject them to military disciplinary procedures violates the right to fair trial.

Discrimination against those who have not performed military service

26. As well as suffering informal discrimination in the labour market, those who have *for any reason* not performed military service face higher income tax rates, less entitlement to social security and government mortgage loans. Military service is also taken into account in calculating seniority in public employment.

Harassment of non-governmental organisations

27. In April 2009, the police seized computers and documents belonging to the organisations New Profile and Target 21, which advise conscientious objectors, and detained some members who were released only after agreeing to bail conditions which did not allow them to contact each other for thirty days. The reason given was an investigation into violations of article 109 of the Israeli criminal law, incitement to draft evasion. Members of Yesh Gvul, which supports refusers from within the military were subsequently interrogated on the same charges. In fact, the aims and activities of all three organisations are openly stated in their documentation, and after six months the case was dropped, but of particular concern is the threat of the serious charge of “incitement to evade military service” to curtail discussion of the right of conscientious objection to military service.

28. In the report on his visit to Israel and the occupied territories in December 2011, the Special Rapporteur on Freedom of Opinion and Expression expressed his “deep concern regarding some bills which have been proposed to or adopted by the Knesset, which contravene international standards on the right to freedom of opinion and expression.”¹⁵ These included the “foreign funding law” adopted on 2 March 2011, which requires NGOs to report quarterly to the Registrar of Associations on any funding received from foreign Governments or any other foreign entities. The High Commissioner on Human Rights subsequently observed that the law “could have a major impact on human rights organizations, subjecting them to rigorous reporting requirements, forcing them to declare foreign financial support in all public communications and threatening heavy sanctions for non-compliance.”

29. The Special Rapporteur welcomed “the fact that a “Bill on Income of Public Institutions Receiving Donations from a Foreign State Entity, which would deprive NGOs that receive foreign funding of the legal right to be exempted from income tax.” had “been put on hold, given that if adopted, it would have further restricted the work of Israeli human rights NGOs.”¹⁶

¹⁴ *Ercep v Turkey*, Application No.43965/04, Chamber Judgment of 22nd November 2011; *Feti Demirtas v Turkey* Application No. 5260/07, Chamber Judgment of 17 January, 2012 *Savda v Turkey*, Application No. 42730/05, Chamber Judgment of 12th June 2012

¹⁵ A/HRC/20/17/Add.2, 11th June, 2012, Para 27

¹⁶ *Ibid*, para 37.

30. A bill proposed in July 2011 by the Yisrael Beiteinu party of Foreign Minister Avigdor Lieberman would establish Parliamentary Committees of Enquiry into “groups that delegitimize Israel and abet terror, especially those that helped the Goldstone Committee investigating the 2008 incursion into Gaza.” Along with New Profile, Lieberman listed “the Arab legal-aid center, Adalah, the Yesh Din human rights group, Breaking the Silence, a group established by Israel Defense Force veterans to provide testimony about military service in the occupied territories”. These, he said, were “organizations that (...) go from one school to the other and incite the students against serving in the army. This is, therefore, a legitimate initiative of self-defense.”¹⁷

Military involvement in education and juvenile recruitment

31. Despite the accusation reported in the previous paragraph, the Minister of Education had in fact some years earlier pronounced a ban on New Profile members from being invited to speak in schools, the only legally constituted non-governmental organisation in Israel to suffer this. By contrast, the Committee on the Rights of the Child has expressed its concern at “the extensive militarization of the educational system in Israel and the inclusion of mandatory military components as part of the school curricula.”¹⁸ The Committee expressed particular concern “that the curricula of programmes that combine military service with Talmudic studies (*hesder yeshivas*), such as programmes that explicitly encourage students to volunteer for recruitment and seek active combat duty, are contrary to the aims of education and human rights values enshrined in article 29 of the Convention.”¹⁹

32. The Committee on the Rights of the Child also noted that although conscripts are not incorporated in the IDF before their 18th birthday, the recruitment process begins before the 17th birthday. Moreover, a number of loopholes can permit “voluntary” early enlistment for the obligatory military service, sometimes leading to the deployment in combat units of persons aged under eighteen.

¹⁷ Ravid, B. & Lis, J. “Lieberman blasts PM, Likud ministers for refusing to probe left-wing groups”, Haaretz, 18th July 2011

¹⁸ CRC/C/OPAC/ISR/CO/1, 4th March 2010, Para 26.

¹⁹ Ibid, Para 22