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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement* submitted by Conscience and Peace Tax International (CPTI),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Conscientious objection to military service

Conscience and Peace Tax International (CPTI), an international NGO which upholds the right of conscientious objection to all forms of military service, whether armed, unarmed, or through the payment of taxes which are used for military expenditure, draws the attention of the Council to the reports of the Working Group on Arbitrary Detention and of the Special Rapporteur on Freedom of Religion or Belief.

Working Group on Arbitrary Detention

CPTI welcomes opinions nos. 8/2008 (Colombia) and 16/2008 (Turkey), of the Working Group.¹

In Opinion 16/2008, concerning Turkish conscientious objector Halil Savda, who had been subjected to four separate periods of imprisonment following his refusal to perform military service, the Working Group states “The Government of Turkey has not put forward any arguments justifying the absence of any legislation accommodating conscientious objectors (...) In the view of the Working Group, it has been established that the limitations on Mr. Savda’s right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case, and is, thus, in violation of article 18 of the Universal Declaration of Human Rights and of article 18, paragraph 1 of the ICCPR. Accordingly, the criminal prosecution, sentencing and deprivation of liberty of Mr. Savda for holding and manifesting his belief and conscience is arbitrary.” (para38). The Working Group not only reaffirms its previous findings² which had “declared arbitrary the detention of conscientious objectors following a second conviction on the grounds that this would be tantamount to compelling a person to change his or her convictions and beliefs for fear of not being subjected to criminal prosecution for the rest of one’s life, being incompatible with the principle of double jeopardy or *ne bis in idem*, thus violating article 14, paragraph 7 of the ICCPR” (para 39); it goes on (para 44) to emphasise that the breach of the rights guaranteed by article 18 meant that *all* the periods of imprisonment, including the very first, were arbitrary detention.

Opinion 8/2008 concerned three youths who had been detained by the Colombian army in the course of *batidas* - random mass forced recruitments in public places. Two of the three were declared conscientious objectors to military service. The Working Group observed that the penalties stipulated for non-compliance with the military recruitment law are fines only. “Under no circumstances are arrest, detention and involuntary incorporation into the army authorised.”(para 22). “The detention of those who have expressly declared themselves conscientious objectors has neither juridical support nor a legal basis, and their incorporation into the army against their will is a clear violation of their affirmation of conscience, such as might breach article 18 of the International Covenant on Civil and Political Rights. Not to accommodate the right to conscientious objection can be a violation of this article. Nor is there any legal basis or juridical support for (...) '*batidas*', '*redadas*', or '*levas*' for the purpose of

¹ A/HRC/10/21/Add.1.

² See Opinion No. 36/1999 (Turkey) (E/CN.4/2001/14/Add.1); Recommendation No.2 (E/CN.4/2001/14); Opinion No.24/2003 (Israel) (E/CN.4/2005/6/Add.1), and also Para 55 of the Human Rights Committee’s General Comment No. 32 (CCPR/C/GC/32), 23 August 2007.

detaining in the streets and public places young men who cannot produce documentation of their military situation.” (para 23). The Working Group therefore found all three detentions to be arbitrary, in breach of article 9 of the ICCPR, and those of the conscientious objectors to be also in breach of article 18.

In the UPR, Colombia did not accept the recommendation that it should recognize the right of conscientious objection to military service “in law and practice and ensure that recruitment methods allow it (and) guarantee that conscientious objectors are able to opt for alternative service, the duration of which would not have punitive effects,” arguing “The Colombian Constitution and the legal framework establish that all citizens have the obligation to enroll in the military service when the circumstances so require to defend the National sovereignty and the public institutions and to provide security conditions for all citizens. This obligation has been upheld on several occasions by the jurisprudence of the Constitutional Court.”³

In fact, the notion that this provision takes priority over that guaranteeing freedom of conscience has been questioned in the Constitutional Court.⁴ More importantly, no interpretation of domestic law can release Colombia from its obligations under the international treaties to which it is party, including the ICCPR.

CPTI calls on the governments of both Turkey and Colombia to give legal recognition to the right of conscientious objection to military service and to put into place measures which will allow conscientious objectors to exercise this right. CPTI also calls on the government of Colombia to cease all irregular recruitment practices.

Special Rapporteur on Freedom of Religion or Belief

In the report on her mission to Turkmenistan (A/HRC/10/8/Add.4, paras 50, 51), the Special Rapporteur on Freedom of Religion or Belief draws attention to the criminalisation and repeated punishment of conscientious objectors to military service in that country. CPTI welcomes her recommendation (para 68): “The Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah’s Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence.”

CPTI therefore looks forward with interest to Turkmenistan’s response to the recommendation in the Draft Report on the Working Group of the UPR⁵, that it “recognize conscientious objection to military service in law and practice and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors”

It is unfortunate that the issue of conscientious objection to military service does not feature in the Special Rapporteur’s report on her mission to Israel (A/HRC/10/8/Add.2). in Israel. In

³ (A/HRC/10/82/Add.1, page 4), referring to the recommendation in Paragraph 37(a) of the Report of the Working Group (A/HRC/10/82)

⁴ See the minority opinion signed by three members of the Court in Case 511/94.

⁵ A/HRC/WG.6/3/L.11, 10th December 2008, para 70.12

October 2007, the Supreme Court had, in the case of Jonathan Ben-Artzi, who had undergone repeated terms of imprisonment over an eight-year period, persuaded the military prosecutor to cease pressing further charges; there followed a relative lull in the persecution of conscientious objectors, during which the Special Rapporteur visited.

However in August 2008 a new round of imprisonments began following the publication of a letter in which a group of male and female final year high school students - the *Shministim* - indicated their refusal to serve in the army of occupation in the Palestinian Territories. Since then nine conscientious objectors have been sentenced to a total of 22 terms of imprisonment in Israeli military detention facilities; Raz Bar-David Varon received her fifth sentence (21 days) on 11th February.

In the working group on the UPR, in reply to a question on the treatment of conscientious objectors, Israel stated, “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

It might be observed that it is not accurate to describe army service in Israel as “a general duty imposed on all members of society”. It is in principle obligatory only for Jewish and Druze men and Jewish women; it is voluntary for Christian Israelis; Arab Israelis are excluded from military service. Moreover “ultra-orthodox” Jewish male religious students studying in *yeshiva* religious schools benefit from automatic exemption. The obligation is thus discriminatory.

Although the explicit acknowledgment of the need to respect the conscience of the individual objector is welcome, there is at present no clear, independent and transparent mechanism for assessing claims of conscientious objection in Israel. CPTI calls upon Israel to bring in legislation consistent with the established international standards, as set out in Commission on Human Rights Resolution 1998/77 and further elaborated in the jurisprudence of the Human Rights Committee, in order to give practical effect to the Supreme Court’s opinion. CPTI further calls upon the Israeli government to acknowledge the objections not just of absolute pacifists, but also of potential conscripts who would be prepared to serve in the defence of Israel’s own territory but have deep reservations of a religious, moral or ethical nature about the occupation of the Palestinian territories, and to put into place measures which would allow such persons to serve their country while not violating their consciences.

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⁶UN 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” -).