

A submission by: **Naomi Paz Greenberg**

For identification purposes:

Main Representative, Conscience and Peace Tax International,
United Nations, New York,

Clerk, Committee on Conscientious Objection to Paying for War,
New York Yearly Meeting of the Religious Society of Friends.

Daniel Jenkins

For identification purposes:

Associate Representative, Conscience and Peace Tax International,
United Nations, New York.

To the: **United Nations Universal Periodic Review Process**

For the: **9th Session of the HRC UPR Working Group, November 2010**

Concerning: **The United States of America**

Contact Person: Naomi Paz Greenberg, naomipaz@cpti.ws (Phone: 01-718-261-9382).
Daniel Jenkins, daniel.jenkins@cpti.ws (Phone: 01-518-891-4083).

1.0 Introduction

- 1.1 As human rights defenders, in this submission we provide information about human rights conditions in the United States of America to the Universal Periodic Review Working Group, with respect to Item B in the General Guidelines for the Preparation of Information under the Universal Periodic Review. (HRC Decision 6/102, 27 September 2007).
- 1.2 Our objective is to protect and enhance the human rights of all persons who are compelled in violation of individual conscience to participate in any form of support for the scourge of war.
- 1.3 The issues raised by this submission with respect to Item B include:
 - (a) the lack of protection for freedom of conscience rights due to the failure of the United States to endorse the first optional protocol of the International Covenant on Civil and Political Rights;
 - (b) a violation of the human rights of conscientious objectors by a military conscription registration form used by the United States; and
 - (c) a federal tax regulation that impinges on the fundamental human rights of conscience.
- 1.4 We make concluding recommendations for the improvement of these specific human rights conditions in the United States of America at the end of each of the following sections.

2.0 First Issue with respect to Item B:

A Lack of General Protections for Freedom of Conscience Rights in the United States of America.

- 2.1 Freedom of conscience rights are guaranteed to the citizens and residents of the United States of America by the International Covenant on Civil and Political Rights (Article 18). This Covenant was signed in 1977 and ratified in 1992 by the United States.
- 2.2 However, the United States has not ratified the first optional protocol of the Covenant, and therefore country nationals are precluded from advancing violation of conscience claims through the international tribunal process that is provided by the United Nations Human Rights Committee.
- 2.3 Although the United States constitution does protect the freedom of religion, it fails to explicitly protect the freedom of conscience, in contrast to the constitutions of many other nation-states.
- 2.4 Thus violation of conscience claims cannot be advanced by the citizens or residents of the United States under the national laws, nor can such claims be advanced at the international level. This national defect in terms of protecting a fundamental human right, the freedom of conscience, can be partially rectified by the endorsement of the first optional protocol of the International Covenant on Civil and Political Rights by the United States.
- 2.5 Recommendation: We recommend that the United States of America endorse the first optional protocol to the International Covenant on Civil and Political Rights so that the citizens and residents of this nation are provided with legal recourse in terms of protecting their freedom of conscience rights.

3.0 Second Issue with respect to Item B:

The Human Rights of Those Who Conscientiously Object to Any Form of Participation in the Conduct or Preparation for War are Violated by the Registration Policy of the United States of America.

- 3.1 Young men between the ages of 18 and 26 are required by the United States government to register for service in the armed forces.
- 3.2 Some young men object to compelled service in the armed forces or to any form of participation in the military as a matter of conscience.
- 3.3 The government registration form makes no allowance whatsoever for any personal declaration of conscientious objection to service in the armed forces or to any form of participation in the military.
- 3.4 The government military registration form specifically states that failure to register is a felony punishable by five years of imprisonment, or a fine of \$250,000, or both, and also permanent loss of eligibility for student financial aid, government employment, and job training. (SSS FORM 1M (MAR 07) OMB APPROVAL 3240-0002).
- 3.5 Conscientious objectors are either compelled to military participation by registering with the United States government without any opportunity to declare their scruples of conscience, or they are otherwise subject to imprisonment, substantial financial fines, and discriminatory loss of eligibility for government programs.
- 3.6 This is a concrete example of a human rights violation that is caused by the United States government because of a lack of general protections for freedom of conscience rights in the United States of America.
- 3.7 Recommendation: We recommend that the United States of America take immediate steps to incorporate a conscientious objection declaration option on the government form that is used for military registration.

4.0 Third Issue with respect to Item B:

A Tax Regulation of the United States Impinges Upon the Fundamental Human Rights of Conscience.

- 4.1 As a signatory to the International Covenant on Civil and Political Rights, the United States is required to "...ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...". (Article 2 (1)).
- 4.2 A federal tax regulation enacted in 1969 impinges on the freedom of conscience rights of United States citizens and residents that are now protected by the Covenant.
- 4.3 A section of the United States Code of Federal Regulations (CFR) reads as follows:
"...appeals procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds.." (CFR Title 26, Section 601.106(b), Federal Register, Vol. 34, No. 180, September 19, 1969). (Emphasis added).
- 4.4 This 1969 federal regulation denies freedom of conscience considerations that have subsequently been established by the International Covenant on Civil and Political Rights, as ratified by the United States in 1992.
- 4.5 The Covent requires States parties to:
"...adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant..." (Article 2 (2)), and to
"...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." (Article 2 (3) (a)).
- 4.6 The human rights protections afforded to all citizens and residents of the United States by the International Covenant on Civil and Political Rights may require that this federal regulation be re-examined and revised. As currently written and administered, CFR Title 26, Section 601.106 (b) appears to impinge on the fundamental human rights of conscience that are established by Article 18 of the Covenant.
- 4.7 Recommendation: We recommend that the United States of America take steps to rescind CFR Title 26, Section 601.106 (b), and to adopt such replacement measures as may be necessary to give effect to the rights of conscience that are recognized in the present Covenant, and to ensure that any person whose freedoms of conscience have been violated by this regulation shall have an effective remedy.

5.0 Conclusion:

We appreciate the opportunity to make this submission to the UPR Working Group, and we are willing to work in concert with the States party, the United States of America, to promote respect for these rights and freedoms, and by progressive measures to secure their universal and effective recognition and observance.