INTERNATIONAL FELLOWSHIP OF RECONCILIATION (IFOR) and
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Submission to the 106th Session of the Human Rights Committee for the attention of the Country Report Task Force on FINLAND

(Military service, conscientious objection and related issues)

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Summary

Amendments to the Non-military Service Act, which took effect in 2008 have removed the anomaly identified in the Committee's concluding observations on Finland's Fifth Periodic Report, that conscientious objection to military service was recognised only in peacetime.

The other issues mentioned in the concluding observations, namely the excessive length of the alternative service required of conscientious objectors, and the discriminatory treatment of Jehovah's Witnesses by comparison with those whose objections are based on other grounds have addressed inadequately, or not at all, respectively.

Moreover, the imprisonment of conscientious objectors who refuse the alternative service available is not in accordance with international standards.
**FINLAND: Basic information**

Population (November 2011, estimated)\(^1\) \hspace{1cm} 5,259,000

Conscription applies to all males, for 6, 9, or 12 months depending on function in the armed forces. Since 1995, women may also opt to perform an equivalent service (as distinct from embarking on a professional military career), in which case they become subject to the same terms and conditions as male conscripts. Alternative civilian service is available on application to conscientious objectors, but see text for further details.

Minimum recruitment age: \(^2\) 18

Manpower reaching “militarily significant age” in 2010\(^3\): \hspace{1cm} 32,599

Armed forces active strength, November 2011: (of whom conscripts)\(^4\) 22,100 (13,650 - 61.8%) as percentages of those reaching “militarily significant age” : 67.8% (41.9%)

Military expenditure US $m equivalent, 2011\(^5\) \hspace{1cm} 3978

Per capita $756
As % of GDP 1.4%

**Background**

In its Concluding Observations on Finland’s Fifth Periodic Report, the Human Rights Committee “regrets that the right to conscientious objection is acknowledged only in peacetime, and that the civilian alternative to military service is punitively long. It reiterates its concern [raised during the consideration of Finland’s Third and Fourth Periodic Reports, submitted in 1989 and 1995, respectively] at the fact that the preferential treatment accorded to Jehovah’s Witnesses has not been extended to other groups of conscientious objectors”, and recommends “The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it (arts. 18 and 26 of the Covenant).”\(^6\)

Strangely, Finland does not seem to address this Concluding Observation at all in its Sixth Periodic Report. The question of conscientious objection to military service has however featured in Finland’s reports to the first two cycles of the Human Rights Council’s Universal Periodic Review, which have been examined since its last report under the ICCPR.

To the first cycle of the UPR Finland reported:

*The overall reform of the Non-Military Service Act shortened the duration of nonmilitary service by*

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1. Source: The Military Balance 2012 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.
2. Source: Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London)
4. The Military Balance 2012 (International Institute of Strategic Studies, London)
5. Stockholm International Peace Research Institute (SIPRI), April 2012
6. CCPR/CO/82/FIN of 2 December 2004), para.14
one month, to 362 days, which is equal to the longest duration of the service referred to in the Military Services Act. Liability for non-military service now exists in a state of emergency, too. Centres for Non-Military Service are responsible for the placement of persons liable for non-military service during a state of emergency. The assisting tasks assigned to these persons in such situations are performed under the leadership of civil rescue authorities. Refusal to perform non-military service, on one hand, and non-military service offences punishable by disciplinary punishments, on the other hand, are defined by different elements of an offence. The duration of unconditional imprisonment imposed for refusal to perform non-military service is half of the remaining service period. The duration of unconditional imprisonment imposed for a non-military service offence is half of the remaining service period at the maximum, so that the court has discretion when imposing the punishment. A key objective during the preparation of the Non-Military Service Act was to ensure maximum equality with the rights and obligations of persons performing service under the Military Services Act. Furthermore, special attention was paid to the compliance of the regulation with the constitutional basic rights and liberties and the requirements of international human rights treaties.

In the Working Group, the United Kingdom “welcomed the attempts to end discrimination against conscientious objectors through the reforms of the Non-Military Service Act. [but] encouraged Finland to go further in reducing the duration of non-military service and to establish parity between the length of non-military service and the average, rather than the longest possible, length of military service.” While it seems that this had been intended as a recommendation, the word “recommend” was not used, and it was not included in the list of recommendations, nor answered in the addendum to the adopted report. (Following such experiences during the first Working Group Session, States took care in subsequent sessions to frame their recommendations in explicit language.)

Although the issue was not included among the formal responses to recommendations, the Finnish delegation did respond to the United Kingdom's comments during the Working Group dialogue itself, stating that “On the important question on the length of the Finnish non-military service that has recently been shortened and is now equal to the longest duration of military service, under the Military Services Act, [...] the Finnish Constitutional Committee of Parliament [had] compared the burden of non-military and military services and the overall burden irrespective of the length was assessed to be more or less equal between the two forms of services and this is the reasoning behind the length of non-military service.”

Moreover, Finland was persuaded to address the issue in its second report under the UPR, which it did in rather clearer language:

At the time of adoption of the Report of the UPR Working Group on Finland during the 8th Session of the Human Rights Council in June 2008, the Quakers (Friends World Committee for Consultation) and Amnesty International expressed the wish that Finland would respond to the Working Group’s comment in paragraph 36 of its Report concerning the duration of non-military service in lieu of military service. Under the Conscription Act (1438/2007), every male Finnish citizen aged between 18 and 60 years is liable for military service. The duty of national defence may be performed in armed or unarmed military service. Non-military service is an alternative to military service. About 80% of the age group concerned performs military service. The most common duration of this service is 12 months, as performed by 45% of conscripts. The calculated average duration of the service is 275 days.

The Non-Military Service Act (1466/2007), which took effect at the beginning of 2008, reduced the

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7 A/HRC/WG.6/1/FIN/1, 18 March 2008, para 76.
8 9th April 2008, reported in A/HRC/8/24, para 36.
9 A/HRC/8/24, para 37.
duration of non-military service to 362 days. The Non-Military Service Act also acknowledges the right to conscientious objection during times of crisis.

The Monitoring Sentences Act (330/2011) that took effect in 2011 also enables electronically supervised home arrest instead of a prison terms for total objectors declining both military and non-military service.

Aside from their respective durations, any comparisons of military service and nonmilitary service must also consider the associated overall strain of each form of service, their differences in principle, and their manner of implementation. Military service is performed in a closed garrison from which leave of absence must always be obtained, even during leisure time. Non-military service is performed under entirely civilian conditions that entitle the individual to enjoy leisure time in accordance with normal working hours (not exceeding 40 hours weekly). Freedom of movement is not restricted in any way.

The prospects for reducing the duration of non-military service were last examined in 2011. While the working group found no way to reduce the duration, it proposed an analysis to determine whether such service could be graded according to its intensity and strenuousness. The duration of non-military service is clearly linked to the maximum duration of military service. There are plans to shorten military service by 15 days and alternative service correspondingly.¹⁰

The revision of the Non-Military Service Act which took effect from 1st January 2008¹¹ had indeed at last removed the paradox that arrangements for conscientious objectors to military service did not apply at the times when, logically, they were most necessary, namely during national emergencies, including war.

The Act prescribes different application procedures for times of national emergency, when a board will be specially constituted for the purpose of reviewing applications; this board will include a representative of the armed forces and reporting to the Ministry of Defence. It is unfortunate that Finland, which as long ago as 1987 dispensed with a personal interview of proclaimed conscientious objectors and in practice accepted claims as valid without enquiry (an approach subsequently welcomed by the Commission on Human Rights in OP2 of Resolution 1998/77) should find it necessary to provide for a departure from this best practice. It is also disturbing that the procedures outlined for times of emergency should incorporate such a strong military influence, and should not be clearly removed from the control of the military authorities; they are thus not “independent and impartial” as recommended in OP3 of Resolution 1998/77.

The assertion that “the overall burden irrespective of the length” is “more or less equal” between military and non-military service is not convincing. The 362 days of non-military service (reduced from the 395 days which applied until 2007) is equivalent to the military service required of those who will become officers in the reserves, and who are liable also until the age of 60 to reservist training aggregating no more than 100 days. Conscripts using special or professional skills perform 270 days of military service. The period of service for the rank and file is 180 days,¹² marginally less than half the period of alternative service required of all conscientious objectors. To that is nominally added between 40 and 100 days of reserve training, but War Resisters International¹³ quote local sources as indicating that in practice reservists are called up for much less. Even at the possible maximum, for rank and file conscripts the aggregate of initial service and reservist duties is substantially less than the duration of alternative service.

¹¹ Siviilipalveluslaki, Act No. 1446 of 28th December, 2007
¹² Stolwijk, M., The right to conscientious objection in Europe, Quaker Council for European Affairs, Brussels, 2005, p.27
The duration of alternative service in Finland clearly does not meet the criterion established by the Human Rights Committee in *Foin v France* that any discrepancy with the length of military service must “in a particular case” be based on “reasonable and objective criteria”\(^{14}\). This implies that for any individual, the duration of alternative service must be compared with the duration of military service which he personally would otherwise face, not with some theoretical maximum, or even with “the average”. Likewise, when comparing the restrictions of military life with the performance of a civilian service (which was presumably part of the assessment by a Parliamentary Committee of the relative “burdens” of the two forms of service), it is the actual conditions of the placement concerned and the effective extra amount (if any) of free time which should be considered. And even if the hours of duty are equalised, it must be recognised that a service of substantially longer duration inevitably involves a greater interruption to the life and normal career of the person concerned.

**Situation of Jehovah's Witnesses**

There is no indication that Finland has responded to the repeated concerns expressed by the Human Rights Committee about the effects of Act No. 645/1985, “On the release of Jehovah's Witnesses from military service in certain cases” which on the basis of certification from the community exempts members from all military service obligations in peacetime. No amendments to this Act have been reported, so it is unsatisfactory in two opposite respects; that it discriminates in favour of Jehovah's Witnesses by comparison with other conscientious objectors, but that its provisions do not extend to cover the situation when they would be most urgently needed, namely in time of war.

Military service is undisputedly incompatible with the religious tenets of the Jehovah's Witnesses. There is no doubt that individual members of the movement should be recognised as conscientious objectors. The 1985 Act was a response to the experience that many Jehovah's Witnesses had found it incompatible with their convictions to respond to the call-up and to apply for and accept the alternative service placements available. However other States have been able to come to an accommodation with the Jehovah's Witnesses to enable voluntary work of an appropriate nature to be considered the equivalent of alternative service, in compliance with OP4 of Commission on Human Rights Resolution 1998/77, which recommends that States “provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature;” There is no good reason why Finland should not make equivalent arrangements.

**Imprisonment of conscientious objectors**

OP5 of Commission on Human Rights Resolution 1998/77 “emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service”. In the case of a number of objectors (other than Jehovah's Witnesses) who have not accepted the alternative service available, or who have refused to co-operate with the conscription process, Finland has not adhered to this recommendation.

In the most notorious case, objector Antti Rautiainen was called up on twenty occasions between 1997 and 2007, and served at least three prison sentences before being – against his will – exempted from military service on supposed medical grounds. As recently as 2008, the Finnish conscientious objectors’ organisation *Asiastukiellityyiliitto*, estimated that approximately 70 total objectors each

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year declared themselves and were free of their obligations only when they had served prison sentences of half the length of the alternative service requirement.\textsuperscript{15} In 2009, the first case was reported of a woman who had opted to perform military service subsequently declaring a conscientious objection and running the risk of a prison sentence.\textsuperscript{16}

It is encouraging that in August 2011 it was revealed that under a new scheme whereby “short-term convicts” would be put under house arrest, with electronic tagging, all or most conscientious objectors would no longer be subject to prison sentences.\textsuperscript{17} Even so, it is neither logical nor appropriate to subject persons whose “offence” is based on conscience to treatment designed for criminals.

**Release on grounds of conscience of professional members of the armed forces**

Although Finland permits conscripts to apply for recognition as conscientious objectors at any stage – before enlistment, during service, or when listed as reserves – no parallel arrangements exist for “professional” members of the armed forces. Finland is however a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

> “42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”\textsuperscript{18}

**Suggestions for list of issues**

Given the absence of any mention of conscientious objection to military service in the Sixth Periodic Report, it is suggested that the State Party is asked in the list of issues what actions it has taken to implement the recommendations in Paragraph 14 of the Concluding Observations on the Fifth Periodic Report.

It might also be asked to comment on reports that some of those who refuse both military service and the alternative service available may be subject to repeated call up and imprisonment.

Finally, it could be asked whether it has taken any steps to implement the recommendation of the Committee of Ministers of the Council of Europe that professional members of the armed forces should be able to leave on grounds of conscience.

\textsuperscript{15} Professional soldiers and the right to conscientious objection in the European Union (Information against war, repression, and for another society No. 5 – Documentation produced for Tobias Pflüger MEP (Vereinigte Europäische Linke / Nordische Grüne Linke (GUE/NGL) Parlamentsfaktion Europäische Parlament), Brussels, October 2008, p24.


\textsuperscript{17} “Finland: Total objectors in future under house arrest?” War Resisters International, CO Update No. 68. September 2011

\textsuperscript{18} CM/Rec(2010)4, 24th February 2010