Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz
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UPR SUBMISSION - UNITED KINGDOM OF GREAT BRITAIN - MAY 2012 AND NORTHERN IRELAND

1. This submission was prepared in November 2011 on the basis of the latest information available to CPTI.

Executive summary:

2. This submission focusses on matters of military recruitment and human rights in the armed forces of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to using the short form "the UK"). The human rights concerns which it raises relate to difficulties in practice in obtaining release on grounds of conscientious objection, to continued juvenile recruitment, and occasional deployment of persons who have not reached their eighteenth birthday, to discriminatory and unfair terms of employment and to other disadvantages suffered by juvenile recruits.

Provisions for Conscientious Objectors to military service

3. At all times when the UK has imposed conscription into obligatory military service, starting in 1916, this has been accompanied by provisions for conscientious objectors. The UK may also have been the first state to cater for the possibility that a serving member of the armed forces might develop conscientious objections, even when the original decision to enlist had been voluntary. During the Second World War, the Appellate Tribunal for conscripts who applied for recognition as conscientious objectors was empowered to sit in an "advisory" capacity to hear cases where a serving member of the armed forces claimed to have developed a conscientious objection; in such cases it was referred to as the "Advisory Tribunal".[1]

4. Following the end of conscription in the early 1960's, this role of the tribunal was retained.. All service personnel, whether full-time, part-time or reservist, "who, during their service, develop a genuine conscientious objection to further military

[1] Information supplied by Bill Hetherington of the Peace Pledge Union.

service".[2] might apply, through the command structure, for discharge on compassionate grounds. The role of the Appellate Tribunal was taken over in 1970 by the Advisory Committee on Conscientious Objection (ACCO).

5. "The ACCO is an independent committee appointed by the Minister for Constitutional Affairs. It consists of a Chairman, a Vice Chairman and 4 lay members. A quorum is the Chairman, Vice Chairman and 2 members. ACCO hearings are held in public but the procedure is relatively informal. The applicant is not informed of the Committee's decision on the day of the hearing as their advice must first be formally accepted by the Secretary of State for Defence's representative."

6. "If the ACCO reject an appeal for discharge on the grounds of conscientious objection, the appellant is interviewed by their Commanding Officer and informed of the ACCO's decision. The appellant is also informed that he or she must continue their military service under the same conditions that applied to them before the ACCO heard their plea, until such time as they retire or are allowed to resign, if an officer, or are discharged on completion of their engagement or allowed to purchase their discharge, if a Serviceman or woman. The appellant is advised that they continue to be subject to Service discipline. However, they are not prevented from resubmitting their case, provided that there is additional and relevant evidence to be heard. In such cases the whole appeals procedure is repeated."

7. Within the broad framework, detailed rules are drawn up by the individual branch of the armed forces concerned, but are not made public. The above quotations are from the rules then current in the Royal Air Force, obtained in 2007 by War Resisters' International by an application under the Freedom of Information Act.

8. Although the UK's procedures for the release of in-service conscientious objectors preceded any international obligations in this regard, such obligations are now required of it by Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe, which states (paras 42 – 46):
"(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."

[2] World Veterans Federation: Evidence dated 12th August 2003, submitted to the OHCHR for its report on "best practices" in the field of conscientious objection to military service, quoting a Ministry of Defence document.

9. As noted above, the documents outlining the procedures to be followed have not been made public. In practice information about the possibility of release on such grounds is not readily available to those who might be affected.

10. Until such time as rejected and made the subject of an appeal to ACCO, applications for release on the grounds of conscientious objection are handled neither independently or publicly. Any release of a conscientious objector by the individual services is officially recorded simply within the figures giving the number of releases on compassionate grounds. .

11. In response to a Freedom of Information request in January 2011, the Ministry of Defence produced figures showing that during the years 2000 to 2010 a total of six persons had been "granted the right to leave the armed forces because of moral, political or religious objections"[3] Of nine applications received, five (two succesful) had been from the Royal Navy and four (all succesful) from the Royal Air Force. A separate Freedom of Information request had revealed that in the previous decade there had been thirteen applications from the Royal Navy and one from the Army, but did not indicate the outcome. In the more recent figures, no cases were reported from the Army, by far the largest branch of the armed forces in number of personnel. We gather however that during this decade at least one potential conscientious objector from the Army was offered honourable release before submitting an application, and on condition of confidentiality. By definition, it is impossible to know how many cases may have been similarly resolved, or how many would-be conscientous objectors are dissuaded from ever registering a formal application for release. Even these very limited statistics reported above hint at a hardening of approach, with the six successful applications recorded as having been made in the period 2003 – 2006, while three unsuccesful applications were lodged in the years 2006 to 2010.

12. From its foundation in 1970 until 1996 ACCO, handled only 36 appeals, 11 of which it upheld.[4] It was convened for the first time since 1996 on 17th December 2010, to adjudicate in the case of LMA (Leading Medical Assistant) Michael Lyons, whose application for release from the Royal Navy had been rejected that September .

13. In the Lyons case, the procedures followed deviated in some respects from those outlined in paragraphs 5 and 6 above. The Chairman of the Committee chose to announce at the end of the hearing that the Committee would recommend rejection of the appeal. This was erroneously described as upholding the decision of Lyons' commanding officer, although it had emerged in the hearing that the commanding officer had initially supported the application and that it was the naval chaplain who had subsequently interviewed Lyons who had first expressed the view that his objections were not of conscience but simply represented his political views about the Aghanistan conflict. There is no evidence that the acceptance of the recommendation by the Secretary of State was ever formally recorded or formally communicated to Lyons in the prescribed manner.

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[3] Marsden, S. "Conscientious objectors figures revealed", The Independent, 30th January 2011.

[4] Stolwijk, M., The Right to Conscientious Objection in Europe, Quaker Council on European Affairs, Brussels, 2005, also at www.wri-irg.org/co/rtba/unitedkingdom.htm

14. Despite the irregularities, Lyons chose not to incur the potential expense of a judicial review of the ACCO decision. However the facts of the case – (a member of medical personnel whose entire previous service was in submarines who, discovering that on active deployment in a land campaign he would be required in all circumstances to give priority to military rather than civilian casualties, which was contrary to his understanding of medical ethics, and who was also taken aback to learn that he would be required to bear a firearm "for his own protection and that of his patients" and on the basis of anecdotal evidence feared that, notwithstanding his non-combatant status, he might in practice be required to take an active part in hostilities) – do raise the question of whether in the current situation of engagement in an increasingly unpopular war any application for release on grounds of conscientious objection under the current procedures will be treated on its individual merits rather than resisted on grounds of the potential "floodgates" effect.

15. A further weakness, as noted in CPTI's submission to the Human Rights Committee prior to the consideration in 2008 of the UK's Sixth Periodic Report under the ICCPR, is that "An application for discharge as a conscientious objector has no suspensory effect. There is no protection whatsoever against the possibility that the conscientious objector may, after lodging the application, be given a specific order which is directly contradictory to the nature of the objection.". Such fears were fully realised in the Lyons case.

16. While Lyons' application to ACCO was pending, he was detailed for an advanced firearms course in anticipation of a posting to Afghanistan. Citing his pending application, he asked to be excused participation. The officer in charge consulted the command structure, and after several hours deliberation the decision was made that Lyons should be ordered to collect a weapon and proceed to the range; in the express anticipation that the order would be refused and he could then be charged with wilful disobedience. The ensuing Court Martial took place on 5th July 2011, seven months after the ACCO hearing. Lyons was reduced to the ranks, and dismissed the service, but first sentenced to seven months detention in a military correction facility. An appeal to the civilian courts was heard on 13th October 2011, but both conviction and sentence were upheld, the Court having been obliged to accept the ACCO finding of "fact" that Lyons was *not* a conscientious objector. At the time of writing, in November 2011, the publication of the full reasoning of the appeal court is still awaited with interest.

17. CPTI recommends that the UK enshrine the procedures for release from the armed forces on grounds of conscientious objection in legislation, that details are included in the information made available to all recruits at the time of first enlistment, and that all duties involving the bearing of firearms be suspended as soon as reasonably possible after registration of an application.

Juvenile recruitment and deployment

18.. In the working group on the first cycle of the UPR, the Russian Federation recommended the UK "to consider removal of its reservations to the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in

armed conflict.[5] In "accepting" this recommendation, the UK stated "The UK Government's declaration made upon signature of the Optional Protocol is an interpretive statement rather than a reservation. In it the UK made clear that the British Armed Forces would continue to recruit from age 16 but included a clear commitment to take all feasible measures to ensure those who had not yet reached the age of 18 did not take a direct part in hostilities. "

19. In fact the "interpretative statement" in question includes the wording:
"The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: - a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and b) by reason of the nature and urgency of the situation:-i) it is not practicable to withdraw such persons before deployment; or ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel."

20. In its concluding observations on the UK's Initial Report under the Optional Protocol in September 2008, the Committee on the Rights of the Child, recommended **"**that the State party review this interpretative declaration to ensure that its policy and practice are in conformity with article 1 of the Protocol and that children are not exposed to the risk of taking direct part in the hostilities."[6]

21. The Committee had welcomed assurances that no person under 18 had been deployed since July 2005. Prior to that date, according to the Child Soldiers Global Report 2008 no fewer than 18 persons under the age of 18 had been deployed since the signing of the Optional Protocol. However, in answer to a Parliamentary Question on 18th. October 2011, a spokesman for the Secretary of State for Defence revealed that "There were four members of the armed forces who were under the age of 18 years and deployed to operational theatres between April 2008 and March 2010."[7]

Unfair terms of service and other disadvantages suffered by young recruits

22. Juvenile recruits into the Army are contractually committed to serving until the age of 22, irrespective of when they actually joined. Thus the younger a recruit is at the time of enlistment with parental consent, the longer the initial period of service, which thus may reach six years, with no legal right to obtain an earlier discharge once an initial six months reconsideration period has elapsed. As long ago as 1991, the Parliamentary Select Committee for the Armed Forces Bill suggested that juvenile recruits should have an opportunity to reconsider at the point when they reached the age of 18, but with respect to the Army no action on this proposal has yet been taken.[8]

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5 10th April 2008, reported in A/HRC/8/25, para 56.26.

6 CRC/C/OPAC/GBR/CO1, 17th October 2008, para 11.

7 Hansard 18 Oct 2011 : Column 868W

8 Coalition to Stop the Use of Child Soldiers: Catch 16 – 22: Recruitment and retention of minors in the British Armed Forces, London, 2011, p.5

23. As the report quoted in the previous paragraph also shows in detail, juvenile recruits are at particular risk of bullying, self-harm and suicide. They are also disproportionately likely to drop out of the armed forces, and those who have done so are heavily represented in the nation's prison and homeless populations.