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*The International Fellowship of Reconciliation (IFOR) is an international, spiritually-based movement composed of people who commit themselves to active nonviolence as a way of life and as a means of transformation ---- personal, social, economic and political.  
IFOR has special consultative status with the United Nations (ECOSOC) and representation at UNESCO.*

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### **Joint UPR Submission: AZERBAIJAN Sixteenth Session: May / June 2013**

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## Executive Summary

**This submission was prepared in October 2012 on the basis of the latest information available at that date. It focusses on:**

**Azerbaijan's continued delay in bringing in legislative provision for conscientious objection to military service ;**

**The continued liability of conscientious objectors to imprisonment and perhaps to repeated punishment for their refusal to perform military service;**

**Juvenile recruitment**

### The first cycle of the UPR

1. In the first cycle of the UPR, in February 2009, Azerbaijan received a question in advance from Slovenia which asked:

“When does the Government of Azerbaijan plan to introduce legislation to give practical effect to the Constitutional provision allowing conscientious objection to military service?”

No reply to this question appears to have been given in the Working Group, and no recommendations were made to Azerbaijan on this subject.

### Delay in bringing in legislation

2. Paragraph 454 of Azerbaijan's Third Periodic Report had recalled Article 2, Part 3 of the “Military Conscription in the Republic of Azerbaijan (Basic Principles) Act”, dating back to 1992, which states that those who “for reasons of belief... cannot be called up to active military service are required to perform alternative service (civilian conscription) for a period of 24 months.” On its own, however, this provision has no practical effect; it does not define the beliefs which will justify release from the obligation to perform military service. On 4<sup>th</sup> February 2005, the Supreme Court of Azerbaijan had found, with regard to Jehovah's Witness conscientious objector, Mahir Bagirov, that a similar provision which had subsequently been incorporated as Article 76 of the 1995 Constitution<sup>1</sup> in fact conferred no right of conscientious objection to military service in the absence of specific implementing legislation.<sup>2</sup>

3. Such implementing legislation has been long promised, but has never materialised:

4. In 1991, the parliament of the Azerbaijani Soviet Socialist Republic had reportedly passed a law on alternative service.<sup>3</sup> This was never officially published, let alone implemented, and seems to have been allowed to lapse with the dissolution of the Soviet Union and the creation of an independent state of Azerbaijan.

5. In 1998, a new draft law was brought forward but was rejected by the Parliament (*Milli Majlis*).<sup>4</sup>

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<sup>1</sup> The wording after amendment in 2002 reads: “If serving in the armed forces runs counter to a person's convictions, then in the cases specified in the legislation it is permitted to replace military service by alternative service.”

<sup>2</sup> Corley, F., “Azerbaijan: Supreme court claims constitutional right does not exist.”, Forum 18 News Service, (<http://www.forum18.org>), 10<sup>th</sup> February 2005.

<sup>3</sup> Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998.

<sup>4</sup> Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p9.

6. Upon accession to membership of the Council of Europe in 2000, Azerbaijan undertook to produce legislation on conscientious objection by January 2003, but failed to do so. There were reports early in 2004 that a draft law on alternative service (which is of course not necessarily the same thing) was about to be submitted to Parliament, but this did not happen.<sup>5</sup> A draft was however eventually sent for review to the Council of Europe and was returned on 23<sup>rd</sup> October 2006.

7. In February 2008 the Council of Europe's Commissioner for Human Rights complained that no further action had been taken, and noting that "the issue has not received the treatment it deserves", urged "a speedy adoption of a law establishing an alternative civilian service."<sup>6</sup>

8. A subsequent resolution of the Parliamentary Assembly of the Council of Europe included the recommendation that "the law on alternative civilian service should be adopted without further delay, in line with Azerbaijan's accession commitment".<sup>7</sup>

9. Meanwhile, in May 2008, Safa Mirzayev, described as "the head of the Azerbaijani Parliament's Administration", had been reported by a news agency as stating that a draft had been approved by "international organisations", and was ready to be adopted at the Parliament's spring session. However civil society sources complained that the text was still being treated as top secret, and that there had been no public consultation about the drafting.<sup>8</sup> After the resolution of the Parliamentary Assembly of the Council of Europe, an Azerbaijani member of the Assembly was quoted as stating that the introduction of this draft law was now the only outstanding item from the "accession criteria", but that nevertheless the implementation of the law would be conditional upon the return of Nagorny Karabakh to Azerbaijani control.<sup>9</sup> The implicit use of a restriction on the human rights of one's own citizens as a bargaining counter in a dispute over sovereignty would seem to have a rather twisted logic.

10. Still no details of the progress of the parliamentary consideration emerged, and the draft law remained unpublished. However, speaking at a further press conference in September 2008, Mirzayev gave a strong indication that it would impose discriminatory and punitive conditions on any alternative service allowed to conscientious objectors, thus vindicating fears that the secrecy surrounding the process served to conceal aspects of the proposals which were not in compliance with international standards. Mirzayev's remarks as reported included: "The term of military service gradually becomes shorter in Europe. The term is six-month in most countries. Only people, who do not join the military service for their conviction, pass to an alternative service in Europe. They participate in public services, renovation of hospitals and cities. The attitude towards military service is different in Azerbaijan because of the war condition. Therefore, we should not implement this task as Europeans" (...) "alternative service should be long-term and its terms should be more difficult than the army service to prevent people to divert from the military service under some pretexts" (...) "Local and international experts do not agree with my position and say that it does not meet the international standards. However, the Law on Alternative Service will be adopted in any

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<sup>5</sup> Ibid

<sup>6</sup> Council of Europe, Report by the Commissioner for Human Rights, Mr. Thomas Hammerberg, on his visit to Azerbaijan (3<sup>rd</sup> - 7<sup>th</sup> September 2007), Strasbourg, 20<sup>th</sup> February 2008, Chapter 3, III, B.

<sup>7</sup> Parliamentary Assembly of the Council of Europe, Resolution 1614 (2008), 24 June 2008, para. 24.1.

<sup>8</sup> Corley, F., "Azerbaijan - conscientious objector freed", Forum 18 News Service (<http://www.forum18.org>), 14<sup>th</sup> May, 2008.

<sup>9</sup> TrendNews "Azerbaijani Delegation in PACE Opposes Fulfillment of Some Obligations Before Council of Europe", 25<sup>th</sup> July 2008, quoted in War Resisters International, CO Update No. 40, August 2008 (<http://wri-irg.org/pubs/upd-0808.htm>)

case and form.”<sup>10</sup>

11. At the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe in October 2008, Azerbaijan again insisted that the draft law was currently under consideration by Parliament<sup>11</sup>, but gave no details.

12. As already noted, no further information was forthcoming in response to an advance question submitted by Slovenia for the Universal Periodic Review Working Group of the Human Rights Council in February 2009, which asked “When does the Government of Azerbaijan plan to introduce legislation to give practical effect to the Constitutional provision allowing conscientious objection to military service?”<sup>12</sup>

13. The issue was raised again in the consideration of Azerbaijan's Third Periodic Report under the ICCPR in July of that year, the Human Rights Committee noting in its Concluding Observations. “The Committee remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18).

“The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civilian service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's general comment No. 22 (1993) on article 18 (Freedom of thought, conscience or religion).<sup>13</sup>

14. Meanwhile amendments to the Religion Law and corresponding sections of the Criminal Code which were adopted by the Parliament on 8<sup>th</sup> May 2009 have the opposite purpose, namely to further penalise conscientious objectors and their religious communities. Article 4 of the amended Religion Law criminalises “refusing or declining to fulfil obligations determined by the law for his/her religious beliefs”, It also states that “substituting the fulfilment of one responsibility by another may only be allowed in cases provided for by the legislation of the Republic of Azerbaijan”. This appears to confirm that conscientious objectors to military service cannot exercise their constitutional right to perform a substitute civilian service. Article 12 of the Law enables the banning of religious organisations for “inciting people to refuse to execute duties required by the law”.<sup>14</sup>

15. It was reported in September 2010 that a draft Law on Alternative Service was on the Parliament's programme of work for the second half of the year, although there was no sign of a text. However in February 2011 it was reported that the draft had been removed from the programme of work for the first half of that year. Since then, there has been no further word of it.<sup>15</sup>

16. On 2<sup>nd</sup> February 2012, the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, stated in his blog post, “People should not be imprisoned when their religious or

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<sup>10</sup> Trend News: “Alternative Service Can Divert Youth from Army in Azerbaijan, Says Head of Parliament Administration”, 27 September 2008.

<sup>11</sup> “Reply of Azerbaijani delegation on the matters that allegedly stated to be of concern in Azerbaijan” at the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe, (HDIM/DEL/453/08), 8<sup>th</sup> October 2008.

<sup>12</sup> [http://www.upr-info.org/IMG/pdf/ADVANCE\\_QUESTIONS\\_TO\\_AZERBAIJAN-Add.1.pdf](http://www.upr-info.org/IMG/pdf/ADVANCE_QUESTIONS_TO_AZERBAIJAN-Add.1.pdf). (It is possible that Azerbaijan may respond during the adoption of the UPR report in the Eleventh Session of the Human Rights Council in June 2009.)

<sup>13</sup> CCPR/C/AZE/CO/3 (July 2009), Para. 19.

<sup>14</sup> See Corley, F., “Azerbaijan: Religion Law amendments contradict themselves”, Forum 18 News Service (<http://www.forum18.org>), 14<sup>th</sup> May, 2009.

<sup>15</sup> Corley, F., “Azerbaijan: Continued defiance of the UN and the Council of Europe” Forum 18 News Service (<http://www.forum18.org>), 22<sup>nd</sup> February 2011.

other convictions prevent them from doing military service. Instead they should be offered a genuinely civilian alternative. This is now the established European standard, respected in most countries – but there are some unfortunate exceptions."

17. Hammarberg referred to the *Bayatyan v Armenia* judgment of the European Court, and observed that "no less than seven Council of Europe members have put objectors in prison in recent years". He then in particular singled out Armenia, Azerbaijan, and Turkey.

18. The blog post closes: "Conscientious objection is a human right. It is thus high time that all member states complied with their commitments and recognised this right effectively."

### Treatment of conscientious objectors

19. In the absence of specific legislation, conscientious objectors regularly declare themselves when required to register for military service, citing the constitutional provisions. Azerbaijan is one of many states where the numbers liable to obligatory military service greatly exceeds the actual capacity of the armed forces, and in practice most objectors are not called up. According to the CIA World Factbook, 76,923 men reached the age of sixteen in 2010.<sup>16</sup> All are liable for military service of 18 months at age 18. However the entire active strength of the Azerbaijani armed forces is estimated at 66,940.<sup>17</sup> An Azerbaijani government source in 2002 quoted a figure of no fewer than 2,000 "youths evading the army on religious grounds", by which he referred to members of the Jehovah's Witnesses, Hare Krishna, and some Protestant churches. It was suggested that such persons should be liable to criminal prosecution.<sup>18</sup>

20. The general experience of such conscientious objectors has continued to be that after a degree of harassment by the military recruitment authorities they have not been forced into military service.<sup>19</sup> However there have now been some prosecutions under Article 321.1 of the Criminal Code, which sets a penalty of up to two years' imprisonment for evading military service.

21. Two prosecutions of Jehovah's Witness conscientious objectors were launched in 2002, but eventually dropped. These were followed in 2004 by the case of Mahir Bagirov, quoted above. Then on 21<sup>st</sup> July 2006, a six month suspended sentence was handed down by Sabail District Court, Baku, in the case of Mushfiq Mammedov, who had been held in Bayil investigative prison in Baku from his arrest on 28<sup>th</sup> April until he was released into house arrest by court order on 26<sup>th</sup> May.<sup>20</sup> In October 2007, Jehovah's Witness Samir Husneyov was sentenced by the Geranboy District Court in the west of the country to ten months' imprisonment for refusing military service. Between January and April 2008 he was held in Penal Colony No. 16 in the Bina district of Baku. Two appeals against his conviction were turned down, but on the second occasion, on 1<sup>st</sup> May 2008 the Regional Appeal Court in Gyanja ruled that the initial sentence had been excessive and ordered his immediate release. This decision does not however expunge his criminal record.<sup>21</sup> A joint application by Mammedov and Husenyov dated 7<sup>th</sup> March 2008 is pending before the European

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<sup>16</sup> (<https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html>, updated 11<sup>th</sup> September 2012);

<sup>17</sup> The Military Balance 2011 (International Institute for Strategic Studies, London), p116.

<sup>18</sup> Stolwijk, op. cit. p.10

<sup>19</sup> Corley, 14<sup>th</sup> May 2008, op. cit.

<sup>20</sup> Corley, F., "Azerbaijan: Jehovah's Witness conscientious objector sentenced", Forum 18 News Service (<http://www.forum18.org>), 26<sup>th</sup> July 2006.

<sup>21</sup> Corley, 14<sup>th</sup> May 2008, op. cit.

Court on Human Rights.<sup>22</sup> On June 5<sup>th</sup> 2008, a second prosecution on the same charges was initiated against Mammedov,<sup>23</sup> and in December 2010 the Supreme Court rejected the final appeal against a fine imposed on that occasion.

22. On 16<sup>th</sup> July 2010, Farid Mammedov (no relation of Mushfiq) was sentenced to nine months' imprisonment under Article 321.1. Although the Court specified that the sentence would not be carried out immediately, Mammedov was arrested in Baku Appeal Court on 10<sup>th</sup> September 2011, as soon as his appeal was turned down, and was sent to a labour camp. On 25<sup>th</sup> January, 2011 the Supreme Court rejected his final appeal.<sup>24</sup> Having completed his sentence in June 2011, Farid Mammedov filed his own application to the European Court of Human Rights on 18th July 2011.

23. Most recently, on 23<sup>rd</sup> July 2012, Jehovah's Witness Amid Zohrabov, from Lokbatan near Baku, was forcibly conscripted into the army and transported to Unit No. 707 in Gazakh Region in north-west Azerbaijan. Zohrabov had first been called up in 2007. He had immediately told the Conscription Office of his conscientious objection to military service and his readiness to do a fully civilian alternative service. "The Conscription Office accepted this and didn't insist that he had to go to the army," Jehovah's Witnesses noted. However, in May 2012 Zohrabov was again called up. He was summoned to the Conscription Office on 19 July and then again on 23 July, when he was forcibly recruited. Following a letter of complaint from his parents to the commanding officer of the Unit, he was freed on 7 August.<sup>25</sup>

### Juvenile recruitment

24. Azerbaijan is one of the States where "Contrary to the intention of the [Optional Protocol to the Convention on the Rights of the Child] and to the position of the Committee on the Rights of the Child, (...) under-18s in military schools are classified as members of the armed forces. (...) As the Committee on the Rights of the Child has noted in relation to Azerbaijan<sup>26</sup>, the fact that military school students are categorised as being on active military service puts them at risk of involvement in hostilities."<sup>27</sup>

25. The risk of involvement in hostilities is heightened by the fact that, like its neighbour Armenia, Azerbaijan prohibits the use of children in hostilities but only those who are 15 years old or younger.<sup>28</sup> "This implies that deployment of 16 to 18 year olds may be considered permissible, which would be inconsistent with their obligations under the Protocol."<sup>29</sup>

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<sup>22</sup> European Association of Jehovah's Christian Witnesses, "Religious Freedom Concerns in Azerbaijan", Oral Statement to the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe (HDIM/NGO/363/08), 7<sup>th</sup> October 2008.

<sup>23</sup> Ibid.

<sup>24</sup> Corley, F., "Azerbaijan: Continued defiance of the UN and the Council of Europe" Forum 18 News Service (<http://www.forum18.org>), 22<sup>nd</sup> February 2011.

<sup>25</sup> Corley, F. "Azerbaijan: Ramadan mosque bans; JW jailed; Church ban upheld" Forum 18 News Service (<http://www.forum18.org>), 12<sup>th</sup> August 2012.

<sup>26</sup> CRC/C/OPAC/AZE/CO/1, 3rd February 2012.

<sup>27</sup> Child Soldiers International, Louder than words, London, September 2012., p.56.

<sup>28</sup> CRC/C/OPAC/AZE/1, 31st March 2011, paragraph 7.

<sup>29</sup> Child Soldiers International, op. cit, p.47.