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### THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

#### Report of the Secretary-General prepared pursuant to Commission resolution 1993/84

#### CONTENTS

	Paragraphs	Page
Introduction . . . . .	1 - 3	2
COMMENTS PROVIDED BY GOVERNMENTS . . . . .	4 - 64	2
Angola . . . . .	4 - 5	2
Antigua and Barbuda . . . . .	6	2
Belarus . . . . .	7 - 9	3
Brazil . . . . .	10	3
Costa Rica . . . . .	11	4
Denmark . . . . .	12 - 24	4
Ecuador . . . . .	25 - 26	6
Germany . . . . .	27 - 31	7
Ireland . . . . .	32	8
Kazakhstan . . . . .	33 - 34	8
Mexico . . . . .	35 - 39	9
Mauritius . . . . .	40	10
Panama . . . . .	41 - 43	10
Paraguay . . . . .	44 - 45	10
Peru . . . . .	46 - 47	11
Spain . . . . .	48	11
Sweden . . . . .	49 - 55	11
Uganda . . . . .	56	12
United States of America . . . . .	57 - 64	13

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### Introduction

1. In its resolution 1993/84 of 10 March 1993, the Commission on Human Rights requested the Secretary-General to report on the question of conscientious objection to military service, taking into account the comments provided by Governments and further information received by him, to the Commission at its fifty-first session.

2. In accordance with this request, the Secretary-General invited States Members of the United Nations, by a note verbale dated 14 June 1994, to forward to him any comments or information on the above-mentioned question that they might wish to make. In reply to his request, the Secretary-General received information from the Governments of Angola, Antigua and Barbuda, Belarus, Brazil, Costa Rica, Denmark, Ecuador, Germany, Ireland, Kazakhstan, Mexico, Mauritius, Panama, Paraguay, Peru, Spain, Sweden, Uganda and the United States of America.

3. Any further information or comments will be submitted in addenda to the present report.

### COMMENTS PROVIDED BY GOVERNMENTS

#### Angola

[26 October 1994]

[Original: French]

4. The Government of Angola attaches the utmost importance to human rights. Angolan legislation guarantees the protection of those rights at all levels, and they are constantly monitored and backed up by the courts. There are no problems with conscientious objection to military service in Angola. Those who refuse to bear arms are asked to serve in the administrative sector.

5. In spite of the difficulties and restrictions of all kinds brought about by a violent war that is destroying every sector of our economic, social, administrative and cultural life, the Angolan authorities reaffirm their unwavering commitment to democracy. The Government's respect for human rights is an everyday reality. The Government of Angola will pursue its policy of promotion and protection of human rights and respect for international instruments in the field of human rights and humanitarian law.

#### Antigua and Barbuda

[27 July 1994]

[Original: English]

6. The Ministry of Foreign Affairs of Antigua and Barbuda reported that military service in the State was voluntary. Therefore, in the Ministry's view, the issue of conscientious objection does not apply.

Belarus

[22 September 1994]

[Original: Russian]

7. In parallel with military service, the national legislation of the Republic of Belarus also provides for alternative service. Article 57 of the Constitution of the Republic of Belarus provides that: "Procedures regulating military service, and the grounds or conditions for exemption from military service or its replacement by alternative service, shall be determined by law". However, the duration and procedures regulating alternative service will be determined by the Republic of Belarus Alternative Service Act and other legislative acts drawn up by the Ministry of Defence of the Republic of Belarus and submitted to the Supreme Council of the Republic for consideration.

8. At the same time, on the basis of the legislation in force and the powers of the Ministry of Defence, those who are actually called up for military service and who refuse for reasons of conscience to take the military oath are transferred, on a decision of the Minister of Defence, to military engineering units, where they continue to serve in the interests of the armed forces.

9. With regard to paragraph 7 of the resolution, it should be pointed out that the Republic of Belarus Alternative Service Bill provides for the establishment of special bodies (committees and departments) to decide on questions relating to the assignment of citizens to alternative service.

Brazil

[12 September 1994]

[Original: English]

10. In reply to the request, the Brazilian Government reiterated information conveyed earlier to the Centre for Human Rights, namely:

(a) The Constitution of the Federative Republic of Brazil, in article 143, paragraph 1, stipulates that:

"It is within the competence of the Armed Forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, claim imperative of conscience, which shall be understood as originating in religious creed and philosophical or political belief, for exemption from essentially military activities."

(b) The constitutional text has been regulated by Decree No. 8.239, of 4 October 1991, and by Regulation No. 2.681, of 28 July 1992, which set out the rules and modalities of alternative service for conscientious objectors. The alternative service comprises activities of an administrative, social or charitable nature. Individuals enrolled in alternative service are entitled to all rights and prerogatives enjoyed by the citizens enlisted in the regular military service, including remuneration equivalent to the soldier's allowances.

Costa Rica

[17 July 1994]

[Original: Spanish]

11. Conscientious objection does not exist in Costa Rica, given that the institution of the Army itself does not exist. Indeed, article 12 of our Constitution (November 1949) reads as follows:

"The Army as a permanent institution is proscribed. For vigilance and the preservation of the public order, there will be the necessary police forces."

Denmark

[1 September 1994]

[Original: English]

12. As per article 81 of the Danish Constitution every physically fit man has to contribute in person to defend his country. The more detailed rules for his compulsory National Service are given in the Danish National Service Law of 1980, altered in 1992, cf. legal order No. 190 of 2 April 1993.

13. As per article 2 National Service in Denmark can be military service, national rescue preparedness service, development service abroad (for those with appropriate skills) and civilian service. The administration of civilian service is managed by the Danish CO administration under the Ministry of the Interior.

14. Danish legislation recognizes conscientious objection to military service. The conditions are stated in legal order No. 191 of 2 April 1993. Conscientious objector (CO) status is granted to a person who objects to military service based upon his conscience. This can be because of religious or ethical reasons. An application based solely on political reasons will be refused.

15. Application for CO status must be sent in writing stating the reasons. This application should be sent within four weeks following receipt of the call-up papers for the armed forces or for the national rescue preparedness service. The reason for this four week time limit is so that the military authorities can replace the COs with other conscripts.

16. The application can be sent in before the conscript has received his call-up papers, and CO status may be granted, but the length of the service cannot be stated until the final half-year distribution for the conscripts has taken place and the call-up papers are sent out.

17. As per law No. 394 of 10 June 1987 an application can also be given in during the service. Still, the application should be based upon the conscience of the conscript. He has to state when his conscience-conflict started, and the reasons for it. Besides, it should be ascertained in what way the conflict was confirmed during his service.

18. In due time before being called up every conscript receives a leaflet which among other things describes the rules of compulsory National Service. This leaflet has a separate chapter on civilian service, containing information on the right to refuse military service for conscientious reasons, about the procedure for applying for CO status, and the length and types of work in the civilian service. Together with the call-up papers for the armed forces or for the national rescue preparedness service the conscripts receive information about the possibility of transfer to civilian service.

19. In order to prevent improper use of CO status based on other reasons than that of conscience, the length of CO service has always been longer than the military service, approximately one third longer. Up to 1986 CO service was for 11 months. Per 1 July 1986 the law was, however, amended to the effect that now the length of CO service has to be equal to the length of the service from which the conscript is transferred. In Denmark the lengths of service are from 3 days up to 14 months, so COs will also have very different lengths of service.

20. Service starts with an introductory stay of six days, where the conscripts are informed of their duties and their rights and of the social and practical conditions of the service. After this introduction the conscripts spend the rest of their service working in institutions, with which the Danish Conscript Administration had made an arrangement about employing COs for various jobs. The CO can during the introductory stay choose the sort of institution he finds most convenient as to interest, geographical position, etc. The institutions are evenly situated all over the country, which makes it possible for most conscripts to get a job near their home.

21. The COs work in public organizations or institutions with non-military jobs. The specific rules are provided by the Ministry of the Interior, and the practical organization rests with the Danish CO Administration.

22. As examples of working places can be mentioned institutions for children, young people and old people, institutions for mentally and physically disabled people, cultural institutions as museums, theatres, libraries, etc. Also, it is possible to work in peace-organizations, organizations connected with the United Nations, the national church and environmental organizations. It is a condition, however, that the conscripts work as extras, i.e. they may not be employed in an approved vacant job and they may not be used in a job demanding a special skill or in an institution which they know or in which they have been employed.

23. COs have more or less the same conditions as conscripts in the military forces and in the national rescue preparedness service. There is a difference only regarding the economic conditions during service. While the military conscripts and the conscripts in the national rescue preparedness service receive a monthly pay, the COs receive daily allowances. However, because of the special tax rules and because of a house-rent grant from the institutions where the COs work, the economic difference is more or less nil.

24. During the last 10 years the following numbers of conscripts have been transferred to civilian service:

<u>Year</u>	<u>No.</u>
1981	660
1982	513
1983	431
1984	378
1985	282
1986	329
1987	460
1988	595
1989	676
1990	614
1991	525
1992	579
1993	714

Ecuador

[28 July 1994]

[Original: Spanish]

25. Although no measures have been taken in Ecuador to enable conscientious objectors to avoid military service, the Compulsory Military Service Act provides for situations in which nationals are not obligated to perform such service. The Act states:

"Article 28 - Subject to the necessary legal verification, the following shall be exempted from service in the national armed forces:

(a) A person with parents or under age siblings entirely dependent on him;

(b) Persons who are married prior to registration, as long as they are living with their wives, unless they express a desire to perform military service; and

(c) Persons who have served in the armed forces as private soldiers, for a period of not less than one year and who were not discharged specifically for misconduct or for having committed a military criminal offence.

Article 31

Persons who are declared mentally or physically unfit in accordance with the provisions of this Act shall be exempted from their military obligations.

Article 32

As exemption is considered permanent, Ecuadorian citizens covered by it shall have no military obligations either in peacetime or in wartime."

26. It should be noted that students do not perform compulsory military service as they are considered to be engaged in alternative activities.

Germany

[21 September 1994]

[Original: English]

27. Pursuant to the basic right contained in article 4, paragraph 3, of the Basic Law, no one may be compelled against his or her conscience to render war service. "War service" in this sense includes all activities which have a direct bearing on the use of weapons of war. In practice in the Federal Republic of Germany, the right to refuse to render war service is broadly interpreted and permits one to call upon reasons of religion, morals and philosophy. Refusal to render military service is conditional on a corresponding decision based on conscience on the part of the individual. Entitlement to refuse to render military service is decided on in a procedure which is laid down in statutes and which as a rule is carried out in writing.

28. Anyone whose entitlement to refuse to render military service is recognized must render substitute service. Article 12a, paragraph 2, of the Basic Law provides: "A person who refuses, on grounds of conscience, to render war service involving the use of arms may be required to render a substitute service. The duration of such substitute service shall not exceed the duration of military service. Details shall be regulated by a statute which shall not interfere with the freedom to take a decision based on conscience and shall also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard."

29. Section 1 of the Act on Refusal on Grounds of Conscience to Render War Service involving the Use of Arms (Gesetz über die Verweigerung des Kriegsdienstes mit der Waffe aus Gewissens-gründen) dated 28 February, 1983 (BGBl - Federal Law Gazette - I p. 203) provides as follows: "Anyone who on grounds of conscience refuses to participate in any use of violence between States and for this reason, calling upon Article 4 paragraph 3 first sentence of the Basic Law, refuses to render war service involving the use of arms, instead of military service shall render substitute service not connected with the Armed Forces under Article 12a paragraph 2 of the Basic Law." The version of section 1 of the Act on Refusal on Grounds of Conscience to Render War Service involving the Use of Arms which was published on 31 June 1986 (BGBl. I p. 1,205) provides that in "substitute service, persons recognized as entitled to refuse to render war service shall carry out duties which serve the general good, with priority being laid in the social area."

30. Instead of substitute service, persons recognized as entitled to refuse to render war service may also render service as auxiliaries in civil defence or disaster prevention or in the development services or in a service abroad intended to further the peaceful coexistence of peoples.

31. In 1993, 131,000 conscripts filed an application for refusal to render war service. Roughly 95 per cent of the applications were recognized. In that year, on average roughly 115,000 persons were rendering substitute service.

Ireland

[25 July 1994]

[Original: English]

32. The Department of Defence has provided the following information:

(a) The minimum age at which a person can join the Irish Defence Forces is 17 years;

(b) Volunteers sign up for a period of time which they themselves determine subject to a minimum of three years' service followed by six years' service in the Reserve Defence Force. A soldier can at any time during his service apply to the military authorities for his discharge.

Kazakhstan

[24 September 1994]

[Original: Russian]

33. The Republic of Kazakhstan cannot currently afford to exempt citizens from military service on grounds of religious or moral convictions. This is linked to the fact that the creation and development of the Armed Forces of the Republic of Kazakhstan is taking place in difficult economic, political and social circumstances resulting from the country's transition to a market economy. However, as a Member State of the United Nations, Kazakhstan endeavours to observe and fulfil its obligations under the Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments. Under the terms of the Universal Military Obligation and Military Service Act, which entered into force in Kazakhstan on 1 January 1993, persons in holy orders and holding official office in one of the registered religious faiths are exempted from military service.

34. Clearly recognizing that this Act is intended to cover the period of establishment of the Republic of Kazakhstan and that it does not fully meet the recommendations of the Commission on Human Rights, the State is elaborating a Bill, in which it intends to introduce regulations in keeping with contemporary legal standards and moral and ethical recommendations.



Mexico

[16 August 1994]

[Original: Spanish]

35. With regard to note G/SO 26/1 from the Centre for Human Rights, referring to Commission on Human Rights resolution 1993/84 entitled "Conscientious objection to military service", and in particular to its paragraph 4, which appeals to States to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service, and to its paragraph 5, which requests States to introduce forms of alternative service for conscientious objectors, the following information has been prepared by the Ministry of Defence.

36. Mexican legislation does not recognize the concept of conscientious objection to military service. For those who are required to perform national military service as one of their obligations as Mexican citizens, it considers that the collective interest in defending the nation must prevail over the private interests of individuals.

37. Compulsory military service in Mexico is designed to provide citizens with instruction enabling them to be proficient in exercising their rights as citizens, competent in the handling of weapons and conversant with military discipline. National military service provides a means of organizing all Mexicans capable of safeguarding the nation, its sovereignty, its institutions and its interests, and is not designed to prepare them for involvement in offensive warfare outside the country.

38. The statutory and constitutional basis for the above can be found in article 31 (II) of the Constitution of the United Mexican States, article 1 of the National Military Service Act, and article 1 of the Regulations appended thereto.

39. The Ministry of Defence has provided for the following situations with regard to performance of national service:

(a) Voluntary enrolment in an armed forces unit for a period of three months;

(b) Following a drawing of lots, citizens chosen to perform military service are enlisted in a training centre, and required to attend instruction sessions on Saturdays from April to September;

(c) Those who are on call as a result of the draw, held each year from April to November, will be issued with a military identity card in December of the same year releasing them and certifying that they have performed military service.

Mauritius

[22 July 1994]

[Original: English]

40. Mauritius does not have any system of military service and therefore the issue of conscientious objection to military service does not arise.

Panama

[29 September 1994]

[Original: Spanish]

41. Modern legal doctrine recognizes that conscientious objection to compulsory military service on ethical or religious grounds is founded on fundamental human rights, and that States where there is compulsory military service must establish other, alternative public service for those persons who for moral or religious reasons cannot engage in violence against other human beings peacefully serving their country.

42. Conscientious objection is not regulated by our legislation. At constitutional level, article 306 sets forth the obligation of all Panamanians to bear arms in order to defend national independence and territorial integrity, except in the case of naturalized Panamanians, who are not required to bear arms against their country of origin. While this provision would seem not to take account of the concept, the Constitution nevertheless provides some latitude, stipulating that "implementation and the conditions of performance shall be governed by legislation".

43. It should be noted that the Panamanian armed forces have traditionally been police units, with a more or less militarized structure, but composed largely of volunteers. It is thus assumed that persons who have decided to serve in such units have no ethical or religious objections to their duties, and the problem of conscientious objection has not in fact arisen as a legal issue.

Paraguay

[16 August 1994]

[Original: Spanish]

44. Chapter XI, article 129, paragraph 5, of the Constitution of the Republic of Paraguay, approved and ratified by the Constituent Assembly on 20 June 1992, regulates conscientious objection to compulsory military service as follows:

"Conscientious objectors will provide services to benefit the civilian population in aid centres designated by law and operated under civilian jurisdiction. The laws implementing the right to conscientious objection will be neither punitive nor impose burdens heavier than those imposed by military service."

45. Through this constitutional provision, the Government of Paraguay explicitly incorporates legal mechanisms enabling those young Paraguayans who do not consider that military service should be compulsory and who provide evidence of their conscientious objection, to perform alternative service to benefit the civilian population, in aid centres designated for that purpose.

Peru

[10 October 1994]  
[Original: Spanish]

46. The Ministry of Defence has indicated that military service in Peru is regulated by Legislative Decree No. 264 of 8 November 1983, the Compulsory Military Service Act and amendments thereto, which establishes that any person over the age of 18 years must enrol in the Military Register, and may, following a thorough medical examination, then be classified as "selected", "not selected" or "exempted". Citizens in the "selected" category whose names are drawn by lot may then be asked to remain on call.

47. Resolution 1993/84 does not establish the cases or specific situations in which exemption from military service may be granted on the general grounds of "conscientious objection". It would in any case be difficult to amend the national legislation objectively, establishing somewhat highly subjective criteria for classification which might lead to distortions in executing or applying of the rule.

Spain

[26 September 1994]  
[Original: Spanish]

48. The Government of Spain has transmitted a publication of the Ministry of Justice and the Interior containing the legislation governing conscientious objection in Spain. The publication does not confine itself to describing the current legislation and case law, but also describes the doctrine of the European Commission on Human Rights on the protection of conscientious objection and the systems of conscientious objection in various European countries, particularly member States of the European Union. The compilation also reproduces the resolutions and recommendations of various international bodies (the Commission on Human Rights, the Consultative Assembly and Committee of Ministers of the Council of Europe and the European Parliament) on the question.

Sweden

[16 September 1994]  
[Original: English]

49. The Swedish military defence is based on general conscription for men. The Compulsory Military Service Act (1941: 967) has the character of a general compulsory law which prescribes that Swedish men from 18 to 47 years of age are liable for military service and may be called up for training and other service. There are few exceptions to the general rule. Exemption from

carrying out military service may be granted for physical and/or mental reasons. In addition, by virtue of the Non-military Service Act (1966: 413) there are possibilities for persons liable for military service to perform non-military service instead.

50. According to section 1 of the Non-military Service Act this may be performed instead of military service "if it can be assumed that the use of arms against another person is so irreconcilable with the serious personal convictions of the conscript that he will not fulfil his military service". In section 2 of the same act it is laid down that a conscientious objector "shall perform service in activities which are important for the society in time of military preparedness and war. This service shall take place in a government or local government authority or in an association or institution".

51. The main alternative for a conscientious objector is education and service in the civil defence. Other alternatives include service in the public medical administration office. All education and service for a conscientious objector take place at civil institutions and in their management.

52. According to the Non-military Service Act, the conscientious objector is liable to do basic training and refresher training. The total training period shall be no less than 355 and no more than 380 days.

53. An application for non-military service is done in writing to the National Board of Non-military Service. The application contains an affirmation by the applicant on his conscientious objection to armed service. The application shall be granted, unless there is a special reason to investigate the matter more closely. Practically all applications are granted. Appeals are lodged with the National Service Board of Appeal, which includes civilian members.

54. The public awareness of the Swedish legislation is to be considered as high.

55. At present a government bill concerning alterations in the military service laws has been presented to the Parliament. If adopted, all military service laws will be brought together in an Act concerning Conscription for Total Defence. The procedure of application for non-military service and the contents of the service will remain the same, but there will be no minimum length of time stated for this service as from 1 January 1995.

#### Uganda

[20 July 1994]

[Original: English]

56. The Government of Uganda reported that there was no legal or administrative provision for compulsory military service in Uganda.

United States of America

[31 October 1994]

[Original: English]

57. At this time, there is no compulsory military service in the United States; all such service is voluntary. Consequently, the issue of conscientious objection does not often arise. The United States none the less does recognize a right of conscientious objection for serving members of the military pursuant to specific guidelines and policies.

58. Department of Defense Directive 1300.6 sets forth the policies and procedures for the resolution of cases of conscientious objection arising in the armed forces. The principal rules may be summarized as follows.

59. The Directive provides for two classes of conscientious objectors. The first class is comprised of those individuals who object to all wars of all kinds, regardless of location and circumstances, by reason of religious convictions. The second class of conscientious objectors consists of those individuals who are willing to serve in the armed forces in a non-combatant status.

60. There exists an initial presumption in favour of granting requests for conscientious objector status. Applications are to be approved to the extent "practicable and equitable".

61. The sincerity of an applicant's beliefs is to be determined by the totality of his or her personal life history and outward manifestations of conscientious scruples as indicated by actual conduct. Conscientious objector status may not be denied because the applicant's scruples "influence his views concerning the nation's domestic or foreign policies". Affiliation with a particular religious group that supports the fundamental concept of opposition to war generally is not required. Determinations are made on the basis of each applicant's personal beliefs.

62. Previously, when compulsory military service did exist in the United States, determinations of claims to conscientious objector status were made by the Selective Service Commission, an independent decision-making body. Currently, conscientious objector status is sought only by personnel serving in the armed forces, and determinations are accordingly made by the military service concerned upon application of the standards prescribed in the directive mentioned above. Each application is evaluated on a case-by-case basis in a structured proceeding, including a hearing with witnesses, the appointment of counsel to represent the applicant, preparation of a final report by the investigating officer, and a final determination at the headquarters of the military service concerned.

63. Those individuals found to be conscientious objectors may be honourably discharged from the military. Alternatively, those individuals found to fall within the definition of the second class described above are granted non-combatant positions, e.g. medical positions. The United States does not subject individuals found to be conscientious objectors to imprisonment or other action of a punitive nature.

64. In accordance with Commission on Human Rights resolution 1993/84, the United States recognizes the right of every individual to maintain conscientious objection to military services as "a legitimate exercise of the right of freedom of thought, conscience and religion". Consequently, each individual is entitled to request classification as a conscientious objector and thus receive exemption from all combatant service.

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