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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by the International Federation of Human Rights Leagues
(FIDH), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Conscientious Objection

The FIDH is very much concerned about the situation of the **Conscientious Objectors in Israel**.

Jonathan (Yoni) Ben Artzi, a 20-year-old university student, has been in detention since 8 August 2002, when he refused to enlist for the military service. Ben Artzi considers himself as a pacifist and total conscientious objector and therefore objects to serve in the army, in any capacity. He requested, however, that he be given the possibility of performing a civil service. After completing seven detention sentences, totalling 196 days, over 6 months, his case has been brought before the court martial in Jaffa.

The trial has reached the final stage. On 8 October 2003, defence counsel Adv. Michael Sfar argued that Yoni's had a sincere belief in pacifism and had a right to disobey an illegal military order. On November 12 2003, the military court in Jaffa recognized Jonathan Ben Artzi as being a pacifist whilst convincing him for failing to follow his draft orders by acting on his beliefs. The Military court, stated as follows: "We have become convinced of the sincerity of Jonathan Ben Artzi's pacifist convictions, and we are far from feeling that the Conscience Committee acted by its best when it rejected his request for exemption. The assertion that he wanted to avoid military service for personal convenience does not stand up to the proven record of his spending more than a year behind bars. A pacifist can have political opinion too. Objecting to Israel's rule behind the Green Line is exactly the opinion which we would expect a pacifist to hold and we would have been surprised to find him holding a different one. The Conscience Committee is the constituted authority entrusted with determining whether or not a person liable for military service would or would not get an exemption. This court is not empowered to act as a court of appeal upon the Conscience Committee. Nevertheless, we strongly call upon the military authorities and the Minister of defence to review the facts of the case and to reconvene the Conscience Committee to discuss once again the issue of whether or not Yoni Ben Artzi should get an exemption from military service."

On 8 January, 2004, the Military authorities decided that Yoni should go before the Conscience Committee. He was released the same day, pending his appearance before the Committee.

Yoni Ben Artzi is not the only Conscientious Objector (CO) who is being court martialled. **Noam Bahat, Adam Maor, Haggai Matar, Shinri Tsameret and Matan Kaminer**, were sentenced on January 4, 2004, by the Military Court in Jaffa, to 4 years imprisonment. They are among **more than 300 "Shministim"**, or high school seniors, who refuse to serve in military forces involved in the occupation of Palestinian Territories. Unlike Yoni they are selective COs, who are not against war per se, but against the occupation war.

Freedom of thought, conscience and religion tackled by military justice:

This is the first time since the 1970's that COs have been brought before a court martial. Previously, the usual practice was to avoid recognizing COs while exempting them from military service on other grounds after brief prison terms. This practice, however, seems to be changing. None of them has been dismissed like many other COs (total or selective) on other grounds; they have already spent from 11 to 18 months in military prisons. It is believed that this new strategy may be the result of the sharp increase in the number of young *refuseniks* (those refusing to serve in the Occupied Palestinian Territories), which may become a threat to the image of the Israeli army and policy.

Concern has been expressed about the violation of the right to freedom of conscience, thought and religion enshrined in article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is party. In its General Comment 22, the Human Rights Committee (HRC) stated that "the Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service." Furthermore, in its resolution 1995/83, the Commission on Human Rights drew attention to the "right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of Universal declaration of Human Rights and article 18 of ICCPR".

Following up the same line, in its concluding observations published after reviewing the second Israeli periodic report in August 2003, the HRC expressed its concern about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection.

The use of military courts to try COs is indeed source of concern. Recommendations by human rights experts of the Sub-Commission for the Promotion and Protection of Human Rights indicate that civil courts should deal with similar cases to ensure impartiality and independence of justice.

The use of military tribunals has been thoroughly considered by the Sub-Commission on the Promotion and Protection of Human Rights. In his first report to the Sub-Commission, Mr. Emmanuel Decaux examines the administration of justice through military tribunals, analysing the jurisdiction *ratione persone, temporis and materie*. His recommendation n°.11 focusing on conscientious objection to military service reads as follows:

"Conscientious objector status should be determined under the supervision of an independent and impartial civil court when the 'conscientious objectors' are civilians. When an application for conscientious objector status is made during the course of

military service, it should not be punished as an act of insubordination or desertion but considered in accordance with the same procedure.”¹

Arbitrary detention:

The incarceration of the COs amounts to arbitrary detention, even though no one of them is currently held in “close detention”. “Open detention” still amounts to a deprivation of liberty and the FIDH recalls that, in its 2001 annual report, the UN Working Group on Arbitrary Detention observed that “...repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that it is incompatible with article 18.2 of the ICCPR, under which no one shall be subject to coercion which would impair his freedom to have or adopt a belief of his choice”.

In 1999, the Working Group, in its Opinion n°36/1999 affirmed that when, after an initial conviction for refusal to perform military service, the person concerned exhibits a constant resolve for reasons of conscience not to perform military service, each subsequent refusal to summons to perform military service, constitutes the same offence and not a new one. Furthermore, it affirmed that, when there is an identity of parties, and identity of the purpose, repeated incarceration for an offence of conscientious objection can be considered arbitrary.

Following this reasoning, **the Working Group (in its final Opinion n° 24/2003, of November 28, 2004), stated that repeated penalties imposed on Matan Kaminer, Adam Maor, Noam Bahat and Jonathan Ben Artzi were arbitrary**².

Recommendations

The FIDH urges the Commission on Human Rights to adopt a **Resolution on the issue of conscientious objection to military service**, which will, *inter alia*:

- Urge all States to take early action to review their laws and practices in the light of Commission Resolutions 1998/77 as called for by Commission Resolutions 2000/34 and 2002/45. In particular, the Commission should call on all States to:
 - (a) Immediately recognize the right of conscientious objection to military service as a legitimate expression of the freedom of thought, conscience and religion, if they have not yet done so;
 - (b) Release immediately and unconditionally all conscientious objectors from imprisonment for failure to perform military service.

¹ United Nations document, E/CN.4/Sub.2/2003/34, para 84.

² See : The Observatory for the Protection of Human Rights Defenders (a joint program of FIDH and OMCT) Press Release: “The detention of the Refuziks is arbitrary says the UN Working Group on Arbitrary Detention”, 19th/01/2004.

- Condemn the practice consisting in subjecting the conscientious objectors to repeated punishment, which is contrary to Article 14 para.7 of the ICCPR affirming: “no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country;
- Ask the OHCHR and the relevant Special Procedures of the Commission, to continue to work on the issue.
