



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96)

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UPR SUBMISSION

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Executive summary:

CPTI (Conscience and Peace Tax International) is concerned at the actual and threatened deportations from Canada to the United States of America of conscientious objectors to military service.

1. It is estimated that some 200 members of the armed forces of the United States of America who have developed a conscientious objection to military service are currently living in Canada, where they fled to avoid posting to active service in which they would be required to act contrary to their consciences.

2. The individual cases differ in their history or motivation. Some of those concerned had applied unsuccessfully for release on the grounds that they had developed a conscientious objection; many had been unaware of the possibility of making such an objection. Most of the cases are linked to the invasion of Iraq in 2003 and the subsequent military occupation of that country. Some objectors, including reservists mobilised for posting, refused deployment to Iraq on the grounds that this military action did not have lawful approval of the international community. Others developed their conscientious objections only after deployment to Iraq - in some cases these objections related to armed service in general on the basis of seeing what the results were in practice; in other cases the objections were specific to the operations in which they had been involved and concerned the belief that war crimes were being committed and that service in that campaign carried a real risk of being faced with orders to carry out which might amount to the commission of war crimes.

3. It may be noted that a refusal to obey orders when to do so would involve the commission of war crimes is not only permitted but actually mandated under the Nuremburg Principles. For it to be upheld, however, there must be agreement upon the facts. A firm belief that participation in a certain action will be tantamount to complicity in illegal action or war crimes is however in itself adequate basis for a genuine conscientious objection, irrespective of whether the precise charge has been proved to the satisfaction of an appropriate tribunal.

4. Some of the earliest arrivals in Canada following the 2003 invasion of Iraq applied unsuccessfully for political asylum. No deportation orders were however issued at that stage.

5. On 3rd June 2008 the Canadian House of Commons passed a resolution which would have given permanent residence status to any conscientious objector to military action without the sanction of the United Nations. It will be noticed that this resolution would give protection not only with regard to the invasion of Iraq, but also to those who wish to avoid involvement in many other of the world's conflicts. This resolution was however not binding on the Government, and rather than being acted on, was followed by moves to deport those whom it would have protected.

6. In July 2008, there took place the first deportation to the USA of a conscientious objector who had arrived in Canada since the invasion of Iraq. Robin Long, who had arrived in Canada in 2005 and was living there with his family, was detained by the Canadian Border Services Agency on charges that he had breached the conditions of an undertaking to report his whereabouts to the authorities. After detention he was informed that he was subject to a deportation order, which was carried out on 15th July. On 22nd August was sentenced by a United States' court martial at Colorado Springs to dishonourable discharge and 15 months imprisonment.

7. Three other cases are currently the subject of appeals against deportation orders. The appeal court of the Province of Saskatchewan referred back to the immigration tribunal the case of Joshua Key, a serviceman whose case was based largely on his experiences in Iraq on the grounds that the tribunal had misled itself as to what actions might constitute war crimes.

8. Those who are deported to the USA are by definition subject to punishment which stems directly from the exercise of their freedom of thought, conscience and belief under Article 18

9. There is no effective means whereby persons in this situation can have their conscientious objection taken into account. It is true that there are provisions allowing applications for release from the United States' armed forces on grounds of conscientious objection. However, those who had fled to Canada had either not been successful in applications under these provisions, or for one reason or another had not attempted to make use of them, in many cases having had no access to information at the appropriate time about the possibility of such an application, as the relevant regulations are not publicised.

10. Crucially, the regulations apply only to complete pacifists. Not only is there no possibility of persons who remain within the military asking to be excused on grounds of conscience from participation in specific conflicts or types of military action; an application for total release from the armed forces on the grounds of such objections would not under the applicable regulations be admissible for consideration. Therefore all cases which could be defined as concerning "selective objection" are by definition excluded.

11. Even were this not the case, it might be observed that in any case where the grounds for conscientious objection hinge upon the alleged illegality of the policy or actions of the United States' government or armed forces, the United States' military authorities could not in any case be expected to act as an independent and impartial adjudicator.

12. Moreover, the sentence handed down by a military tribunal in the cases of Robin Long and an earlier conscientious objector who returned voluntarily to the United States of America indicate that conscientious objectors who had gone to Canada may be systematically treated more severely than other members of the armed forces who have failed, for whatever reason, to deploy to Iraq.

9. For these grounds, and whatever the strengths or weaknesses of the individual cases, all persons in this situation are under severe and discriminatory risk of persecution related to a freedom guaranteed in Article 18 of the Universal Declaration of Human Rights and of the International Covenant of Civil and Political Rights