

Conscience and Peace Tax International (CPTI)

Submission to the 140th Session of the Human Rights Committee for the attention of the country report task force on:

VIET NAM

(Military service, conscientious objection and related issues)

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CPTI aims to supply information on all States with armed forces which report under the International Covenant on Civil and Political Rights (ICCPR) with regard to their military recruitment legislation and their recognition of the right of conscientious objection, even when there appear to be no urgent questions arising.

In association with the Child Rights Information Network, CPTI also reports to the Committee on the Rights of the Child on States where there appear to be issues under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and although these issues do not necessarily have implications for the ICCPR, such concerns are also summarised in these submissions.

Summary

In its concluding observations on Viet Nam's Second Periodic Report under the ICCPR, in 2002, the Human Rights Committee took note "of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant." and recommended "The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination." ¹

Sadly, this issue was not addressed directly in the Concluding Observations on Viet Nam's Third Periodic Report, and is not mentioned at all in Viet Nam's Fourth Periodic Report, and no evidence has been traced in other sources of any action taken in this regard.

¹ CCPR/CO/75/VNM, 26 July 2002, para 17.

VIET NAM: Basic Information

HISTORY: The Vietnamese State as it exists today may be considered to date from the reunification of the country in 1975, following the end of the Viet Nam war. It was admitted to the UN as a member state in 1977, and acceded to the ICCPR on 24th September 1982.

Shortly after reunification, in 1978, Viet Nam intervened in neighbouring Cambodia overthrowing the Khmer Rouge regime in favour of the military dictatorship of Hun Sen; as a result it had to repel a punitive invasion by China the following year. Subsequently, however, it has not been involved in armed conflict.

POPULATION (November 2022, estimated ²)	103,808,000
proportion of males aged 15-193	3.8%
thus annually reaching recruitment age (approx):	788,941

MILITARY SERVICE: Obligatory for all males.

Current provisions: Military Service Act 2015

Duration: 24 months

Minimum recruitment age: 18, but 17-year-olds enrolled in military schools are classified as on active service.⁴

Conscientious objection: No provision

ARMED FORCES: Active strength, 2022	482,000⁵
compared to the male population reaching recruitment age	61.1%

MILITARY EXPENDITURE: US \$ equivalent, estimated 2018 ⁶	\$5,500m
Per capita	\$58
As % of GDP	0.6%

² Source: The Military Balance 2023 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

³ Ibid

⁴ Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers. London, September 2012, p.

⁵ The Military Balance 2023.

⁶ Stockholm International Peace Research Institute – SIPRI, April 2023. Latest figure available.

Military service in Vietnam

Vietnam has always operated a system of obligatory military service for males aged between 18 and 25 (27 for University graduates). In recent years, when the country has not been engaged in foreign wars, the number of those liable has however exceeded requirements, so that not all are called up.

Women with special qualifications and skills, while not liable to conscription, must under the military reserve law register with the reserve forces and may be called up for training. It appears that women may also volunteer as members of the regular armed forces, but no details are available.

The length of military service is now two years, reduced from three years in 1990 in the light of reduced manpower needs. Officers and those with special skills still serve three years.

Reservist obligations apply until the age of 45 in the case of men, and until the age of 40 in the case of women.

Our information on the recruitment system as governed by the Military Service Act of 1981, as amended in 1994 and detailed regulations promulgated in 2001 comes from the exhaustive, and sometimes repetitive, account given in Viet Nam's Report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁷ A new Military Service Act was reportedly promulgated in 2015; the revised version lists more exhaustively than previously the grounds for postponement of or exemption from the military service requirement, but there is no indication that it has changed the process in any significant way.

A crucial role is played by the People's Committees of the district, small town or city under the authority of the province. Under Article 19 of the 1994 Act, each January, the People's Committees are required to supply a list of male citizens turning seventeen that year to the relevant Military Command Board. It is however the responsibility of the individuals concerned to report to District Military Command Service in their area and show identity card as well as fill out the curriculum vitae forms required for registering for the first time (Paragraph 17 of the 2001 Regulations). Together with the results of the subsequent health examination, these items are placed on the individual file maintained by the District Military Command Service. Unless exempt, citizens are required to maintain their registration until reaching the age of 45, at which reserve service obligations cease.

Under Article 24 of the 1994 Act each People's Committee appoints a Council of Military Service, comprising "the Chairman of the People's Committee as President, Military Commander in Chief as Vice President and Commissioners from branches including Labor, Public Security, Health, Culture and Information, Planning, The National Front Committee, the Labor League, the Ho Chi Minh Communist Youth Union, The Women Union, The Farmer Associations The Veterans Association. The Council of Military Service operates under the principle of collective decision-making; the Council's resolutions have to receive approval from over half of its members." This Council of Military Service is charged with maintaining an updated register of male citizens aged between 18 and 27 who have not yet performed military service, including annually reviewing cases where the obligation has been temporarily suspended (in peacetime), namely:

- "- Any citizen whose health is unsatisfactory for active duty military service according to the conclusion of pre-enlistment check-up board;
- Any citizen being the sole earner who directly takes care of his/her relative who lost working capacity or under working age; any citizen being the sole earner in a family suffering serious

⁷ CRC/C/OPAC/VN/1, 12th December 2005.

damage to humans and properties due to dangerous accidents, disasters, epidemics certified by People's Committees of communes.

- Any citizen who is a child of sick soldiers, people infected with dioxin and suffering labor capacity reduction from 61% to 80%;
- Any citizen whose full brother/sister is a non-commissioned officer/active duty enlisted soldier or a non-commissioned officer/enlisted soldier performing service in People's Army;
- Any citizen who is subject to emigration or evacuation in 03 first years to extremely disadvantaged communes according to the socio-economic development project of the State that is decided by People's Committees of provinces or higher levels;
- Any citizen who is official or youth volunteer assigned to extremely disadvantage socio-economic area according to the law provisions;
- Any citizen who is studying at compulsory education institutions or receiving training of university level at higher education institutions or training of college level at vocational education institutions for a training course of a level.
- Any citizen who is active militia.”⁸

In this respect, a set period is stipulated for pre-enlistment medical checks; for enlistment in 2024 this period runs from 1st November to 31st December 2023.

Those who reach the age of 27 without performing military service are placed on a reserve list.

Pursuant to Clause 2 Article 41 of the 2015 Law on Military Service, permanent exemption is granted to those who are:

- “- Any citizen who is a child of revolutionary martyrs or grade 1 wounded soldiers;
- Any citizen who is a brother of revolutionary martyrs;
- Any citizen who is a child of grade 2 wounded soldiers; a child of sick soldiers suffering labor capacity reduction of 81% or above; a child of people infected with dioxin and suffering labor capacity reduction of 81% or above;
- Any citizen carrying out essential tasks who is not a soldier or a People's Army;
- Any citizen who is official or youth volunteer assigned to extremely disadvantaged socio-economic area according to the law provisions for 24 months or more”

Article 1 of the Military Service Law, as amended in 1994 stipulates that every year, the appeal for citizens to join the armed forces take place once or twice; the government decides the time of the appeal and the number of citizens to be recruited for the year. Subsidiary targets are derived for each province and so on down to the local district where the Military Service Council is responsible for deciding who is to be called up.

Although there are no provisions for conscientious objection, this devolved system could be operated in a manner to ensure that those most willing to serve are called upon first, making it unlikely that the issue would ever in fact arise. We have however no information regarding how the decision-making process works in practice.

On the advice of the Military Service Council, the call-up notice is issued by the local military commander, and must be sent at least fifteen days prior to the date of enlistment.

In the case of localities stricken by severe natural disasters, the Minister of National Defense has the right to adjust the time of recruitment.

⁸List expanded as per Clause 1 Article 41 of the Law on Military Service in 2015 (supplemented by Clause 1.c Article 49 of the Law on Militia and Self-defense Forces in 2019).

In addition to the regular armed forces, Viet Nam maintains large paramilitary forces: the People's Self-Defence Force (urban units) and the People's Militia (rural units). These forces serve as a reserve force for the PLA and conscripts may perform their reserve service in them. The total enrolment in such militias is estimated as some five million.⁹

“The task of the self-defense militia force is to be ready to fight and defend the locality; when needed, they supplement the army or co-ordinate with the army to safeguard national sovereignty and integrity, fight against invasion and prevent natural disasters from damaging their localities.”¹⁰

Under Article 2 of the Ordinance on Self-defense militia issued on 9 January 1996 persons selected to join the self-defense militia force have to be eighteen, the same age limit as applies to the army.

Conscientious objection: the UN

As reported above, the Human Rights Committee recommended in 2002 that “The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.”¹¹

In its Third Periodic Report Viet Nam responded “Vietnamese law stipulates that participation in military service is a citizen’s obligation (Constitution, Article 45) and that act of escaping military service is prohibited by law (Law on Obligatory Military Services, Article 10). Therefore, in Viet Nam no one refuses military service on the ground of conscientiousness, religion or belief”¹²; and in its Replies to the List of Issues it claimed nevertheless: “The Constitution and pieces of legislation in Vietnam contain provisions on mandatory military service in line with Article 18 of the Covenant.” and confirmed: “In Viet Nam, no one has refused to serve in the army on the basis of his or her conscience, belief, or religion.”¹³

Meanwhile, the issue had also been addressed by the UN Special Rapporteur on Freedom of Religion or Belief, who in his report on his visit to Viet Nam in 2014 observed: “The right to conscientious objection to compulsory military service is not known in Viet Nam, and the option of an alternative civilian service for individuals who object to taking arms for conscientious reasons does not exist. This contravenes the right to freedom of thought, conscience and religion or belief, which provides protection, consistent with article 18, paragraph 3, of the International Covenant, against being forced to act in contrary to genuinely held religious or moral belief.”¹⁴ This was referred to by the Human Rights Committee in the Concluding Observations on Viet Nam’s Third Periodic Report: “The State party should bring its legislation into conformity with article 18 of the Covenant, refrain from any action that may restrict the freedom of religion or belief beyond restrictions permitted under that article and take into account the recommendations of the Special Rapporteur on freedom of religion or belief”¹⁵ The reference was however sufficiently oblique that Viet Nam was able to contrive to overlook it in its fourth periodic Report.

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⁹ International Institute for Strategic Studies, The Military Balance 2021, p310.

¹⁰ CRC/C/OPAC/VN/1, 12th December 2005, para 34.

¹¹ CCPR/CO/75/VNM, 26 July 2002, para 17.

¹² CCPR/C/VNM/ 3, 30th January 2018, para 169.

¹³ CCPR/V/VNM//Q/3/Add.1, 26th November, 2018, para 60.

¹⁴ A/HRC/28/62/Add 2, 30th January, 2015, para 63.

¹⁵ CCPR/C/VNM/CO/3, 29th August, 2019, para 44.

Juvenile recruitment

Viet Nam ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) on 20th December 2001. In the Declaration made on ratification it stated:

“only male citizens at the age of 18 and over shall be recruited in the military service.” but added the caveat. “Those who are under the age of 18 shall not be directly involved in military battles unless there is an urgent need for safeguarding national independence, sovereignty, unity and territorial integrity.”

In its Concluding Observations on the Report of Viet Nam under OPAC the Committee on the Rights of the Child recommended “that the State party set a minimum age for voluntary recruitment of children in accordance with article 3, paragraph 2, of the Optional Protocol and prevent the active participation of children in hostilities even in the presence of the exceptional situations mentioned...”¹⁶

There has been no report of any action to implement this recommendation, to which the Committee returned in its latest consideration of Viet Nam under the Convention itself, recommending that it “Revise its declaration on the Optional Protocol in order to prohibit the participation of children in hostilities even in exceptional situations”¹⁷

The Declaration also states, “Male citizens up to the age of 17 who wish to make a long-term service in the army may be admitted to military schools.” and proceeds to outline the safeguards enduring the voluntary nature of such recruitment and the fitness of candidates. In Viet Nam’s Report under OPAC it is made clear that 17 is in fact the minimum age for admission to such schools, and, as with other regulations concerning recruitment ages there are detailed safeguards to ensure that these age limits are not interpreted loosely – provisions which might usefully be adopted by many other States:

“According to the above regulations, the minimum age for attending a military school is seventeen years old. Age must be counted by the year and a year must include all twelve months while a month must have all its days in order to eliminate cases of people old enough by year but not by month, or by year and month but not by day.

“For example: if a person born on 1 January 1984 then the day he is considered to be seventeen and thus qualified to take the military schools’ entrance exam is 2 January 2001.”¹⁸

However it is stated clearly that on admission to military schools students are “recognised as servicemen on active service.” Beyond the general measures of prohibition it had suggested, The Committee on the Rights of the Child did not address the specific risk that this might result in them being involved in hostilities below the age of eighteen

It is also reported that in all cases “Before the age of recruitment and before enlisting, male citizens will undergo military training classes in high school. This training includes political education, military training, organizational skills and discipline training as well as physical training.”¹⁹

¹⁶ CRC/C/OPAC/VNM/CO/1, 17th October, 2006, para 13.

¹⁷ CRC/C/VNM/CO/5-6, 21st October, 2022 para 54(a).

¹⁸ CRC/C/OPAC/VNM/1, 12th December, 2005, paras 42,43.

¹⁹ Ibid, para 31

Suggestion for the List of Issues

What steps has the State party taken to implement the previous recommendation of the Committee (CCPR/CO/75/VNM, 26 July 2002, para 17), that it “ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.”