

CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

UPR SUBMISSION
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ISRAEL

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Executive Summary

1. This submission deals with conscientious objection to military service and related issues. It was prepared in October 2022 on the basis of the latest information available.
2. Conscientious objection to military service has hitherto received too little attention in the UPR of Israel. The concerns have remained the same for decades, with no change on the ground. They are:
 - a) The lack of any legislative recognition of the right of conscientious objection to military service.
 - b) The lack of independence in composition and role of the bodies which have over the years advised the Israeli Defence Force on applications from conscientious objectors to be excused military service, and the unduly restrictive criteria which must be met for such an application to be successful.
 - c) The practice of repeated imprisonment of unrecognised conscientious objectors, in clear breach of the principle of *ne bis in idem*, and with the clear motive of coercing them to abandon their conscientiously held beliefs.
 - d) The civil disabilities faced by those who have not performed the military service to which they are liable, compounded in the case of conscientious objectors who have eventually been found unsuitable for military service by official insinuations regarding their mental health and/or character.

Background: Military service and conscientious objection in Israel

3. As first established in the 1949 “Security Services Law”, all Israeli citizens, men and women alike, are obliged to perform military service; 36 months (subsequently reduced to 32) for men and 24 months for women. (Eritrea is the only other state which systematically conscripts women.) Military service is followed by an active reserve duty of one month each year.
4. One feature which distinguishes military service in Israel from that in most other States is that it is not postponed until the completion of all education, including university studies. Instead it usually takes place immediately after the completion of secondary school education at the age of 18. This is not accidental; that military service should typically be the first experience of adult life, is part of the pervasive militarisation of society. but in fact preparation for it starts long before: “Most schools had uniformed teacher-soldiers and youth guides on their staff, who provided a link between the educational system and the military establishment (...) *Gadna*, or youth battalions, ran a one-week military training programme on an (...) IDF base as part of the curriculum for 16-17 year olds at most Jewish state schools”ⁱ
5. In practice the military service provisions are not applied to all sections of the population. Article 36 of the 1949 Law authorised the Minister of Defence “to grant exemption from military service under certain conditions, without an explicit right to exemption having been established in the law.”ⁱⁱ The Minister of Defence has unfailingly used this administrative discretion to exclude

from conscription the Moslem and Christian “Arab-Israeli” fifth of the population. (Since 1956 men, but not women, of the Druze community have been subject to conscription.)ⁱⁱⁱ The Minister of Defence also by convention has used his discretion to “defer” military service for students of “*yeshiva*” religious seminaries until after they pass the age limit. In recent years, amid controversy, the scale of such concessions has been considerably reduced.

6. It must be emphasised that the ongoing debate on the latter issue is neutral with regard to conscientious objection to military service. Pacifism plays no part in Haredi teaching, and none of the individuals concerned have expressed opposition to military service on the grounds of conscience. Opposition to the draft law has been in order to preserve religious privilege. On the other hand, the fact that resentment against such privilege has taken the form of demands that all should perform military service illustrates and reinforces the militarisation of Israeli society.

7. It should be noted that the violations of the rights of conscientious objectors within Israel are suffered exclusively by the Jewish and Druze communities and do not affect Christian or Muslim “Arab Israelis”, or non-Israelis. Similarly, as there are no Palestinian armed forces, there can in the Occupied Territories be no conscientious objection to military service in the traditional sense.

Conscientious objection to military service

8. The only *legislative* recognition of a possibility of conscientious objection to military service appeared in Article 12 of the 1949 Security Services Law, which stated that “a woman...for whom reasons of conscience, or reasons of religious consciousness, prevent her from serving in the armed forces, shall be exempt from such service.” The “conscience committee” which formerly examined claims from women was eventually merged with the “Special Committee” set up in 1995 by the Minister of Defence to advise him in acting under his residual discretion to issue exemptions from military service and which now considers on the same basis those applications from both male and female objectors which are referred to it as showing a *prima facie* case. (It should be noted that there is no automatic right to have one’s case heard by the Committee.)

9. It is reported that in the first five years of its existence the Committee decided, on the basis of well over 100 applications, that 11 men (both new conscripts and reservists) were “unsuitable for military service”.^{iv} The phrase is telling; there is no suggestion that the “successful” applicants were worthy of exemption. Grounds for rejection could be bizarre. Above all, attempts have always been made to show that objectors are not “genuine pacifists”, but “selective objectors”.

“Selective objection” and objections by reservists

10. From about 1970, a number of potential conscripts began to announce their specific objection to serving in the Occupied Territories, often accompanied by a statement of willingness to serve in the defence of Israel itself. In that year appeared the first *shministim* letter addressed to the Prime Minister from students in the final year of secondary education, stating their refusal to enlist in an “army of occupation”. Several further such letters have appeared; the most recent, of 5th January 2021 initially had over 60 signatories. Initially the IDF attempted to resolve most individual cases of this nature with the minimum of publicity, but as the number and visibility of such objectors grew, so the authorities responded with a tightening of policy. Conscripts who might have expressed selective objections have since about 1980 had a choice between, on the one hand, completely refusing enlistment and, on the other, allowing themselves to be enlisted with the intention of subsequently refusing to obey orders if posted outside the borders of Israel itself, or at a later stage to refuse service or reserve service outside those borders.

11. The first two reported instances of the second possibility, of reservists declaring their refusal to serve in the Occupied Territories, and subsequently undergoing military detention, occurred in December 1972. Numbers increased after the invasion of Lebanon in 1982. The number of soldiers and officers, mainly reservists, who were imprisoned, sometimes repeatedly, for refusal to serve in Lebanon has been given by different sources as 143,^v and 168.^{vi} A new movement named *Yesh Gvul* (Hebrew for “there is a limit”) claimed over 3,000 signatures of reservists on a petition objecting to such service and subsequently became the principal mouthpiece of all “*refuseniks*”, as reservist objectors became known. A subsequent initiative “Courage to Refuse”, dated January 2002 bore the signatures of 52 reservists in combat units, many of them officers, who declared “We will not continue to fight beyond the Green Line...we will continue to serve in the Israel Defence Force in any assignment that will serve the defence of the state of Israel”;^{vii} within a year 500 others had signed on to their petition.

Repeated imprisonment of conscientious objectors

12. In 2003,^{viii} the Working Group on Arbitrary Detention criticised Israel for its repeated imprisonment of four conscientious objectors on charges of military disobedience, observing, “The explanation of the Government that after one conviction for not having obeyed an order to serve in the military repeated acts of disobedience are considered new offences did not convince the Working Group (...) the Working Group is of the opinion that if after an initial conviction the convicted persons exhibit, for reasons of conscience, a constant resolve not to obey the subsequent summonses, additional penalties imposed for disobedience have the same content and purpose: to compel an individual to serve in the army (...) Moreover, repeated penalties for refusing to serve in the military would be tantamount to compelling a person to change his/her mind for fear of being deprived of liberty if not for life, then at least until the age at which citizens cease to be liable for military service.”^{ix}

13. The Human Rights Committee has subsequently confirmed that “repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.”^x (In two opinions published in May 2008^{xi} the Working Group on Arbitrary Detention went further, finding that the first imprisonment of three conscientious objectors amounted to arbitrary detention resulting from the exercise of rights or freedoms guaranteed by Article 18 of the UDHR and the Covenant.)

14. Israel has nevertheless continued routinely to subject conscientious objectors to repeated terms of imprisonment. The fact that individual sentences are usually expressed in days rather than months merely underlines that they are designed to put the objector under repeated pressure to relent.

15. No predictable pattern emerges. But only in a small minority of cases is the cycle eventually ended by the recognition of the objection or by capitulation and agreement to perform military service on the part of the objector. Otherwise a compromise, recognising the objector as unsuitable for military service, is eventually reached – the timing largely depending on the persistence in the individual case of the different parties. The decision on unsuitability can have severe implications for the future employability of the objector; for example the compromise preferred by the IDF is “psychiatric instability”. An article in the “Jerusalem Post” in January 2020^{xii} reported that in the previous two years there had been no less than 2,488 exemptions from military service on grounds of mental health, mainly among “secular” Israelis. The number of exemptions on grounds of conscientious objection is not indicated.

16. At least twenty objectors have been imprisoned since the consideration of Israel in the third cycle. Totals are hard to estimate as many objectors eschew publicity because of the potentially

negative effect on their future careers, especially of imputations regarding their state of mental health; no recent figures from official sources have been traced. Two are currently serving their first and two their second terms of imprisonment. Of those who had now emerged from the cycle, eight had spent between 70 and 110 days of imprisonment, following between four and eight consecutive sentences.

17. Since Israel's Second Periodic Report under the International Covenant on Civil and Political Rights (ICCPR), considered in 2003, the issue of conscientious objection to military service has repeatedly featured in the Human Rights Committee's Concluding Observations on Israel.

18. In its concluding observations on Israel's Third Periodic Report, the Committee expressed concern "about the independence of the 'Committee for Granting Exemptions from Defence Service for Reasons of Conscience', which is composed entirely, with the exception of one civilian, of officials of the armed forces.", and noted "that persons whose conscientious objection is not accepted by the Committee may be repeatedly imprisoned for their refusal to serve in the armed forces". It recommended that the Committee: should be made fully independent, persons submitting applications on the grounds of conscientious objections should be heard and have the right to appeal the Committee's decision. Repeated imprisonment for refusal to serve in the armed forces may constitute a violation of the principle of *ne bis in idem*, and should therefore be ceased."^{xiii}

19. In its Concluding Observations on the Fourth Periodic Report "The Committee remains concerned at the proceedings before the special Committee in charge of recommending to the competent authorities to grant or reject an individual's application for exemption from compulsory military service for reasons of conscience and at its lack of independence given that its membership comprises only one civilian member and all the rest serve as officials of the armed forces. The Committee reiterates its concern that individuals whose conscientious objection applications are rejected may be repeatedly imprisoned for their refusal to serve in the armed forces.

"The Committee reiterates its previous recommendation that the special Committee making recommendations to the competent authorities on conscientious objection applications be made fully independent, and proceedings before it include hearings and provide for a right to appeal against negative decisions. The State party should also refrain from repeated imprisonment for refusal to serve in the armed forces that may constitute a violation of the principle of *ne bis in idem*."^{xiv}

20. In its Concluding Observations following the consideration of Israel's Fifth Periodic Report in March 2022:

"The Committee reiterates its concern about the predominantly military nature of the membership of the special military committee that decides on requests for conscientious objection to compulsory military service. It is further concerned that conscientious objectors continue to be subjected to repeated punishment and imprisonment for their refusal to serve in the army (...)

"The Committee reiterates its recommendations that the State party take concrete measures to diversify the membership of the special military committee that handles requests for conscientious objection, with a view to making it fully independent and impartial. The State party should also put an end to the practice of repeated punishment and imprisonment of conscientious objectors, which may amount to a violation of the right not to be tried or punished again for the same offence."^{xv}

21. In the First Cycle of the UPR, in December 2008, Slovenia recommended that Israel should "Cease imprisoning conscientious objectors and consider granting them the right to serve instead with a civilian body independent of the military."^{xvi} During the adoption of the UPR report, among "items from the Council's recommendations" which Israel had "taken upon itself to promote" was listed:

“granting the right to those who object to serve in the army on conscientious grounds to serve instead with a civilian body, such as in the form of the newly established and strengthened Public Commission for National Civil Service.”^{xvii} No subsequent developments in this respect have however been recorded.

22. In the Second Cycle, there was simply an anodyne recommendation from Slovenia that. Israel “Lead progress made to a systemic solution of the issue of conscientious objectors.”^{xviii}

23. In the Third Cycle the issue of conscientious objection to military service was not raised at all.

Recommendations

24. CPTI suggests the following recommendations:

That Israel should:

fully recognise in law the right of conscientious objection to military service

move towards acceptance of declarations of conscientious objection as valid, without further enquiry

meanwhile review the membership of the committee established to review claims of conscientious objection in order to ensure its civilian nature and impartiality, including not reporting to the Ministry of Defence

immediately cease the practice of repeated call-ups and punishments for persons who refuse military service as being not only in breach of the principle of *ne bis in idem* but also tantamount to an attempt to coerce a change in belief, in violation of Article 18.2 of the International Covenant of Civil and Political Rights.

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- i Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London), p184.
- ii Peri, Y., “Israel: Conscientious Objection in a Democracy under Siege”, in Moskos C.C. & Chambers, J. W., (1993). The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford, pp. 146 - 157 at p.148.
- iii For details see Speck, A., “Druze conscientious objectors; discrimination, silence and ignorance”, in The Broken Rifle 58, (War Resisters International, London), May 2003.
- iv War Resisters International, Conscientious objection to military service in Israel: an unrecognised human right. Report submitted to the Human Rights Committee, February 2003.
- v Peri, op.cit., p.153
- vi Kidron, P. (Ed) Refusenik!: Israel’s Soldiers of Conscience (Zed Books, London, 2004), p5.
- vii Ibid, p.88,
- viii Opinion No. 24/2003 (Israel), 28th November 2003, reported in E/CN.4/2005/6/Add.1.
- ix Ibid., para 30.
- x General Comment 32, 23rd October, 2007, para 54.
- xi Opinion No. 8/2008 (Colombia), and Opinion No. 16/2008 (Turkey)
- xii Aaronheim, A., “A third of Israeli Youth do not enlist in IDF”, Jerusalem Post, 19th January 2020.
- xiii CCPR/C/ISR/CO/3, 2nd September 2010, para.19
- xiv CCPR/C/ISR/CO/4, 21st November, 2014, para 23
- xv CCPR/C/ISR/CO/5, 5th May 2022, paras 46,47.
- xvi A/HRC/10/76, 8th January, 2019, para 22
- xvii The text of the statement may be found at <http://www.upr-info.org/IMG/pdf/Israel.pdf>
- xviii A/HRC/25/15, 19th December 2013, para 136.79