

SUBMISSION TO THE HUMAN RIGHTS COMMITTEE:

*123rd session for the attention of the Country Report Task Force on ISRAEL Military service,
conscientious objection and related issues. Drafted April 2018*

Basic Information

Population:	8,300,000 ¹ (November 2017, estimated)
Military service:	Obligatory for both men (32 months) and women (24 months), usually undertaken immediately after secondary education.
Minimum Age:	18 ²
Conscientious objection:	A “Special committee” of the Israeli Defense Force examines applications, and does grant exemption in some cases, but the decisions are made entirely within the military, with no right of appeal to civilian courts.
Approximate annual population cohort reaching 18:	132,800 ³
Armed forces:	(active strength by Nov 2017): 176,500 ⁴ (including 109,500 conscripts) in proportion to those reaching 18 ⁵ ; 132.9% ⁶ (conscripts 82.5%)
Military expenditure:	US\$ equivalent (2016 ⁷) \$17,977 million Per capita; \$2193.8 ⁸ As 5.8% of GDP

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- 1 Source: [The Military Balance 2018](#) (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.
 - 2 Source: 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.
 - 3 Calculated from the population breakdown given in [The Military Balance 2018](#). This figure includes both males and females both are liable for military service,
 - 4 Source: [The Military Balance 2018](#), op cit..
 - 5 This provides a very crude indication of the extent to which the population is enrolled, through conscription or otherwise, into military service. By focussing on just the age cohort which is likely to be most affected, it builds in a rough compensation (as compared with total population) to the figures for those States which have unusually large proportions of old or very young people. And in the case of conscription, it gives an indication of how universal this is in practice.
 - 6 Note that this refers to both males and females. In practice, only in DPRK (North Korea) is a greater proportion of the population at any one time engaged in military service than in Israel.
 - 7 Stockholm International Peace Research Institute (SIPRI), April 2017
 - 8 This was the highest figure in the world, followed by Saudi Arabia (\$1978.2) and the USA \$1886.2)

Context

In its Concluding Observations on Israel's Fourth Periodic Report, the Human Rights Committee, referring back to its previous Concluding Observations, stated:

"The Committee remains concerned (CCPR/C/ISR/CO/3, para.19) 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" (arts.14 and 18).

"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*."⁹

Sadly, no action has been taken by the State Party in the subsequent three years to implement the Committee's recommendations.

9 CCPR/C/ISR/CO/4, 30th October 2014, distributed 21st November 2014, para 23.

Recapitulation of the background

The Israeli Defense Force (IDF) is organized as a citizen's militia. In principle, men and women alike are required to perform obligatory military service, almost always starting on leaving school at the age of 18, and subsequently to report for one month's active reserve duty, until the age of 40 for men and for women until marriage, pregnancy or age 38. In practice, only Jewish Israelis and men from the Druze community are affected. Other "Arab Israelis" are not called up and the Ultra-Orthodox have also in the past benefited from a variety of exemptions. There is however no effective legal provision governing cases of conscientious objection to military service.

The only mention of conscientious objection in the Security Service Law comes in Article 39 (3), allowing exemptions to women "for one of the following reasons: a) Marriage, parenthood or pregnancy. b) Conscientious objection. c) Religious familial background."¹⁰ However "this provision was interpreted by Israel's Supreme Court as pertaining to (Jewish) religious custom only (HCJ 2383/04, *Milo v the Minister of Defence*)."¹¹ (Liora Milo had attempted in this case to assert her right under Article 39 to exemption from military service on the grounds of conscientious objection. Instead the Court ruled that women asserting conscientious objection should, like men, rely on the general discretionary power given to the Minister of Defence under Article 36 of the Law.)

"Section 36 of the Security Service Law (Consolidated Version) 5746-1986 (hereinafter: "the Law"), states that the Minister of Defense may exempt a person designated for security service (or an army veteran) from performing military service for a number of reasons including "different reasons". This term was interpreted by the Court as providing the Minister of Defense with the discretion to exempt persons for reasons of conscience."¹² (See, for example, HCJ 734/83 *Shein v the Minister of Defence*). It should however be noted that this power is purely discretionary. "The military is in any case not under any legal obligation to allow exemptions to conscientious objectors."¹³

"In 1995 the head of the IDF's human resources branch decided to appoint a special committee (hereinafter: "the Committee") that will review applications of persons designated for security service, soldiers in active service and persons performing their reserve service for release from military service (or reserve service) for reasons of conscience, due to a pacifistic point of view. Prior to the establishment of the Committee, applications were reviewed in an individual and specific manner. The Committee is headed by a military official authorized to issue an exemption from security service, and is comprised of several members, including a public representative who is a person of the academia, a representative of the IDF's

10 CCPR/C/ISR/Q3/Add1, 12th July, 2010, p. 49

11 Evidence Supplied for the OHCHR Analytical Report on Conscientious Objection to Military Service, jointly by New Profile (a feminist movement for the demilitarisation of Israeli society), the Mesarvot network for the support of political refusal in Israel, and the American Friends Service Committee Israel program, March 2017.

12 CCPR/C/ISR/4, 12th December 2013, Para 417

13 Evidence submitted by New Profile, Mesvarot and AFSC, op cit.

behavioural science department, an officer from the Meitav unit (in charge of classification and placement of all those who are designated for security service) and a representative from the military advocacy.”¹⁴

Initially, the “special committee” considered applications from male objectors only. Since 2005, following the Court decision in the *Milo* case, it has considered applications from men and women alike.

Under the procedures set out, “in order to review an application for reasons of conscience, opinions of the soldier’s commanders, the military advocacy and the drafting authorities are required. All of these opinions are transferred to the relevant military official who determines whether to refer the applicant to the [special] committee.”¹⁵

Attention should be drawn to three particular aspects of this explanation by the State Party.

First, the telling use of the word “soldier”. Induction into the military *precedes* any consideration of an application for exemption on the grounds of conscientious objection. **IFOR firmly maintains that no person should be treated as a member of the armed forces unless he or she has, however unwillingly, accepted this status.**

Second, there is no right to apply to be heard by the special committee. A preliminary triage limits the number of cases submitted to it. Those who are not given access to the procedure face disciplinary proceedings for their refusal of military service, which will inevitably lead to a sentence of imprisonment in a military prison. It is not known (except by the IDF itself) how many applications for exemption on grounds of conscience are withdrawn when the objectors are refused a hearing by the special committee. **IFOR believes that this is the first step in a systematic coercion of objectors to abandon their sincere convictions of conscience, in direct violation of Article 18.2 of the ICCPR.**

Third, the details of the special committee’s composition, under military chairmanship and with only one civilian member make it clear that it is not independent, and cannot perform its function in an objective, impartial manner. “It is a military committee, composed of soldiers, with just one civilian representative. It is convened in a military base and operates entirely within the military system. (...) Its procedures and judgements are highly arbitrary. According to military data provided under the freedom of information law in Israel, in 2015 13 people applied through the committee to be recognised as conscientious objectors, only 5 of whom were successful.”¹⁶

“The Committee is responsible for recommending to the competent authorities whether to accept an individual’s application for exemption from obligatory military service for reasons of conscience or to reject it. Note that the Committee does not possess the authority to decide. This authority is given only to those

14 CCPR/C/ISR/4, para 419.

15 Ibid, para 418.

16 Evidence submitted by New Profile, Mesvarot and AFSC, op cit.

officials who have been delegated such an authority pursuant to Section 36 to the Law - namely the Committee's chairperson.

"The Committee carefully examines the applications for exemption for reasons of conscience. If the Committee is satisfied that the main factor for the application's submission is the inherent use of violent force in the military framework, and the absolute objection of the applicant to war, in a way that prevents him/her from serving in a similar framework – at any position, then the committee will recommend exempting the applicant from performing security service for reasons of conscience. However, if the Committee believes that the main reasons for the submission of such an application are different reasons, such as: the compelling nature of the military framework or personal convenience considerations the Committee's recommendation will be to reject the application.

"If the Committee is satisfied that the applicant is clearly pacifistic, it recommends the competent authorities to exempt the applicant from security service on the basis of reasons of conscience. Prior to this recommendation, and in light of the current recognition in clear and sincere pacifistic views that justifies the grant of an exemption from security service, the Committee does not consider the IDF's human resources needs or the value of equally fulfilling the duty of security service.

"The Committee is also authorized to recommend on allowing certain easements in the applicant's service, such as: the permission not to hold weapons or to wear uniforms, etc. if it is satisfied that application stems from genuine conscience dilemmas. The abovementioned is true, *mutatis mutandis*, with regard to the placing of an exempted applicant in certain position or in particular branch that meets the applicant's conscience point of view (for example: the possibility of serving in a non-combat position or in a rear unit).

"In addition, according to the relevant internal procedures of the drafting authorities, the Committee's chairperson's decisions may be appealed within 30 days. Any such appeal will be heard by a military official who is also authorized to issue an exemption from security service – the Committee's chairperson's commander, who is also authorized to issue an exemption from security service."¹⁷

Few States Party provide such full and clear explanations of the current situation regarding issues of particular concern to the Human Rights Committee. In this respect, Israel should be commended. However, its account makes it clear how unsatisfactory the current system is, in two particular respects.

First, there is the extremely narrow definition of what constitutes conscientious objection, namely an absolute pacifism. Anecdotal evidence is that the special committee interprets this in an extreme way, trying to make out that it requires a complete refusal to use force in any circumstance, or to accept the protection of the police, not to mention a very strict vegetarianism. But even without these excesses the definition does not address one of the most common forms of conscientious objection in Israel, namely a refusal to be part of an army of occupation. Some, but of course not all, of those who have conscientious objections of this form declare themselves perfectly willing to serve in the defense of Israel itself. It is telling that the list of potential "easements" in the terms of service do not include not being posted to the

17 Ibid, paras 420-425.

occupied territories, although it is believed that at times in the past this has been done informally. Policy varies; the nature of the system militates against consistency. In March 2017 a female objector's opposition to the occupation was accepted by the special committee as a conscientious objection (but not before she had served 115 days imprisonment). This was however the first time since 2004 that such a case had been recognized.

in this context, mention should be made of the particular situation of Druze objectors, whose objection is typically to being required to serve in what they see as a foreign army oppressing their own people. Some would willingly bear arms in a Palestinian army, and thus would certainly not be recognized as conscientious objectors by the IDF. Druze objectors tend to be subjected to more draconian sentences and harsher treatment than other objectors; their cases receive less publicity, but at any one time there are probably at least as many Druze as Jewish objectors held in military prison.

Second, there is the fact that the only appeal against the special committee's recommendations is to the higher military authority who is authorized on behalf of the Minister of Defense to grant exemptions from military service. Once again, there is not even a semblance of independence or impartiality.

Treatment of conscientious objectors

“Conscientious Objectors who are not recognized by the committee, but who still refuse to serve in the military are tried, sentenced and imprisoned within the military system, being officially considered as soldiers.”¹⁸

As stated previously, IFOR maintains that those who have refused military service for whatever reason, including of course grounds of conscience, should retain their civilian status; any lawful penalty for the refusal of military service should be handed down by a civilian court and if it involves imprisonment, that should be in a civilian penal establishment.

With specific reference to Israel, the Working Group on Arbitrary Detention found in 2003 that “repeated penalties for refusing to serve in the military would be tantamount to compelling someone 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.”¹⁹ Subsequently, the Human Rights Committee recognised that repeated prosecution for failure to obey a renewed order to serve in the military, when “the refusal is based on the same constant resolve grounded in reasons of conscience”, may constitute a breach of the principle of NE BIS IN IDEM.²⁰ **As always in General Comments, the Committee was at pains not to outrun its existing jurisprudence, but IFOR would argue that a more logical position would have been that any “repeated prosecution for failure to obey a renewed order to serve in the military” *might* constitute a breach of NE BIS IN IDEM, and that if the very tightly-defined specific conditions were indisputably met it *would* constitute such a breach.**

Israel has never accepted this argument, explaining its position thus in its Fourth Periodic Report:

“In regard to additional imprisonment and the principle of ne bis in idem – the relevant authorities do not consider an additional imprisonment, in regard to a person that was not recognized as a conscientious objector, to be a repeated imprisonment. As long as the person designated for security service has a legal duty to perform the security service, and he/she continues to refuse to perform his/her legal duty, it is to be considered as a new offence with a new factual infrastructure and new criminal intent and thus, according to the relevant case law, this justifies an additional indictment.”²¹

This argument is of course circular. Israel does not subject conscientious objectors to repeated imprisonment, because it defines a conscientious objector as someone who has been recognized as such by the non-impartial special committee. But by that definition it would claim never to imprison conscientious objectors even once; a claim belied by the case in 2016 of an objector who was recognized as such by the special committee and exempted but only after serving three consecutive sentences of imprisonment totaling 67 days. Nor of course does the argument address the Working Group on Arbitrary Detention's finding that repeated imprisonment was tantamount to coercion to change one's mind, which

18 Evidence submitted by New Profile, Mesvarot and AFSC, op cit.

19 United Nations Working Group on Arbitrary Detention, Opinion No. 24/2003 (Israel), E/CN.4/2005/6/Add. 1, para. 30.

20 General Comment No 32 (CCPR/C/GC/32), 23rd August 2007, para 55.

21 CCPR/C/ISR/4, para 426.

was not linked to a narrow definition of who deserved protection from this. It is indeed arguable that anyone who is prepared to face a sentence of imprisonment because he or she believes strongly enough, *for whatever reason*, that it would be wrong personally to perform military service, would be indeed punished for the same “crime” if subjected to repeated prosecution for repeated refusal.

The initial sentences are usually handed down by a low-ranking military officer, and therefore can be only of a strictly limited duration – no more than a month, but on release the objector is immediately again summoned to report for military service. Refusal leads to a further sentence. This cycle can be prolonged indefinitely; on rare occasions the objector eventually relents and agrees to serve (thus by the circular logic “proving” that he or she was never a “genuine” objector in the first place); in practice it is usually ended with the dismissal of the objector for persistent disobedience, or to his or her consenting to be examined by a military psychiatrist, and being classified as unfit to serve due to suffering from a psychiatric disorder – in either case the resulting “profile” can lead to lifelong stigmatization and severe implications for employability.

Imprisoned Conscientious Objectors who refuse to comply with military prison laws, including wearing a military uniform, are subsequently further punished within the military prisons, and placed in solitary confinement. This is done with no hearing or due process.²²

While many individual cases have been extensively and publicly documented by supporters, some past objectors have in the face of discrimination and stigmatization sought to have their names removed from the record. All cases mentioned in this submission are therefore reported anonymously, but the details²³ illustrate the process described above.

In the years 2015 and 2016, IFOR is aware of five women and five men objectors, who were imprisoned for total periods ranging from 7 days to 170 days.

The shortest of these sentences was served in March 2016 in a men's military prison by a transgender woman objector, before she was released, against her will, on mental health grounds.

Between 10th January and 21st July 2016, a 19-year-old woman objector underwent a sequence of six consecutive sentences, starting with one of 20 days, and the longest of which was 45 days. In all she was imprisoned for 155 days, the longest recorded for any woman objector, before being dismissed for “persistent disobedience”.

In March 2017, after the intervention of a Member of the Knesset, a woman objector was heard by the special committee after having served 130 days imprisonment. The committee did not recommend her exemption, but the following day a more senior officer ordered her discharge on the grounds of

22 Evidence submitted by New Profile, Mesvarot and AFSC, op cit.

23 Published variously by War Resisters' International, New Profile, and Mesvarot and supplemented by personal conversations.

“incompatibility and especially bad behavior”. Much the same happened in June 2017, in the case of a 19-year-old female objector who had served four consecutive sentences totaling 110 days.

A nineteen-year-old female objector served four consecutive terms of imprisonment, totaling 112 days, between 12th July and 31st October 2017. On 16th October an 18-year-old female objector, who had already served 50 days, was sentenced to a further 10 days.

The latest release detailed by War Resisters' International was on 25th April 2018, of an objector who had spent six consecutive imprisonment sentences, totaling 110 days. The official reason for his discharge was “bad, grave behavior”. On 18th April, a woman objector who had already served 40 days in prison was sentenced to a further 40 days and remains in detention at the time of writing.

The “Tal Law” which had hitherto regulated the exemption from military service of ultra-orthodox *Haredim* was found by the Supreme Court in February 2012 to be unconstitutional. Under the “Tal Law”, *Haredim* studying at “*yeshiva*” religious seminaries were allowed to postpone military service until they turned 22 years old, and then during a “decision year” could choose whether to work for a year in civilian national service or enlist for 16 months' military service..

On 7th July 2013 revised Military Service Law was approved by the Cabinet. According to Reuters, only some 1,800 students, designated “outstanding biblical scholars”, would continue to be exempted of an estimated 8,000 *haredim* males reaching military service age each year. The legislation was to be phased in over a period of four years, during which those affected would be encouraged to sign up voluntarily for military service.

But this meant that from July 2017 almost all *haredim* males became liable to conscription. (Ultra-Orthodox women continue to be exempted under Article 39.3 of the Security Service Law). The youth of the 100,000 strong Yiddish-speaking *Eida Haredith* minority, whose global history shows an unwavering commitment to non-violence and refusal of military service, are particularly strongly affected. Other Ultra-Orthodox groups used their bargaining power within the governing coalition to negotiate concessions; the *Eida Haredith*, like the Jehovah's Witnesses within the Christian tradition, reject all secular authority, which means that they oppose “the Zionist state”.

During 2017, according to *Haredim* sources, the number of young men from their community sentenced to imprisonment for conscientious objection *each month* was in double figures. It is also alleged that they were deprived of “praying articles, proper Kosher food etc.”²⁴

In March 2018, agreement was reached within the governing coalition on further draft amendments concerning Ultra-Orthodox exemptions. These however do nothing for the situation of the *Eida Haredith*.

24 Confidential communication from their legal representative.

It should be noted that not all conscientious objectors seek to be exempted on such grounds. Many choose other ways to avoid military service, the most popular being to seek an exemption on health grounds, or to go abroad, if not long enough to avoid military service altogether at least to obtain a postponement by a few years. Others choose these routes who do not claim any conscientious grounds for their desire to avoid military service. Imprisoned conscientious objectors represent but a small proportion of those liable to military service who do not in fact perform it.

Finally, it should be noted that there is currently a civilian service scheme in Israel, but this is a strictly voluntary scheme available *only* to those who have already fulfilled the military service requirement. Although there is confusion even within Israel itself, this is not an alternative service option available to conscientious objectors.

SUGGESTIONS FOR THE LIST OF ISSUES

1) What action has the State Party taken towards implementing the Committee's recommendations

"that the special Committee (...) on conscientious objection applications be made fully independent, and proceedings before it include hearings and provide for a right to appeal against negative decisions" and that "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*." (CCPR/C/ISR/CO/4, para 23)?

2) How would the State Party respond to the accusation that the forced recruitment of youths from the and Druze minorities constitutes a forced assimilation of these minorities into the majority culture?

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