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**The protection of the right to conscientious objection to military service and the attainment of Sustainable Development Goal 16 in the context of eliminating intolerance and discrimination based on religion of belief**

*Introduction*

The right to conscientious objection to military service has been recognised by both the UN Human Rights Council and the Human Rights Committee, with the right to freedom of religion or belief at its core.[[1]](#footnote-1) It is based on Article 18 of the International Covenant on Civil and Political Rights, and Article 18 of the Universal Declaration of Human Rights. The Human Rights Committee considers that “the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual’s religion or beliefs.”[[2]](#footnote-2) Human Rights Council resolution 24/17 ‘(R)ecognizes that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion.’

Despite this recognition, the right remains unfulfilled in a number of States either in law or in practice. There are, therefore, two categories of State which do not implement the right: those who do not recognise the right to conscientious objection, and those where there is incomplete implementation of the right.

The non-recognition of the right to conscientious objection is a particular aspect of discrimination against individuals or communities based on their religion or belief, including theistic, non-theistic, and atheist beliefs, as well as those whose interpretation of their religion or belief differs from the State’s position.[[3]](#footnote-3) It stigmatises and delegitimises those with anti-militarist, pacifist, and community-building beliefs who could be a core element of the realisation of Sustainable Development Goal 16. It also prevents individuals and communities from enjoying the benefits intended for all in SDG 16: peaceful and inclusive societies must include those who refuse military service for reasons of conscience, and those who refuse must have access to justice.

This discrimination, a discrete rights violation, can be a driver for forced migration, and is likely to constitute a driver of insecurity and, potentially, conflict. Furthermore, such discrimination may manifest itself in ways which constitute further rights violations, including arbitrary detention, lack of access to justice, and deprivation of other rights from across the spectrum.

Often, therefore, these laws or policies constitute a restriction of the right to manifest a freedom of religion or belief (as established in Article 18(1) of the International Covenant on Civil and Political Rights), given the centrality of religion or belief, whether theist, non-theist, or atheist, to conscientious objection to military service.

**Patterns of discrimination**

States which do not recognise conscientious objection must amend their law to do so and all States should ensure they have independent and impartial decision-making bodies unless applications are accepted without further examination. Too often, even when States recognise conscientious objection in law, they apply discriminatory practices in such decision-making procedures.[[4]](#footnote-4)

The militarised ideas of national identity associated with requirements to perform military service create a rejection of those who do not undertake military service. This manifests in both societal stigma and legal barriers to the exercise of a wide range of rights. The tension this creates towards individuals or communities who do not perform military service fuels discrimination and causes divisions. Furthermore, it delegitimises and stigmatises those whose views could contribute towards reducing such tension and who reject violence towards specific communities: this is the case, for example, Conscientious Objectors in Turkey who object because of the violence of the conflict with the Kurds,[[5]](#footnote-5) in Israel for Conscientious Objectors, or so-called ‘partial objectors’ who reject the Occupation of Palestinian Territories,[[6]](#footnote-6) and in the case of Cypriot Conscientious Objectors who work towards peace and foster bi-communal relations.[[7]](#footnote-7)

***Conscientious Objection Application Procedures***

The best practice in this area is the acceptance of claims of conscientious objection as valid without enquiry, as welcomed in Human Rights Council Resolution 24/17. This practice should be applied to all those who seek conscientious objector status, without discrimination of any kind. Good practices in this regard include Austria, Norway and Switzerland.[[8]](#footnote-8) This system is the best practice because it provides the fullest recognition of the right to freedom of religion or belief, acknowledging the personal nature of the matter and thus the impossibility of another person judging this.

Where this is not the case and an application process is required, it is essential that all such processes be in strict accordance with human rights law, and without discrimination of any kind.

Where application procedures for requesting conscientious objector status are arbitrary or ineffective, conscientious objectors may not avail themselves of the opportunity to apply due to fear of persecution for publicly expressing their convictions,[[9]](#footnote-9) impinging upon their right to freely express their religion or belief.

Priority should not be granted to any group(s) over others,[[10]](#footnote-10) for example rules which only enable conscientious objector status for members of groups whose teachings or values expressly prohibit bearing arms constitute discrimination and are likely to enhance inter-community division.[[11]](#footnote-11) This has been recognised by the Human Rights Committee since the adoption of general Comment No. 22 in 1993, with the Committee repeatedly referring to the prohibition of discrimination among conscientious objectors on the basis of the nature of their particular beliefs. Decision-making processes about who is entitled to conscientious objector status should not be influenced by prejudicial attitudes towards certain religion or belief communities. Limiting the groups of faith or belief communities entitled to Conscientious Objector status is discriminatory and may cause inter-community tension.[[12]](#footnote-12)

Processes must be made transparent and accessible to all, including by the provision of materials and processes in all relevant languages, as well as of materials to enable the full participation of persons with disabilities.

It is important for States to recognise, both in law and in practice, that people can develop a conscientious objection over time, including after having started to undertake their military service. There should be no discrimination between those whose conscientious objection develops at different times. Volunteers as well as conscripts should have their right to conscientious objection respected and protected.

Furthermore, it is important that having a criminal record is not considered to be a barrier to being awarded conscientious objector status: a previous offence should have no bearing on someone’s ability to manifest their right to freedom of religion or belief.

Much more detailed information and best practice examples can be found in OHCHR’s 2019 report on approaches and challenges to regard to application procedures for conscientious objection to military service in accordance with human rights standards.[[13]](#footnote-13)

***The Provision of Alternative Service***

Some States choose to require Alternative Service for those who refuse to undertake military service. Where this is the case, the Alternative Service provision must be non-discriminatory and compliant with international human rights obligations.

In some States, the Alternative Service available to conscientious objectors to military service is discriminatory and perpetuates social divisions and tensions between different religious and other communities. It is important that such Alternative Service measures are in accordance with the reasons for the conscientious objection and are not of a punitive nature, both in duration but also in substance. Alternative Service should therefore not be humiliating, should be of genuine benefit to the community, should be rewarded with an adequate salary, should not be excessively long, and should not place restrictions upon the freedom of movement of the person in question.

Any such discriminatory provisions are likely to create or exacerbate divisions between Conscientious Objectors and the wider community, divisions which are likely to fuel tension and conflict rooted in religion or belief.

***Deprivation of liberty***

Systematic human rights violations persist in States that fail to recognise conscientious objection to military service and prosecute those who refuse to serve. Such prosecutions impinge upon the right to freedom of religion or belief, punishing people unnecessarily for legitimately held convictions.

Any imprisonment for conscientious objection to military service constitutes arbitrary detention (an Article 9 CPR violation), as such detention punishes individuals for attempting to exercise their right to freedom of religion or belief, an Article 18 violation.

The Working Group on Arbitrary Detention has stated that the detention of a conscientious objector is a violation *per se* of Article 18(1) of CPR, noting that ‘the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States’. [[14]](#footnote-14) The Human Rights Committee, too, has found that imprisonment of conscientious objectors, not only repeat imprisonment, constitutes an Article 9 violation (arbitrary detention), noting in 2015 that:

Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.[[15]](#footnote-15)

Unrecognised conscientious objectors must not be imprisoned for their ongoing refusal to undertake, or continue, military service, even if they are called up again. Doing so constitutes a violation of their right to access to justice and effective remedy and impedes them from accessing the vision encapsulated for all in SDG 16.[[16]](#footnote-16) The UN Working Group on Arbitrary Detention has found that repeated imprisonment of conscientious objectors because of their continued refusal to undertake military service constitutes arbitrary detention.[[17]](#footnote-17)

***Deprivation of other rights (civil, political, economic, social and cultural)***

Conscientious Objectors must not be subjected to discrimination in relation to their economic, social, cultural, civil or political rights because they have not undertaken military service.

In countries without provision for conscientious objection, many of those who refuse to serve suffer a severe deprivation of other rights which in some circumstances constitutes degrading treatment. Such deprivation is a grave example of the discrimination against individuals or communities because of their religion or belief: it perpetuates inequalities, entrenches injustice, and imperils the ability of whole societies to achieve SDG 16.

The European Court of Human Rights case has described the impact of discrimination against unrecognised conscientious objectors as ‘civil death’. This consists of a repeated cycle of prosecution and imprisonment, and the systematic generation of feelings of fear and instability which are incompatible with a free and democratic society, and entirely counter to the ambition of SDG 16.[[18]](#footnote-18)

***Displacement and forced migration***

Conscientious objectors in States which do not recognise the right to conscientious objection, or in which application procedures for conscientious objectors are inadequate, often find themselves persecuted and in danger. As a result, conscientious objectors are forced to leave their countries of origin and seek protection elsewhere. For this reason, inadequate protection of the right to conscientious objection and the discrimination it both constitutes and perpetuates is an important driver for forced migration.

Persecution due to failures to recognise or implement the right to conscientious objection can constitute a basis for refugee protection.[[19]](#footnote-19)

**Good practices**

As discussed above, the best practice in terms of the granting of conscientious objector status in a way which ensures the protection of the right to freedom of religion or belief, and non-discrimination, is the welcoming of claims as valid without inquiry. Systems which accept claims as valid without inquiry prevent the possibility of discriminatory attitudes or practices entering systems and perpetuating societal divisions. Where application procedures exist, in order to constitute ‘responsive, inclusive and representative decision-making’, such procedures must meet the checklist laid out in the 2019 OHCHR Report on Application Procedures in order to constitute best practice.[[20]](#footnote-20) To this end, application procedures must be effective, transparent and non-discriminatory.

In order to demonstrate non-discriminatory practice, States must not differentiate between different religious of belief backgrounds: Finland model good practice in this regard, enabling applicants to give ethical and/or religion reasons for their conscientious objection in their application.

States which enable application for conscientious objector status before, during or after service model good practice: these include Switzerland.

In this regard, good practice means never prosecuting or imprisoning conscientious objectors on the basis of their conscientious objection.

States which model best practice in this area work towards the attainment of SDG 16 with a recognition of the key importance of the demilitarisation of society going hand-in-hand with the freedom of religion or belief for all individuals and communities.

1. For an overview of applicable international standards, see Rachel Brett (Quaker United Nations Office), ‘international Standards on Conscientious Objection to Military Service (January 2015) <https://quno.org/sites/default/files/resources/QUNO%202015%20RB%20Conscientious%20Objection%20FINAL.pdf>. [↑](#footnote-ref-1)
2. Jong-nam Kim et al. v. The Republic of Korea (CCPR/C/106/D/1786/2008 Communication No. 1786/2008 of 1 February 2013), para. 7.4 [↑](#footnote-ref-2)
3. Human Rights Committee, General Comment No. 22 (1993). [↑](#footnote-ref-3)
4. Office of the High Commissioner for Human Rights, ‘Conscientious Objection to Military Service’, A/HRC/41/23, 2019. [↑](#footnote-ref-4)
5. War Resisters International, ‘Country report and updates: Turkey’, <https://wri-irg.org/en/programmes/world_survey/country_report/en/Turkey> [↑](#footnote-ref-5)
6. War Resisters International, ‘Country report and updates: Israel’, <https://wri-irg.org/en/programmes/world_survey/country_report/en/Israel> [↑](#footnote-ref-6)
7. War Resisters International, ‘Country report and updates: Cyprus’, <https://wri-irg.org/en/programmes/world_survey/country_report/en/Cyprus> [↑](#footnote-ref-7)
8. Quaker United Nations Office, ‘Closing the Implementing Gap: Application Procedures Enabling the Exercise of the Rights to Conscientious Objection to Military Service’, submission to OHCHR Report A/HRC/41/23. [↑](#footnote-ref-8)
9. UN High Commissioner for Refugees Guideline on International Protection No.10: Claims to Refugee Status related to Military Service within the context of Article 1A (2)of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr.1 of 12 November 2014, paras 10 – 20. [↑](#footnote-ref-9)
10. Human Rights Committee General Comment 22, para. 11. [↑](#footnote-ref-10)
11. Office of the High Commissioner for Human Rights, ‘Conscientious Objection to Military Service: Analytical report of the Office of the United Nations High Commissioner for Human Rights, report to the General Assembly, A/HRC/35/4 (1 May 2017) para. 41. [↑](#footnote-ref-11)
12. Office of the High Commissioner for Human Rights, ‘Conscientious Objection to Military Service: Analytical report of the Office of the United Nations High Commissioner for Human Rights, report to the General Assembly, A/HRC/35/4 (1 May 2017) para. 35. [↑](#footnote-ref-12)
13. Office of the High Commissioner for Human Rights, ‘Conscientious Objection to Military Service’, A/HRC/41/23, 2019. [↑](#footnote-ref-13)
14. United Nations Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention to the Forty-Second Session of the Human Rights Council, A/HRC/42/49 (16 July 2019), para. 61. [↑](#footnote-ref-14)
15. Young-kwan Kim et al. v Rep. of Korea (CCPR/C/112/D/2179/2012 Communication No. 2179/2012 of 14 January 2015), para. 7.5 [↑](#footnote-ref-15)
16. General Comment No. 32, CCPR/C/GC/32, 23 August 2007, IX NE BIS IN IDEM, paras 54-55. [↑](#footnote-ref-16)
17. UN Working Group on Arbitrary Detention, Recommendation 2: detention of conscientious objectors (E/CN.4/2001/14), paras. 91-94. [↑](#footnote-ref-17)
18. European Court of Human Rights, Ülke v Turkey, application number [39437/98](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2239437/98%22]}), 24.01.2006. [↑](#footnote-ref-18)
19. United Nations High Commissioner for Refugees, Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1961 Protocol relating to the Status of Refugees. [↑](#footnote-ref-19)
20. Office of the High Commissioner for Human Rights, ‘Conscientious Objection to Military Service’, A/HRC/41/23, 2019. [↑](#footnote-ref-20)