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**OHCHR Intersessional Workshop on good practices and recent developments in the implementation of the right to conscientious objection to military service in law and practice**

**31 October 2023**

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What I have to say draws on the lived experience of conscientious objectors to military service from many countries and addresses problems and good practice in relation to 4 key issues – law, procedures, attitudes and protection.

First, the rulings from the courts in Colombia and the Republic of Korea are most welcome and deeply appreciated by the conscientious objectors in those countries. But conscientious objectors should not need to bring court cases: conscientious objection to military service should be legally recognised as a right.

**1. Legal recognition of conscientious objection to military service as a right is necessary**

* because it establishes that this is an individual human right;
* applicable to all individuals;
* at all times and in all circumstances, including war-time/mobilisation and is non-derogable;
* it cannot form a legitimate basis for discrimination during or after its exercise;
* clearly distinguishes it from group exemptions from military service, eg for clergy, and from the idea that it applies only to certain groups, such as certain listed religious groups, and/or religious groups which require pacifism of their members[[1]](#footnote-2);
* it applies to women as well as men;
* exclusion from military service on grounds of sexual orientation, gender identity or being intersex is not the same as recognition as conscientious objectors;
* it applies to conscripts, volunteers, serving military personnel, reservists and those outside the armed forces *per se*, eg those who may find themselves engaged in the manufacture of weapons or weapons components[[2]](#footnote-3);
* it is applicable to selective objectors, ie those not necessarily opposed to all wars or use of armed force.[[3]](#footnote-4)
* provision for alternative service or payment in lieu of military service is not the same as recognition of conscientious objection as a right; indeed alternative service is not a requirement even where there is conscription[[4]](#footnote-5)

Equally “buying out” provisions for members of the armed forces to enable them to leave before the end of a contractual period are not the same as recognition as a conscientious objector. In addition, such provisions may not apply or may be suspended during times of war or mobilisation, when contracts may also be extended unilaterally by the authorities.

**2. Legal recognition is necessary but it is not sufficient. Making information readily available and having procedures which enable the exercise of the right of conscientious objection are also essential**

In themselves laws are not sufficient to enable the exercise of the right, information needs to be readily accessible – both official information about the right, and any requirements or procedures[[5]](#footnote-6), but also the provision of information by others including civil society organisations and other conscientious objectors. Making information about the possibility of being a conscientious objector, and how to apply, difficult to access could be tantamount to denial of the right.

Procedures need to be accessible, fair, transparent and reviewable – independent of the military, defence establishments and ministries – and free of cost, including for any documentation required to demonstrate that the individual has no outstanding military obligations in countries where this applies, and such documentation must be in a form which does not lead to discrimination in law or practice, for example in relation to employment.[[6]](#footnote-7) Using “mental health” as grounds for exclusion or exemption from military service in lieu of recognising conscientious objection can also lead to discrimination.

**3. Addressing attitudes**

Even when the law does not limit recognition of conscientious objection to certain specific groups (eg listed religious groups or those requiring pacifism of their members) recognition may *in practice* be based on such assumptions.[[7]](#footnote-8)

Where recognition of conscientious objection is based on an individual assessment requiring justification, decision-makers may be influenced by assumptions about the nature of pacifism, eg not all conscientious objectors are vegetarian or vegan.

Legal or procedural requirements also may bring in unfounded assumptions, eg the requirement that the applicant has never had a gun licence[[8]](#footnote-9), or does not have a criminal record[[9]](#footnote-10), neither of which are necessarily relevant to being a pacifist, as well as taking no account of possible changes in the applicant’s religion or beliefs.

Good practice includes a simple form to complete or statement to make for acceptance. Experience from such practices do not support the idea that this would lead to mass avoidance of military service.[[10]](#footnote-11)

**4. Asylum and refugee status** for unrecognised conscientious objectors, including selective objectors and those who become objectors after volunteering,[[11]](#footnote-12) is an important safeguard and requires States to ensure accurate and up-to-date information about *not only the law but the practice* in the Country of Origin of the asylum-seeker, including changes due to mobilisation, war or emergency situation.

**Finally**, a reminder that in addition to the work of the Human Rights Committee[[12]](#footnote-13), and the Special Rapporteur on Freedom of Religion and Belief[[13]](#footnote-14), and other Special Procedures, the Human Rights Council has adopted a series of consensus resolutions recognising conscientious objection as a right, as had its predecessor, the Commission on Human Rights, evidencing the political/governmental support for this right.

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1. Eg CCPR/C/KGZ/CO/2, para.23; CCPR/C/BLR/CO/5, para.47, Ukraine [↑](#footnote-ref-2)
2. Women were conscripted in the UK in World War 2 including to work in munitions factories and 1,000 claimed conscientious objector status. [↑](#footnote-ref-3)
3. UN General Assembly resolution 33/165 of December 1978 on “Status of persons refusing service in military or police forces used to enforce *apartheid*”; Norway specifically accepts objection to the use of weapons of mass destruction as grounds for conscientious objection; cases of selective objectors have been taken up by the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion and Belief [↑](#footnote-ref-4)
4. Alternative service for conscientious objectors was suspended in 2011 in Norway which means that they are simply exempted from military service, Friendly Settlement in *Alfredo Diaz Bustos v Bolivia,* Case 14/04, Report No. 97/05, Inter-Am. C.H.R., OEA/Ser.L/V/II.124 Doc.5 (2005). This avoids the problem Finland has with absolute objectors. [↑](#footnote-ref-5)
5. Denmark sends out information with the call-up papers [↑](#footnote-ref-6)
6. Positive decision from Hellenic Data Protection Authority in January 2022 quoted in Michael Wiener and David Fernandez Puyana (eds), *A Missing Piece for Peace*, pp162-163 [↑](#footnote-ref-7)
7. “Greece: A Victory for Transparency Reveals Zero Recognition of COs on Ideological Grounds. Serious Deterioration for COs Intensifies” (*War Resisters’ International*, 1 August 2022), https://wri-irg.org/en/story/2022/greece-victory-transparency-reveals-zero-recognition-cos-ideological-grounds-serious [↑](#footnote-ref-8)
8. Eg Greece [↑](#footnote-ref-9)
9. Austria, Greece [↑](#footnote-ref-10)
10. Austria since 1991, Norway since 2001, Switzerland since 2009 [↑](#footnote-ref-11)
11. UNHCR Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service [↑](#footnote-ref-12)
12. CEDAW has also recognised conscientious objection to military service (CEDAW/C/ERI/CO/6, para. 11). [↑](#footnote-ref-13)
13. The Working Group on Arbitrary Detention has also recognised conscientious objection to military service, as well as other thematic and country specific Special Procedures [↑](#footnote-ref-14)