



UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

FACTSHEET

August 2020

CONSCIENTIOUS OBJECTION

Gayle Manchin
Chair

Tony Perkins
Vice Chair

Anurima Bhargava
Vice Chair

Commissioners

Gary Bauer

James W. Carr

Frederick A. Davie

Nadine Maenza

Johnnie Moore

Nury Turkel

Erin D. Singhsinsuk
Executive Director

USCIRF's Mission

To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

By Kirsten Lavery, Supervisory Policy Analyst

Overview

Conscientious objection to military service is frequently connected to freedom of religion or belief, as many conscientious objectors are motivated by deeply-held religious beliefs. To protect the rights of these individuals, some states maintain laws that exempt them from compulsory military service. Often, objectors are required to participate in an alternative national service.

Although the right to conscientious objection is recognized under international human rights law, a number of governments do not have provisions for conscientious objection to military service. When this right is not recognized in states with mandatory military service, conscientious objectors may face prison time for their beliefs.

Eritrea – No right to conscientious objection: Despite the signing of historic peace agreement with Ethiopia in 2018, the [law](#) in [Eritrea](#) still [requires](#) all citizens to perform national service between the ages of 14 and 50 with limited exceptions. The requirement includes 18 months of military service and training for those deemed fit. In practice, service often [extends](#) beyond 18 months. The [law](#) does not provide for conscientious objection status for religious reasons, and there are no alternatives for objectors who are willing to perform alternative civilian service. Hundreds of Eritreans are believed to remain religious prisoners of conscience, including [Jehovah's Witnesses](#) imprisoned for exercising their beliefs and conscientiously objecting to military service.

Cuba – Illegal to invoke conscientious objection: In [Cuba](#), all men are required to perform military service. There are no legal provisions to allow for conscientious objection. In April 2019, [Cuba](#) adopted a new constitution that makes it illegal to invoke [conscientious objection](#) with the “intention of evading compliance with the law.”

International Standards

The UN Human Rights Committee (HRCtee)¹ in [General Comment 22](#) recognized “the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience, and religion” as provided for in Articles 18 of [the Universal Declaration of Human Rights](#) and the [International Covenant on Civil and Political Rights](#). This right is derived “in as much as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.” States must not differentiate among conscientious objectors based on their specific religious beliefs or discriminate against conscientious objectors who fail to perform military service.

Under the ICCPR, the right to religious freedom is non-derogable, even in times of public emergency or war. The [HRCtee](#) and the [UN Working Group on Arbitrary Detention](#) have emphasized the right to hold beliefs that conscientiously object to military service is protected under Article 18(1) of the ICCPR and therefore cannot be [limited](#) by states.

Standards for Laws on Conscientious Objection

Many countries struggle with balancing national security concerns with international human rights standards, including in recognizing the right to conscientious objection. To ensure this right can be fully exercised, states should have [legislation](#) in place on conscientious objection that complies with international human rights standards.

Azerbaijan – Constitutional right to conscientious objection, but no right in practice: [Azerbaijan](#) maintains mandatory military service due to the conflict over the Nagorno-Karabakh region. While the constitution provides a right to conscientious objection, the country has yet to enact a law on alternative civilian service. Without this option, conscientious objectors are criminally prosecuted for refusing military service. The [HRCtee](#) and the European Court of Human Rights in cases, including [Mushfig Mammadov and Others v. Azerbaijan](#), have called on Azerbaijan to give practical effect to the constitutional right of conscientious objection by providing for alternative civil service and repealing sanctions against objectors.

- Any process for obtaining status as a conscientious objector must meet international human rights standards: While some states accept an individual’s conscientious objection as valid without further review, other states require conscientious objectors to apply for this status. As provided for by the [UN Special Rapporteur on freedom of religion or belief](#) and the [UN High Commissioner for Human Rights](#), any application process should be:
 - *Transparent:* Objectors should be provided with information regarding their rights and responsibilities for seeking conscientious objector status, along with details on the process.
 - *Accessible:* The application process for conscientious objection must be accessible. There should not be a cost or the option for a payment to evade military service.
 - *Non-discriminatory and available to all:* The application process must be non-discriminatory, including among religious groups or on the basis of the grounds for objection. The option for conscientious objection should not be limited to specific religious groups or even to religious objections, as some conscientious objectors may be driven by ethical, humanitarian, or other beliefs.
 - *Not time restricted:* There should not be strict time limits for when an individual must apply for conscientious objector status, and doing so should be available before, during, and after performing military service. This is particularly important as individual’s beliefs may evolve during his or her military career.

¹ The [HRCtee](#) is the treaty body of independent experts charged with monitoring state parties’ compliance with the International Covenant on Civil and Political Rights (ICCPR). Along with publishing its interpretation of the content of human rights provisions in its general comments, the HRCtee receives reports regularly from states on their implementation of rights. Through the [First Optional Protocol to the ICCPR](#), the HRCtee is empowered to examine individual complaints with regard to alleged violations of the ICCPR by state parties. It is a different entity from the [UN Human Rights Council](#), which is an inter-governmental body.

Kyrgyzstan– limits on religious communities that can apply for conscientious objections: In [Kyrgyzstan](#), only members of registered religious communities whose teachings prohibit the use of arms can obtain status as conscientious objectors. In light of this limitation, the [HRCttee](#) has called on Kyrgyzstan to ensure that conscientious objection adheres to international human rights standards, including the principle of non-discrimination and the protection of individuals whose non-religious beliefs lead them to conscientiously object.

- Decisions regarding the status of conscientious objectors should be made by an independent civilian body: As [recommended](#) by the UN Special Rapporteur on freedom of religion or belief, an independent and impartial body that is separate from the military should decide claims of conscientious objection. Individuals must also have the right to appeal decisions to an independent and civilian judicial body.

Russia – failure to establish independent decision making body: In [Russia](#), conscientious objectors must [apply](#) to a draft board for alternative military service. While the draft board is separate from the military by law, in practice, there are reports that the military does not permit the draft board to make independent decisions.

- Decisions must be made in good faith and timely: Determinations on applications should be made in good faith. Criteria must be relevant and reasonable, particularly any examination of a person's beliefs. The [UN High Commissioner for Human Rights](#) discourages the use of disqualifying conditions, in recognition that individuals have the right to change their beliefs and that the right to conscientious objection applies also to partial or selective objectors who believe the use of force is justified in some circumstances but not in others. Decisions should also be timely, with a resolution reached before the individual is conscripted.

South Korea – bad faith inquiries: In South Korea, prosecutors have tried to appeal decisions granting conscientious objector status, arguing that some objectors were insincere for [reasons](#) such as playing first-person shooter video games. The Seoul Southern District Court, however, [ruled](#) that individuals can still be conscientious objectors even when they enjoy violent video games, noting that playing such games “does not necessarily mean they had a propensity for violence or that their religious convictions were weak.”

- Objectors may be required to perform comparable civilian alternative service: In some states with compulsory military service, conscientious objectors are exempted from military service. In others states, objectors may be required to perform an alternative service, which must be compatible with human rights, including that it is:
 - *Compatible with the reasons for conscientious objection, which may require a civilian or non-combatant position:* The alternative service must be compatible with the objector's reason for opposing military service. As any individual has the absolute right to be exempted from compulsory military service if it cannot be reconciled with his or her religion or belief, a state can only require the objector to undertake a civilian alternative to military service. This civilian alternative must be outside the military sphere and not under military command. (See [Cenk Atasoy v. Turkey](#)). An objector who is opposed to bearing arms but not unarmed military service may be required to take up a non-combatant position within the military, such as a medical or clerical role.

Tajikistan – no civilian alternative service: In [Tajikistan](#), there is not a genuine civilian alternative to military service for individuals who are conscripted. While the government has [claimed](#) that a law is being developed, conscientious objector [Jovidon Bobojonov's](#) request to perform alternative civilian service was denied. He has been [held](#) pending a criminal trial for fabricated charges of “inciting religious hatred” since October 2019.

- *Not punitive*: [According](#) to the UN Special Rapporteur on freedom of religion or belief, the alternative civilian service may be “at least as onerous as military service” to “avoid opportunism,” but it should not be so arduous as to constitute a punishment. The term of alternative service would be punitive when conscientious objectors are required to serve for a much longer duration than their counterparts and the increased service requirement is not based on reasonable and objective grounds.
- *In the public interest*: The alternative service should be a real service to the community.

South Korea – steps towards alternative service: For decades, all able-bodied men in South Korea have been required to serve in the military for about two years, as part of a conscription effort to defend the country from North Korea. Few [exemptions](#) were granted, and South Korea had been one of the few countries not to offer alternative civilian service, which led to around [19,000](#) conscientious objectors being imprisoned for up to three years since the 1950s for refusing to serve in the military.

Recently, South Korea has taken steps to ensure its system conforms to international human rights standards. In June 2018, the Constitutional Court [issued](#) a decision requiring the government to revise the law to introduce alternative military service. Immediately following the decision, the government ceased imprisoning conscientious objectors. In December 2019, the National Assembly [amended](#) the law to allow conscientious objectors to fulfill the military service obligations by working for 36 months, the longest alternative service requirement in the world, at a correctional facility. This law has been [criticized](#) for failing to meet international standards. UN experts [expressed](#) several concerns, including regarding the length of alternative service, the exclusive focus on detention centers, and the failure to take into account the preferences and skills of the conscientious objector to ensure real public service.

- States should not imprison individuals solely based on their conscientious objection or otherwise discriminate against conscientious objectors: While conscientious objectors can be required to perform alternative civilian service, states should refrain from imprisoning these individuals based on their refusal to perform military service. The [UN Working Group on Arbitrary Detention](#) has noted that the detention of individuals based on their genuine beliefs that conflict with military service is a per se violation of the absolute right to hold beliefs enshrined in Article 18(1) of the ICCPR. Repeated incarcerations should not be used to try to force conscientious objectors to change their beliefs. Beyond criminal prosecutions, conscientious objectors should not be discriminated against based on their beliefs, including in employment or through the deprivation of other rights.

Turkmenistan – imprisonment of conscientious objectors: In [Turkmenistan](#), there is no alternative civilian service and the government routinely imprisons conscientious objectors, who are facing increasingly severe penalties. There are currently 8 conscientious objectors known to be in prison and charged under article 219(1) of the Criminal Code for the absence of a legal basis for exemption from military service. In July 2019, [Bahtiyar Atahanov](#) received a 4-year sentence for conscientious objection, the harshest sentence to date. He was forcibly brought to a military unit and then charged as an active serviceman in dereliction of duty.

Turkey – discrimination against conscientious objectors: In [Turkey](#), conscientious objection is not [recognized](#) and there are no provisions for alternative service. In addition to prosecuting and imprisoning conscientious objectors, the Ministry of National Defense sends letters to employers of conscientious objectors, causing them to lose their jobs.



Conclusion

States must universally ensure the right to object to military service based on genuinely-held religious beliefs as an integral part of the absolute right to hold beliefs. Yet, some states fail to recognize this right in law or in practice, erroneously citing national security concerns. In these countries, individuals are often imprisoned and discriminated against for conscientious objection.

In addition to urging the release of all individuals detained for conscientious objection, the United States Commission on International Religious Freedom (USCIRF) calls on states to ensure their laws comprehensively protect conscientious objectors, including by providing a process to obtain this status that complies with international standards. When compliant with these principles, civilian alternatives to military service can facilitate the contribution of conscientious objectors to the public good, while respecting their beliefs and rights.

Professional Staff

Danielle Ashbahian
Senior Communications Specialist

Keely Bakken
Policy Analyst

Dwight Bashir
Director of Outreach and Policy

Elizabeth K. Cassidy
Director of Research and Policy

Patrick Greenwalt
Researcher

Gabrielle Hasenstab
Communications Specialist

Roy Haskins
Director of Finance and Office Management

Thomas Kraemer
Senior Advisor for Strategic Outreach

Kirsten Lavery
Supervisory Policy Analyst

Jason Morton
Policy Analyst

Dominic Nardi
Supervisory Policy Analyst

Mohyeldin Omer
Policy Analyst

Jamie Staley
Senior Congressional Relations Specialist

Zack Udin
Researcher

Nina Ullom
Congressional Relations Specialist

Madeline Vellturo
Policy Analyst

Scott Weiner
Senior Policy Analyst

Kurt Werthmuller
Supervisory Policy Analyst

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan federal government entity established by the U.S. Congress to monitor, analyze, and report on threats to religious freedom abroad. USCIRF makes foreign policy recommendations to the President, the Secretary of State, and Congress intended to deter religious persecution and promote freedom of religion and belief.