

## Speech

Dear distinguished colleagues, ladies and gentlemen,

I would first like to thank the organizers for inviting the United Nations Office of the High Commissioner for Human Rights to participate in this conference.

I would also like to thank the distinguished speakers that have presented before me, for their insights.

My presentation will focus on international human rights standards and recommendations issued by Office of the High Commissioner for Human Rights.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognise the freedom of conscience. The right of conscientious objection to military service derives from the freedom of conscience.

This has been authoritatively and repeatedly affirmed by the Human Rights Committee since its early pronouncement in General Comment number 22, adopted in the 1993.

States, too, have expressed repeated recognition of the right, as affirmed in consecutive resolutions by the Human Rights Commission – and then Human Rights Council, a subsidiary body of the United Nations General Assembly composed of 47 Member States of the United Nations. States have also raised questions to other States relating to the implementation of the right in the context of the Universal Periodic Review. States, through the Council have mandated independent experts, such as the UN Special Rapporteur on the freedom of religion or belief – but also others – who have raised matters of compliance with the right to the attention of States.

Last, but not least, States – through the Council - have regularly mandated OHCHR to report on the implementation of the right.

**The existence of the right– as a matter of international law binding on States – is therefore undisputable.**

The adoption of the celebrated Constitutional Court judgment in 2018, culminating in the adoption of the Act on Assignment to and Performance of Alternative Service, has been a welcome and important development.

We have recognised this both in our reporting as well as in a recent Intersessional Workshop on Conscientious Objection to Military Service, highlighting the role of the Court as a good practice for States. It is also something that the Human Rights Committee gave recognition to in its most recent concluding observations, adopted just a few weeks ago.

**The recognition of the right, however, is not the end of the story.**

In our previous reporting, we noted that there were concerns with the Alternative Service Act already prior to its adoption. In particular, we highlighted the length of alternative service.

This is an element that the Human Rights Committee also raised in its most recent concluding observations. It also raised concerns of the punitive character of alternative service, the limitation of alternative service to correctional facilities, and the exclusion of certain individuals from applying to alternative service.

I will not make further comment on these concerns. Instead, I would like to elaborate on the recommendations that OHCHR has presented to the Human Rights Council on the implementation of the right of conscientious objection under international human rights law.

These recommendations concern the application procedure for achieving recognition as conscientious objector and alternative service arrangements, which could be relevant to our discussions today.

**Before delving into these, however, I want to specify a few points:**

First, the right of conscientious objection to military service is **absolute**, and permits no restrictions.

Second, there is **no obligation** under international law **to maintain a system of conscription**.

Secondly, those States that do maintain such systems must – at least – provide **exceptions to ensure that conscientious objectors** are **not** put in a potential situation of having to take another human beings' life.

Thirdly, States have no obligation to establish alternative service – they may very well simply impose **no obligations on those individuals that do not perform military service**. However, when States establish an alternative service system, that system must comply with international human rights law and should facilitate the exercise of human rights.

**Now, on to the recommendations:**

**First,** States should avoid the undue exclusion, directly or indirectly through practice, of individuals from conscientious objection application procedures. This is crucial, because this type of exclusion could be tantamount to not recognising the right for the excluded individuals.

It is therefore important to recall that the right applies also to **pacifists and to selective objectors** who believe that the use of force is justified in some circumstances but not in others.

The application procedure should be available to **all persons affected by military service**, including conscripts, professional members of the armed forces and reservists;

Alternative service arrangements should be accessible to all conscientious objectors **without discrimination as to the nature of their religious or non-religious beliefs**;

Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service.

**Second,** States should ensure a procedure that is conducive to the protection of the right.

Everyone has the right of **access to information**, as provided in Article 19 of the ICCPR. This right imposes certain obligations on States to proactively put information in the public domain. The lack of information can be an important barrier to the exercise of rights. All persons affected by military service should therefore have access to information about the right to conscientious objection and the means of acquiring objector status.

The process of applying for status as a conscientious objector should be **free and there should be no charge for any part of the whole procedure**. This is important not to dissuade individuals from exercising their rights on the basis of their socio-economic situation.

States should consider **accepting claims of conscientious objection to military service as valid without an inquiry process**. States that do not accept claims of conscientious objection as valid without an inquiry, should ensure that the inquiry is undertaken by an **independent and impartial body under control of civilian authorities**.

Procedures should be based on reasonable and relevant criteria to identify the conscientious objector status of the individual ... and the inquiry processes should be tailored to ensure **respect for the dignity of the individual**, and it must **avoid undue interferences in the privacy** of the applicants.

States should also not impose any conditions that would result in **automatically disqualifying applicants**. This precludes, for example, setting unreasonable time-limits for launching an application, setting excessively onerous documentation requirements on the applicant, or for example excluding individuals with a criminal record.

The process for consideration of any claim of conscientious objection should be timely.

**The third point**, is that **while the procedure is ongoing**, all duties involving the bearing of arms should be suspended pending the decision.

**Fourth**, after a decision on conscientious objector status, right to appeal to an independent civilian judicial body. This right of access to justice is also guaranteed in the ICCPR article 14, and is an important safeguard to ensure the compatibility of the procedure with international and domestic law.

**Fifth**, the **alternative service** must be compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not be of a punitive character.

I will make a few comments on the public interest and non-punitive character of alternative service:

This assessment is made not only by looking at whether the **purpose** of alternative service is punitive, but whether it, everything considered, alternative service in **effect** is punitive.

This includes, first, looking at the **length of alternative service**. Account will be taken, also, as to whether there are reasonable grounds for delays between recognition of the conscientious objector status, and the commencement of alternative service.

It includes, also, an **assessment of the alternative service locations, conditions, and the treatment of the individuals performing alternative service**. Efforts should be made to ensure that the nature of the alternative service is such as to make a meaningful contribution to the public interest.

Authorities should also be mindful that excessive discretion awarded to the employer to impose restrictions on alternative service members could raise concerns of punitive treatment.

Differential treatment between military and alternative service could constitute unlawful discrimination under ICCPR article 26 if it is not based on reasonable and objective criteria.

**Sixth**, have the **obligation to ensure effective remedies. This pertains to all violations**. The right of effective remedies entails that States must cease ongoing unlawful conduct, and take the steps necessary, including legislative and other measures, to ensure compliance with obligations under international human rights law.

In this regard, art. 9 of the International Covenant on Civil and Political Rights grants an enforceable right to compensation for anyone who has been unlawfully arrested or detained.

**Seventh, and last, States should promote societal acceptance of the exercise of the right of conscientious objection.** As noted by our director at the intersessional workshop on conscientious objection to military service, public authorities should emphasise the crucial societal value of alternative service. Civilian functions are essential and remain essential also in times of insecurity and armed conflict.

It is our hope that these recommendations would be relevant in the ongoing discussions evaluating the alternative service.

The topic is one of **great importance for us**, as conscientious objection to military service is the individual expression of two fundamental and universal values recognised by the Charter of the United Nations: it reaffirms the inherent dignity and worth of the human person and the desire to save present and future generations from the scourge of war.

As a final note, I would just like to highlight that our upcoming report to the Human Rights Council will include recommendations on legal and policy frameworks to uphold the right of conscientious objection to military service. It will be presented to the Human Rights Council at its 56<sup>th</sup> session in June/July 2024.

Thank you for your attention.