

CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 139th Session of the Human Rights Committee

KUWAIT

(Military service, conscientious objection and related issues)

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CPTI aims to supply information on all States with armed forces which report under the International Covenant on Civil and Political Rights (ICCPR) with regard to their military recruitment legislation and their recognition of the right of conscientious objection, whether or not urgent questions arise.

In association with the Child Rights Information Network, CPTI also reports to the Committee on the Rights of the Child on States where there appear to be issues under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Such concerns are also summarised for information in our ICCPR submissions.

Summary and context

It is not clear what provisions, if any, Kuwait has for alternative service for conscientious objectors to military service. The statement made during the examination of its Third Periodic Report was vague, and no reply was given to the question on the subject in the List of Issues on the Fourth Report. Fuller information needs to be sought from the government delegation.

On the other hand, the State Party has been consistent in insisting that the right of conscientious objection to military service cannot be respected in time of war. This betrays a complete incomprehension of conscientious objection, which developed initially precisely as an objection to taking part in war, which this Committee derived as a right from that to freedom of thought, conscience, and religion “insofar as it entails an obligation to use lethal force”,¹ and which the Committee’s subsequent jurisprudence has defined as inherent to the freedom of thought, conscience and religion, a right from which the Covenant permits no derogation. It is in fact “in times of armed conflict, when (...) the right to conscientious objection is most in need of protection, [and] most likely to be invoked.”²

In the past similar arguments were put forward by a number of States to justify their complete failure to make provision. But since the issue was highlighted by actions of both parties to the war in Ukraine, it has emerged that many States reserve the right to suspend conscientious objection provisions in such circumstances.

It is essential that this proposed limitation of the right be challenged whenever it arises -as in the case of Kuwait.

¹ General Comment 22, 30th September 1993, para 11.

² Views adopted on Communications 1642/2007 to 1741/2007, *Min-Kyu Jeong et al v Republic of Korea*, 24th March, 2011 (CCPR/C/101/D/1642-1741/2007, issued 5th April 2011). concurring opinion by Sir Nigel Rodley, endorsed by three other members of the Human Rights Committee,

KUWAIT: BASIC INFORMATION

HISTORICAL BACKGROUND

Kuwait, formerly under British protection, gained independence in 1961, and was admitted to the UN as a member State in 1963. It ratified the ICCPR in 1996.

From the outset its main defence challenge was the desire by Iraq to assert historical sovereignty; but this resulted only in relatively minor clashes until the invasion of September 1990, in which Iraq occupied the entire country, being driven out by a UN-authorized coalition under the leadership of the USA the following year. It is estimated that some 1,000 Kuwaitis perished as a result of the Iraqi occupation.

POPULATION (November 2022, estimated) ³	3,068,000
proportion of males aged 15-194	3.3%
thus annually reaching recruitment age (approx):5	20,249

MILITARY SERVICE: Obligatory for male citizens under Military Service Act(No. 20/2015)

Also: “Single women of over 18 and under 30 years of age may be called up for compulsory military service, pursuant to a decree, provided that their duties are compatible with their natural capacities,”⁶ but there is no report that this has ever happened in practice.

DURATION: 12 months; 9 months for graduates

MINIMUM AGE: 18. Kuwait’s declaration on accession to OPAC in 2004 stated: “the Government of the State of Kuwait is committed to maintaining the minimum age for voluntary service in the Kuwaiti armed forces at 18 years of age, and to prohibiting the forced conscription of any persons under the age of 18, pursuant to article 3, paragraph 2 of the (...) Protocol. No issues regarding juvenile recruitment, military schools, or militarisation of education arose when it Reported under OPAC

CONSCIENTIOUS OBJECTION: No details known of any provision (see text)

ARMED FORCES: Active strength, November 2022 7	17,500
compared to the male population reaching recruitment age	86.4%
(proportion of conscripts not known)	

MILITARY EXPENDITURE⁸: US \$ equivalent, estimated 2022	\$8,244m
Per capita	\$1,882
As % of GDP	4.5%

³ The Military Balance 2023 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

⁴ Ibid

⁵ It should however be noted that because of the large proportion of non-citizens in the population the number eligible for conscription is much smaller.

⁶ CRC/C/OPAC/KWT/1, 24th April, 2007, p4.

⁷ The Military Balance 2023

⁸ Stockholm International Peace Research Institute – SIPRI, April 2023.. It might be noted that the level of expenditure per capita is exceeded only by Qatar, Israel, the USA, Saudi Arabia and Singapore.

Military Service and Conscientious Objection

Kuwait imposed obligatory military service on male citizens upon independence in 1961. However, military service was not popular with citizens, in any case a minority of the resident population, who reportedly often took advantage of liberal exemption provisions.⁹ These had not however included any on the basis of conscientious objection. In response to the questionnaire from OHCHR on conscientious objection provision in 1980, Kuwait stated “There are no legal provisions under which a Kuwaiti national who satisfies the conditions specified in the Compulsory Military Service Act (...) may be relieved of his responsibility to bear arms in defence of the integrity of his country.”

Traditionally, the shortfall was made good by foreign nationals and on members of the stateless Bedoon community, who saw military service as a route to acceptance and perhaps of acquiring citizenship; before the Iraqi invasion of 1991 the Bedoon provided over 90% of the military rank and file. However, non-citizens, particularly Bedoon and Palestinians, were widely perceived as having mixed loyalties in that conflict, and a large number subsequently were dismissed; by 1995 Bedoon accounted for only 25% of military manpower. This of course exacerbated the problems of reaching recruitment quotas. It seems that restrictions on the eligibility of Bedoon for military service were eventually loosened in view of manpower shortages,¹⁰ but meanwhile a comprehensive overhaul of the system had been deemed appropriate. Military Conscription Act (No. 102/1980), was “was repealed in its entirety following the promulgation of Ministerial Decree No. 1518/2001, (...) because of difficulties and problems with its implementation, (...) temporarily exempting Kuwaitis from military service for a non-specified period of time.”¹¹ Conscription was eventually reinstated by the National Military Service Act (No. 20/2015), with effect from April 2017.

The 2015 Act applies to male citizens¹² born on 10th May 1999 and later, who are obliged, whether or not resident, to register for military service within sixty days of reaching their eighteenth birthday. It seems that the *de facto* exemption of those who became eighteen between 2001 and 2017 was thus made permanent, although of course the option of voluntary enlistment remained available.¹³

Conscripts serve for twelve months divided in two phases – four months of training and eight months active service. According to one report, this was to be followed by thirty days reserve service each year until the age of forty-five.¹⁴ The same source also reports a “non-binding” recommendation from the parliament that private-sector employees should be exempted from military service, in a bid to encourage citizens into private sector jobs. Conversely, those enrolled for military service have priority in the allocation of public sector jobs, in which they are guaranteed leave on full salary for the periods of military service; during the drafting process it had been suggested that this would apply also to those employed in the private sector, and that the self-

⁹ Horeman, B. and Stolwijk, M., Refusing to Bear Arms, War Resisters' International, London, 1998, quoting a 1993 report by the United States State Department.

¹⁰ Touni, H. “Kuwait's Bidoons allowed to join army” Gulf News, 7th March 2018.

¹¹ Initial Report of Kuwait under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (CRC/C/OPAC/KWT/1), 24th April, 2007 (Arabic original submitted on 13th April 2007), page 5.

¹² In 2008, during the discussions on the legislation, it was proposed that unmarried women aged between 18 and 30 might also be covered by the requirement, but this was not followed up. Women may however volunteer to perform military service. 7th February 2022, Kuwait arma allows women in combat roles, but without guns. France 24.com

¹³ The Kuwaiti Government website (<https://e.gov.kw/sites/kgoenglish/Pages/Services/MOD/AskedVolunteeredMilitaryServiceKuwaitis.aspx>) implies that voluntary enlistment is aimed at those who are going to train as non-commissioned officers.

¹⁴ Sophia, M. “Kuwait reintroduces compulsory military service for citizens”, Gulf Business, 9th April 2015.

employed would be reimbursed by the Ministry of Defence; the Government would also pay social allowances to enlistees. At the same time, it had been proposed that for university graduates “who pass all the training courses”, the period of service would be nine months, increased by two months in the case of failure in the training courses. Provisions regarding exemptions similar to those included in the 1980 Act are retained.

Those who fail to register for military service within the deadline have an extra month of service added; those who do not respond to call-up, two extra months. These offences are not be subject to statutes of limitations; after the age of military service they would be punishable by a travel ban, an arrest warrant to serve up to three years’ imprisonment, and a fine of KD 5,000 (approximately \$20,000 US), as well as a lifelong ban from public office and [unspecified] further restrictions on basic rights. In time of mobilisation the punishment would be imprisonment for between three months and five years and a fine of KD 10,000.¹⁵

In 2000, in its Concluding Observations on Kuwait’s Initial Report under the ICCPR, the Human Rights Committee recommended: “In order to implement article 18 of the Covenant, the State party should reflect in its legislation the situation of persons who believe that the use of armed force conflicts with their convictions, and establish for these cases an alternative civilian service.”¹⁶; in 2011 the Concluding Observations on the Second Periodic Report stated: “The Committee is concerned that the State party does not recognize the right of conscientious objection to military service and does not intend to adopt provisions implementing that right. (...) The State party should adopt legislation recognizing the right of conscientious objection to military service, and put in place an alternative to military service which is neither punitive nor discriminatory.”¹⁷

In response, in its Third Periodic Report, Kuwait cited Article 47 of the Constitution, which refers to defence of the country as a “sacred duty”, and proceeds to assert: “Accordingly conscientious objection is not recognised since conscription is in the interests of a country situated at the heart of a region characterized by instability and political crises in the light of which its people need to be trained to face dangers, defend their homeland and resist any aggression.”¹⁸ It pointed out that 1980 Act had clauses exempting breadwinners and the only male child of any family, that “the citizen's state of health is taken into consideration” and that the army “sometimes assigns citizens to civilian duties in their own field of specialisation, such as care of the sick and the injured, and not solely to combat duties,”¹⁹ but proceeded to admit that at the time “enforcement of the Military Conscription Act has been suspended while it is being reviewed”.²⁰

In the List of Issues on the Report, Kuwait was asked “to indicate whether steps have been taken to amend the relevant legislation to recognise the right to conscientious objection to military service and to introduce an alternative civilian service for conscientious objectors.”²¹

The reply seemed to imply that conscientious objection *might* be recognised *except* when most relevant: “Conscientious objection may be a matter of personal conviction and feelings yet there is a more general context which cannot be overlooked: that is, when the independence of the State and its territory or the self-determination of its people is at stake and citizens must help to defend it. Therefore, if the State comes under attack, there can be no alternative to military service and the obligatory conscription of non-military personnel to defend their country. This principle

¹⁵ Kuwait Times, [*Failure to register for conscription subjects citizens to punitive measures: Kuwaiti Army*](#), 9th July 2017

¹⁶ CCPR/CO/69/KWT, 27th July 2000, para 44.

¹⁷ CCPR/C/KWT/2/CO, 18th November 2011, para 22.

¹⁸ Ibid, para 101

¹⁹ Ibid, para 102.

²⁰ Ibid, para 102

²¹ CCPR/C/KWT/Q/3, 4th December 2015, para 19.

finds confirmation in a number of articles of the Kuwaiti Constitution: 1, 47, 48, 68, 157, 158 and 160.”²²

This statement was questioned during the dialogue with the State delegation: “although the Committee understood that there had been no conscription since 2001, it would be useful to know the extent to which — were a law providing for conscription to be reintroduced — the right to alternative service for conscientious objectors would be recognized. The State party had informed the Committee that there could be no alternative to military service if the State came under attack, and it would be helpful to know what circumstances would qualify as an attack”²³

In reply, the delegation “said that conscientious objection to military service was an expression of the freedom of belief, and alternatives to military service were made available to those who declared themselves to be objectors. However, the Constitution provided that military service was a sacred duty and that everyone, without exception, was required to perform such service if the country were invaded by an enemy State, which had indeed happened in the recent past.”²⁴

The implication was that alternative service did exist in time of peace, but no details were given, no reports on the 2015 Act mention any provisions regarding conscientious objectors, and the State reply²⁵ to Paragraph 20 of the List of Issues on the present Periodic Report seemingly overlooks the first sentence of that paragraph “Please report on the measures taken to ensure that the right to freedom of conscience and religious belief is fully respected, in law and in practice, on a non-discriminatory basis, and includes conscientious objection to military service.”²⁶

This makes it important to seek reassurances that in practice any conscientious objectors are not simply subjected to the draconian punishments which, in an attempt to encourage the enlistment of Kuwaiti nationals, are applied to those who evade military service.

²² CCPR/C/KWT/3/Add.1, 21st April, 2016, p20.

²³ CCPR/C/SR3270, 30th June 2016, para 24.

²⁴ Ibid, para 51.

²⁵ CCPR/C/KWT/RQ4, 16th May 2023, paras 91-97, inclusive.

²⁶ CCPR/C/KWT/Q/4, 29th November, 2022, para 20.

Suggested Questions

No information is given in the replies to the List of Issues regarding respect for the right of conscientious objection to military service. What arrangements are in place to make alternatives to military service available to conscientious objectors? Please indicate the relevant legal provisions, the procedures followed, and how those affected are informed of these alternatives. Please indicate also the number of individual cases which have arisen in recent years.

The State Party is reminded that conscientious objection is in fact most relevant in times of armed conflict, when the requirement to exercise lethal force is most likely to be invoked. In the light of this, the Committee would appreciate an assurance that the relevant arrangements apply equally in time of war, national emergency, or general mobilisation.