



RESPONSES TO INFORMATION REQUESTS (RIRs)

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Organization Chart	Israel: Sanctions for and consequences of avoiding military service or refusing to bear arms or to follow orders from officers, including in battle zones; possibility for soldiers to sue officers for improper conduct or wrong-minded orders	
Employment	Research Directorate, Immigration and Refugee Board of Canada, Ottawa	
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Refugee Protection Division	In 23 February 2009 correspondence sent to the Research Directorate, a representative from New Profile, a pacifist non-governmental organization (NGO) opposed to the compulsory military draft (New Profile n.d.), distinguishes between sanctions imposed upon people who have been legally exempted from military service and those sanctions imposed upon draft evaders (ibid. 23 Feb. 2009a). According to the Representative, few draft evaders are able to avoid imprisonment (ibid. 23 Feb. 2009a).	
Immigration Division		
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National Documentation Packages	Consequences of illegally avoiding military service	
Issue Papers and Country Fact Sheets	Under Israeli military law, penalties for avoiding military service differ depending on whether such avoidance is deemed to constitute absence without leave or desertion (Israel 2008, 15). Section 94 of the Military Jurisdiction Law states that, in the absence of reasonable justification, "absence from service without permission is punishable by 3 years imprisonment" while desertion, or "absence from military service with the intention not to return to the army, is punishable by 15 years imprisonment" (ibid.). According to the Representative from New Profile, persons who continually fail to report for military service may be sentenced to prison terms again and again (23 Feb. 2009a).	
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Proactive Disclosure	Cases reported in several media sources indicate that prison sentences for refusing an order or failing to report for duty because of objections to specific military operations can range from between two to four weeks (Ynet 17 Oct. 2006; Dawn 8 Aug. 2007; The Jerusalem Post 18 Aug. 2006) to a year or more (NZPA 9 Oct. 2008; VOA 8 Jan. 2004; LA Times 21 Aug. 2007). The Los Angeles Times notes that "Israelis who refuse outright to serve are prosecuted and sent to jail for a year or more ... [b]ut those evaders ... numbered only a few dozen" between 2000 and	

2007 (ibid.).

In December 2008, Amnesty International (AI) reported on nine teenagers who had recently been imprisoned for refusing to comply with call-up notices because of their opposition to Israel's presence in the Palestinian Territories (18 Dec. 2008). One such refuser, a 19-year-old, had reportedly already served 50 days in prison and was carrying out her third sentence (AI 18 Dec. 2008). A 2 January 2006 article from *The Jerusalem Post* reported on a conscientious objector who has been sentenced multiple times for refusing to obey orders.

A second representative from New Profile stated in correspondence with the Research Directorate that, in his opinion, social stigma against refusers has recently increased in Israel (New Profile 23 Feb. 2009b).

Consequences of refusing orders

According to the Public Committee Against Torture in Israel (PCATI), an Israeli NGO that receives support from, among others, the European Commission and the New Israel Fund (PCATI June 2008.), soldiers who do not obey lawful orders are committing a military offence (ibid., 23). Israeli law provides that a soldier who disobeys an illegal order will not face prosecution (ibid.; Israel n.d.), while a soldier who obeys an illegal order may be found criminally responsible (PCATI June 2008, 23). For instance, a soldier who obeys an order to fire upon unarmed civilians may be punished with imprisonment (*LA Times* 8 Aug. 2007). In addition, a senior commander who observes soldiers abusing a detainee, even if the commander is not assigned to their unit, risks criminal prosecution for being "an accessory and a partner in the assault" if he or she does not intervene to stop the abuse (PCATI June 2008, 24-25). The Representative from New Profile noted that while he has on occasion heard of soldiers being convicted for carrying out illegal orders, he has never heard of a soldier being acquitted for refusing to obey an order (23 Feb. 2009a).

In 23 February 2009 correspondence with the Research Directorate, the first Representative from New Profile provided further details on the types of orders that soldiers might refuse: Some soldiers refuse to obey an order asking them to serve in a particular territory, such as the Occupied Palestinian Territories (OPT), while others refuse to perform certain functions, such as carry weapons (New Profile 23 Feb. 2009a). Refusing an order is an offence that may be disciplined according to the Military Penal Code and in this way is similar to failing to report for duty (ibid.). The Representative stated that in the absence of a double jeopardy, "people are being repeatedly imprisoned for refusing the same order on conscientious grounds" (ibid.). The Representative noted, however, that in some cases, the military agrees not to deploy a soldier to the OPT and that "for very rare exceptions, " soldiers refusing to bear arms may be discharged (ibid.). The practice of refusing to follow military orders is most common among reserve soldiers and they are generally punished by repeated prison terms until the Israel Defense Forces (IDF) eventually decide to cease calling them up for service (ibid.).

In December 2006, *Haaretz* published excerpts from a report prepared by the Military Advocate General's Office which included details on acts of insubordination that took place during the 2005 military disengagement from the Gaza Strip (19 Dec. 2006). Of the 163 cases of insubordination (a number which indicated that it was "a limited phenomenon") that took place prior to and during the disengagement, the IDF indicted 3 soldiers (of whom 1 was imprisoned) and tried 65 in a disciplinary court (of whom 46 were sentenced to jail terms) (*Haaretz* 19 Dec. 2006). Another 49 soldiers or officers received non-prison sanctions, such as removal from command positions (ibid.). One officer, for instance, received a relatively light sentence from the Central Command Military Court because his background in the settler community and his good standing in the military were taken into account (ibid.). Stiffer sentences were handed out in cases where the insubordination was highly public, such as before television cameras (ibid.). For

example, a brigade rabbi who "called for insubordination on camera" was demoted and sentenced to 4.5 months' imprisonment (ibid.).

Consequences of legally avoiding military service

Following an apparent increase in incidents of draft evasion (*LA Times* 21 Aug. 2007; *The Jerusalem Post* 14 Jan. 2008), *The Jerusalem Post* reported in 2008 that the Ministry of Transportation would begin sharing information with the army on young people who were able to obtain driver's licences but who had previously been found psychologically unfit to serve in the military (ibid.). This initiative, which seeks to identify people who have fraudulently obtained a medical exemption from military service, met with criticism from some groups that claimed it infringed upon citizens' right to privacy (ibid.). In addition, the *Los Angeles Times* reports that the IDF is considering "a new category of dishonourable discharge for those judged to have faked ailments" (*LA Times* 21 Aug. 2007).

The first Representative from New Profile stated that there are both formal and informal sanctions against those who do not serve, even for those who are legally exempted from military service on the basis of health, religious belief, conscientious objection or ethnicity (such as the majority of Arab-Israelis who are not obligated to serve) (New Profile 23 Feb. 2009a; see also *LA Times* 21 Aug. 2007). According to the Representative, persons who are legally exempted from military service are denied the preferential treatment given to veterans (including lower taxes, state guarantees for mortgage loans and higher minimum wage) (New Profile 23 Feb. 2009a). For example, non-veterans might encounter more difficulty when trying to renew a driver's licence or may not have access to social security payments until they are 20 years of age (ibid.). "Informal sanctions" could include having more difficulty in finding employment or entering universities before the age of 20 (ibid.) or, for artists, in accessing certain performance venues (ibid.; see also *LA Times* 21 Aug. 2007).

Possibility for soldiers to sue officers

The first Representative from New Profile stated that a soldier may lodge a complaint against an officer for improper conduct or wrong-minded orders, although he believes that such complaints are frequently disregarded (New Profile 23 Feb. 2009a). According to the Representative, a soldier may not sue an officer because "there [is] no court that would accept such charges from an individual, unless one can prove material damage to oneself and demand compensation from the military" (ibid.). This information could not be corroborated among the sources consulted by the Research Directorate.

According to a 2006 pamphlet on military service prepared by Israel's Ministry of Immigrant Absorption, soldiers who wish to lodge a complaint regarding any aspect of their service must first report this to a non-commissioned officer (NCO) (Israel 2006, 32). Within the military bureaucracy, the office of the *Mashakit Tash* is responsible for conditions of service and may "intercede on [a soldier's] behalf with [a] commanding officer [or] ask for special assistance" (ibid.).

Soldiers may submit, in writing, their inquiries to the Soldiers' Complaint Commissioner (*Netzivut kvilot chayalim*), "an independent body that handles inquiries and complaints from soldiers on issues including conditions of services, unreasonable orders or unfair treatment, injustice or blatant deviation from regulations" (ibid.).

The Public Appeals Commissioner (*Katzin/Katzinat Pniyot HaTzibur*) fields inquiries from soldiers (or family members of soldiers) in regular service or reserve duty who face "irregularities, injustices, and mismanagement in their units" (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This

Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: The Embassy of Israel in Ottawa, the Israel Defense Forces (IDF), a lawyer specializing in Military Law and two Israeli professors specializing in military affairs did not respond to requests for information within the time constraints of this Response.

Internet sites, including: British Broadcasting Corporation (BBC), Coalition to Stop the Use of Child Soldiers, Combatants for Peace, Courage to Refuse, European Country of Origin Information Network (ecoi.net), Human Rights Watch (HRW), *The Jewish Chronicle* [London], *The New York Times*, Refuser Solidarity Network, War Resisters' International (WRI).

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